

## NOTICE OF DECISION

### SKAGIT COUNTY HEARING EXAMINER

**Appellant:** David Allan  
P. O. Box 98  
Bow, WA 98232

**Application #:** PL10-0178 - Appeal of Denial of Request for Administrative Setback Reduction.

**Location:** 15547 Flinn Road, within a portion of Sec. 22, T36N, R3E., W.M. (Parcel #P123887)

**Zoning:** Agricultural Natural Resource Lands (Ag-NRL)

**Summary of Case:** Appellant appeals administrative denial by Planning and Development Services (PDS) of request for reduction of required setback from 35 feet to 8 feet for structures along the north (rear) property line.

**Public Hearing:** June 23, 2010. Appellant represented himself. Michele Szafran and Brandon Black represented PDS. Witnesses testified. Exhibits were offered and admitted.

**Decision:** The administrative denial is affirmed. The appeal is denied.

**Date of Decision:** July 13, 2010

**Reconsideration/Appeal:** A Request for Reconsideration may be filed with PDS within 10 days of this decision. (SCC 14.06.180). The decision may be appealed to the Board of County Commissioners within 14 days of the date of decision or decision on reconsideration, if applicable. (SCC 14.06.110(13))

**Online Text:** The entire decision can be viewed at:  
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

In the Matter of the Appeal of	)	
	)	
<b>DAVID ALLAN</b>	)	PL 10-0178
	)	
From the Administrative Denial of a	)	<b>FINDINGS OF FACT,</b>
Variance for a Reduction of Setbacks on	)	<b>CONCLUSIONS OF LAW</b>
Property at 15547 Flinn Road.	)	<b>AND DECISION</b>
_____	)	

This matter came on regularly for hearing before the Skagit County Hearing Examiner on June 23, 2010. Appellant David Allan represented himself. The County Planning and Development Services Department was represented by Michele Szafran and Brandon Black.

Witness testified. Exhibits were offered and admitted. From the record made, the Examiner enters the following:

**FINDINGS OF FACT**

1. On April 8, 2010, Planning and Development Services (PDS) issued an administrative decision denying a requested reduction in setback to David Allan. The decision related to property at 15547 Flinn Road, within a portion of Sec. 22, T36N, R3E, W.M. The property is zoned Agriculture- Natural Resource Land (AG-NRL).
2. The request which the decision denied was for a reduction of setbacks from 35 feet to 8 feet for structures along the north property line.<sup>1</sup> The request concerned three structures: a shop building located 9 feet off the north and east property lines, and two existing shed buildings located approximately 8 feet off the north property line and about 70 feet west of the shop building.
3. The shed structures are apparently used for hay and equipment storage. The shop building is used in connection with the appellant's septic system business.
4. The rear setback for all structures in the zone is 35 feet. The side setback for residential structures and accessories is 8 feet. The side setback for non-residential structures is 15 feet. SCC 14.16.400(5)(a).

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<sup>1</sup> There is an unresolved dispute about the location of the north property line. After a Superior Court decision, the matter has been appealed to the Court of Appeals. The north line used in the instant matter is the surveyed north line used for the Short Plat that created the subject lot and which is physically indicated by capped rebar at the property corners. This line is, apparently, consistent with the Superior Court's ruling.

5. Under the definitions of Chapter SCC 14.04, the north property line (along which the reduced setback is sought) is the rear property line of the lot. This is because that boundary is opposite what is clearly the front lot line -- namely, the line on the south adjacent to Finn Road.

6. To receive an administrative reduction of setbacks, an applicant must show that "topography or critical areas or the lot's size and configuration impact the reasonable development of the property." SCC 14.16.810(4). PDS concluded that "there appears to be room on site without constraints to construct accessory structures and meet setback requirements."

7. On April 22, 2010, Allan filed a letter which the County has interpreted as an appeal of the denial. The appeal was clarified by a formal Notice of Appeal received on April 29, 2010. In his appeal, Allan asserted that the buildings in question are located on the highest available ground in order to minimize flood exposure.

8. In making his request for a setback reduction, Allan suggested that as an alternative to the variance, the north line could be considered as a side property line for the purposes of the buildings in question. Based on the Code's definitions, PDS declined to do this. PDS noted that the Short Plat which created the subject lot (PL05-0258), contained a graphic showing the rear line as the opposite of the line fronting the street.

9. The buildings to which this case relates are in existence. They do not have valid building permits allowing their present placement. They are not legal non-conforming structures which may remain where they are. Therefore, they must be treated as new structures which must either meet today's setback limits or be granted a reduction of setbacks.

10. No showing was made that the structures in question are required to be where they are because of critical areas. Moreover, the lot is of ample size to allow accessory structures meeting the setback. The maps submitted provide no basis for avoiding setback standards because of lot configuration.

11. This leaves topography as the only possible basis for granting the variance. Appellant submitted aerial photos, showing the historical placement of previous structures near the places where the subject buildings are located. From this, he seemed to infer that these locations are the logical sites to use for buildings in order to avoid flood waters. He also introduced photos showing flood waters elsewhere on the property near the house.

12. The information supplied by Appellant provides a plausible scenario. But his evidence was not sufficient to prove his point. Assuming without deciding, that the subject structures are necessary for the reasonable development of the property, the record fails to demonstrate there are not areas on the property where such accessory structures could both meet the required setback and achieve equal protection from flood waters.

13. The decision of the Administrative Official was not clearly erroneous.

14. The Appellant appears to be well-liked by a number of his neighbors, but to be locked in acrimonious disputes with some nearby owners. This decision is based solely on information provided relative to the subject property. Allegations pertaining to personalities or other legal proceedings were regarded as irrelevant.

15. Any conclusion herein which may be deemed a finding is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. SCC 14.06.110(7). The Appellant has the burden of proving that the decision of the Administrative Official was clearly erroneous. SCC 14.06.110(11).

2. The Appellant here has failed to meet his burden.

3. Any finding herein which may be deemed a conclusion is hereby adopted as such.

### **DECISION**

The Administrative Decision denying a setback reduction (PL10-0178) is affirmed. The appeal of David Allan is denied.

**DONE** this 13<sup>th</sup> day of July, 2010.



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Wick Dufford, Hearing Examiner

See Page 1, Notice of Decision for information on Reconsideration and Appeal.