

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Kimberly Johnson
13913 Avon Allen Road
Mount Vernon, WA 98273

Agent: David Hough
17483 W. Big Lake Boulevard
Mount Vernon, WA 98274

File No: PL05-0065

Request: Special Use Permit

Location: 13913 Avon Allen Road; Lots 2, 3, & 6 Block 13,
Skalings Addition to the Town of Avon; within a
portion of the SW1/4SW1/4 Sec.12, T34N, R3E, W.M.

Land Use Designation: Rural Intermediate

Summary of Proposal: To operate Avant Garden, a display garden open for
viewing in which outdoor events may be held. These
would include workshops/seminars, gardening classes,
outdoor meetings, weddings, family reunions,
arts/crafts/plant sales.

Public Hearing: After reviewing the report of Planning and Development
Services, the Hearing Examiner conducted a public hearing
on September 14, 2005. Subsequent to the hearing the
Examiner visited the site.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Kimberly Johnson (applicant) requests a Special Use Permit to operate a display garden and to hold temporary outdoor events there.

2. The facility is called Avant Garden and is located at 13913 Avon Allen Road. The property is Lots 2,3 & 6 Block 13, Skalings Addition to the Town of Avon, located within SW1/4SW1/4 Sec. 12, T34N, R3E, W.M. The owner is Pat Johnson, the applicant's mother.

3. The subject property is only a half acre in size. It borders the east side of Avon Allen Road, north of the intersection of Avon Allen with Bennett Road. The property has an irregular shape with a north/south configuration. The west property line along Avon Allen Road measures approximately 185 feet. There are 180 feet along the east property line. The south boundary is 140 feet long and the north boundary is 185 feet long.

4. The property is essentially flat. The applicant has spent nine years creating a showplace garden there. The property is covered with flowerbeds, ornamental ponds, and trees. A large area of lawn is located in the west central and south west part of the property behind a screen of vegetation along Avon Allen Road. The exterior of the lot is surrounded by fencing (chain link and wood). There is an existing single-family residence and a shop building in the northwest corner. There is a barn in the southeast corner.

5. In the past the applicant has sold flowers from a small stand on Avon Allen Road and has opened the property occasionally for garden sales. In addition she has rented the premises for weddings and wedding receptions. The large lawn area is the space principally used for receptions. Sometimes canopies are put up in this space. The applicant says that the site can readily accommodate up to 175 event guests if no canopies are used and 150 guests with canopies.

6. While the main gathering point for the larger events is centered around the large lawn area located on the western half of the property, there are two smaller open areas in the eastern part of the property that can be used for food and general visiting. Scattered throughout the parcel are small sitting areas for two or three people. A groom's tent and a bridal dressing room are provided for weddings. Because of the landscaping, most of the on-site activities cannot be seen from outside.

7. The immediately surrounding properties are developed with single-family residences. In the near vicinity are several small businesses including an auto body repair shop, sign painting shop, a daycare, a heating and cooling business. There is also a nearby church. There are no adjacent Natural Resource Lands, but an AG-NRL district is within 500 feet to the northwest.

8. The subject property is located in an AO Flood Hazard Zone, per FIRM mapping dated January 3, 1985. There are no critical areas on the site. The property is served by an on-site septic system and potable water from PUD #1.

9. The proposal is for a permit to carry on the types of activities that have been held on the property in the past. The impetus has been complaints from neighbors. The applicant says she was previously unaware of the need for a Special Use Permit.

10. The Special Use Permit sought is for a Display Garden, including the ability to conduct outdoor events. The proposal is for the following:

- a. Continued flower sales at the roadside stand.
- b. The ability to hold large events (weddings, family reunions, outdoor meetings) involving more than 50 people.
 - (1) Limited to two large events per month
 - (2) Limited to Saturdays – 10 a.m. to 9 p.m.; and Sundays – 10 a.m. to 8 p.m. Except for Halloween, no events shall continue after sunset.
 - (3) Limited to May through October.
 - (4) No hard liquor, no kegs; champagne, bottled beer and limited wine only
 - (5) No D.J.s
- c. The ability to hold smaller events (50 or less attendees). These could include gardening classes, workshops for artists and craftspersons, concrete demonstrations, wedding rehearsals.
 - (1) Normally held during the week and lasting no more than four hours. OK on weekends when there is an opening.
 - (2) Limited to same hours as large events.
 - (3) Limited to May through October.
- d. Permission to hold occasional sales of plants, arts and crafts – one such event to be on Mother’s Day weekend and perhaps another in the fall.
- e. Permission to open a haunted garden during the Halloween season. The garden could remain open after dark.
- f. Permission to open the garden to the public for photo shoots, such as senior pictures, or wedding pictures, and for general viewing.

11. The applicant estimates that most large events would involve from 75 to 100 people. The smaller workshop type activities would probably involve no more than 15 or so.

12. For large events and some smaller events, the use of the Avant Gardens would be rented to the event sponsors. The rental would include use of the property, outdoor bathroom facilities, sink, canopies or tents, tables, chairs, fresh flowers. The terms of the rental agreement would require the renters to provide insurance, to obtain appropriate permits for alcohol, to provide child care, to pay for garbage services. Food for the larger events would be provided by caterers hired by the “event renter.”

13. Portable toilets would be used for all events. The applicant has an ongoing contract with Wizards of Ooze for providing these toilets and replacing and maintaining them. Garbage services are also arranged by contract.

14. There is a driveway into the property off of Avon Allen Road and limited space along the shoulder. Deliveries of materials used for events occurs in the driveway or along the roadside. Otherwise all parking is to be at a grass lot off of Brunswick Road, adjacent to the northeast corner of the applicant’s property.

15. The Brunswick Road lot would handle parking for all events. The applicant has an agreement with a neighboring owner for use of the lot. There is a connecting gate to the applicant’s property from the parking lot. Parking spaces on the lot are not marked off, but there is adequate space for 60 vehicles and parking would be limited to that number. At the time of large events, two parking attendants would be provided – one to direct guests from Avon Allen to the Brunswick Road site and another to monitor the parking in the lot. “No Parking” signs would be posted on Avon Allen Road. On promotional materials, car pooling would be encouraged.

17. The application was deemed complete on May 11, 2005, and a Notice of Development was published on May 26, 2005. A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued on June 20, 2005. The DNS was not appealed.

18. County agencies reviewed the application. Their concerns are reflected in conditions of approval.

19. The application elicited considerable public comment both pro and con. Some 30 letters expressing support were received. At least 20 of these were from residents in the immediate neighborhood. In general, the proponents expressed appreciation for the attractive facility the applicant has created and pleasure at the experience of attending events there. They felt that the enterprise is an asset that is appropriate for the mixed-use neighborhood. They felt that the level of disruption caused by events at Avant Gardens has not been particularly bothersome.

20. There were six households that opposed the application. They were all people who live in the immediate vicinity and are affected on their own property by the events at Avant Gardens. They complained of the noise from large events and the continuation of some of those events into after-dark hours. They also expressed concerns

about traffic safety in regard to deliveries and parking along Avon Allen and about the management of parking generally. Their sense was that the events have grown too large to fit compatibly into the residential setting. The Sanchez family who own a house on a lot directly behind Avant Gardens to the east had special concerns about glare from headlights in the parking lot and the safety of their children in situations where many strangers are attending functions that involve drinking alcohol.

21. Worries were articulated about what might happen if the property were sold to new operators, and what might happen if the parking arrangement were terminated. The applicant has agreed to a condition that the Special Use Permit shall expire if the ownership of the property is changed from the current owner, Pat Johnson, or her daughter Kimberly Johnson. The Staff has recommended a condition stating that parking will be limited to the area described in the "License to Park Cars" agreement between John and Margaret Byfield and Kim Johnson. With this condition in effect, if the parking agreement is terminated, it will no longer be possible to comply with the terms of the permit, and operations will have to cease until some new means of parking compliance is developed.

22. Fuel was added to the opponents' fire by the events surrounding September 10, 2005, a Saturday on which a big wedding was held at Avant Gardens. Trucks unloading equipment at times parked over the fog line. Parked cars filled up the parking lot and spilled out onto Brunswick Road. Noise was audible at neighboring houses for some time after dark. Headlights shined into the Sanchez' lot. One guest was observed walking on the road with an open beer bottle. Others were seen pouring drinks in the parking lot from bottles brought in their cars.

23. No accidents were reported. No harm to any children occurred. Drunks did not trespass on other properties. But the event was felt by some neighbors to be too big and too disruptive for the residential setting.

24. There is no evidence of traffic mishaps during any of the events at Avant Gardens. It is true that space along the Avon Allen roadside is limited. But the limited use allowed there was not shown to be the source of substantial hazard.

25. Clearly, the larger events would benefit from better supervision of parking and guest behavior.

26. 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 persons and the subject matter of this proceeding. SCC 14.06.050(1)(b)(ii).

2. The requirements of SEPA have been met.

3. The criteria for Special Use Permit approval are set forth at SCC 14.16.900(2)(b)(v), as follows:

- (a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (b) The proposed use complies with the Skagit County Code.
- (c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.
- (d) The proposed use will not generate intrusions on privacy of surrounding uses.
- (e) Potential effects regarding the general public health, safety, and general welfare.
- (f) For special uses in ... Natural Resource Lands ..., the impacts on long-term natural resource management and production will be minimized.
- (g) The proposed use is not in conflict with the health and safety of the community.
- (h) The proposed use will be supported by adequate public facilities and services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

4. *Comp Plan and Compatibility.* The proposal for Avant Gardens meets Comprehensive Plan goals for rural-based employment and economic diversification.

The neighborhood is one already containing a mixture of uses. The proposed use of the gardens, if adequately controlled, is not inconsistent with the overall pattern, nor is it necessarily at odds with enjoyment of residential uses.

5. *Code Compliance.* In the Rural Intermediate district, Display Gardens are allowable by Hearing Examiner Special Use Permit. SCC 14.16.300(4)(i). "Display gardens" are defined by SCC 14.04.020 as "horticultural gardens open to the public, including ornamental plants." Avant Gardens meets this definition. The outdoor event facilities there would not qualify as a "Home Based Business" because they provide an exterior variation from the residential character of the property and are not incidental to the residential use. See SCC 14.16.900(3)(e).

The concept of “display garden” has been employed rather expansively in this case to include the event uses sought by the applicant. However, the Examiner has concluded that the category is flexible enough to incorporate such uses. The Special Use Permit criteria provide the protection needed for accommodating such uses to a Rural Intermediate setting.

The County departmental reviews and the conditions of approval ensure compliance with specific Code provisions.

6. *Noise, odor, pollution.* Noise at large events appears to be a problem for a number of neighbors. The State’s noise standards must be met. Moreover, conditions of approval limiting the frequency, size, and duration of large events, prohibiting the use of disc jockeys, prohibiting amplified sound should mitigate the noise produced. Attention to sanitary waste disposal and the prompt clean up of other waste should effectively eliminate odor and pollution effects.

7. *Intrusions on privacy.* Requiring cars to park so that headlights point north (away from the Sanchez residence) should significantly lessen light intrusion. The applicant will be required to provide boundary markers for her property and the parking lot so that guest will know their limits. The fencing and perimeter landscaping will impede trespass by guests. Providing childcare should prevent children from wandering off the property.

8. *Public health, safety and welfare.* All Health Department requirements will have to be met. Parking will be off-site and parking attendants will be on hand to direct traffic and regulate parking. Event generated traffic was not shown to present extraordinary dangers. The applicant or a representative will be required to present at each event to monitor activities of guests to ensure compliance with permit and contract conditions.

Only temporary unloading and loading traffic will be allowed to park along Avon Allen Road. There is space for this to occur without encroachment on the fog line of the road. Public works identified no traffic safety issues. There is no evidence of accidents.

9. *Natural Resource Lands.* None of the activities will occur on Natural Resource Lands. However, the applicant will be required to comply with SCC 14.16.870, Notification of Development Activities on or Adjacent to Designated Resource Lands.

10. *Community health and safety.* If the events are adequately supervised, adverse impacts to the community should be adequately mitigated.

11. *Adequate public facilities.* There was no showing that public services available to the site are not adequate to handle the demands likely to be made.

12. Counsel for the opponents argued that the proposed use is not compatible with the existing residential land use in the area, that the larger events are likely to generate undue noise, and that invasions of privacy will occur. It is certainly possible for

events at Avant Gardens to become too large and to be too poorly controlled for the achievement of compatibility with adjacent residential enjoyment. More effective supervision will need to occur at larger events. The conditions of approval will need to be rigorously observed. However, the conditions imposed are not unduly onerous and are capable of achievement. In the circumstances, the presumption is that they will be met.

13. The Examiner concludes that, as conditioned, the proposal will be consistent with the criteria for Special Use Permit approval.

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

CONDITIONS

1. The applicant shall obtain all application permits prior to the continuation of business.

2. The garden may be open for large and small events from May 1 to October 31.

3. Events are public gatherings, including, but not limited to weddings, family reunions and similar outdoor meetings, as well as classes, workshops, seminars, demonstrations, and wedding rehearsals.

4. Large events (over 50 attendees) shall be limited to Saturday (10:00 a.m. to 9:00 p.m.) and Sundays (10:00 a.m. to 8:00 p.m.).

5. Large events shall be limited to no more than 10 during the May-October season and no more than two in any month.

6. The attendance at large events shall be limited to 150 persons.

7. Small events (50 attendees or less) will normally be held during the week and will last no longer than four hours. The hours shall be limited to 10:00 a.m. to 9:00 p.m. on all days except Sunday. The hours for Sunday shall be 10:00 a.m. to 8:00 p.m.

8. For both large and small events, in those instances that sunset occurs prior to the above noted limitations, an event shall not continue after sunset, with the exception of Halloween.

9. Alcohol available at events shall be limited to bottled beer, champagne and wine. No hard liquor shall be allowed onto the site. Any person bringing hard liquor onto the site shall be obliged to leave. No guest shall be permitted to carry alcohol of any kind off the site.

10. No disc jockeys shall be used. Amplified sound of any kind shall be prohibited at all events.
11. The business shall comply with all applicable State and local regulations, including the noise control requirements of SCC 14.16.840 and Chapter 173-60 WAC.
12. The business shall comply with all requirements of the County Health Department.
13. Portable restrooms need to be adequate in number and maintained. The applicant shall have a current contract for portable restroom services and make the same available upon request.
14. Hand washing facilities shall be provided and maintained with water, soap and paper towels.
15. An adequate number of garbage cans with lids or dumpsters shall be provided. All garbage shall be removed within 24 hours of any event.
16. Event parking shall be limited to the area described in the “License to Park Cars” agreement between John and Margaret Byfield and Kim Johnson. All conditions of that agreement shall apply.
17. In promotional materials and contract documents, carpooling shall be encouraged.
18. Event parking on Avon Allen Road shall be limited to loading and unloading. The driving surface shall not be blocked.
19. Parking at the Brunswick Road lot shall be as depicted in the parking plan contained in Exhibit 19 of the permit hearing. Cars shall be parked with their headlights facing north.
20. A minimum of two (2) parking attendants shall be required for all large events. These attendants shall be provided by the applicant, who shall instruct them as to their duties. In addition to directing traffic/parking, the attendants shall provide supervision on the restrictions on alcohol at the parking lot and in front of the facility on Avon Allen Road.
21. The applicant shall comply with SCC 14.16.820 (Signs). Signs shall be posted on Avon Allen Road and Brunswick Road to identify where parking may occur and where it may not.
22. The access for the parking area shall be clearly marked

23. Prior to the continuation of business the applicant shall obtain an access permit for the parking lot on Brunswick Road.

24. Boundary markers and appropriate signs shall be provided at the parking lot and at Avant Gardens to alert guests to property limits.

25. Contracts for events shall require the “event renter” to provide any needed childcare.

26. The applicant or a representative shall be present at each event to monitor activities and ensure that conditions of this permit and of the relevant contract are being observed.

27. The business may continue to operate the flower stand on Avon Allen Road, provided that it is located outside of the 10-foot clear zone from the edge of travel.

28. A haunted garden may be opened during the Halloween season. While in operation, the haunted garden may remain open after dark, but not later than 10:00 pm.

29. Occasional sales of plants or arts and crafts may take place at the site.

30. The garden may be used for photo shoots and for general viewing by the public.

31. This Special Use Permit shall expire if the ownership of the property is changed from Pat Johnson or Kimberly Johnson. Planning and Development Services shall be notified within 30 days after any change of ownership, in writing referencing PL05-0065.

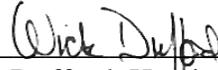
32. Prior to the continuation of business, the applicant shall comply with the provisions of SCC 14.16.870, Notification of Development Activities on or Adjacent to Designated Natural Resource Lands.

33. The Special Use Permit shall be void if work under it is not commenced within two (2) years of the date of permit approval or if the use is abandoned for a period of one (1) year.

34. Prior to the continuation of business, any outstanding planning review fees shall be paid in full.

DECISION

The requested Special Use Permit is approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: November 15, 2005

Date Transmitted to Applicant: November 15, 2005

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.