BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant	Mr. and Mrs. Robert Tiffany 17037 Galilee Drive Burlington, WA 98233
Agent:	C. Thomas Moser, Attorney at Law 411 Main Street Mount Vernon, WA 98273
File No:	PL 04-0733
Request:	Variance
Location:	Adjacent to 20338 East Stackpole Road; within a portion of Government Lot 3 within the NE1/4NW1/4 Sec. 4, T33N, R4E, W.M.; Parcel # 16253
Land Use Designation:	Rural Resource – Natural Resource Land (40-acre minimum lot size.)
Summary of Proposal:	Variance from the minimum lot size and short plat requirements in order to allow the construction of a single-family residence on a 7+ acre lot.
Public Hearing:	After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on April 6, 2005.
Decision:	The application is denied.

FINDINGS OF FACT

1. Mr. and Mrs. Robert Tiffany (applicants) seek a variance from minimum size requirements for the Rural Resource – Natural Resource Land district – as well as a variance from the subdivision requirements of Chapter 14.18 SCC. The minimum lot size for RR-NRL land is 40 acres. The present zoning was applied to the land in question in 1996.

2. The property in question is Parcel # 16253, located adjacent to 20338 Stackpole Road, within a portion of Gov't Lot 3, within NE1/4NW1/4 Sec. 4, T33N, R4E, W.M. The parcel comprises 8.6 acres.

3. When Parcel #16253 was conveyed in 1988 it was combined with Parcel #16277 to the west by a Boundary Line Adjustment. The resulting lot is 10.5 acres in size. The entire lot is currently undeveloped.

4. Cascade Ridge Drive crosses Parcel #16253, at an angle from east to west, leaving a portion south of the road and a portion north of it. The portion north of the road is 7+ acres in size. The applicants seek to have this area made into a separate lot upon which they could build a single family residence.

5. The subject property is among four contiguous parcels owned by the Frank Family Limited Partnership (Parcels #16275, 16274, 16277 and 16253). Robert Tiffany is the husband of a Frank daughter. Lot certifications were issued for these lots on August 31, 2004. Because of the Boundary Line Adjustment, Parcels #16253 and 16277 were certified as a single unit. All four of the parcels were created in the late 1950's prior to zoning in Skagit County. Taken together the four lots amount to considerably less than one 40-acre lot. There is an existing residence on Parcel # 16274.

6. Mailand and Jeanne Frank acquired the properties in 1988 long before the adoption of RR-NRL zoning in 1996. Under the prior zoning, they had, but did not take advantage of, opportunities to subdivide the property.

7. The variance application herein was filed on September 29, 2004. At that time the provisions of former SCC 14.04.190(5) were in effect. That subsection provides:

> (5) When any person owns or acquires contiguous pieces of property involving descriptions setting forth lots which would be substandard under the provisions of this chapter, the Planning Department and the Assessor shall combine such property in the following manner:
>
> (a) If either or both of the two (2) lots are substandard, they shall be

aggregated to from one (1) lot;

(b) If any of three or more lots are substandard, they shall be aggregated in such a way that no substandard lots remain;

(c) All contiguous substandard lots shall be aggregated into a single lot even if the resultant lot is substandard.

There are exceptions to the aggregation requirement, but none applies in this case.

8. Where the aggregation requirement applies, the County will issue no development permits for property until aggregation is accomplished. In this case, taking all of the subject contiguous lots together still leaves a resulting lot that is substandard for the zone. Thus, at most there could be one development right attributed to the whole. Because there is already a single family residence on one of the lots that development right has been used.

9. However, the 60-foot-wide strip containing Cascade Ridge Drive was, in fact, retained in fee simple by the prior owners – the Johnsons – when they conveyed the Parcel #16253 to the Franks in 1988.

10. When Keith Johnson later recorded the plat of Cascade Ridge PUD (located some distance from the subject property), the 60-foot-wide strip of land was dedicated to the public as a public road.

11. The applicant's argument is that the County has ignored the definition of "contiguous land" when it has insisted that the aggregation requirement applies to the north part of Parcel #16253. Because of the 60-foot-wide strip owned in fee by another, that portion of the lot is not contiguous with the remaining property and is therefore allegedly not subject to the aggregation rules.

12. The applicants also maintain that the County has long had an unwritten policy that treated properties on opposite sides of a fee simple County road as separate properties that could be recognized as such by short platting. Granting the variance sought would be consistent with this policy. Denying it would not.

13. The applicants' proposition is, in effect, that by accepting the transfer of the property with the road excepted and again by approving the plat of Cascade Ridge PUD with the road dedication, the County recognized de facto the splitting of Parcel #16253 into two separate parcels, one on either side of the road. The Boundary Line Adjustment then merely added the southern portion of Parcel #16253 to Parcel #16277.

14. The County replies that the ownership of the road strip is of no significance. In 1998 the Franks purchased a specific legal description with an exception that bisected the area described. Moreover, the deed stated explicitly: "The above described property

will be combined or aggregated with contiguous property owned by the purchaser. This boundary adjustment is not for the purposes of creating an additional building lot."

15. In the County's view, because the Franks purchase was with full knowledge of the exception, it cannot be used as a hardship justification to allow the creation of a separate substandard parcel north of the road.

16. The County also asserts that the applicant could apply for a development permit for a variety of uses or construct any number of accessory buildings on the north part of Parcel #16253

17. The applicants urge that denying this variance request will prevent any reasonable use of the area north of the road. That portion of Parcel #16253 is impacted by critical areas and related buffers, relegating any improvements to the northeast corner. According to the applicants, this means that building residential accessories there in connection with the existing residence on Parcel #16274 would be impractical because they would be over 600 feet from the house.

18. The historic boundary between Parcels #16253 and #16277 which was eliminated when the two were combined by Boundary Line Adjustment does not coincide with the 60-foot-wide road strip through Parcel #16253.

19. The criteria for approval of a variance are set forth at SCC 14.10.030(2). That subsection requires a narrative statement included in the application that demonstrates that the requested variance conforms to the following standards:

> (a) Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district.
>
> (b) Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the terms SCC Titles 14 and 15.
>
> (c) The special conditions and circumstances do not result from actions of the applicant.
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> (d) The granting of the variance will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same district.
>
> (e) [not applicable]
>
> (f) If applicable, an explanation as to why, if a variance is denied, the applicant would be denied all reasonable use of his or her property.

20. The Staff recommends denial of the variance request.

21. 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.

2. After considering the evidence presented, the Examiner concludes that the requested variance fails to conform to all of the standards listed in SCC 14.10.010(2).

3. The existence of the road strip across the property, owned in fee by another, does indeed appear to be a special condition or circumstance applicable to this property and not to all other property in the district. But it is a circumstance of which the applicants have long had full knowledge and which the Franks to some degree participated in creating when they accepted the Statutory Warranty deed in 1988. Thus, it is not quite accurate to say that the special conditions and circumstances did not result from actions of the present ownership of the property.

4. Moreover, literal interpretation of the 40-acre minimum lot size would not deprive the applicants of rights commonly enjoyed by other properties in the same district under the terms of SCC Chapter 14. There are some substandard properties in the vicinity that have been in existence for years. But the evidence discloses no instances of the creation of such lots in this zone since the RR-NRL minimum was created. Moreover, the effect of granting this variance would actually be to create two substandard lots out of what is already a substandard total.

5. The idea that denial of the variance would prevent any reasonable use of the property is untenable. For purposes of that requirement, the "property" involved is the entire contiguous ownership as a whole, not simply that portion of Parcel #16253 lying north of the road. Reasonable use is already being made of the "property" through the availability of the existing residence on Parcel #16274.

6. Although the County may have followed an unwritten policy of treating property on opposite sides of a road owned in fee as separate lots, the Examiner has found nothing in the Code that requires this result. Given the state of knowledge of the participants here, there is nothing in this record to suggest that the refusal to give a separate lot status to the northern portion of Parcel #16253 upsets any reliance interests. The original deed after all disclaimed any intent to create an additional building lot.

7. Nor is it the case that the County has disregarded or misused the concept of "contiguous land." Parcel #16253 is a historical lot. The aggregation of this lot with Parcel #16277 occurred along a common boundary. For all the lots involved here, aggregation would occur along land adjoining or touching other land, as required by the "contiguous land" definition of SCC 14.04.020

8. The problem in this case has nothing to do with whether property has been or can be properly aggregated. No aggregation is involved with respect to Parcel #16253 internally. It has been one parcel from the outset. The question is rather whether the exception of the road strip from the historical lot had an independent effect that should be recognized as severing that lot into two. Whether a single lot can have two non-contiguous parts is a completely separate issue from the aggregation requirements.

9. That a severance within Parcel #16253 did not automatically occur is implicitly recognized by the variance application at hand. A variance is needed to recognize the north part of Parcel #16253 as a separate parcel. It is needed in order to authorize a "new" drastically undersized lot size and then to allow creation of the lot formally through the short subdivision mechanism.

10. As concluded above, the result sought does not satisfy the variance criteria.

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

DECISION

The variance application is denied.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: May 26, 2005

Date Transmitted to Applicant: May 26, 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.