

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Pat Senatore  
17406 State Route 536  
Mount Vernon, WA 98273

**File No:** PL04-0938

**Request:** Variance

**Location:** 17406 State Route 536, within the Urban Growth Area of the City of Mount Vernon. The property is situated within a portion of Sec. 13, T34N, R3E, W.M.

**Land Use Designation:** Urban Reserve Commercial Industrial (URC-1) – Mount Vernon

**Summary of Proposal:** Applicant seeks relief from SCC 14.34.180(2)(b), the provision of the Flood Damage Prevention ordinance requiring that “all buildings or structures shall be securely anchored on pilings or columns” where velocities of 5 feet per second or greater are listed in an AO Zone.

**Public Hearing:** After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on March 9, 2005.

**Decision:** The application is approved, subject to conditions.

## **FINDINGS OF FACT**

1. Pat Senatore (applicant) seeks a variance from a provision of the Flood Damage Prevention ordinance in connection with a building located within the Urban Growth Area (UGA) of the City of Mount Vernon.

2. The building is located at 17406 State Route 536 (Memorial Highway), within a portion of Sec. 13, T34N, R3E, W.M. It is within an Urban Reserve Commercial-Industrial (URC-I) zone. Across the highway behind a dike is the channel of the Skagit River.

3. The parcel is located with a designated AO flood hazard area, as identified on Flood Insurance Rate Map #530151 0250 C, effective January 3, 1985. Flood velocities there would be expected to be 5 feet per second or greater should the dike fail or the river overflow its channel. The variance sought is from SCC 14.34.180(2)(b) which reads:

(b) All buildings or structures shall be securely anchored on pilings or columns.

4. The subject property is within a residential subdivision (Valley View Addition 4034) with residential structures located to the south and west. However, the applicant's building is designated as commercial.

5. The building was originally reviewed and permitted as a residential garage (residential accessory structure) to be used for storage. The plan was to convert it to commercial use at a future time. The building will serve as an office and shop for an auto lot.

6. The City of Mount Vernon initially approved the construction of this "accessory" although the property did not contain a "primary" structure. Construction was undertaken. The City engaged in additional review when the owner began to construct a second story. The City then advised that since there is not a primary structure, the building cannot be classified as an accessory and that the owner must now reclassify it as a commercial use.

7. The result was a change in the applicable flood-risk-related construction standards. New commercial structures within AO zones with water velocities of 5 feet per second or greater must meet the requirement of SCC 14.34.180(2)(b) for pilings or columns for structural anchorage. The building was constructed with standard footings. The variance application is, in effect, a request to be allowed to retain the foundation that was initially approved.

8. The applicant provided an engineering report which analyzed the existing structure and determined that the building is adequately supported to withstand anticipated flood velocities. The report noted that the building is elevated over one foot above the 100 year flood elevation and supported on backfill beneath the concrete floor and around the perimeter of the foundation. The report further stated that buoyancy is not a factor for the elevated building.

9. The applicant reported that FEMA reviewed this report and found no fault with the engineering evaluation. No comments on the application were received from the City of Mount Vernon or the State Department of Transportation. County departments had no concerns.

10. One public comment letter was received. The letter had no objections to the variance but complained about other matters concerning upkeep of the property. At the hearing the applicant gave assurances that landscaping shown on his plans will be completed. He said the building will be painted to blend in.

11. The Flood Damage Prevention ordinance contains its own provision for variances. Variances may be granted for matters relating to the type and extent of required flood proofing. When granted, a variance may not result in increased flood heights, additional threats to public safety, extraordinary public expense, creation of nuisances, fraud on or victimization of the public, or conflicts with other existing local laws or ordinances. SCC 14.34.130(2).

12. The Staff, in reviewing this request, found that none of the above forbidden results would occur from the issuance of this variance. The Examiner concurs. This being the case, the variance is to be considered pursuant to the general variance criteria of Chapter 14.10 SCC.

13. General criteria for variances are set forth at SCC 14.10.030, as follows:

- (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. Topics to be addressed include topographic or critical area constraints that make use of the particular site infeasible without the proposed variance.
- (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 SCC Titles 14 and 15.
- (c) The special conditions and circumstances do not result from the actions of the Applicant.
- (d) The granting of the variance requested will not confer on the

Applicant any special privilege that is denied by SCC Titles 14 and 15 to other lands, structures, or buildings in the same district.

(e) [The proposal meets special criteria for the type of variance requested, *i.e.*, critical areas variance, shorelines variance, public works alternative, agricultural siting variance, flood hazard variance].

(f) If applicable, the applicant must explain why, if a variance is denied, the Applicant would be denied all reasonable use of his or her property.

14. The situation giving rise to the subject application is not fault of the applicant. Under the circumstances, the developed conditions on the property are special conditions. Significant hardship would result if the variance were denied, essentially depriving the property of development rights commonly enjoyed by others in the neighborhood. Given that the purposes of the flood proofing provisions are fulfilled, no special privilege is involved.

15. The commercial use proposed within this zone is a reasonable use of the structure and the variance is the minimum variance that will make possible this reasonable use. The granting of this variance will be in harmony with the general purpose and intent of the Unified Development Code and other applicable provisions of the Skagit County Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

16. 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. No issue was raised concerning the applicability of the Flood Damage Prevention ordinance in this Urban Growth Area.

3. The application is exempt from the procedural requirements of the State Environmental Policy Act (SEPA) WAC 197-11-800(6)(b).

4. No discussion was necessary here about why a variance is needed to prevent denial of “all reasonable use of the property.” This criterion comes into play only “if applicable” which means in cases where there is some question that a failure to grant the variance would result in a constitutional taking of the property. No such situation is presented here.

5. The record made justifies the granting of the variance. The findings support a conclusion that the variance criteria of SCC 14.34.130(2) and 14.10.030 are met, if the conditions set forth below are imposed.

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

### **CONDITIONS**

1. The applicant shall obtain all other required permits and approvals and abide by the conditions thereof.

2. Pursuant to SCC 14.34.130(2)(d), the applicant is hereby notified that:

(a) The issuance of this variance may result in increased premium rates for flood insurance.

(b) Construction below base flood elevation increases risks to life and property.

### **DECISION**

The requested variance is approved, subject to the conditions set forth above.



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Wick Dufford, Hearing Examiner

Date of Action: March 23, 2005

Date Transmitted to Applicant: March 23, 2005

### **RECONSIDERATION/APPEAL**

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center 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 the Planning and Permit Center within 14 days after the date of the decision, or decision on reconsideration, if applicable.