

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: BS80LLC
Jim Bell
421 14th Street
Bellingham, WA 98228

Agent: Marianne Manville-Ailles
Skagit Surveyors & Engineers
806 Metcalf Street
Sedro Woolley, WA 98284

Request/File No: Zoning Variance, PL09-0490

Location: Between 16595 & 16887 Wood Road on north side, within a portion of S/2NE1/4 Sec. 23, T36N, R3E, W.M. (Parcels P48086, P48087, P48126, P48132)

Land Use Designation: Rural Resource - Natural Resource Land (RRc-NRL)

Summary of Proposal: To reduce the setback at the north property line from the adjacent resource lands from 200 feet to 100 feet for a proposed 10-lot CaRD land division

SEPA Compliance: Exempt

Public Hearing: June 9, 2010. No public testimony. Planning and Development Services recommended approval.

Decision: Approval, subject to conditions.

Date of Decision: July 8, 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 by filing an Appeal with PDS within 14 days of the date of the decision or decision on reconsideration, if applicable (SCC 14.06.120(9)).

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

FINDINGS OF FACT

1. Jim Bell seeks a variance to reduce the setback from the northern property line from the adjacent resource lands for a proposed 10-lot Conservation and Reserve Development (CaRD) land division.

2. The subject property is located between 16595 and 16887 Wood Road, within a portion of the S1/2NE1/4 Sec. 23, T36N, R3E, W.M. The property is zoned Rural Resource - Natural Resource Land (RRc-NRL).

3. The subject property is approximately 89 acres in size and is situated on north side of Wood Road. Below the upper (northerly) portion, where the development would occur, is a long panhandle that reaches south to Wood Road. The current configuration is the result of a boundary line adjustment with the property to the north. The subject property is vacant, mountainous and timbered. Access is by logging roads off of Wood Road.

4. Ultimately, the applicant hopes to effect a 10-lot land division with 9 lots to be used for residential development. The remaining much larger land area will be kept as a separate open space lot. The residential lots will range in size from .72 acres to 1.10 acres. They will be served by onsite septic systems and a community water system.

5. Under the Land Division regulations, all buildings within CaRDs are subject to a 200-foot setback from adjacent NRL designated parcels. SCC 14.18.310(8)(b). The adjacent property is also in RRc-NRL zoning.

6. The applicant is asking for a setback of 100 feet from the north property boundary of the parcel to the north boundary of the most northerly two lots. The standard setback would affect only these two lots. The rest of the residential lots are beyond 200 foot from the north boundary. If the request is approved, the resulting setback from any building will, in fact, be greater than 100 feet, depending on the placement of buildings within the affected lots.

7. Due to the topography, the parcel has only a limited building area located in the northwestern portion of the property. The lots will be located in this area, on either side of the internal plat road. Property further to the south is not topographically suitable for development. The drainfields will be placed in the southwest corner of the property before the panhandle.

8. Even with the reduced setback, the building area available on site is small, essentially restricted to a "flatter" bench located at the top of the mountain. The requested setback reduction is the minimum necessary to fit the lots into the buildable area.

9. An identical setback reduction is requested for another 10-lot CaRD immediately to the north of the subject development. If both variances are granted, as between these properties, the setback between building lots will be 200 feet. Given the topography and the existing vegetation, it appears that adequate screening and separation between the two developments will be provided

10. There is no resource activity on the portion of the property proposed for development. A portion of the property is in timber production, but the proposed development area in the northwest has limited forest resource production potential because of shallow soils and rock outcrops.

11. There is currently no resource use in the proposed setback area between the two CaRD's. In fact, the setback area between the building areas of two CaRD's is better suited for development than for resource use. Thus, the setback reduction will have little, if any, effect on the resource use of adjacent property. It will have no effect on the ability to use the larger undeveloped area on the subject property for resource management.

12. The criteria for approval of a zoning variance are found at SCC 14.10.030(2), 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 building in the same district. Topics to be addressed include topographic and 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 the terms of 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) (f) (not applicable)

13. The applicant has provided a thorough discussion of the reasons for the variance request. The topography of the site provides the special conditions needed. Literal interpretation of the 200 foot setback would require placement of the lots on more steeply sloping ground with questionable suitability for development and potential critical area constraints. The effect would be to foreclose development possibilities that are available on other properties in the district. The situation is one over which the applicant has no control. The variance would result in the placement of lots in the location that best fits the site, consistent with the intent of CaRD provisions for clustering development, using infrastructure efficiently, and preserving large areas for resource use. Non-CaRD developments in the district would be subject to 50-foot setbacks. Accordingly, approval of the variance would not be a grant of special privilege.

14. The application was routed to various County departments for review. No objections to the variance were noted, however, review of access, septic, water, critical areas, and fire preparedness issues will await the land division process.

15. There was no public comment on this request, either in writing or orally. The Staff Report recommended approval.

16. The reasons set forth in the application justify the granting of the variance. The proposed CaRD is a reasonable use of the property and the variance is the minimum variance that will make this use possible. The granting of the 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. The variance will not be injurious to the neighborhood or otherwise detrimental to public welfare.

17. 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 14.06.050(1)(b)(i), 14.10.020(3).

2. The request is exempt from the procedural requirements of the State Environmental Policy Act (SEPA).

3. The proposal is consistent with the resource protection objectives of Natural Resource Land zoning and CaRD subdivision development.

4. The proposal is consistent with the standards for variance approval set forth in SCC 14.10.030(2) and 14.10.040.

5. There is variation, and perhaps inconsistency, in standards and flexibility for setbacks relating to Natural Resource Lands. See SCC 14.16.430(5), 14.16.810(7) and 14.18.310(8)(b). The Examiner does not address this subject. The variance recommended here is from the most restrictive standard.

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

CONDITIONS

1. The applicant shall conform to the setbacks as shown on the site diagrams submitted.

2. Except as allowed herein, the applicant shall comply with the Code provisions related to CaRD developments.

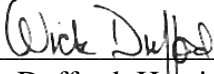
3. The variance number and date of approval shall be shown on the plat map.

4. The applicant shall comply with SCC 14.16.870, Notification of Development Activities on or Adjacent to Designated Resource Lands.

DECISION

The request variance (PL09-0490) to reduce the setback from the northern property line to 100 feet is approved, subject to the conditions set forth above.

DONE this 8th day of July, 2010.



Wick Dufford, Hearing Examiner

Transmitted to Applicant on July 8, 2010.

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