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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: RECOMMENDATION ON AGRICULTURAL VARIANCE
AG 99 0367

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: LEE NEWMAN

ASSESSOR PARCEL NO: P22058

ABBREVIATED LEGAL DESCRIPTION:
14499 Best Road, within Section 16, Township 34 North, Range 3 East, W.M., Skagit
County, Washington

17607

RESOLUTION NO. _____

A RESOLUTION APPROVING AGRICULTURAL VARIANCE
AG 99 0367 FOR LEE NEWMAN

WHEREAS, the Skagit County Hearing Examiner held a public hearing on September 8, 1999 to review the application for an Agricultural Variance of LEE NEWMAN and adopted Findings of Fact and a Recommendation which were submitted to the Board of Skagit County Commissioners; and,

WHEREAS, The Board of Skagit County Commissioners has reviewed the Findings and Recommendation of the Hearing Examiner in this matter and concurs with these Findings and Recommendation; now therefore,

BE IT RESOLVED that the Board of Skagit County Commissioners hereby adopts the Findings and Recommendation of the Hearing Examiner and approves the Agricultural Variance request of LEE NEWMAN subject to the conditions of approval listed in the Recommendation.

WITNESS our hands and official seal this 18TH day of OCTOBER, 1999.



BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

TED W. ANDERSON, Chairman

Harvey Wolden
HARVEY WOLDEN, Commissioner

Robert Hart
ROBERT HART, Commissioner

ATTEST:

Patti J. Chambers
Patti J. Chambers
Clerk of the Board



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SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

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In the Matter of:)	No. AG 99-0367
Application of Lee Newman)	
for an AGRICULTURAL VARIANCE)	Findings of Fact
to Allow Replacement of a)	Conclusions of Law
Nonconforming Garage and Accessory)	And Recommendation
Outbuildings with Structures Located)	
within the Rear and Side yard Setbacks in)	
an Agricultural Zoning District.)	
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THIS MATTTTER, an application for an Agricultural Variance Permit, came on regularly before the Skagit County Hearing Examiner in a public hearing on September 8, 1999. The Skagit County Planning and Permit Center presented its Staff Report. Oscar Graham represented the applicant. Members of the public were given an opportunity to testify.

Testimony was heard, exhibits were entered and argument was made. On the basis thereof, the following is entered:

FINDINGS OF FACT

1. Lee Newman seeks a variance in order to remove some old buildings and construct replacements that encroach on setbacks for the zone.
2. The project location is 14499 Best Road, within a portion of Sec. 16, T34N, R3E, W.M.
3. The subject parcel is located within an Agricultural zoning district.
4. The property is approximately one (1+) acres in size located along the east side of Best Road. There is an existing 1,664 square foot single family residence facing the road on the southwest portion of the parcel. The parcel currently contains several existing accessory structures located to the east of the residence along the south (side) property line. The existing garage is approximately 650 square feet in size and now sits approximately five feet from south property line. Adjacent to the east side of the garage is a 1,152 square foot shed located approximately ten feet from the south property line. Further east, in the southeast corner of the property are two small sheds (approximately 216 and 35 square feet in size). One of these is located on the south property line and the other is located directly adjacent. The remainder of the parcel contains a large area for



wood storage, an associated outside storage area, a pasture area, gravel drive and parking, septic tank and drainfield.

5. The proposal is to demolish the garage and replace it with a new one which has a 10 foot setback from the side property line. This will bring the garage into line with the adjacent existing 1,152 square foot shed. The applicant also proposes to remove the two smaller accessory buildings to the southeast and replace them with a 3,600 square foot structure, also 10 feet from the side property line and also in line with the shed. After a boundary line adjustment, the new accessory building will be 10 feet from the rear property line.

6. The property is located in an A7 designated flood hazard area as identified by FEMA on Flood Insurance Rate Map (FIRM) panel #530151 0250 C. It is served with water by Public Utility District #1. It has an existing on-site sewage disposal system.

7. There are no critical areas on the property. The proposed development is categorically exempt from the procedural requirements of the State Environmental Policy Act (SEPA)

8. The surrounding area is primarily used for agriculture. The property is bordered by large agricultural fields currently under production. There are a few residential parcels scattered along Best Road that are similar in design and configuration.

9. Two neighbors provided written comments supporting the applicant's proposal. At the hearing the applicant spoke on his own behalf, noting that the project will improve security on his property. No members of the public testified. No consulted agencies objected.

10. Skagit County Code (SCC) 14.04.112(5)(c)(i) states that nonresidential structures shall maintain a minimum setback of 15 feet from side property lines and 35 feet from rear property lines. Thus, the existing buildings that are to be torn down are non-conforming and the new buildings proposed to replace them require a variance to be located as proposed.

11. SCC 14.04.223(1)(f) sets forth the following criteria for approval of a variance:

- a. That 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. The 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 this chapter.



- c. That 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 this chapter to other lands, structures or buildings in the same district.

12. Accessory uses of the kind proposed are permitted uses in the zone. The Staff Report analyses the application in relation to the variance criteria and finds that the proposal is consistent with the standards for approval. The Examiner concurs with this analysis and adopts the same. The Staff Report is incorporated herein as though fully set forth.

13. In particular, the Examiner notes that the accessory buildings to be replaced were erected more than a half century ago, before the establishment of zoning setbacks. This status of existing development on the site is a special condition of the property over which the applicant has had no control.

14. The proposed replacement structures will create a uniform in-line setback on the south side of the property larger than the setbacks of the nonconforming structures that will be removed. The result will be closer to compliance with today's standards. There are numerous accessory buildings on other properties in the area that fail to meet the current setback requirements. So allowing the improved setback that is proposed cannot be regarded as a grant of a special privilege.

15. The Examiner has examined the variance application and finds that the reasons set forth justify the granting of the variance. In light of the small lot size involved, he further finds that the variance is the minimum variance that will make possible the reasonable use of the property.

16. The granting of the variance will be in harmony with the general purpose and intent of the zoning ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the 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 parties and the subject matter of this proceeding.
2. The requirements of SEPA have been met.



3. The findings support a conclusion that the proposed development is consistent with the applicable criteria of the Skagit County Code for the approval of a variance.

4. The variance sought should be approved, subject to the following conditions:

(a) A demolition permit shall be obtained prior to the removal of any of the structures.

(b) The applicant shall obtain building permits prior to the start of any construction.

(c) The applicant shall obtain all other required permits and approvals, if any.

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

RECOMMENDATION

The Variance Permit is recommended for APPROVAL, subject to the conditions set forth in Conclusion 4 above.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: September 29, 1999

Copies transmitted to Applicant

9/29/99

Attachment: Staff Report and Findings



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SKAGIT COUNTY PLANNING AND PERMIT CENTER
FINDINGS OF FACT

HEARING AUTHORITY: SKAGIT COUNTY HEARING EXAMINER

HEARING DATE: SEPTEMBER 8, 1999

APPLICATION NUMBER: VARIANCE REQUEST PL99-0367

APPLICANT: LEE NEWMAN

ADDRESS: 14499 BEST ROAD
MOUNT VERNON, WA. 98273

PROJECT LOCATION: Located at 14499 Best Road, Mount Vernon, within a portion of Section 16, Township 34N, Range 3 East W.M. Skagit County, Washington.

PROJECT DESCRIPTION: Variance request #PL99-0367 from 14.04.112 (5)(c)(i) of the Skagit County Code for the purpose of removing the existing garage, which currently has a 5 foot setback, and replacing it with a new garage that will have a 10 foot setback from the south (side) property line bringing the garage in line with the existing accessory building on site. The applicant is also proposing to remove two old nonconforming accessory outbuildings and replace them with one 3,600 square foot accessory structure with the side and rear yard setbacks of 10 feet. This will also bring the structure in line with the existing accessory structure on site.

ASSESSOR'S ACCOUNT NUMBER: 340316-2-005-0000, P22058

ZONING: The subject parcel is located within an Agricultural zoning district.

COMPREHENSIVE PLAN: The Comprehensive Plan designates the area as Agricultural Natural Resource Land (Ag-NRL) as identified by the Skagit County Comprehensive Plan and associated maps adopted June 1, 1997.

RECOMMENDATION: The Skagit County Planning and Permit Center would recommend approval of the requested setback variance.

EXIBITS:

1. Application dated June 3, 1999
2. Assessor's Section Map
3. Letter of Completeness dated June 14, 1999
4. Notice of Development published June 17, 1999
5. Site Plan



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Correspondence:

1. Letter received July 9, 1999 from Julie Jones, adjacent property owner, in support.
2. Letter received July 1, 1999 from William Roozen, in support.

STAFF FINDINGS:

1. The subject property is zoned Agricultural and the Comprehensive Plan and associated maps as adopted June 1, 1997 designates the area as Agricultural Natural Resource Land (Ag-NRL). A letter of completeness was issued as per Section 14.01.033 (1) of the Skagit County Code and the application was determined to be complete on June 14, 1999.
2. A Notice of Development Application was posted on the subject property and published in a newspaper of general circulation on June 17, 1999 as required by Section 14.01.040(2) of Skagit County Code. The public hearing has been advertised in accordance with the requirements of Chapter 14.01.042 and 14.04 of the Skagit County Code.
3. The application has been reviewed in accordance with the State Environmental Policy Act guidelines WAC 197-11-800 (6)(b) and has been found to be exempt.
4. The subject parcel was reviewed with the respect to the Skagit County Critical Areas Ordinance 14.06 of the Skagit County Code. Staff conducted a site visit on June 7, 1999 and determined that there were no critical areas on site. Critical Areas Staff recommended approval without conditions
5. The subject property is located in a A7 designated flood hazard area as identified by FEMA on Flood Insurance Rate Map (FIRM) panel #530151 0250 C.
6. The subject property is approximately one (1+) acres in size located along the east side of Best Road. The subject parcel measures approximately 207.8 feet in width along the east and west property lines and approximately 213.3 feet in length along the north and south property lines. There is an existing 1,664 square foot single family residence located along Best Road on the southwest portion of the parcel and access is taken off of Best Road. The parcel currently contains several existing accessory structures located to the southeast of the existing residence along the south side property line. The existing garage is approximately 650 square feet in size and currently sits approximately 5 feet from the side property line. Adjacent to the east side of the garage, there is an existing 1,152 square foot shed structure located approximately 10 feet from the south side property line. Further to the east, along the southeast property line, there are two smaller shed structures (approximately 266 and 315 square feet in size), one of which is located on the property line and the other is located directly adjacent, which are proposed to be demolished and replaced with a 3,600 square foot accessory structure with



the setbacks of 10 feet off of the side and rear property lines. The remainder of the parcel contains a large wood storage area with associated outside storage area, a pasture area, gravel drive and parking, and the septic tank and drainfield area to the north of the existing residence. The proposal is to demolish the garage and rebuild the structure with a 10 foot setback off of the side property line, bringing the structure in line with the existing 1,152 square foot shed, as well as demolishing the smaller nonconforming shed structures to the southeast and replacing them with a 3,600 square foot structure with the setbacks of 10 feet off of the side and rear property lines. The parcel is currently serviced water from Public Utility District #1 and has an existing on site septic system.

7. The surrounding area is agricultural in nature. The property is primarily surrounded by large agricultural fields currently under production and Best Road to the west. There are only a few scattered residential parcel along the road similar in design and configuration.
8. The applicant is requesting a variance from Skagit County Code 14.04.112 (5) (c) (i) to allow the removal of an existing garage, which currently has a 5 foot setback, and replace it with a new garage that will have a 10 foot setback from the south (side) property line, bringing the garage in line with the existing accessory building on site to the east. The applicant is also requesting the variance to remove two older nonconforming accessory outbuildings and replace them with one 3,600 square foot accessory structure with the side and rear yard setbacks of 10 feet. This will also bring that proposed structure in line with the existing accessory structure on site. Skagit County Code 14.04.112 (5) (c) (i) states that nonresidential structures shall maintain the minimum setback requirements of 35' feet off of the front yard property line, 15' feet off of the side yard property lines, and 35' feet off of the rear yard property line.
9. The application was reviewed by the Skagit County Department of Public Works. Public Works had no comments or concerns with the proposal and recommended approval.
10. The application was routed to Skagit County Environmental Health Specialist for review. Environmental Health had no concerns with the proposal.
11. The application was routed to the Water Resources division of the Skagit County Planning and Permit Center. Water Resources comments are as follows: "We have no objection to approval of this variance with the use of Public Utility District #1. A letter or billing from PUD #1 should be submitted for the record".

Since the time of initial review, the applicant has supplied a copy of the water bill which verifies that Public Utility District #1 is the water purveyor.
12. Section 14.04.270 Nonconforming Uses, Structures, Lots of the Skagit County Code states the following: "Any lot building, structures or legal use of land,



existing or established at the time of the adoption of these regulations shall be permitted to continue." It is the intent of this ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this ordinance that nonconformities shall not be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

13. Section 14.04.223 (1) (e) Variances of the Skagit County Code states that certain items will be reviewed when approving or denying Variances. Staff comments as they relate to the Variance criteria are as follows:

- a. *That 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.*

Staff recognizes that special conditions and circumstances generally apply to topographic hardships, i.e., a large ditch or creek or other physical feature peculiar to a particular parcel of property, that has a detrimental impact on a proposed development. This parcel is level and flat and contains no topographical hardship however, the parcel is a small lot with existing structures constructed approximately 50+ years ago. The proposal is to remove the aging structures and construct new structures that will be in line with the remaining accessory structure on site. The proposed structures currently do not meet the side yard setback requirements, and the shed structures to the east do not meet the rear yard setback requirements, however their current location ranges from 5 feet to zero feet on the side yard, whereas the proposal is to make the structures all maintain a minimum setback of 10 feet from said property lines for uniformity.

The applicant has indicated that the existing residence and various outbuildings are approximately 50+ years old. The existing residence meets all required setbacks, however, the outbuildings, (garage, storage shed) currently are not in compliance with the dimensional requirements of the Skagit County Zoning Ordinance (SCC 14.04.112 Ag-NRL). The applicant has indicated that they are proposing to remove the existing garage, which currently has a 5 foot setback from the south (side) property line, and replace it with a new garage, increasing the setback to 10 feet on the south (side) property line. This will also bring the new garage in line with the existing buildings on the subject property. The applicant has further indicated that the proposal includes the removal of two very old outbuildings, that currently are on the south (side) property line and 15 feet from the east (rear) property line and replace the two structures with one building, increasing the south (side) setback by 10 feet and decreasing the east (rear) setback by 5 feet, (providing for a 10 foot setback from the rear property line).



- b. *That 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 this chapter.*

Staff notes that the 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 this chapter. The use proposed by the applicant is a permitted use common with this zoning designation. There are similar parcels and structures located throughout the region, as well as along Best Road, constructed prior to the establishment of zoning requirements, which have similar circumstances which clearly indicates that the literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district.

The applicant has indicated this parcel, as well as the neighboring properties have existing out building that do not meet current setback requirements. The applicant has further indicated that he is proposing to increase the setbacks, for 5 feet to 10 feet and from 0 feet to 10 feet. The property is currently used for the existing buildings, with the remaining area of the subject property, utilized for parking, garden, and wood storage area. This would also bring uniformity to the structures by aligning them with each other while maintaining the openness of the property, furthermore maintaining the agricultural character consistent with surrounding properties.

- c. *That the special conditions and circumstances do not result from the actions of the applicant.*

The applicant has indicated that the conditions did not result from his actions. The applicant has indicated that the buildings currently on the subject property were constructed many years ago and are either on the property line or have a minimum of a 5 foot setback from the south (side) property line. The applicant further indicated that the buildings were established before zoning requirements and are not the result of the actions by the applicant.

Staff notes that the special conditions and circumstances are not the result from the actions of the applicant. The structures were constructed prior to current zoning regulation and are approximately 50+ years old. The existing location of the structures and their configuration did 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 this chapter to other lands, structures, buildings in the same district.*

The applicant has indicated that the granting of this variance request will not confer a special privilege that is denied by this chapter to other lands or structures



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in the same district. The applicant has indicated that the parcel is 1 acre in size and the structures are 50+ years old, bordered primarily by agricultural fields with common surrounding uses. Denial of this variance would deprive the applicant of rights commonly enjoyed by properties in the same district by denying the uses allowed in the Ag-NRL zoning district.

Staff notes that the proposal is to remove older nonconforming structures and replace them with new accessory structures that will be uniformly aligned along the south property line. The structures will all maintain a setback of 10 feet off of the south and east property lines. Staff notes that the use of the property is not changing and accessory structures are common permitted uses within the Ag-zoning district. The applicants proposal fits in with the surrounding area due to the fact that there are many other similar structures along Best Road that appear to have nonconforming setbacks. Staff notes that the request will not confer a special privilege that is denied to other lands or structures in the same district.

RECOMMENDATION:

Based on the current code the Planning and Permit Center would recommend **approval** of the requested setback variance with the following conditions:

1. The applicant shall obtain all permits and approvals from the appropriate jurisdiction.
2. A demolition permit shall be obtained prior to the removal of any of the structures.
3. The applicant shall obtain building permits prior to the start of any construction.

Prepared by: BB

Approved by:

Dated: 8-27-99


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