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Kathy Hill, Skagit County Auditor
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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON SPECIAL USE APPLICATION SU 99 0578, VARIANCE
APPLICATION VA 00 0044 AND APPEAL AP 00 0263

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: CHARLES PETERSEN

ASSESSOR PARCEL NO: P61862

ABBREVIATED LEGAL DESCRIPTION: located at 11265 Peace Cliff Lane, Anacortes,
WA; within the NE ¼ of Section 34, Township 35 North, Range 1 East, W.M., Skagit
County, Washington.

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of) CHARLES PETERSON)	SU99-0578, VA00-0044) AP00-0263)
For a Special Use Permit and Variance) to allow a Bed and Breakfast Operation) in a Cabin Separate from the Applicant's) Residence at 11265 Peace Cliff Lane, and) Access on an Existing Road Exceeding) 12% Grade)	
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In the Matter of the Appeal of) DAN & JANUS INNES and) JEAN H. WEST)	Findings of Fact,) Conclusions of Law) And Decision)
From an Administrative Interpretation) Recognizing an Easement Recorded on) Short Plat #78-114 as a Legal Right of) Way.)	
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THIS MATTER is a consolidated hearing on the appeal of an administrative interpretation and a related special use permit and variance application. The case came on for hearing before the Examiner on May 31, 2000, after due notice.

The Planning and Permit Center was represented by Marge Swint. John Hicks, Attorney at Law, represented the Appellants. Gary Jones, Attorney at Law, represented the Applicant in connection with the appeal. Louis Requa represented the Applicant in connection with the permit applications. Several members of the public testified.

On the basis of the testimony heard, the exhibits admitted and the arguments made, the following is entered:

FINDINGS OF FACT

1. Charles Peterson (Applicant) seeks a Special Use Permit for a bed and breakfast operation and a Variance to allow the existing road serving his property to exceed the maximum grade limit.

2. He has also applied for a short plat (SP99-026) to divide his five acre parcel into two 2.5 acre lots. Both lots would be served by the existing road.



3. The property is located at 11265 Peace Cliff Lane on Lot 2 of Short Plat 114-78 which was created from Lot 58 of the Plat of Anaco Beach. The property is south of the City of Anacortes within a portion of the NE1/4, Sec. 34, T35N, R1E, W.M.

4. Lot 1 of Short Plat 114-78 (11220 Peace Cliff Lane) is owned by the Appellants, Dan and Janus Innes. They are in the process of selling to Appellant Jean H. (Jill) West.

5. Short Plat 114-78 was jointly proposed by Peterson and Innes in 1978. It was approved and ultimately recorded in October of 1980. Peterson's presently proposed short plat proposal would divide Lot 2 (five acres) into two 2.5 acre tracts.

6. As recorded, Short Plat 114-78 shows a 60-foot wide right-of-way, extending north from Marine Drive and proceeding through Anaco Beach Lots 57 and 58 to lot 59 on the north. This is named Seabreeze Place and labeled a private road. Within Lot 1 of the short plat, a 60-foot wide right-of-way named Rosario Beach Lane is shown branching off of Seabreeze Place to the east and entering Lot 2. This short plat, as recorded, has never been amended.

7. In commenting on the current applications, the Department of Public Works has advised that the existing road must meet short plat road standards. Since 1971 this has meant a right-of way-width of 60 feet. SCC 14.08.090(3)(b)(iv).

8. The instant appeal focuses on the issued of whether a 60-foot-wide right-of-way is currently in existence or whether the right-of-way is in fact only 20 feet wide. The Appellants assert that there is only a 20-foot-wide easement on Lot 1 and that this would have to be expanded to 60-feet-wide to accommodate the Applicants proposal.

10. In 1990, Bratz, the owner of Anaco Beach Lots 60 and 61 to the north sought a short plat (31-90) and in connection with this land division endeavored to confirm access through an extension of the right-of-way from Marine Drive shown for Short Plat 114-78 as Seabreeze Place. Short Plat 31-90, as filed in February 1991, shows a 60-foot wide private right-of-way.

11. Within this 60-foot-wide right-of-way, Short Plat 31-90 shows a 20-foot-wide easement per Auditor's File #773630. The file reference is to an easement created by Eastvold Development Company on September 6, 1972, for ingress, egress and water line across Lots 57 through 61.

12. Prior to 1990, this easement had never been located on the ground. An agreement among the property owners then provided this location, conforming to the route of actual improvements. The easement as located initially occupies the center of Seabreeze Place as shown on Short Plat 114-78. But then, within Anaco Beach Lot 58, it loops to the east returning to the locale of Seabreeze Place at the boundary between Lots 58 and 59.



13. The Agreement of Location (Auditor's File #9006140092) states:

It is ... declared by the parties hereto, that by the creation of this easement and by establishing the location of same, that all documents of record making mention of a roadway and waterline for the mutual benefit of all the lots described above, are hereby merged into this declaration and agreement so that persons dealing with said properties can rely upon the fact that this instrument replaces and is in lieu of all other instruments executed which established an easement for such purpose."

No explicit mention is made of the 60-foot-wide right of way in this document.

14. Peace Cliff Lane is the name given to the road built on the easement as located by agreement.

15. Notwithstanding the deviation in the actual route across Lot 58, the preponderance of evidence is that the location 20-foot-wide easement by the property owners was intended as a location of the access road within the 60-foot-wide right-of-way identified in both Short Plat 114-78 and Short Plat 31-90. The Agreement of Location does not purport to reduce the overall width of the right-of-way.

16. No evidence was presented in the hearing on the possibility of abandonment of the plat-created right-of-way.

17. On May 3, 2000, the Planning and Permit Center Director issued an Administrative Interpretation concerning the width of the right-of-way. After reviewing letters from attorneys for both the Applicant and the Appellants herein, the Director stated:

... [T]he Planning and Permit Center staff will continue to recognize the 60-foot easement recorded on Short Plat #78-114, recorded October 2, 1980 as a legal right-of-way. the 60-foot easement remains a requirement of the Skagit County Code Land Division Chapter to date. Further developments of this short plat must be in conformity with Skagit County Codes and right-of-way requirements. Private agreements cannot change conditions of a recorded plat.

18. A Notice of Development application for the Special Use Permit was posted and published on November 4, 1999. A similar notice was posted and published for the Variance Application on March 9, 2000. Notice of hearing was duly given.



19. The existing road is steep. In places the current grade is as much as 24%. The Applicant proposes to reduce the maximum grade to 18%. The code sets forth a maximum of 12%. SCC 14.08.090(3)(b)(ii).

20. The driving surface is 14 ft wide. The Applicant would increase this to 20 feet within the 60-foot-wide right-of-way. The application materials on file when notice of the subject variance proposal was made showed that grading and filling would occur.

21. The Department of Public Works did not oppose the variance proposal. In comments, Public Works specified various performance standards to be met, called for engineering road plans to be submitted prior to construction, and stated that "the maximum road grade shall not exceed 18%."

22. The Fire Marshal said he would not oppose the variance "if the applicant can make his road safer and get below 18%." He specified the installation of sprinklers for the bed and breakfast operation.

23. A Mitigated Determination of Non-Significance (MDNS) was issued for this proposal on January 21, 2000, under the State Environmental Policy Act. (SEPA). The MDNS was not appealed. It imposed the following conditions:

1. Peace Cliff Lane must be improved to current short plat road standards from Marine Drive to the intersection with the proposed plat road.
2. The proposed access road will need to be improved to current short plat road standards up to the intersection with the access road (driveway) for the neighbor to the south.
3. A Fill and Grade permit, including a Temporary Erosion/Sedimentation Control Plan is required prior to starting construction.
4. A pre-construction meeting is required prior to starting construction on any road upgrade.
5. The water system providing water to the cabin must meet the requirements for a public system.

24. A geotechnical report, dated September 7, 1999, was prepared by JB Scott and Associates. A Protective Critical Area Easement (PCA) will be required on the short plat for the "fill zone showing ravel." as indicated in the geotechnical report.

25. Prior to issuance of a fill and grade permit for the access road work, a Fish and Wildlife Assessment will be required for a Type 5 Stream in the western portion of the property.



26. Under SCC 14.04.223, variances are authorized in specific cases where departure from the requirements of the zoning code “will not be contrary to the public interest” and “where, owing to special conditions, a literal enforcement of the provision of this chapter would result in unnecessary hardship.” The explicit criteria for approval of a variance are:

- 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.

27. The Staff Report analyzes the proposed road grade in light of these criteria and concludes that the project will meet them. The Examiner concurs in this analysis and adopts the same.

28. The Anaco Beach Plat created original lots in 1930 and contemplated access from Marine Drive. Development has followed the original idea. The steepness of the topography was known when Short Plat 114-78 was approved in 1978, and Bratz’ Short Plat approval (31-90) recognized the existence of road portions in excess of 12%. The access road from Marine Drive is the only access to the Applicant’s property. The topography presents a special condition of hardship not applicable to all lots in the district. Adverse impacts can be avoided by engineering and design.

29. The Examiner finds that the reasons set forth in the application justify the granting of the variance. It is the minimum that will make possible reasonable uses proposed for the property. The granting of the variance sought will be in harmony with the general purpose and intent of the zoning code and will not be injurious to the neighborhood, or otherwise detrimental to public welfare.

30. The bed and breakfast operation is proposed for a small cabin (footprint roughly 16’ by 16’) called the Troll House. This cabin is approximately 20 feet from the north property line, west of the existing single family residence and on the same proposed 2.5 acre lot as the existing residence. The cabin commands a water view in the distance.



The majority of the property is timbered except for the area immediately surrounding the residence and cabin. The structures are accessed by a driveway from Peace Cliff Lane.

31. The residence is served by water from a private well. The proposal is to use City of Anacortes water for the Troll House. There is an existing septic system, but County records do not show it as serving the Troll House.

32. The bed and breakfast operation is to be run by the Applicant and is proposed to be open seven days a week. At present food service is not proposed to be offered. The cabin is a modest structure with a small living room (containing a microwave and small refrigerator), a loft for sleeping and one bathroom. There is a small deck at the front with a hot tub. The cabin can accommodate four people, but best accommodates two. There is adequate parking for several vehicles. There is a small sign, saying "Troll" at the entrance to the property.

33. Agency comments on the bed and breakfast proposal included the Health Department's reminder that a license from them will be needed if food will be prepared for the guests; the Building Official's warning that the cabin must meet Uniform Building Code requirements; and the Septic Review notice that approval of a system serving the cabin must be obtained.

34. The property is zoned Residential. Bed and Breakfast Operations are expressly listed as requiring Special Use approval from the Hearing Examiner in such zones. SCC 14.04.150(2)(g).

35. SCC 14.04.150(3)(d) requires consideration of the following elements in evaluating a Special Use application.

- (i) Conformity to the Comprehensive Plan in respect to the compatibility with existing and future land use and circulation;
- (ii) The zoning of the subject property and surrounding properties and the conformance of the application to the zoning ordinance;
- (iii) Automobile or truck traffic and parking and its effect on surrounding community;
- (iv) Noise, odors, heat, vibration, air and water pollution potential of the proposed use;
- (v) Intrusion of privacy;
- (vi) Design of site and structures as to possible effects on the neighborhood;
- (vii) In addition to possible effects on the neighborhood in which the use is to be located, the potential effects on the region shall be considered;
- (viii) Potential effects regarding the general public health, safety and general welfare.

36. The Staff Report analyzes the application against these criteria and concludes that the project will meet them. The Examiner concurs in this analysis and adopts the same. In particular it is noted that the subject bed and breakfast is in a very secluded location where it will not even be visible to most residents of the surrounding neighborhood. The traffic to be anticipated will not exceed that which could be anticipated for a single family residence.

37. Several neighbors and neighborhood associations opposed this application. Their main objection is to the location of any commercial operations in the larger residential neighborhood in the vicinity. A point was also made concerning increased fire danger.

38. There were also some supporters. They emphasized the extremely small and essentially hidden nature of this operation.

39. 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 subject matter of this proceeding.

2. Notice was properly given of the applications and the hearing as required by law. The appellants had adequate notice of the features of the proposals.

3. The Examiner concludes that the 60-foot-right of way on the property in question should be regarded as continuing to exist for purposes of the pending short plat application and the bed and breakfast request. The private agreements made subsequent to the filing of Short Plat #114-78 cannot alter the short plat's terms. The critical point is that the Short Plat was subject to governmental approval which has not changed. For this approval to change, the Short Plat needs to be amended.

4. This decision does not purport to cover more than the right-of-way on Short Plat #114-78. The roadways involved are private ones. Mutual grants of easement as between the joint-applicants for that short plat may be inferred, but no dedications to Skagit County were made.

5. The requirements of SEPA have been met.

6. The findings support a conclusion that the Variance should be approved, as conditioned.

7. Likewise, if conditions of approval are imposed, the proposal will meet the criteria for Special Use Permit approval.



8. The Examiner notes that the objections of neighborhood groups to the intrusion of commercial uses is basically an issue of compatibility. Because bed and breakfasts are authorized as Special Uses under the zoning code, this question has been answered legislatively in circumstances like this one where the activity is non-intrusive, small in scope and poses little potential for interference with neighboring property use.

9. The application should be approved, subject to the following conditions:

- (1) The applicant shall obtain all necessary approvals, including business licenses, prior to the operation of the bed and breakfast.
- (2) The applicant shall meet the following requirements for access:
 - (a) Peace Cliff Lane must be improved to short plat road standards from Marine Drive to the intersection with the proposed plat road.
 - (b) Improvements to Peace Cliff Lane shall include a 20-foot-wide driving surface consisting of 10 inches of gravel base with two inches of crushed surfacing top course and drainage ditches, in required by Public Works.
 - (c) The proposed plat road shall be constructed to the same standards as Peace Cliff Lane.
- (3) The applicant shall comply with all conditions stated in the MDNS (See Finding 23 above.)
- (4) A Fill and Grade permit, including a Temporary Erosion/Sedimentation Control Plan shall be obtained prior to starting construction of the road improvements.
- (5) A Fish and Wildlife Assessment shall be conducted for the Type 5 Stream on the property prior to issuance of the Fill and Grade permit, and any conditions thereof shall be satisfied prior to issuance of the Fill and Grade permit.
- (6) A pre-construction meeting shall be arranged prior to starting the construction of improvements.
- (7) All planning review fees shall be paid prior to the issuance of a Fill and Grade permit.
- (8) If food is prepared for guests, the applicants shall obtain a Bed and Breakfast license from the Skagit County Health Department.



- (9) The applicant must demonstrate that the cabin (Troll House) meets both structural and non-structural provisions of the Uniform Building Code prior to operation of the bed and breakfast.
- (10) Approval and, if necessary, installation of a septic system for the cabin (Troll House) shall be obtained prior to operation of the bed and breakfast.
- (11) Water service for the cabin (Troll House) shall be obtained from the City of Anacortes, or approval of a Group B system shall be obtained from the Health Department.
- (12) Operation of the hot tub shall be allowed only after Health Department approval, and subject to Health Department regulations.
- (13) A minimum of four (4) parking spaces and a complete turnaround for guests shall be provided on-site.
- (14) The bed and breakfast shall be operated solely in the cabin (Troll House). No more than four renters at any one time shall be allowed.
- (15) The applicant shall post rules of behavior in the cabin. These shall include prohibitions against excessive noise and trespass on neighboring property. Information on approved hiking routes that can be used without trespass shall be provided.
- (16) Pets shall be kept within a designated area on the subject property or leashed when walking.
- (17) Signs shall be meet the requirements of SCC 14.04.155.
- (18) Any new owner or operator shall notify the Planning and Permit Center of any change of ownership or operator and the acceptance of the conditions set forth herein. Lack of notification of change of ownership or of acceptance of conditions shall be cause for immediate cancellation of the permit.
- (19) The permit shall be void if progress on all conditions has not been shown within 18 months of the date of this decision.
- (20) If the operations authorized hereunder cease for any continuous period of one year, the permit shall be void.

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



DECISION

The Administrative Interpretation is **AFFIRMED**. The appeal is denied. The Special Use Permit and Variance are **APPROVED**, subject to the conditions set forth in Conclusion 9 above.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: July 25, 2000

Transmitted to Applicant: July 25, 2000

Attachment: Staff Report for Permits

RECONSIDERATION/APPEAL

This decision shall become final unless a request for reconsideration or appeal is filed. A request for reconsideration shall be filed with the Hearing Examiner within ten (10) day from the date of this decision. An appeal to the Board of County Commissioners shall be filed with the Planning and Permit Center within fourteen (14) days from the date of this decision, or if reconsideration has been requested, within fourteen (14) days from the decision after reconsideration.



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SKAGIT COUNTY PLANNING & PERMIT CENTER

FINDINGS OF FACT

HEARING AUTHORITY: SKAGIT COUNTY HEARING EXAMINER

HEARING DATE: May 31, 2000

APPLICATION NUMBER: Special Use Request PL99-0578
Variance Request PL00-0044

APPLICANT: Charles Petersen

ADDRESS: 11265 Peace Cliff Lane
Anacortes, WA 98221

RELATED FILES: Appeal of Adm. Interpretation PL00-0263
Short Plat SP99-026
Code Enforcement PL99-0174

PROJECT LOCATION: The proposed project is located at 11265 Peace Cliff Lane, Anacortes, WA; portion of Lot 58 of the Plat of Anaco Beach, Lot 2 of Short Plat 114-78, within a portion of the NE ¼ Section 34, Township 35 North, Range 01 East, W.M., Skagit County, Wa.

PROJECT DESCRIPTION: Special Use Request PL99-0578 to allow for a bed and breakfast operation in a separate existing cabin. Variance Request to allow for an existing road, serving a proposed two lot short plat and a proposed bed & breakfast, to exceed the 12% grade requirements.

ASSESSOR'S ACCOUNT NUMBER: 3858-000-058-0107

P# Number: P61862

ZONING: Residential

COMPREHENSIVE PLAN: Rural Intermediate

RECOMMENDATION: The Planning and Permit Center **recommends approval** of the Special Use Permit for a bed and breakfast in a separate cabin and the Variance Request for the existing road serving a proposed two lot short plat and a proposed bed & breakfast, to exceed the 12% grade requirements.



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EXHIBITS:

1. Special Use Application dated September 15, 1999
2. Environmental Checklist
3. Geotechnical evaluation submitted by JB Scott & Associates dated September 7, 1999.
4. Assessor Map
5. Ariel site photo provided by applicant
6. Site Plan submitted by applicant
7. Letter of Completeness October 26, 1999
8. Notice of Development November 2, 1999
9. Mitigated Determination of Nonsignificance dated January 4, 2000
10. Correspondence 9 letters from various property owners in the area
11. Variance Application dated January 27, 2000
12. Proposed 2 lot short plat map
13. Map of access road to proposed short plat
14. Access road grade for proposed short plat
15. Letter of completeness dated February 28, 2000
16. Notice of Development dated March 7, 2000
17. List of parties of record including names & addresses

STAFF FINDINGS:

1. The subject property is zoned Residential and the Comprehensive Plan designates the area as Rural Intermediate.
2. Per Section 14.01.033 of the Skagit County Code, a letter of completeness for the Special Use was issued on October 26, 1999. A Notice Of Development Application for the Special Use was posted on the subject property and published in a newspaper of general circulation on November 4, 1999 as required by Section 14.01.040(2) of the Skagit County Code. The letter of completeness for the Variance Request was issued on February 28, 2000 and the Notice of Development Application was posted and published on March 9, 2000. The public hearing has been advertised in accordance with SCC Section 14.01.042.
3. The application has been reviewed in accordance with the State Environmental Policy Act guidelines (WAC 197-11 and RCW 43.21C) A Mitigated Determination of Non-significance (MDNS) was issued on, becoming effective following the fifteen-day comment period ending January 21, 2000 and fifteen-day appeal period ending February 7, 2000. The following conditions were attached:
 1. Peace Cliff Lane must be improved to current short plat road standards from Marine Drive to the intersection with the proposed plat road.
 2. The proposed access road will need to be improved to current short plat road standards up to the



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intersection with the access road (driveway) for the neighbor to the south.

3. A Fill and Grade permit, including a Temporary Erosion/Sedimentation Control Plan is required prior to starting construction.
 4. A preconstruction meeting is required prior to starting construction of any road upgrade.
 5. The water system providing water to the cabin must meet the requirements for a public system.
4. The subject property has been reviewed in conjunction with Short Plat 99-0026 with respect to the Skagit County Critical Areas Ordinance Chapter 14.06 of the Skagit County Code. Staff conducted a field visit on August 27, 1999. Based upon the site visit a geotechnical report was required because the existing residence is built on a slope. A Geotechnical report dated September 7, 1999 prepared by JB Scott & Associates was reviewed by staff. A Protective Critical Area Easement (PCA) will be required on the short plat for the "fill zone showing ravel" as indicated in the geohazard report. In addition Critical Areas Staff has identified a potential Type 5 stream running in the western portion of the property. Prior to issuance of a fill and grade permit for the upgrade of the access road, a Fish and Wildlife Assessment will be required for this stream. Any conditions recommended in the Fish and Wildlife analysis must be met prior to issuance of any fill and grade permit.
 5. The subject property is not located in a Flood Hazard Zone and is not located within 300 feet of an area designated as natural resource land.
 6. The subject property is approximately 5-acres in size and is located on Peace Cliff Lane off of Marine Drive. The subject property was created by a short plat (SP78-114) in 1978 and was originally a portion of a platted lot in the Plat of Anaco Beach recorded in 1930. The property is rectangular in shape and lies in an east/west configuration. The property measures approximately 360 feet on the west (front) property line, approximately 581 feet on the north (side) property line, approximately 348 feet on the east (rear) property line, and approximately 666 feet on the south (side) property line.
 7. There is an existing single family residence located approximately 70 feet from the north property line in the east half of the property. A small cabin located approximately 20 feet from the north property line lies west of the single-family residence. A small shed is located on the north property line lying north of the small cabin. The majority of the property is timbered except for the area immediately surrounding the residence & cabin.



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8. The applicant has also applied for a short plat (SP99-0026) to subdivide this property into two 2.5-acre parcels. The property is served by onsite sewage with a private well serving the residence and City of Anacortes water is proposed to serve the cabin (proposed Bed & Breakfast, Troll House) and proposed Lot 2. The proposed short plat and proposed Bed and Breakfast (Troll House) is to be served by the existing paved access road. There are portions of the existing road that do not meet current short plat road standards. These standards include a 20-foot driving surface consisting of 10-inches of gravel base with 2 inches of crushed surfacing top course, drainage ditches if required, and a 12% maximum grade. The width of the existing easement approved with the recording of SP78-114 is under appeal (PL00-0263).

9. The applicant is requesting a variance to allow for the access road serving both the proposed short plat and the proposed bed and breakfast to exceed the 12% maximum grade.

10. Skagit County Code Section 14.08.090(3)(b)(ii) Short Plat Road, Bridge and Drainage Standards states Alignment, both vertical and horizontal, shall meet County road standards. The maximum grade shall be 12%. The Uniform Fire Code Section 9.02.2.2.6 Grade states the gradient for a fire apparatus access road shall not exceed the maximum approved. Skagit County has adopted short plat standards of 12% grade or 14% paved. In addition the Fire Code allows the Fire Marshal to modify the criteria if the road is not buildable due to topography, waterways, non-negotiable grades or similar conditions. The modifications are to be based on the buildings using sprinklers or additional fire protection as required by the Fire Marshal.

11. The Variance application was routed to the appropriate County offices for comments. Their comments are as follows:

Public Works - a) Road geometrics must either be contained within the existing easement or additional easements must be secured prior to starting construction. b) The road shall have Asphaltic Concrete Pavement, Class B, with a minimum 2 inches compacted depth. c) The variance does not apply to the cul-de-sac. d) Engineered road plans must be submitted to Skagit county Public Works prior to starting construction. e) If final design warrants guardrails, they shall meet WSDOT requirements. f) The maximum road grade shall not exceed 18%. G) The road must meet all other requirements of a short subdivision rural private road.

Dan Cain, Skagit County Fire Marshal - If the applicant can make his road safer and get below 18% that this office would not oppose a variance request. If Mr. Peterson does the 18% road and sprinkles the little



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Toll House (propose Bed and Breakfast) and any new residence, I would say that it complies with the listed exceptions in the fire code. *It should be clear on the face of the short plat, that the road to the south of the short plat does not provide access to the upper (eastern) portions of proposed Lot 2. This variance addresses access to the southwest corner of proposed Lot 2 only.*

7. Section 14.04.223(1)(e) Variances of the Skagit County Code states that certain items will be reviewed when approving or denying Variances. Those items 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. A site visit has confirmed the topography of the site which rises steeply from Marine Drive. The access was reviewed with the short plat in 1978. According to the applicant's narrative supplied by Skagit Surveyors & Engineers, Inc. at the time of approval of the 1978 short plat, the 12% grade was not the maximum allowed. The ordinance in effect indicated that if grades exceed 12% additional review may be necessary. Public Works comments in regard to the 1978 short plat do not discuss the issue of grade. The short plat was recorded and the roadway has served the two lots as well as lots to the north south, and west of Mr. Petersen's lot.

- 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 County has approved two short plats that are served by the subject roadway (SP78-114 [subject property] & SP90-31 [north of subject property]) as it exists today. Mr. Petersen's property has no other access and due to the topography of the land, there is no other place for a road to be built. If the variance were denied, the applicant would not be able to divide his property even though he has the required acreage.

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



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The conditions that require the request for a variance arise from the topography of the area which is the applicant is not responsible for. The applicant is not responsible for the original platting configuration of the Plat of Anaco Beach that resulted in the access for Lots 57 to 62 inclusive to come off Marine Drive at its present location.

- 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.

Therefore, Staff concurs that the granting of this variance will not confer on the applicant any special privilege that is denied to property owner of other lands, structures, or buildings in the same district. The County has alternate provisions that allow roadways to exceed the 12% grade if they meet Fire Marshal standards. The proposed plan will utilize the property in the best manner.

12. The applicant is requesting an Special Use Permit to allow for a bed and breakfast operation in a separate cabin. The small cabin is located west of the single-family residence. The cabin is meant to be a low profile, small operation maintained by the owners. The owners plan to have the cabin available 7 days a week. The building consists of a small living room with a microwave and small refrigerator. There is a loft for sleeping purposes and a bathroom. At the front of the cabin is a small deck with a hot tub. If the Special Use is approved, the hot tub will need to comply with Health Department regulations regarding the use of hot tubs by the general public. The cabin best accommodates two people but can sleep four. There are no plans to increase the size of the cabin or to expand the bed and breakfast operation into the single-family residence. According to the applicant, there is a septic system on site to accommodate the proposed bed & breakfast. Staff notes there is a 2 bedroom septic system on file showing the single-family residence. Currently there is a small sign (Troll) at the entrance to the subject property. This special use request is a result of an enforcement action (CE99-0174).

13. Skagit County Code 14.04.030 (13) defines Bed and Breakfast Operations as overnight lodging provided in a single family dwelling not exceeding five (5) bedrooms including owner/operator; meals provided to overnight guests only.

14. The Special Use Application was routed to the appropriate County offices for review. Their comments are as follows:
Public Works - a) Peace Cliff Lane must be improved to short plat road standards from Marine Drive to the intersection with the proposed plat road. Peace Cliff Lane will need to



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be constructed to current short plat road standards. This includes a 20-foot driving surface consisting of 10 inches of gravel base with 2 inches of crushed surfacing top course and drainage ditches if required. b) The proposed plat road will need to be constructed to current short plat road standards.

This includes a 20-foot driving surface consisting of 10 inches of gravel base with 2 inches of crushed surfacing top course and drainage ditches if required. c) A Fill and Grade permit, including a Temporary Erosion/Sedimentation Control Plan, is required prior to starting construction. d) A preconstruction meeting is required prior to starting construction.

Dan Cain, Skagit County Fire Marshal - Comments were the same as for the variance request.

Corrine Story, Skagit County Health Department- Bed and Breakfast Licensing: If food is not provided or guests will be providing their own food, no bed and breakfast license is required from the Skagit County Health Department. A bed and breakfast license is required only if food will be prepared for guests. Water: approved water is required prior to approval of this project. This can be obtained either through connection to the Anacortes City water or approval as a "Group B" system through the Skagit County Health Department.

Lorna Parent, Skagit County Health Department - The source of water for the "Troll House" appears to be an illegally dug well. The applicant is willing to provide bottled water but the sinks still have the dug well water which would be unacceptable for the public to drink. A connection to the City of Anacortes water would be the best source and location for water for the public.

Corey Schmidt, Skagit County Building Official - The cabin will need to be evaluated for current building code requirements especially where sleeping rooms are provided. The applicant must demonstrate how this building meets the Uniform Building Code, both structural & non structural provisions prior to any change of use approvals.

Greg Geleynse, Skagit County Septic Review - The septic system will need to meet the requirements for a bed and breakfast. It appears the existing septic system serves the existing residence and is for two bedrooms only. There is no record of a system for the cabin.

9. Section 14.04.150 Unclassified Special Uses of the Skagit County Code indicates that certain items will be reviewed when approving or denying Special Use Permits. Those items are as follows:

- A. **Conformity to the Comprehensive Plan in respect to the compatibility with existing and future land use and circulation.**



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Chapter 4 Land Use Element Section/Commercial and Industrial Uses Outside of UGA Objective 2 Provide for increased rural economic opportunities with home-based occupations and cottage industries compatible with the designation in which the business is located. **Policy 2.1** Home-based occupations and cottage industries shall be allowed provided they are adequately buffered or distanced from roads and adjacent properties to assure that they do not adversely affect the surrounding area and the designation in which they are to be located. Site specific standards shall be considered through the permitting process. Chapter 12 Economic Development Element of the Comprehensive Plan has several goals, objectives and policies that support this request. **Employment Goal A:** Create and maintain diverse employment opportunities that meet the changing income needs of Skagit County residents. **Objective A-2** Encourage diverse job options and entrepreneurial opportunities for persons interested in full-time and part-time employment or desiring to own their own business. **Policy 1.1** Business investments that provide economic and employment opportunities to meet the employment needs of all county residents should actively be encouraged. **Commercial Activity Goal C:** Encourage a range of commercial retail and service businesses to meet local resident needs and serve visitors to Skagit County. **Visitor Services Goal D:** Support Skagit County as a visitor destination by preserving and enhancing the unique qualities of both rural areas and urban communities. **Objective D-2** Offer opportunities for both isolated and more group oriented visitor experiences. **D-3** Build on the county's locational advantages for visitor services by encouraging lodging, retail and transportation services. **D-4** Encourage attractions which would enable Skagit County to capture destination as well as pass-through visitor traffic.

B. The zoning of subject property and surrounding properties and the conformance of the application with the Zoning Ordinance.

The zoning of the subject property and surrounding properties is Residential. Section 14.04.150 Unclassified Special Uses of the Skagit County Code indicates that "certain uses which, because of their unique characteristics or rare occurrence, require special review to insure compatibility..." Bed and Breakfast operations are specifically listed under SCC Section 14.04.150 (2)(g) as requiring a Hearing Examiner Special Use. An application is then reviewed for impacts to a surrounding area. Staff notes that in the current definition Bed and Breakfast Operations are limited to the single-family residence. However several unattached Bed and Breakfast Operations have been approved in the past. Staff also notes that accessory living quarters (guest houses) are a permitted use within the Residential



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district. Under the proposed Development Code (due to adoption June, 2000) Bed and Breakfast Operation is defined as an owner-occupied and managed dwelling which is used to provide overnight guest lodging for compensation and which usually provides a morning meal, and/or may include facilities for banquets, weddings and similar small parties. Guest lodging may be in a separate structure from the main dwelling.

C. Automobile or truck traffic and parking and its effect on surrounding community.

The proposed project will generate traffic that is typical of a single-family residence and should have little effect on the surrounding community. Access to the site is via Peace Cliff Lane and the proposed short plat road. Public Works has required that these roads be upgraded to short plat road standards. Peace Cliff Lane and the proposed short plat road is subject to the previously mentioned variance request. According to the applicant there is parking available for up to 6 vehicles onsite. The application anticipates approximately six trips a week. The average single-family residence experiences an average of ten vehicle trips per day. If the Special Use is approved, the possible additional six trips/week of Bed and Breakfast clients will not substantially impact the area. It should be noted that Bed and Breakfast facilities are not similar to motels, in that guests do not typically arrive at uncommonly late hours

D. Noise, odors, heat, vibration, air and water pollution potential of the proposed use.

There will be no noise, odors, heat, vibration, air and water pollution potential of the proposed project provided the site is maintained in a typical residential manner. There is an airtight woodburning stove in the cabin which when used will cause some emissions.

E. Intrusion of privacy.

The project appears to have minimal chance of intrusion of privacy onto the adjacent properties. The site is approximately 5 acres in size, with a private drive accessing off of Peace Cliff Lane. The intrusion on privacy of the area will be the occasional additional traffic to the site. However, there are no residences on Peace Cliff Lane until after the driveway leading to the proposed bed and breakfast. The subject property and surrounding properties are made up of dense forest and steep topography. The applicant has indicated there is an old trail linking up to the Anacortes City Forest Trails for hiking. If the Special Use is approved, the applicant shall provide private property information for persons interested in hiking in order to



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assist in preventing trespassing. The applicant has not indicated whether pets would be allowed or not. If pets were to be allowed, they would need to be kept within a designated area on the subject property and not allowed to "run free".

F. **Design of site and structures as to possible effects on the neighborhood.** (See comments below)

G. **In addition to possible effects on the neighborhood in which the use is to be located, the potential effects on the region shall be considered.**

There should be minimal effect on the neighborhood or region as a result of the design of the proposal. The subject property is currently 5 acres in size and is basically undeveloped except for the area surrounding the existing residence and proposed bed and breakfast. The cabin (Troll House) evolved from a storage shed that was built some 20 years ago. The area is made up of dense forest and steep slopes. The residence and the cabin are not visual from any public roads. As stated earlier, the cabin is meant to be a low profile small operation. The attraction of the cabin is the pristine serenity of the surroundings and will be left as natural as possible.

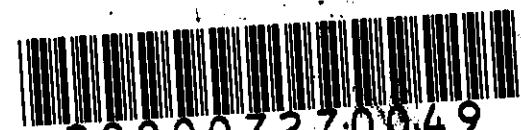
H. **Potential effects regarding the general public health, safety, and general welfare.**

The potential effects of the proposed project regarding the general public health, safety, and general welfare should be minimal as long as the property is maintained in a typical residential manner and all appropriate water supply & sewage issues are in conformance with permit conditions.

RECOMMENDATION

The Planning and Permit Center recommends **approval** of the Variance Request to allow the existing road to exceed the 12% grade requirements subject only to the conditions and modifications listed below:

1. The applicant shall obtain all necessary approvals (i.e. building permit).
2. The maximum grade of the Peace Cliff Lane and the proposed short plat road shall not exceed 18%.
3. Road geometrics must either be contained within the existing easement or additional easements must be secured prior to starting construction.
4. The road shall have Asphaltic Concrete Pavement, Class B, with a minimum 2 inches compacted depth.
5. Engineered road plans must be submitted to Skagit County Public Works prior to starting construction.



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6. If final design warrants guardrails, they shall meet WSDOT requirements.
7. The road must meet all other requirements of a short subdivision rural private road.
8. The proposed Bed and Breakfast (Troll House) and the proposed residence on proposed Lot 2 of SP99-0026 shall be sprinkled.
9. This variance addresses access to the southwest corner of proposed Lot 2 only.

The Planning and Permit Center recommends **approval** of the Special Use Permit for a bed and breakfast in a separate cabin only subject to the conditions and modifications listed below:

1. The applicant shall obtain all necessary approvals prior to the continuation of the business.
2. The applicant shall meet the following requirements for access to the proposed Bed and Breakfast:
Peace Cliff Lane must be improved to short plat road standards from Marine Drive to the intersection with the proposed plat road. Peace Cliff Lane will need to be constructed to current short plat road standards. This includes a 20-foot driving surface consisting of 10 inches of gravel base with 2 inches of crushed surfacing top course and drainage ditches if required. The proposed plat road will need to be constructed to current short plat road standards. This includes a 20-foot driving surface consisting of 10 inches of gravel base with 2 inches of crushed surfacing top course and drainage ditches if required.
3. The applicant shall comply with all conditions stated in the MDNS.
4. A Fill and Grade permit, including a Temporary Erosion/Sedimentation Control Plan, is required prior to starting construction of the improvements.
5. Prior to issuance of fill and grade permit a Fish and Wildlife Assessment will be required for the potential Type 5 stream. Any conditions recommended in the analysis must be met prior to issuance of any fill and grade permit.
6. A preconstruction meeting is required prior to starting construction of the improvements.
7. Prior to issuance of the Fill and Grade Permit, the applicant shall pay all planning review fees.
8. A Bed and Breakfast license through the Skagit County Health Department is required only if food will be prepared for guests.
9. Prior to the continuation of the Bed & Breakfast an approved water supply is required. This can be obtained either through connection to the Anacortes City water or approval as a "Group B" system through the Skagit County Health Department
10. The applicant must demonstrate how the cabin (Troll House) meets the Uniform Building Code provisions, both structural &



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- non structural, prior to any change of use approvals.
11. Prior to continuation of the Bed & Breakfast the septic system will need to meet the requirements for a Bed and Breakfast.
 12. The hot tub will need to comply with Health Department regulations regarding the use of hot tubs by the general public.
 13. A minimum of four (4) parking spaces and a complete turnaround area for all guests shall be provided on-site.
 14. The Bed and Breakfast Operation shall be limited to the cabin (Troll House) as it exists today. No additional bedrooms can be added.
 15. The applicant shall provide private property information for persons interested in hiking in order to assist in preventing trespassing.
 16. Any pets shall be kept within a designated area on the subject property or be leashed when walking and not allowed to "run free".
 17. Signing shall be limited to one "on premise" sign no larger than 32 square feet. Off premise signs are limited to private directional signs, 2 square feet or less in size [SCC 14.04.155(5)(b)]
 18. Any new owner or operator shall notify the Planning and Permit Center of any change of ownership or operator and the acceptance of the conditions of the permit by referring to these application numbers (PL99-0578 & PL00-0044). Lack of notification or acceptance shall be cause for the immediate cancellation of the permit.
 19. The permit shall be void if progress on all conditions has not been initiated within eighteen (18) months of the date of this order.

Prepared by: MS

Approved by:

