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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 PERMIT SU 03 0203

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: RICHARD and LINDA CLEMENS

ASSESSOR PARCEL NO: P62439

LEGAL DESCRIPTION: The proposed project is located at 312 Gardner Road, Burlington, WA; a portion of Section 33, Township 35N, Range 4 East W.M. Skagit County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Richard and Linda Clemens
961 Burlington Boulevard
Burlington, WA 98233

File No: PL03-0203

Request: Special Use Permit (Home Occupation)

Location: 312 Gardner Road in the Burlington Urban Growth Area.
(UGA). The property is within a portion of Sec 33, T35N,
R4E, W.M.

Land Use Designation: Residential within the Burlington UGA as identified in the
County Comprehensive Plan and maps adopted July 24,
2000.

Summary of Proposal: To operate a home-based business, called "Absolute
Chiropractic," in an existing residence.

Public Hearing: After reviewing the Report of the Planning and Permit
Center, the Hearing Examiner conducted a public hearing
on May 28, 2003.

Decision: The application is approved, subject to conditions.



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FINDINGS OF FACT

1. Richard and Linda Clemens (applicants) seek a Special Use Permit to operate a chiropractic business from a residence located within the Burlington Urban Growth Area (UGA) at 312 Gardner Road. Both of the Clemens are chiropractors.

2. The property is located within a portion of Sec. 33, T35N, R4E, W.M. It is designated as Residential (R) within the UGA in the Comprehensive Plan and associated maps adopted on July 24, 2000.

3. The application was determined to be complete on March 10, 2003. A Notice of Development was published, posted and mailed to adjacent property owners on March 13, 2003.

4. Environmental review under the State Environmental Policy Act (SEPA) was conducted in conjunction with review under the County's Critical Areas Ordinance. No critical areas concerns were identified and a Determination of Non-Significance (DNS) was issued in connection with the Notice of Development. The DNS was not appealed.

5. The subject parcel is a rectangular residential lot of approximately 11,777 square feet which fronts on Gardner Road to the west. There is an existing single-family residence of about 2,356 square feet, situated in mid-property. The property is fenced with a seven-foot tall solid-board fence on the north, east and, south. The property is served by public water supply and is hookup into the public sewer system.

6. The applicant's site plan shows the residence about 56 feet from the edge of the pavement along Gardner Road. The City of Burlington supplied a map that shows a 30-foot setback from the front property line. A portion of Gardner Road along this line has been vacated and there is apparent confusion over the width of the vacated area. At the hearing, the applicant testified that his subsequent measurements indicate that the distance between the house and Gardner Road is about 45.5 feet.

7. There is a horseshoe shaped driveway on the front of the property that provides parking space and ingress and egress to Gardner Road. The Examiner is inclined to accept the applicants' estimate of the setback area available. But, whichever version is correct, there is room in front of the house to park four cars on the driveway. If needed, adequate space exists to adjust the position of the driveway to keep parked cars out of the right-of-way.

8. The surrounding area is developed in residential on relatively small lots. There are a few scattered home-based businesses in the neighborhood which have been permitted under Conditional Use Permits or were permitted outright. The city limits of Burlington run down Gardner Road. Structures and uses on the west side of the road are in the City. Those on the east side are in the UGA.



9. The applicants' present chiropractic business is operated in a residential structure at 961 S. Burlington Boulevard. For several years they have been looking for a quieter site that would fit their needs. They have finally settled on the 312 Gardner Road location.

10. The City of Burlington's Planning Director submitted a letter on this application that opposed granting the Special Use Permit sought. The main basis for objection was the assertion that "the use is not appropriate in a single family residential zoning district" because of the traffic such uses generate. The letter also stated that "they appear to be using the public right-of-way to create a larger parking area," and it expressed concern that employees other than the immediate family might be added.

11. The City's concerns appear to be based on the assumption that patients will be coming and going at 10-15 minute intervals and on the City's experience with two chiropractic clinics in downtown Burlington that have generated localized parking problems. The applicants agreed that high volume chiropractic practices of the nature of those in downtown Burlington might be a problem in a residential setting. They said that theirs, however, is of a different, quieter, and more personal nature.

12. They evaluated their records over the last four years and calculated an average of 8.8 visits per day. They said that this is about what they would anticipate at the new location. They are seeking merely to relocate, not to expand their practice. They are approaching retirement age and are not looking for more work. In their view, 8 to 9 visits per day approximates the traffic volume generated by many families at their homes. They said that the parking they will provide at the new location will be more than adequate, based on their past experience.

13. The proposed hours of operation are Tuesday through Friday -- 9 a.m. to 6 p.m. and Saturday mornings -- 9 a.m. to noon.

14. Two long-time patients of the applicants testified and concurred that the nature of their business is very quiet and suitable for a residential setting. Based on their experience, they agreed that the off-street parking provided would be more than enough.

15. Two area residents submitted letters for the record. Both opposed the granting of the permit. The concerns expressed were over inadequate parking and the assertion that this would be a "retail-type business, not a self-contained, in-home type business."

16. In light of the entire record, the Hearing Examiner finds that the location of the applicants' business at the location proposed is not likely to have an impact on traffic or parking that will be significantly different from that to be anticipated from normal residential use.



17. The Examiner further finds that, with appropriate conditions, the proposed home-based business can be conducted in a manner that does not detract from the residential character of the subject property or of the neighborhood. The applicants will reside in the home and no more than ¼ of the overall floor area may be devoted to the business. No non-residential appearing external alterations will be made. County restrictions as to signs will be imposed.

18. The application was routed to appropriate County agencies and none had concerns or objections.

19. The County has adopted Burlington's development standards for applications within the UGA. Those regulations would treat this application as a conditional use. The County has not adopted Burlington's conditional use criteria or performance standards. Thus, the project was reviewed under the parallel County criteria for special uses, and the County's performance standards for a home-based business were applied.

20. The major relevant difference between Burlington's standards for home-based businesses and the County's standards relate to parking. Under the Burlington scheme "additional parking is not allowed in order to conduct a home occupation." The County standards state that the business may not "create a level of parking demand beyond that which is normal to a residential area." The proposal here is to make available four parking spaces in the driveway, in addition to the two existing spaces on the parking pad for the residence. Nothing specific to traffic appears in either set of performance standards.

21. The general criteria for Special Use Permit Approval are set forth in SCC 14.16.900(2)(b)(v).

- (a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (b) The proposed use complies with the Skagit County Code.
- (c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standard of SCC 14.16.840.
- (d) The proposed use will not generate intrusions on privacy or surrounding uses.
- (e) Potential effects regarding the general public health, safety, and general welfare.
- (f) For special uses in Industrial Forest-NRL, Secondary Forest-NRL, Agricultural-NRL, and Rural Resource-NRL, the impacts on long-term natural resources management and production will be minimized.
- (g) The proposed use is not in conflict with the health and safety of the community.
- (h) The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding



areas, or conditions can be established to mitigate adverse impacts on such facilities.

22. SCC 14.16.900(3)(e) requires consideration of the following elements in evaluating a Home Based Business 2 application.

- (1) Is carried on by a member of members of a family residing in the dwelling and may include up to 3 additional employees;
- (2) Is clearly incidental and secondary to the use of the property for dwelling purposes;
- (3) The business activity may be conducted in other than the dwelling;
- (4) Has no outside storage or other exterior indication of the home occupation or variation from the residential character of the property with the exception of one sign not to exceed four (4) square feet provided such sign shall not be illuminated;
- (5) Does not create a level of electrical interference, line voltage fluctuation, noise, vibration, smoke, dust, odors, heat, glare, traffic and other environmental impacts beyond that which is common to a residential area;
- (6) Does not create a level of parking demand beyond that which is normal to a residential area;
- (7) May have clients come to the site.

23. The Staff Report analyzes the application against the above criteria and finds that, as conditioned, the use will be consistent with them. The Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporate herein as through fully set forth.

24. The Staff has proposed conditions that, by and large, parallel the home occupation standards of the Burlington Code. The Examiner has accepted these suggested conditions. The County Staff's reason for rejecting the City's recommendation of denial is rooted in the economic development policies of the County's Comprehensive Plan. The Staff argues that home occupations should be approved when they can be conducted consistent with the character of adjoining properties and neighborhoods.

25. The Examiner finds that this particular use will likely prove to be compatible with the residential setting, and that the City's concerns on this score will probably not be realized.

26. The applicants submitted a petition signed by 110 people supporting their application for a Special Use Permit.

27. 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. SCC 14.06.050(b)(ii).

2. The requirements of SEPA have been met.

3. The findings support a conclusion that the proposal, as conditioned, will be consistent with the Special Use Permit Criteria of SCC 14.16.900(2)(b)(v) and the specific performance standards for home-based businesses of SCC 14.16.900(3)(e).

4. The following conditions should be imposed:

(1) The use shall be conducted as described in the application materials, except as the same may be modified by these conditions.

(2) The applicants shall obtain all necessary permits and comply with the conditions thereof.

(3) Only members of the immediate family residing on the premises may be employed in the home-based business.

(4) No inventory shall be kept, other than incidental supplies necessary for and consumed in the conduct of the home occupation. No commodities shall be sold other than those produced on the premises.

(5) No mechanical equipment shall be used, except such as is customarily used for domestic, household or personal purposes.

(6) No more than one-fourth (1/4) of the floor area of the residence shall be devoted to the occupation.

(7) The home occupation shall not require external alteration or involve construction features not customarily found in a dwelling.

(8) The home occupation shall not involve use of commercial vehicles for the distribution of materials from the premises.

(9) The conduct of the home occupation, including but not limited to the storage of goods and equipment, shall not reduce or render unusable, areas provided for the required off-street parking.



(10) No display pertaining to the occupation, other than the one permitted sign shall be visible from the street or adjacent residences.

(11) No more animals shall be maintained on the premises that what is otherwise permitted in the zone.

(12) The home occupation shall be conducted in such a manner that the residence shall not differ from its residential character, either by the use of colors, materials, construction, lighting, signs, or the emissions of sound, noises, vibrations or odors.

(13) There shall be no backing out onto, or parking within, the Gardner Road right-of-way. All parking shall be on site. Because the driveway is "U-shaped," clients shall directed to enter the site from one side of the property, and to exit the site from the other side.

(14) Four additional parking spaces (8 1/2 ' wide by 17' long) shall be provided on site, in addition to the two existing spaces for occupants of the residence.

(15) Only one sign shall be allowed. The sign shall be non-illuminated and shall not exceed four square feet in size.

(16) The applicants shall submit a revised site plan prior to the commencement of operations, demonstrating that the business will occupy no more than 1/4 of the overall floor area of the residence.

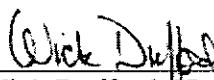
(17) The use shall be commenced within the time frames specified in SCC 14.16.900(2)(d).

(18) Failure to comply with any of the conditions of approval herein may result in permit revocation.

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

DECISION

The requested Special Use Permit is approved, subject to the conditions set forth in Conclusion 4 above.


Wick Dufford, Hearing Examiner



Date of Action: May 30, 2003

Copy Transmitted to Applicant: May 30, 2003.

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.



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