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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 VARIANCE VA 04 0651

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: ALLEN BUSH

ASSESSOR PARCEL NO: P31153

LEGAL DESCRIPTION: Located at 4352 Eden's Road and 6628 West Shore Drive,  
Anacortes (Guemes Island) Wa; a portion of Section 2, Township 35 North, Range 1 East,  
W.M., Skagit County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Allen Bush  
4352 Eden's Road  
Anacortes, WA 98221

**File No:** PL04-0651

**Request:** Variance

**Location:** 4352 Eden's Road and 6628 West Shore Drive on  
Guemes Island, within a portion of Sec. 2, T35N,  
R1E, W.M. Parcel # P31153

**Land Use Designation:** Rural Reserve

**Summary of Proposal:** To obtain a variance from the minimum lot size of 10  
acres in the Rural Reserve zone. The applicant wishes  
to divide his 12.3 acre parcel into two 6.15 acre lots.

**Public Hearing:** After reviewing the report of the Planning and Permit  
Center, the Hearing Examiner conducted a public  
Hearing on December 1, 2004.

**Decision:** The application is denied.



## FINDINGS OF FACT

1. Allen Bush (applicant) seeks a variance from the minimum lot size specified for the Rural Reserve zone. The minimum lot size is 10 acres, unless the lot is created through a Conservation and Reserve Development (CaRD). SCC 14.16.320(5)(e). The applicant does not propose a CaRD.
2. The subject property is a 12.3 acre rectangular parcel (P31153) located on Guemes Island south of Eden's Road, extending east its intersection with West Shore Drive. The property is within a portion of Sec. 2, T35N, R1E, W.M.
3. The application was determined to be complete on October 11, 2004. The proposal is subject to the regulations in effect on that date. The 10 acre minimum lot size was then applicable to the property in question. The application requests a variance to subdivide the property into two 6.15 acre lots.
4. There are currently two residences on the property – a main house occupied by the applicant and a second house occupied by his son. The second house is an accessory dwelling unit (ADU) approved by the County. Both residences have garages and separate driveways, and are served by individual well and septic systems. The houses occupy separate halves of the parcel and are not clustered near the County right of way. Under the application, each of the houses would occupy a separate lot.
5. The applicant has catalogued all adjacent properties within 300 feet of the subject property and determined that the average lot size is 3.5 acres. Further he has calculated that on 12 adjacent lots in the Rural Reserve zone, the average parcel size is 4.75 acres.
6. Property to the east and south is, like the subject property, zoned Rural Reserve. To the north and west the zoning is Rural Intermediate. Minimum lot size in the latter zone is 2.5 acres.
7. The Variance criteria are set forth at SCC 14.10.030, as follows:
  - (a) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district. Topics to be addressed include topographic or critical area constraints that make use of the particular site infeasible without the proposed variance.
  - (b) Literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under SCC Titles 14 and 15.



- (c) The special conditions and circumstances do not result from the actions of the Applicant.
- (d) The granting of the variance requested will not confer on the Applicant any special privilege that is denied by SCC Titles 14 and 15 to other lands, structures, or buildings in the same district.
- (e) [The proposal meets special criteria for the type of variance requested, *i.e.*, critical areas variance, shorelines variance, public works alternative, agricultural siting variance, flood hazard variance].
- (f) If applicable, the applicant must explain why, if a variance is denied, the Applicant would be denied all reasonable use of his or her property.

8. The variance must also be the minimum variance that will make possible the reasonable use of land and shall not be injurious to the neighborhood or otherwise detrimental to welfare. SCC 14.10.040.

9. Notice of the development application was duly mailed and published. Three neighbors filed written comments. All of them supported granting the variance.

10. The property has been in the Bush family since 1954. It was initially a farm and in recent years has been classified as agricultural open space. The applicant wishes to divide the property in order for his son to have separate ownership of a lot and, also, for the father to be relieved of financial obligation for the son's portion.

11. There is, however, no special circumstance imposed by topography or critical areas that makes use of the proposed site infeasible with the variance. In fact, reasonable use of the site is established and ongoing.

12. The Staff analysis is that the smaller size of surrounding lots is due to either different zoning or development prior to adoption of the Rural Reserve 10-acre minimum.

13. Although a CaRD is not requested, the Staff suggests that there would be problems with such an application because of the sole source aquifer designation on Guemes Island. The CaRD density bonus is not available for properties that are not served by public water from outside the designated area. SCC 14.24.350(3).

14. The applicant's position is essentially that the existence of the smaller lots around him is justification for the variance. In addition he argues that by allowing the ADU, the County has already allowed an increase in density beyond one dwelling per 10 acres. The applicant says that the separate wells and septic systems constitute a sort of de facto recognition of this density increase. He points out that granting the request would have no adverse impact on the environment or infrastructure.



15. Any conclusions 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 14.10.020(3).

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

3. The Examiner concludes that the Staff is correct in stating that special circumstances for the granting of a variance are not present in this case. The variance is from a dimensional requirement of the zoning code and the kind of circumstance needed to vary from it is one involving the physical features on the property. Here there is nothing peculiar physically about this property that dictates a departure from the lot size rule.

4. The problem is that this property is surrounded by other lots that, for one reason or another, are smaller. However, this by itself cannot be the basis for a variance from the lot size specified by the zoning code. If neighboring lot size deviations were enough, zoning that calls for lots larger than the historic norm in any area could never be effectively enacted.

5. Here the applicant has waited too long to make the property division he seeks. The Rural Reserve zoning, establishing the 10-acre minimum, was adopted in 1997. He did not file a complete application until 2004. No vested rights are conferred by longevity of ownership.

6. Under SCC 14.16.700 an accessory dwelling unit is permitted as accessory to an existing single-family dwelling, provided that certain restrictions are met. One of these is that "accessory dwelling units shall not be subdivided or otherwise segregated in ownership from the principal unit of the single-family dwelling, unless allowed by the zoning."

7. There is nothing in the Rural Reserve zoning regulations that allows the subdivision of an accessory unit from a principal unit. Therefore, the argument that approval of the ADU increases the density cannot prevail. An "accessory use" is by definition "dependent on and subordinate or incidental to, and located on the same lot with, a principal use." The ADU thus represents a kind of extension of the main house



8. In sum, the criteria for a variance are not met in this case. The required special circumstances are not present. A variance is not needed in order to make reasonable use of the property.

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

### DECISION

The requested variance is denied.

*Wick Duford*

HEARING EXAMINER

Date of Action: January 5, 2005

Date Transmitted to Applicant: January 5, 2005

### RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Planning and Permit Center within 14 days after the date of the decision, or decision on reconsideration, if applicable.



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