

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Snow Goose Produce
c/o Michael Rust
17672 Polson Road
Mount Vernon, WA 98273

File Nos: PL04-0709; PL04-0710

Requests: (1) Special Use Permit; (2) Variance

Location: 15170 Fir Island Road, within a portion of Sec. 16, T33N, R3E, W.M.

Land Use Designation: Agricultural-Natural Resource Land (Ag-NRL)

Summary of Proposal: To add a 36' by 22' structure at the north end of the existing produce stand to use for additional storage of produce and related sale items. The addition will be in line with the existing structure at a location 18 feet back from the front property line on Fir Island Road. Forty parking stalls will be set aside to the north of the building.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on March 9, 2005.

Recommendation: The variance should be approved, subject to conditions.

Decision: The Special Use Permit application is approved, subject to conditions.

FINDINGS OF FACT

1. Snow Goose Produce (applicant) seeks to build a 36' by 22' roofed area at the north end of its existing produce stand to use for more storage. The additional structure will further modify an existing Special Use authorized in 1986 (SP-86-026) and modified in 1989 (and 1990).

2. The business is a seasonal operation occupying a long narrow three-acre parcel between Brown Slough and Fir Island Road, just south of the intersection with Rawlins Road. The parcel is about 1,992 feet long. At the north end it is 110 feet wide and at the south end it is 182 feet wide. The address is 15710 Fir Island Road, located within a portion of Sec.16, T33N, R3E, W.M.

3. The site now contains the existing "grainery" building that has been remodeled for the sale of produce, flowers, bulbs and seafood. Perennial and herb demonstration gardens are south of the "grainery." A manufactured home is situated at the extreme south end of the parcel.

4. The new 792-square-foot roofed area will be placed on a concrete slab added to the existing slab. North of the new structure will be an area containing at least 40 parking stalls. New asphalt aprons will lead from Fir Island Road into the parking area. The parking will meet requirements for handicapped access.

5. The new structure will be in line with the existing building, set back about 18 feet from the road right-of-way. Parking on the road right-of-way will be prohibited. All parking in front of the building will be eliminated. Traffic will be directed to the parking area by appropriate signs. The space covered by the new roofed area will take five existing parking spaces, but about 15 new spaces will be added in the northerly lot.

6. The business employs approximately 20 people, six of whom including the owners are full time. The rest are part time workers, mostly students. The season of operation for the stand is approximately from the time of daffodil harvest in the spring to the end of produce harvest in mid-October. Normal business hours follow the hours of daylight.

7. The site is within an Agricultural- Natural Resource Land (Ag-NRL) district. The surrounding lands are made up of farms and open fields currently in production.

8. SCC 14.16.400(3)(g) lists "seasonal roadside stands exceeding 300 square feet" as an Administrative Special Use in Ag-NRL areas. However, the original Special Use Permit was conditioned on Hearing Examiner approval of additional expansion.

SCC 14.16.400(5)(a)(i) establishes a front setback of 35 feet in the Ag-NRL zone. To authorize the additional area of 18-foot setback area, a Variance is sought.

9. The applications were deemed complete on October 12, 2004. Notice of Application was published on October 14, 2004. No public comments were received.

10. The property is within a designated A7 flood hazard area. The proposed addition is to be used only as a cover to provide protection from the weather. If this addition is ever enclosed and the structure is valued at in excess of 50% of the market value of the existing structure, the entire structure will need to be elevated.

11. A fish and wildlife assessment was prepared and reviewed by the critical areas staff. The staff recommended that the assessment's recommendations be included as conditions of approval. A Protected Critical Area site plan was recorded on December 13, 2004, under Auditors File #200410120067.

13. Environmental review resulted in the issuance, on December 23, 2004, of a Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA). No comments were received. The MDNS was not appealed.

14. The MDNS contained the following conditions:

- a. Temporary erosion/sedimentation control measures shall be in place prior to the placement of any fill material. The applicant shall maintain all temporary erosion/sedimentation control measures until completion of the project.
- b. The applicant shall comply with Northwest Air Pollution Authority requirements.
- c. The applicant shall comply with the provisions of Chapter 14.32 of the Skagit County Code, the Skagit County Drainage Ordinance, as it relates to increased runoff resulting from additional impervious surfaces.
- d. An engineered soils compaction report shall be required for all structures placed on fill material.
- e. The applicant shall comply with all relevant provisions of 14.24 (Skagit County Critical Areas Ordinance).
- f) The applicant shall comply with Skagit County Road Standards Figure B-1, a paved apron is required for each access point.
- g. The applicant shall provide and install signs directing customers to the parking lot. The signs and installation must be in compliance with M.U.T.C.D.
- h. The applicant shall comply with all fire codes.

14. Reviewing agencies identified no problems with the proposal that cannot be dealt with through conditions of approval.

15. 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.

16. The applicant noted that:

“The extreme narrowness of the site dictated the original placement of the building and its linear form in the 1920’s. It is a unique site and building, providing circumstances and conditions not applicable to other lands and buildings in the same district.”

17. The Staff Report analyzes the application in relation to the variance criteria and determines that the setback proposal will be consistent with the criteria. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

18. The reasons set forth in the application justify the granting of the variance. The use involved is a reasonable one. The variance is the minimum variance that will allow the addition to this use. Failure to grant it would impact the reasonable development of the property. The granting of the variance will be in harmony with the general purpose and intent of the Unified Development Code and will not be injurious to the neighborhood, or otherwise detrimental to public welfare.

19. The criteria for Special Use Permit approval are set for at SCC 14.16.900(2)(b)(v), as follows:

- (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 standards of SCC 14.16.840.
- (d) The proposed use will not generate intrusions on privacy of surrounding uses.
- (e) Potential effects regarding the general public health, safety, and general welfare.
- (f) For special uses in ... Natural Resource Lands ... , the impacts on long-term natural resource 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 and services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

20. The facility creates opportunities to promote and market products produced in Skagit County. It takes no cultivated land out of production. The existing operation is compatible with present and planned land use in the area, and the proposed addition will not change this.

20. The Staff Report analyzes the proposal in connection with the special use approval criteria and determines that, as conditioned, it will be consistent with them. Again the Examiner concurs with this analysis and adopts the same.

21. 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. Because both a Variance and a Special Use Permit were requested, the applications were consolidated for consideration before the Examiner. SCC 14.06.060.

2. The requirements of SEPA have been met.

3. There was no discussion by the applicant of why a Variance is needed to prevent denial of “all reasonable use of the property.” This criterion comes into play only “if applicable” which means in cases where there is some question that a failure to grant the Variance would result in a constitutional taking of the property. No such situation is presented here.

4. The findings support a conclusion that the project, as conditioned, will be consistent with the applicable criteria for a Variance. SCC 14.10.030. Under SCC 14.10.020(2), this application must be processed as a Level-III Hearing Examiner recommendation with the final decision by the Board of County Commissioners.

5. The findings support a conclusion that the project, as conditioned, will be consistent with the applicable criteria for approval of a Special Use Permit. SCC 14.16.900(2)(b)(v).

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

CONDITIONS

1. The project shall be constructed and operated as described in the application materials, except as the same may be modified by these conditions.

2. The applicant shall obtain all other necessary permits and approvals and shall abide by the conditions thereof.

3. The applicant shall comply with the conditions of the MDNS issued on December 23, 2004. (See Finding #14.)

4. The applicant shall comply with the Flood Damage Prevention Ordinance, Chapter 14.34 SCC.

5. The applicant shall comply with all other relevant County Code provisions, except those from which a variance has been granted.

6. The plantings and wood duck boxes recommended by the Wetland/Fish and Wildlife Site Assessment of Graham-Bunting Associates, dated December 9, 2003, shall be installed concurrent with the initiation of construction activities. The biannual slough cleanup shall also take place concurrent with the initiation of construction. The applicant shall contact the Planning and Development Services Department for a site inspection following completion of these activities.

7. The applicant shall consult with the County Health Department in regard to the use of "Sani-cans/port-o-potties" on site.

8. Operation of equipment and daily operations shall comply with Chapter 173-60 WAC, Maximum Environmental Noise Levels, and address the performance standards of SCC 14.16.840. This includes consideration of ventilation for safety, heating and cooling of any office or storage/preparation buildings, as well as daily operations.

9. The applicant shall comply with state regulations concerning surface and ground water quality. Chapter 173-201A and 173-200 WAC. Best management practices shall be used to prevent interference with or degradation of water quality. NOTE: Chapter 12.05 SCC prohibits any industrial waste disposal into a septic system.

10. Signs shall be installed per the sign plan approved by the County Public Works Department on September 21, 2004. Signs installed within County rights-of way shall require a Right-of-Way Permit.

11. All customer parking shall be located on site with a minimum of 40 parking stalls provided. There shall be no parking within the County right-of-way. Provisions for ADA compliance shall be reviewed at the time of building permit review.

12. There shall be only two, well identified access points off Fir Island Road into the parking lot. The most southerly access will require a minimum sight distance of 450 lineal feet. An Access Permit shall be required for approval of access points.

13. If any major change in the intensity of operations occurs, or if new construction is proposed, or if on-site sales are expanded to include items not associated with previously approved products, further review by the County Planning and Development Services Department will be needed.

14. All conditions under previous approvals which have not been accomplished or which are operational in nature shall remain in effect.

15. Construction shall be carried out in compliance with the time requirements of SCC 14.16.900(d).

16. Prior to building permit approval all remaining outstanding review fees shall be paid in full.

17. Failure to comply with any permit conditions may result in permit revocation.

RECOMMENDATION

The Hearing Examiner recommends that the Variance be approved, subject to the conditions set forth above.

DECISION

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



Wick Dufford, Hearing Examiner

Date of Action: March 23, 2005

Date Transmitted Applicant: March 23, 2005

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration of the Special Use Permit decision 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.