

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Jim and Jo Nelson  
16800 Chillberg Avenue  
LaConner, WA 98257

**Agent:** Marianne Manville-Ailles  
Skagit Surveyors and Engineers  
806 Metcalf Street  
Sedro-Woolley, WA 98284

**File No:** PL04-0792

**Request:** Variance

**Location:** Along the east side of Snee-Oosh Road, northeast of McGlenn Drive and northwest of Dan Street, within a portion of Sec. 27, T34N, R2E, W.M.

**Land Use Designation:** Rural Reserve (RRv)

**Summary of Proposal:** To establish reduced setbacks from the portion of the eastern property line of the subject property that is adjacent to Secondary Forest Natural Resource Lands. The standard setback from such lands is 200 feet. The applicant hopes to develop the property using the CaRD subdivision process to create five (5) residential building lots.

**Public Hearing:** After reviewing the report of the Planning and Permit Center, the Hearing Examiner conducted a public hearing on January 26, 2005.

**Decision:** The application is approved, subject to conditions.

## **FINDINGS OF FACT**

1. Jim and Jo Nelson (applicants) seek a variance from the setback from Natural Resource Lands (NRL) in order to develop a CaRD subdivision.

2. The project is on Parcels P20762 and P20763, located along the east side of Snee-Oosh Road, northeast of McGlenn Drive and northwest of Dann Street. The property consists of approximately 25.84 acres within a portion of Sec. 27, T34N, R2E, W.M.

3. The subject property is zoned Rural Reserve (RRv). Along the north and a portion of the eastern property boundary, the adjacent property is designated Secondary Forest –Natural Resource Land (SF-NRL). To the southwest across Snee-Oosh Road the land is in the Swinomish Urban Growth Area.

4. The UDC requires a 200-foot setback from adjacent NRL designated parcels. SCC 14.16.810(7), SCC 14.18.310(8)(b).

5. The proposed CaRD calls for the creation of five residential lots parallel to the eastern boundary of the property. Between the lots and that boundary would be a 50 foot wide private road. The five lots would run from south to north.

6. The original CaRD design contemplated a 25 foot greenbelt to the east of the private road bordering the eastern property boundary. Under this design there was a 110-foot building setback for Lots 1 through 4 and a 135-foot setback for Lot 5. The larger setback for the northernmost lot was to accommodate a hammerhead turnaround.

7. The property overall is approximately 25.84 acres in size. The area outside the proposed residential lots would be retained in open space. The open space allocation would be about 21.11 acres.

8. The property slopes up dramatically from the west to the northeast. The lower portion of the property contains its only trees and a wetland. The development is proposed for a bench area near the eastern boundary. Using a 200-foot setback from the east would result in the development being forced onto the slope into the trees and closer to the on-site critical area.

9. The original design was submitted to the Fire Marshal. He stated:

After reading the variance request for this CaRD the Skagit County Fire Marshal's office would not object to this variance. The 200 foot setback as required in Skagit County Code is not required to be a fire break.

A setback of 110' with the road as a fire break may be safer than if it were 200' of forested land with no break. This office would ask as a condition of the variance that the developer consult with the Skagit County Fire Warden on how to have a green belt that complies with the standards for a 'fire safe community.'

10. After evaluating this response, the applicants decided to get rid of the 25-foot greenbelt along the east property line and to move the private road over against that line for the majority of its length. This would remove the necessity for designing the greenbelt for fire safety.

11. At the hearing they presented a new drawing which eliminated the greenbelt and shifted the building setbacks 25 feet to the east. Thus, the building setbacks proposed were 85 feet for Lots 1 through 4 and 110 feet for Lot 5. The full 200-foot setback would continue to be met with respect to the property to the north.

12. The implicit assumption underlying this change is that the private roadway between the lots and the resource lands to the east would by itself serve as a satisfactory fire break. The record needs to reflect the opinion of the Fire Marshal to this effect before any such change is given the final go-ahead.

13. The applicants noted that the revised plans place the building envelopes farther from the slope than the prior plan and asserted that, in the interests of resource protection, the farther from the slope the better.

14. The Staff did not oppose the change. There was no public testimony at the hearing.

15. Four letters were received from citizens. In the main they contained comments relevant to conditions of the CaRD subdivision. This is an administrative long CaRD proposal and so another comment period will be provided for the land division process.

16. One of the commenters felt that the 200-foot setback should be retained to protect utilities, road rights-of way and forest lands. Another was concerned with the precedent of granting a variance for one of the first developments on the east side of Snee-Oosh Road. If the Fire Marshal approves of the reduced setbacks, adequate protection to the bordering resource lands will have been demonstrated. The variance is dependent on unique topographic facts and therefore is not likely a precedent for other variances in the neighborhood.

17. Under the UDC, 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.

18. The Staff Report contains the applicants statements on these criteria, analyses them, and concludes that the variance criteria are met by the original proposal. The Hearing Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

19. Overall, the reasons set forth in the application justify the granting of the variance. However, the applicants include among their arguments an assertion that a mapping error was made in designating the neighboring lands as natural resource lands. The Examiner expressly declines to make any finding regarding this assertion.

20. There is nothing in the revised proposal for lesser setbacks that undermines the initial staff analysis or renders it obsolete. The main purpose to be served by the variance remains removing development as far as possible from the slope, the trees, and the critical area on the site. The bench near the east side is the most reasonable area to use for building houses on the property. If this can be done with adequate protection for natural resource lands, the variance will be in the public interest.

21. The variance, as revised and conditioned, is the minimum needed for reasonable use of the property. The granting of it will be in harmony with the general purpose and intent of the UDC and will not be injurious to the neighborhood or otherwise injurious detrimental to public welfare.

22. 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.

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

3. The purpose of this variance is to confine development to the portion of the site where it will not encroach on slopes, trees and critical areas. The revised variance proposal improves on the original aim in this regard. If the natural resource lands are adequately protected, the revised proposal does not present a significant change that would require re-noticing of the proposal and of the hearing.

4. SCC 14.16.810(7) establishes a 200-foot setback from natural resource lands generally. That subsection also provides for an administrative waiver of this setback on satisfaction of stated conditions.

5. SCC 14.18.310(8)(b) establishes the same 200-foot setback from natural resource lands for CaRD developments, but makes no mention of the availability of a waiver or administrative reduction of the setback. In the case of CaRDs, then, no method for obtaining relief from the setback is available other than seeking a variance.

6. The facts support a conclusion that the criteria for variance approval are met by this proposal, as conditioned. SCC 14.10.030.

7. No final approval should be effective unless or until the Fire Marshal approves the reduced building setbacks as providing a sufficient fire break from the natural resource lands.

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

### **CONDITIONS**

1. The building setbacks for this project shall be as indicated on Exhibit 13, as presented at the Hearing.

2. The CaRD subdivision process shall consider whether street trees should be required along the east side of the residential lots created.

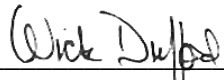
3. The revised proposal shown on Exhibit 13 shall be routed to the Fire Marshal for his review. Approval of this variance is expressly contingent on the approval of this alternative plan by the Fire Marshal.

4. The variance number and date of approval shall appear on the face of the land division map.

5. Failure to comply with any condition hereof may result in revocation of this variance.

### **DECISION**

The requested variance from the setback established by SCC 14.16.810(7) and 14.18.310(8)(b) is approved, subject to the conditions set forth above.

  
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Wick Dufford, Hearing Examiner

Date of Action: February 17, 2005

Date Transmitted to Applicant: February 17, 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.