

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER
DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
)
CLEARVIEW ANIMAL HOSPITAL (Adam Black)) **FILE NO. 06 129265 LU**
)
Conditional use permit and landscape modification)

DATE OF DECISION: November 7, 2007

DECISION (SUMMARY): The application for the conditional use permit with landscape modification is **CONDITIONALLY APPROVED with a precondition.**

BASIC INFORMATION

LOCATION: The subject property is located at 8424 180th Street SE, Snohomish, Washington.

ACREAGE: 4.9 acres

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential (1 du/5 acres basic)

UTILITIES:

Water: Cross Valley Water District

Sewer: On-site septic

FIRE DISTRICT: No. 7

INTRODUCTION

The applicant filed the Master Application on April 17, 2007. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 19, 20 and 21)

A SEPA determination was made on August 28, 2007. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on October 23, 2007, the 84th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on October 23, 2007 at 10:02 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. The applicants, Adam Black and Erin Black, were present. Snohomish County was represented by Michael Dobesh of the Department of Planning & Development Services. No member of the public appeared at the hearing to offer support or to raise concern or opposition. No contested issue of fact or law was raised between the applicant and the County.
3. Residents of two vicinity households submitted pre-hearing documents opposing the animal hospital: Donald and Barbara Hawkins (Exhibit 25) and Gregory Lund (Exhibit 24). (See below herein.)

The hearing concluded at 10:28 a.m.

NOTE: The above information summarizes the information submitted to the Examiner at the hearing. However, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all of the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.

2. The applicants, Adam Black and Erin Black, filed an application for a conditional use permit to relocate their existing Clearview Animal Hospital to 8424 180th Street SE: one-third of a mile to the east of its current location at the intersection of 180th Street SE and State Route 9 from which location the facility has been serving the residents of Clearview for more than 20 years. The impending expansion of State Route 9 requires demolition of the current space within about three years, leaving inadequate lot space and setbacks for rebuilding. (Exhibit 3)
3. The proposal also includes a cat boarding kennel: a use permitted outright in the underlying R-5 zoning on a parcel of the size of the subject parcel. All animal runs and kennels will be indoors. Animal waste will be picked up and sent off-site with trash, not disposed of in a septic system. No unsupervised animals will be outdoors. The hours of operation will be 7:00 a.m. to 6:00 p.m. Medical emergencies after hours will be referred to 24-hour animal clinics. The 3,900 square-foot animal hospital will be set back 100 feet from 180th Street SE. on the site of the existing dwelling, leaving the southern 75% of the site forested with natural vegetation.
4. The majority of the subject site is densely forested. A small Category 3 wetland exists near the center of the site and will be protected by a 50-foot buffer. (Exhibit 16B) The architectural design of a farmhouse/barn is chosen to blend reasonably into the rural setting of single-family residences, horse pastures, mixed tree forested areas and the Cross Valley Water District headquarters. Most homes in the vicinity are on large lots with architecture reflecting a rural or country quality. The applicants assert that the facility will maintain the rural character as intended by the R-5 zoning, which is the predominant zoning in the vicinity. (An on-site well will be abandoned.)
5. The applicant's testimony is that an explanatory letter was mailed in January 2007 to all neighbors within 500 feet. Only two households responded with opposition. Gregory Lund (Exhibit 24) argues that the County has deliberately set aside land along State Route 9 for commercial use and that the proposed facility should be located there rather than among homes and families. Barbara and Donald Hawkins concur (Exhibit 25) and also assert that 180th Street SE is an extremely busy, two-lane road with much large truck traffic and with poor visibility. The Hawkins express concern also about noise impact.
6. The staff report notes that total daily vehicular trips to be generated by the animal hospital are 29 trips, of which four will be morning peak-hour trips and two will be p.m. peak-hour trips. That volume will not decrease levels of service on 180th Street SE. The Examiner's site visit showed no areas of impaired sight distance for drivers. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B SCC) as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.
7. There is no evidence in the record of noise impacts likely to exceed the noise standards of SCC 10.01.
8. Stormwater runoff will be via catch basins through underground pipes to a detention/water quality treatment pond, released to the existing storm drainage system in the 100th Street SE right-of-way.
9. The request will not generate impacts to the County's park system or the school system.

10. The applicant proposes a landscaping modification pursuant to SCC 30.25.040(1)(b). The applicant proposes (Exhibits 4 and 15) that the unlined detention pond be used to meet the intent of providing a dense sight barrier between differing uses. Specifically, where the detention pond intrudes into the Type A landscape buffer on the east side, the applicant proposes to plant a boundary of living fence that will block a view of the pond from neighboring property. The applicant also proposes to landscape the pond with more dense growth along the eastern side to achieve a continuation of a very dense sight barrier in the area of the displaced buffer. By thus blending the pond into the buffer, the applicant points out, the plan achieves a wildlife travel corridor to the wetland from the rest of the property. The staff report recommends approval of the landscape modification. The Examiner concurs.
11. The subject property is designated R-5 which allows the proposed use. A CUP may be granted in this type of zone if the requirements for a CUP are met. One of those requirements is that the proposal must be consistent with the Comprehensive Plan. The Comprehensive Plan is largely silent as to animal hospitals. The staff report notes that veterinary facilities are a necessity in both rural and urban areas. With a building design rural residential in appearance, the staff report recommends that the facility be found in compliance with the General Policy Plan's Rural Residential designation. The Examiner concurs.
12. The request meets the requirements for the issuance of a CUP under Chapter 30.42C SCC, in particular the decision criteria therein for a CUP as set forth in SCC 30.42C.100.
13. A review of these CUP standards with the request, indicates that the standards are met and no adverse affects will be made to the area as a result of allowing the expansion of the veterinary hospital.
14. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
15. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner having fully reviewed the PDS staff report, that report is adopted by the Examiner as a conclusion as if set forth in full herein in order to avoid needless repetition. There are no changes to the recommendations of the staff report.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions specified below.
3. The request is consistent with the GMACP, GMA-based County codes, and the type and character of land use permitted on the site by the applicable design and development standards.
4. The use serves a need in the surrounding community for veterinary services without being materially detrimental to uses or property in the immediate vicinity and, thus, is consistent with the Comprehensive Plan. The proposal is thoughtfully designed to be compatible with the surrounding community and incorporates specific features described as findings of fact above that ensure appropriate response to the existing or intended character, appearance, quality of development and physical characteristics of the site and surrounding property.

5. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

DECISION

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The requests for a conditional use permit and a landscape variance are hereby **CONDITIONALLY APPROVED**, subject to the following precondition and conditions:

PRECONDITION:

- A. A record of developer's Chapter 30.66B SCC mitigation obligations shall have been recorded with the County Auditor.

CONDITIONS:

- A. The CUP Site Plan and conceptual landscape plan received by PDS on August 7, 2007 (Exhibits 15, 16B and 16C) shall constitute the CUP official site plan. Any revisions to the CUP and/or development plan exhibits shall be in accordance with SCC 30.42C.110.
- B. Per SCC 30.26.075, any parking lot lighting shall be arranged or shielded so as to reflect the light away from any residential properties and the public right-of-way.
- C. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
 - i. A Land Use Permit Binder shall be filed for the subject decision;
 - ii. Building and grading permits shall have been approved and issued by PDS;
 - iii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
 - iv. A Critical Area Site Plan (CASP) shall be recorded with the Snohomish County Auditor encumbering the critical areas/required buffers in a Native Growth Protection Area (NGPA). The recorded NGPA restrictive language shall state "All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees";
 - v. The sum of \$6,264.00 shall have been paid to Snohomish County as mitigation for project impacts on road system capacity within Transportation Service Area "E";

- vi. The sum of \$1,044 shall have been paid to Snohomish County for the Washington State Department of Transportation as mitigation for project impacts on state highways.
- vii. Additional right-of-way parallel and adjacent to the right-of-way centerline of 180th Street SE shall be deeded to the County along the development's frontage such that 40 feet of right-of-way exists from centerline of the 180th Street SE right-of-way

D. Prior to any occupancy of the proposed development:

- i. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plat may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing;

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

- ii. Rural frontage improvements shall be constructed along the parcel's frontage on 180th Street SE to the satisfaction of the County.
- iii. Site improvements and landscaping depicted on the approved site and landscape plans shall be installed, inspected and approved.
- iv. The existing on-site well shall be decommissioned by a licensed well driller pursuant to WAC 173-160.

- E. The recipient of any conditional use permit shall file a land use permit binder on a form provided by the department (Planning and Development Services) with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as acknowledgement of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Decision issued this 7th day of November, 2007.

Ed Good, Deputy Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **NOVEMBER 19, 2007**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with

the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **NOVEMBER 21, 2007** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. (SCC 30.72.070)

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. (SCC 30.72.080)

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Michael Dobesh

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.
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This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than NOVEMBER 7, 2008.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of _____, _____.

Certified by:

(Name)

(Title)
