

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Variance)	VAR2016-0001
Application for)	
)	FINDINGS OF FACT,
Clandestine Consulting / Ian Kaplan)	CONCLUSIONS OF LAW,
)	AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicants are requesting a Zoning Variance Permit to reduce the required 45 foot front yard setback from Valley Highway for the construction of a 4,000 square foot addition to the existing two buildings currently in use in an indoor marijuana production/processing facility.

Decision: The requested Zoning Variance Permit is approved, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

I.

Applicant: Clandestine Consulting, LLC / Ian Kaplan

Property Address: 5410 Saxon Road
Acme, Washington

Legal Description: A portion of Section 20, Township 37 North, Range 5 East, W.M.

Assessor's Parcel Numbers: 370520 207456 and 200412

Zoning: Rural [R10A]

Comprehensive Plan: Rural

Subarea: South Fork Valley

Lot Size: 6.77 acres

Roads: Public

Water and Sewer Supply: Private Well and Septic

Fire Protection: Whatcom Fire District No. 16

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: School District No. 507

Vegetation: The subject site is relatively flat.

Adjacent Land Uses:

North:	[R10A] Single-Family Residential
East:	[R10A] Residential / Agriculture
South:	[AG] Residential / Agriculture
West:	[R10A] Single-Family Residential

Authorizing Codes, Policies, Plans, and Programs

Revised Code of Washington [RCW] Chapters 36.70 and 58.17

Whatcom County Comprehensive Plan

Whatcom County Code, Title 2, Chapter 2.33-Permit Review Procedures

Whatcom County Code Chapter 12.08, Development Standards

Whatcom County Code Chapter 15, Building Code/Fire Code

State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11,

Whatcom County Environmental Policy Administration Chapter 16.08

Whatcom County Code Chapter 16.16, Critical Areas

Whatcom County Code, Title 14, Use of Natural Resources

Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance

Whatcom County Code Title 24, Health Regulations

Whatcom County Code Title 17, Flood Damage Prevention Code

Whatcom County Code Title 23, Shoreline Management Program

Legal Notices: Posted – Notice of Public Hearing, September 28, 2016

Mailed – Notice of Public Hearing, September 23, 2016

Published – Notice of Application, June 6, 2016

Notice of Public Hearing, September 29, 2016

Hearing Date: October 12, 2016

Parties of Record

Clandestine Consulting / Ian Kaplan
19290 Silver Creek Drive
Sedro Woolley, WA 98284

Ali Taysi / AVT Consulting, LLC
1708 F Street
Bellingham, WA 98225

Charles Sullivan, Planner
Planning and Development Services

Exhibits

- 1 Zoning Variance Application, with attachments
- 2 Zoning Variance Application, with attachments
 - 2-1 Supplemental Administrative Use Application
 - 2-2 Fee Responsibility
 - 2-3 Agent Authorization
 - 2-4 Setback Variance Application Narrative
 - 2-5 Customer Receipt, May 10, 2016
 - 2-6 Determination of Complete Application, May 23, 2016
 - 2-7 PDS Intake Checklist
 - 2-8 Cover Memo from Charles Sullivan re: enclosed Variance Application, Sept 1, 2016
 - 2-9 Current Planning Hearing Examiner Checklist, September 1, 2016
 - 2-10 PDS Address Mailing Labels and Instructions
 - 2-11 PDS Residential Unit Setback Waiver – Marijuana Facility, March 4, 2016
 - 2-12 PDS Tech Committee Application Review Memo, June 3, 2016
 - 2-13 Preliminary Traffic and Concurrency Information
 - 2-14 Revocable Encroachment Permit Application
 - 2-15 Statutory Warranty Deed, January 31, 2014
 - 2-16 Whatcom County Construction Permit
 - 2-17 2015 Whatcom County Fees – Zoning Variance
 - 2-18 County Assessor and Treasurer Results for 2015-2016
 - 2-19 Right-To-Farm Disclosure Statement & Agreement to Refrain from Legal Action
 - 2-20 ATV Consulting, Tyler Green, & Wain Harrison, PDS Building Services Manager, Saxon Road Building Expansion, Nov 17 & Dec 2, 2015 email chain
- 3 Staff Report, dated September 22, 2016
- 4 Agency Comments
 - Building Services-Plans Examiner, August 28, 2014
 - Critical Areas, Notice of Additional Requirements for Building Expansion, June 22, 2016
 - Public Works, Engineering Technician, June 23, 2016
 - County Fire Marshal, July 21, 2016
 - Environmental Health, June 28, 2016

- 5 PDS Administrative Approval Staff Report and Determinations, ADM2014-0012
- 6 Two Aerial Site Images
- 7 Site Plans [Existing Conditions and Proposed Building Expansion Area
- 8 Vicinity Map
- 9 Whatcom County Health Department Letter of Intent for Septic Tank System Fill Soil, Jan 30, 1991
- 10 Whatcom County Health Dept Water Availability Notification Form, entered Jan 27, 1999
- 11 Legal Notice of Application, Bellingham Tear-Sheet, June 6, 2016
- 12 Certificate of Mailing, Notice of Public Hearing, September 23, 2016
- 13 Certificate of Posting Notice of Public Hearing, September 28, 2016
- 14 Affidavit of Publication, Notice of Public Hearing, September 29, 2016

II.

The Applicants are seeking a Zoning Variance in order to reduce the setback to Valley Highway [SR 9] to accommodate the construction of a 4,000 square foot expansion of an existing marijuana production and processing facility.

III.

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Zoning Variance Permit in the Staff Report, Exhibit 2, dated September 22, 2016, subject to conditions. The Findings of Fact and Conclusions of Law set forth in the Staff Report, Exhibit No. 2, a copy of which is attached hereto, are incorporated herein by this reference.

The Applicant has indicated that there are no factual inaccuracies in Staff's factual findings and no objection to the Conditions of Approval requested by Staff.

There were no written comments during the County's comment period and no public testimony on the matter at the public hearing.

The Findings of Fact in the Staff Report are hereby adopted by the Hearing Examiner as

the Findings of Fact herein.

IV.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

The request to reduce the 45 foot front yard setback to accommodate construction of a 4,000 square foot addition to an existing production/processing facility can be granted only if the request is consistent with the Zoning Variance Criteria of WCC 20.84.120 (1 through 3). Subject to Conditions of Approval, this Zoning Variance will be consistent with the applicable Variance Criteria. The requested Variance should be granted subject to conditions.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

A Zoning Variance Permit is hereby granted to Clandestine Consulting, LLC for the reduction of the 45 foot front yard setback to construct a 4,000 square foot addition to an existing production/processing facility located at Clandestine Gardens, addressed as 5410 Saxon Road, Acme, Washington, subject to the following conditions:

1. The use and location on site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Whatcom County Planning and Development Services must issue a building permit prior to the commencement of construction activities.
3. The Applicant shall ensure that all development complies with the Whatcom County Development Standards.

4. If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907) LNTHPO (384-2280) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and Lummi Sche'lan'en Department (384-2312) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
5. The Applicant shall not extend structural overhangs further than 18 inches into the side and rear yard setbacks.
6. The Applicant is required to contact Building Services to arrange an inspection when locating the existing concrete pad prior to replacing or repairing it for the proposed new structure. The Applicant shall not extend any foundation or structure westerly of the existing concrete.
7. The Applicant shall stay in compliance with the State's Groundwater Exemption (RCW 90.44.050), regulated by the Department of Ecology. The existing well is exempt from applying for and receiving a State Water Right under the Groundwater Exemption. As such, this project is limited to withdrawing up to 5,000 gallons per day for domestic use and commercial irrigation. In addition, the total property (non-commercial lawn or garden) being irrigated cannot exceed one half [$\frac{1}{2}$] acre.
8. The Applicant shall remove the detached structure located between the purposed expansion of the commercial structure and the house in order to meet the fire-flow exception. If the building is to remain, the Applicant shall arrange with the Whatcom County Fire Marshal for a fire hydrant to be located with 400 feet of the most remote corner of the building that supplies a minimum of 500 gallons per minute at 20 pounds per square inch for 1 hour in duration. The Applicant shall be required to obtain separate fire permits for installation of the fire flow system.

NOTICE

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is Final. The following review procedure is available from this Decision and may be taken by the Applicant, any Party of Record, or any County Department.

Appeal to County Council. Within ten business days of the date of the Decision a written Notice of Appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The Appeal Notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about Appeal Procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office. After an Appeal has been filed and the Council Office has received the Hearing record and transcript of the public hearing, the Parties will be notified of the time and date to file written arguments.

DATED this 18th day of October 2016.



Michael Bobbink, Hearing Examiner



**WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT**

Date: September 22, 2016
Hearing Date: October 12, 2016

The application of Ian Kaplan of Clandestine Consulting LLC for a Zoning Variance	VAR2016-00001 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Summary: The applicants are requesting a variance to reduce the required 45 foot front yard setback from Valley Highway for the construction of a 4,000 square foot addition. The proposed addition would match the sight line and be consistent with the 2 existing buildings currently used by Clandestine LLC. The setback is proposed to be approximately 20 feet from the State Right of way.

Recommendation: The Technical Review Committee recommends approval based on the following report.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant/Agent: Clandestine Consulting LLC- Ian Kaplan
39290 Silver Creek Drive
Sedro Wooley, WA 98284

Owner: Ezechial Coberly
5410 Saxon Road
Acme, WA 98220

Site Location/Address: 5410 Saxon Road
Acme, WA 98220

Legal Description: NE NW LY ELY OF STATE HWY 9-EXC N 396 FT AS MEAS ALG ELY LI OF STATE HWY 9-EXC PTN DAF-BEAP 396 FT S ALG E LI OF STATE HWY 9 FR N SEC LI-TH DUE E 297 FT- TH S 16 DEG W 378 FT-TH S

48 DEG W 349 FT-TH S 359.9 FT TO N LI OF CO RD-
TH E ALG SD CO RD TO WLY

Assessor's Parcel Number: 370520207456

Zoning: Rural (R10A)

Comprehensive Plan: Rural (R10A)

Subarea: South Fork Valley

Lot Size: 6.77 Acres

Roads: Public

Water & Sewer Supply: Private well & Septic

Fire Protection: Fire District #16

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: School District # 507

Topography: The subject site is relatively flat.

Vegetation: The subject site is made up of lawn in the eastern side yard and forested in the back yard. The Western side is made up of tree stumps, saplings and bushes. The front yard of off Saxon Road is primarily used for parking and access

Adjacent Land Uses:

North:	R10A - Single-Family Residences
East:	R10A - Residential / Agricultural
South:	AG - Residential / Agricultural
West:	R10A - Single-Family Residences

B. AUTHORIZING CODES, POLICIES, PLANS, AND PROGRAMS:

1. Revised Code of Washington (RCW) Chapter 36.70
2. Revised Code of Washington (RCW) Chapter 58.17
3. Whatcom County Comprehensive Plan
4. Whatcom County Code, Title 2, Chapter 2.33 - Permit Review Procedures
5. Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
6. Whatcom County Code, Title 14, Use of Natural Resources
7. Whatcom County Code Chapter 12.08, Development Standards
8. Whatcom County Code Chapter 15, Building Code/Fire Code
9. State Environmental Policy Act (SEPA); Washington Administrative Code Chapter

- 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
10. Whatcom County Code Chapter 16.16, Critical Areas
11. Whatcom County Code, Title 17 – Flood Damage Prevention Code
12. Whatcom County Code, Title 23 – Shoreline Management Program
13. Whatcom County Code Title 24, Health Regulations

III. APPLICATION PROPOSAL

The Applicant, Clandestine LLC, is requesting a reduction of the setback to Valley Highway (SR 9) in order to accommodate an expansion of an existing Marijuana production and processing building. The Proposal is to reduce the setback from 45 feet to the distance from the Valley highway right of way to the existing non-conforming concrete pad. At present the pad is a portion of the facility and located within the fenced area approximately 20 feet from the Route 9 Right of way. Locating a building over it requires a variance.

The facility owner holds a license from the state permitting up to 10,000 square feet of marijuana canopy. The existing production and processing building is 5,845 square feet. In order to expand up to the permitted size the applicant has proposed to build vertically over the existing concrete pad to the north of the existing production and processing building. This location is within the 45 foot zoning setback to Valley highway.

Site constraints including on-site sewage system location, wetlands and buffers, and other zoning setback requirements make construction over the existing impacted concrete surface the least impactful location for expansion of the building. There are significant critical areas and buffers to the North and East. The existing OSS is located in the lawn area to the East. Expansion in the lawn area would require a replacement of the OSS which would likely occur within a wetland or buffer. Saxon road and facility parking is located to the South of the building.

IV. SITE DESCRIPTION

The subject site is an approximately 6.77 acre parcel located at 5410 Saxon Road, Acme, WA Section 20, Township 37 North, Range 5 East W.M., Whatcom County, WA.

There are two existing driveways off of Saxon Road. The site includes an existing single family residence and other associated outbuildings. No part of the residence or other buildings not identified in the proposal description will be utilized for marijuana production or processing.

The existing operation is housed in a 5,485 square foot building. There is an additional 4,000 square feet of concrete outdoor space located to the North of the building encompassed by an 8 foot high fence. To the North of the concrete pad is a small storage building.

The surrounding properties are zoned R10A and appear to be mostly larger lots. The surrounding uses predominantly include single family residences and other agricultural related uses.

V. PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in Chapter 2.33 WCC.

Notice of Application: The Notice of Application for this proposal was published on June 6, 2016. The fifteen (15) day comment period ended on Tuesday, June 21, 2016.

Notice of Public Hearing: The Notice of Public Hearing for this application was published in a one-time newspaper publication in the Bellingham Herald.

Public Comment: During the public comment period for the Notice of Application, Whatcom County Planning & Development Services Department received no comments

The Technical Review Committee finds that public comment submitted during the 15 day public period have been adequately addressed in the above discussion.

VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment unless the proposal is categorically exempt from SEPA threshold review.

Pursuant to WCC 16.08 and WAC 197-11-800 (6)(b), minor land use decisions such as the granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location and/or surrounding are categorically exempt.

VII. CONSISTENCY WITH REGULATIONS, FINDINGS OF FACT

Zoning Variance - Applicable Policies and Regulations

In order for a variance to be approved it must satisfy the criteria of WCC 20.84.120 (1) through (3). In summary, these criteria state that any variance granted shall not constitute a grant of special privilege, be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for pecuniary reasons alone, but be granted because of special circumstances applicable to the subject property, including size, shape, topography, location or surrounding, and when the strict application of the zoning ordinance is found to cause a hardship and deprive the subject property of a use or improvement otherwise allowed in the identical zoning classification.

Aesthetic considerations or design preferences without reference to restrictions based upon the physical characteristics of the property do not constitute sufficient hardship

under this section, and the granting of this variance shall not be materially detrimental to the public welfare, or injurious to the property or improvement in the vicinity and zone in which the subject is situated.

The following circumstances, pursuant to WCC 20.84.120 (1)-(3), shall be found to apply in order to grant a variance:

- 1. That any variance granted shall not constitute a grant of special privilege, be based upon reasons of hardship caused by previous actions of the property owner, nor be granted for pecuniary reasons alone.**

Staff has no reason to believe that this variance has been requested for financial reasons, is based upon reasons of hardship caused by previous actions or is for pecuniary reasons. The proposed expansion requires a variance in order to build vertically over existing concrete connecting two non-conforming buildings within the setback area. The addition will not extend further into the setback area than already exists. The use of the property within the setback area will not change. The site line of the building will not change. Multiple residential and agricultural structures in the general vicinity to the proposed structure are located within the setback area.

- 2. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surrounding, the strict application of the zoning ordinance is found to cause a hardship and deprive the subject property of a use or improvement otherwise allowed in the identical zone classification. Aesthetic considerations or design preferences without reference to restrictions based upon the physical characteristics of the property do not constitute sufficient hardship under this section.**

The subject parcel has wetlands and wetland buffers to the north. To the east is the on-site sewage system drainfield. Expansion in any direction would likely require mitigation for wetland buffer impact or a redesign and replacement of the existing septic system. The least disruptive location for the expansion of the building is over the existing concrete area which is already legally impacted. The variance proposal seeks only to enclose an existing impacted surface, in order to reduce other environmental impacts. The site line of the buildings on site will not change and no new structure will be located further into the setback than already legally exists.

- 3. The granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the vicinity and zone in which the subject is situated.**

Setbacks to roads are required for safety and aesthetic reasons. Given the vegetation within the existing non-conforming setback and the difference in elevation between the road and the proposed structure, neither the aesthetics nor public safety is likely to be impacted by the requested variance.

The variance application was routed to Whatcom County Public works and The Washington State Department of Transportation. Neither had any comments or conditions for the project.

The Technical Review Committee finds that the requested variance meets all of the three requirements of WCC 20.84.120.

A. WCC Chapter 12.08 – Roads and Bridges

WCC Chapter 12.08 adopts and gives authorization for development standards for development within Whatcom County. Whatcom County shall establish uniform, comprehensive and distinct requirements which shall be applied to all developments. These requirements shall be established as “Whatcom County development standards” and shall exist to provide clear development guidelines for all construction activity within the county. These standards shall establish administrative and technical requirements for the implementation of land use regulations and shall provide the basis by which developments are evaluated to ensure compliance with county regulations.

The Whatcom County Public Works Department Division of Engineering reviewed the proposal and submitted a revised memo dated June 28, 2016 with the following comments and recommended conditions:

The applicant is applying for a 45’ setback from highway 9 to allow for a i-502 expansion located off of Saxon Rd, a county maintained road. Gravel access is existing off Saxon Rd, a rural local access road.

Engineering Services has the following requirements for the proposed project:

1. Engineering Services has no conditions for the variance request.

The Technical Review Committee has determined that the proposed variance meets the requirements of WCC Chapter 12.08.

B. WCC Title 15 – Buildings & Construction

Building Code: WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety,

designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County Planning and Development Services Department.

The Technical Review Committee has determined that as conditioned, the variance would meet the requirements of WCC Title 15.

C. WCC Title 16 – Whatcom County Critical Areas Ordinance

Case ADM2016-00012 has been forwarded to Whatcom County Critical Area staff for review under WCC 16.16, specifically wetlands and habitat conservation areas (HCA). This project proposes to construct an expansion of two existing structures, to connect them, over an existing concrete slab. No work is proposed outside of impervious surface areas. The subject parcel is located at 5410 Saxon Road, Bellingham, WA, parcel number 370520207456 & 370520200412.

Whatcom County GIS mapping indicates a fish bearing tributary to the Samish River to the north and east of the two subject parcels. There is a potential for wetland areas associated with the stream throughout the northern and eastern portions of the subject parcels.

The location of the proposed project is at least 50 feet from the identified potential critical areas. Since the structures are existing, and there is no earthwork proposed outside of impervious surfaces, this project is approved for wetland and HCA as proposed. Additional review will be necessary if the proposal changes, and for all future site development.

The Technical Review Committee has determined that the proposed variance will meet the requirements of WCC Chapter 16.16.

D. WCC Title 20 – Official Whatcom County Zoning Ordinance

WCC 20.36.350 – Building Setback Criteria:

Building setbacks shall be administered pursuant to WCC 20.80.210 and 20.80.230 (3).

WCC 20.80.210 (R) states minimum building setbacks of 45 feet from the front property line and 5 feet from the rear and side property lines. For corner lots, the owner/builder has the option of selecting the front yard setback if both roads are classified as Local Access streets. Yards on the other flanking streets may be considered side yards; pursuant to WCC 20.80.230 (3).

Discussion: The subject variance is for a reduction of the 45 foot setback from the property line fronting Valley Highway to a line consistent with the westerly most point of the two existing commercial buildings contained within the

existing fence. This proposed setback is approximately 71 feet from the existing edge of the pavement on Valley Highway. The proposed building location meets all other building setback requirements.

The Technical Review Committee finds that the proposed development, besides the reduction in the front yard setback, will conform to the applicable building setback requirements.

WCC 20.36.400 – Height Limitations:

Maximum height shall be limited to 35 feet. Height of structures shall also conform, where applicable, to the general requirements of WCC 20.80.675.

Discussion: The proposed expansion conforms to this requirement.

WCC 20.36.450 – Lot Coverage:

No structure or combination of structures, including accessory buildings, shall occupy or cover more than 5,000 square feet or 20 percent, whichever is greater of the total area.

Discussion: As conditioned, the total structural coverage will be less than the maximum allowable coverage.

WCC Chapter 20.78 Transportation Concurrency

WCC Chapter 20.78 gives authority to ensure adequate transportation facilities are available or provided concurrent with development.

Public Works Engineering Services reviewed the Preliminary Traffic and Concurrency information submitted at the time of application. Based on the information submitted, a determination was made indicating that there are no further requirements for this proposal.

Discussion: The Technical Review Committee has determined that the proposal conforms to the requirements of WCC Chapter 20.78.

Fire Protection

WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County planning and development services department.

The Whatcom County Fire Marshal's Office submitted a memo dated July 21, 2016 with the following comments:

Per WCC 15.04.040 Amendments to the International Fire Code. Section D. Fire-flow exception: Building must have 60 foot setbacks to all property lines, and other structures on the same lot

The Technical Review Committee has determined that as conditioned, the variance would meet the requirements of WCC Title 15

E. Health Code (Title 24)

The purpose of Title 24 is to provide minimum standards to safeguard public health and welfare.

The Whatcom County Health Department (WCHD) reviewed the application and had the following comments:

The Whatcom County Health Department (WCHD) has reviewed the proposed project referenced above in accordance with WCC 24.05 On-Site Sewage Regulations and WCC 24.11 Drinking Water. The applicant is proposing to add 4,000 square feet of new building for primary marijuana processing. WCHD has no objections to the variance request.

The Technical Review Committee has determined that as conditioned the project meets the requirements of WCC Title 24.

VIII. RECOMMENDATION

The Technical Review Committee recommends that the Whatcom County Hearing Examiner **approve** the applicant's variance request to allow an reduction in the

IX. CONDITIONS OF APPROVAL

1. Permit Changes or Modifications: The use and location on site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. Building Permit: Whatcom County Planning and Development Services must issue a building permit prior to the commencement of corrected construction activities.
3. Chapter 5 Development Standards: The development shall comply with the Whatcom County Development Standards.

4. Structural Overhangs: Structural overhangs may not extend further than 18 inches into the side and rear yard setbacks.
5. Inadvertent Discovery: If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907) LNTHPO (384-2280) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and Lummi Sche'lan"en Department (384-2312) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
6. Building Permit inspection: An inspection locating the existing concrete pad is required prior to replacing or repairing it for the proposed new structure. No foundation or structure is to extend westerly of the existing concrete.
7. Health Department: The applicant must stay in compliance with the state's groundwater exemption (RCW 90.44.050), regulated by the Department of Ecology. The existing well is exempt from applying for and receiving a state water right under the groundwater exemption. As such, this project is limited to withdrawing up to 5,000 gallons per day for the domestic use and commercial irrigation. In addition, the total property (non-commercial lawn or garden) being irrigated cannot exceed ½ acre.
8. Fire Marshall: The detached structure located between purposed expansion of the commercial structure and the house must be removed to meet the fire-flow exception. If the building is to remain a fire hydrant must be located with 400 feet of the most remote corner of the building that supplies a minimum of 500 gallons per minute at 20 pounds per square inch for 1 hour in duration. Separate fire permits shall be required for install of the fire flow system.

Report prepared for the Technical Review Committee by:

Charles Sullivan
Planner