

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit) CUP2012-0012
Application for)
)
John and Ruth Appel) FINDINGS OF FACT,
"The Cheese Shop-Appel Farms") CONCLUSIONS OF LAW,
AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicants are requesting a Zoning Conditional Use Permit to operate a 688 square foot restaurant with a drive-through service window. The restaurant will be used to serve dairy products that are produced and processed on-site. The restaurant is proposed to be located within a new, 3,250 square foot building, which will also contain areas used to process and market the agricultural products that are produced onsite. The Applicants have also proposed to hold special events within the structure, such as educational classes related to the processing of agricultural products.

Decision: The requested Zoning Conditional Use 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: John and Ruth Appel

Site Location/Address: 6605 Northwest Road
Ferndale, WA 98248

Legal Description: A tract of land located within the SE ¼ of Sec 9, T39N, R2E, W.M.
And a portion of tract of land in the SW ¼ Sec10, T39N, R2E, W.M.
Whatcom County, WA

Assessor's Parcel Number(s): 390210 193141 & 390209 415085

Zoning: Agriculture (AG)

Comprehensive Plan: Agriculture (AG)

Subarea: Cherry Point Ferndale

Total Parcel Acreage: 110.27 acres

Roads: County

Water Supply: Well – Proposed Public Water System

Sewage Disposal: On-Site-Sewage-System (OSS)

Fire Protection: Whatcom County Fire District No. 7

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Meridian School District No. 505

Topography: Generally flat, but a slight slope toward the south and west of less than 3%

Vegetation: Site is actively farmed with crops, such as corn and grass silage. The vegetated portions include shrubs, and large native trees, such as Douglas Fir, Western Red Cedars, Alders, Maples.

Adjacent Land Uses: North: Agriculture
East: Agriculture
South: Rural (R10A) – Residential/AG
West: Agriculture – Residential/AG

Easements: Puget Sound Energy, AF Nos. 302070 and 1045618
Natural Gas, AF No. 171100175

Authorizing Codes, Policies, Plans, and Programs

Revised Code of Washington (RCW) Chapter 36.70
Whatcom County Comprehensive Plan
Whatcom County Code, Title 2, Chapter 2.33 – Permit Review Procedures
Whatcom County Code, Title 20 – Official Whatcom County Zoning Ordinance
Whatcom County Code, Title 14 – Use of Natural Resources
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 23 – Shoreline Management Program
Whatcom County Code Title 24 – Health Regulations

Legal Notices: Posted – Notice of Public Hearing, January 9, 2013
Mailed – Notice of Application, October 11, 2012
Notice of Public Hearing, January 4, 2013
Published – Notice of Application, October 11, 2012
Notice of Public Hearing, January 10, 2013

Hearing Date: January 23, 2013

Parties of Record:

John and Ruth Appel
6605 Northwest Road
Ferndale, WA 98248

Mary White
Division of Engineering

Nick Smith
Planning and Development Services

Exhibits:

- 1 Land Use Application with attachments
 - 1-1 Fee Responsibility
 - 1-2 Project Description
 - 1-3 Customer Receipt
 - 1-4 Property Owners' List
 - 1-5 Agreement & Covenant to Bind Properties
 - 1-6 Email dated Dec 28, 2012 re: CUP Staff Questions
 - 1-7 Determination of Completeness, September 26, 2012
 - 1-8 Tech Committee Memo, Oct 4, 2012
 - 1-9 PDS Form Letter/Comment, Oct 11, 2012
 - 1-10 PDS Address Form
 - 1-11 Staff email re: scheduling hearing
 - 1-12 PDS Checklists, 1, 2, 3
- 2 Staff Report, January 15, 2013
- 3 Septic and Well Comments from David Jensen and Nancy Heuman, with attached Health Department letter, October 18, 2011 re: Well Site Inspection
- 4 Agency Comments
 - Fire Inspector, Oct 9, 2012
 - Critical Areas, Oct 9, 2012
 - Environmental Health, Oct 24, 2012
 - Engineering, Oct 31, 2012, with Exemption from Concurrency Evaluation attached
 - Plans Examiner, Oct 17, 2012
 - Doug Goldthorp approval, Oct 12, 2012
- 5 Public Comments
 - Robert and Karen Chervenock, Oct 13, 2012 and Jan 6, 2013
 - Mark Belles, Oct 16, 2012
 - Molly Crocker, Nov 1, 2012
 - Wayne and Barb DeVries, Jan 15, 2013
- 6 SEPA DNS, November 7, 2012, with attached Checklist

- 7 Certificate of Mailing, Notice of Application, Oct 11, 2012
- 8 Legal Notice of Application and Optional SEPA, Oct 11, 2012
- 9 Certificate of Mailing, Notice of Public Hearing, Jan 4, 2013
- 10 Certificate of Posting, Notice of Public Hearing, Jan 9, 2013
- 11 Legal Notice of Public Hearing, Jan 10, 2013
- 12 Aerial Site Photos
- 13 Zoning Maps
- 14 Large Site Plans
- 15 LDP Application
- 16 Preliminary Traffic and Concurrency Info
- 17 Preliminary Stormwater Management Report
- 18 Warranty Deed
- 19 Flood Control Works Easement

II.

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Zoning Conditional Use Permit, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit #2, dated January 15, 2013, and are incorporated herein by this reference.

The Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant indicated no objection to any of the Conditions of Approval requested by Staff. There was no public comment on this matter at the public hearing. Staff received written concerns during the comment period which were fully addressed in the Staff Report. The Hearing Examiner concurs with Staff's thorough review in addressing these concerns and hereby adopts Staff's Findings of Fact as though fully set forth herein.

III.

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 proposed construction and operation of a restaurant serving onsite produced and

processed dairy products can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (1 through 9). Subject to the Conditions of Approval included in the granting of this permit, the proposal is consistent with the Conditional Use Criteria. A Zoning Conditional Use Permit 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 Conditional Use Permit is hereby granted to John and Ruth Appel for the proposed construction and operation of a restaurant, including a drive-through service window, serving dairy products produced and processed onsite at Appel Farms, located on Assessor's Parcel Nos. 390210 193141 and 390209 415085, 6605 Northwest Road, Ferndale, Washington, subject to the following conditions:

Planning – Current Planning Division

1. The use and location on the site as approved by this permit shall not be amended or changed in any way without further approval of the Hearing Examiner.
2. Pursuant to WCC 20.40.160, the restaurant must clearly be subordinate to the processing of agricultural products into food or beverage for human consumption. Pursuant to WCC 20.40.111, the Applicant must process at least 50 percent of goods produced in Whatcom County.
3. Pursuant to WCC 20.80.500, the Applicant shall establish adequate parking. An approved parking plan shall be submitted prior to issuance of the required commercial building permit.
4. Pursuant to WCC 20.80.523, any lights used to illuminate a parking lot shall be so arranged so as to direct the light away from the adjoining property and the public road.
5. Pursuant to WCC 20.80.300, the Applicant shall submit a landscape plan prior to the approval of the commercial building permit. Landscaping shall be installed in the proposed "traffic island" by the drive-through service window. This area shall be screened from neighboring properties.
6. Pursuant to WCC 20.80.355, the Applicant shall screen all trash and/or garbage collection and storage areas from view of the adjacent streets and properties using a solid fence or wall a minimum of six (6) feet high.
7. The Applicant shall comply with the State Noise Level Standards under the Washington 5 Administrative Code (WAC) 173.6.
8. The Applicant is allowed to install one freestanding sign not to exceed 64 square feet in surface area per sign face. Reader board signs shall be allowed for tenant identification only, and merchandise or price special advertising shall be prohibited. The height of this sign shall not exceed 25 feet.

9. The Applicant shall not exceed a cumulative total of 100-square feet in area when installing single-faced signs on walls or eaves.
10. The Applicant shall limit the hours of operation from 7 a.m. to 8 p.m., including special events.
11. The Applicant shall record a covenant and agreement to bind Assessor Parcel Numbers: 390209 415085 and 390210 193141 prior to the issuance of the subject building permit.
12. Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during the scope of operations as approved, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
13. Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by the hearing examiner.
14. Pursuant to WCC, Title 14, the owners of the property upon which this conditional use permit approval is granted shall sign a statement of acknowledgment containing a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on forms provided by Whatcom County, which shall then be recorded on title of the subject properties in the Whatcom County Auditor's office.

Building Services Division

The Applicant shall comply with the condition set forth by the Plans Examiner's memorandum dated October 17, 2012, unless modified by the Plans Examiner, or appealed to the appropriate agency. Specifically, this condition reads as follows:

15. A commercial building permit is required for this proposal. It will be reviewed under the current adopted edition of the International Building Code (IBC) and must comply with all other applicable code and ordinances adopted by Whatcom County.

Fire Marshal's Office

The Applicant shall comply with all the conditions set forth by the Fire Marshal's memorandum, dated October 9, 2012, unless modified by the Fire Marshal, or appealed to the appropriate agency. Specifically those conditions read as follows:

16. Fire flow is required. A minimum 1,500 GPM at not less than 20PSI shall be provided for 1 hour per the International Fire Code. All hydrants, pumps, water supply and pipes shall be designed by a Washington State Licensed Engineer.
17. Fire extinguisher size shall be 2A10BC and the locations shall be approved by the Fire Marshal.
18. The fire department access shall meet the requirements of the Whatcom County Development Standards for roads.

19. Hazardous Materials safety data sheets and quantities shall be provided to the Fire Marshal's Office.
20. The Applicant shall comply with all applicable codes and ordinances adopted by Whatcom County. Any overlooked hazardous conditions and/or applicable code does not imply approval of such condition or violation.

Public Works – Division of Engineering

The Applicant shall comply with all the conditions set forth in the Engineering Services memorandum dated October 31, 2012, unless modified by the Engineering Official, or appealed to the appropriate agency. Specifically those conditions state:

21. The Applicant shall comply with the Whatcom County Development Standards.
22. The Applicant shall submit an Engineered Stormwater Design Report that addresses water quantity and quality measures, prepared by a Washington State licensed civil engineer, for review and approval by Whatcom County Engineering. The applicant must address the stormwater for all buildings on the parcel. The applicant may include future proposed buildings in the report to prevent having to complete another report for the proposed building. If the applicant elects to do one report for all of the proposed buildings, the engineer selected to complete the report should be aware of the proposed 2012 stormwater manual which does propose and prefer LID techniques.
23. A civil plan showing the building outline, roof type (some metal roofing is pollution generating), downspout locations, water quality facilities, and all drainage facilities with details.
24. The access road will be required to be 24 feet wide and asphalt to the west end of the second access. One-way roadways are required to be 14 feet wide. A revocable encroachment permit shall be obtained for all work within the County rights-of-way.
25. Prior to final occupancy of the building permit, a record drawing must be submitted. The record drawing shall show all drainage improvements made per the Whatcom County Development Standards, Chapter 2. A maintenance security may be required for the stormwater improvements.

Health Department

The Applicant shall comply with all the conditions set forth by the Health Department memorandum dated October 24, 2012, unless modified by that Department or appealed to the appropriate agency. Specifically those conditions state:

26. The Applicant shall submit a copy of the signed public water availability form at the time of building permit issuance.
27. The Applicant shall submit an On-site Sewage System (OSS) permit issued by the Whatcom County Health Department (WCHD) prior to the issuance of the building permit. The permitted OSS must be sufficient for the intended use.
28. All cheese making wastes must be handled and disposed of in a legal manner. If the product is to be disposed of on-site then the applicant will be responsible for obtaining either a state waste discharge permit from the Washington State Department of Ecology or a solid waste land

application permit from the WCHD.

The Applicant shall complete construction or, if no construction is contemplated as a part of this permit, shall demonstrate compliance with all of the conditions of this permit within 24 (twenty-four) months of the date of the issuance of this decision. Failure to complete construction or demonstrate compliance shall result in the expiration of this permit. Substantial progress toward completion may satisfy the terms of this condition if approved by Whatcom County Planning and Development Services and the Hearing Examiner. The Applicant or permit holder may apply for an extension for a term of up to one year upon a showing that substantial progress has been made toward completion or compliance. An extension shall be granted if the Hearing Examiner finds that the Applicant or permit holder will suffer a substantial hardship if the extension is denied. The Hearing Examiner may grant an extension for any other good cause shown, in his discretion, but extraordinary circumstances must be shown to obtain an extension of more than one year. The Hearing Examiner shall obtain the comments of Whatcom County Planning & Development Services before granting any extension.

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 23rd day of January 2013.



Michael Bobbink, Hearing Examiner