

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit) CUP2009-0003
Application for)
)
Custom Built Structures, Inc.) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Conditional Use Permit to construct a 2,392 square foot storage building for the Washington State Department of Transportation. The building will be used to store sand for distribution on roads during the winter months.

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: Custom Built Structures, Inc.

Property Address: 7399 Delta Line Road
Custer, Washington

Legal Description: Located within the SE ¼ of Section 36, Township 40 N, Range 1E, W.M.

Assessor's Parcel 400136 328080

Zone: Agriculture

Subarea: Birch Bay/Blaine Subarea Plan

Comprehensive Plan: Agriculture

SEPA Review: SEPA EXEMPT – WAC 197-11

AUTHORIZING ORDINANCES:

Whatcom County Comprehensive Land Use Plan
Whatcom County Code Chapter 15, Building Code
State Environmental Policy Act (SEPA). Washington Administrative Code, Chapter 197-11
Whatcom County Code Chapter 16.16, Critical Areas
Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
Whatcom County Code Title 24, Health Regulations

Legal Notices: Mailed – August 21, 2009
Published – February 16 and August 27, 2009

Hearing Date: September 9, 2009

Parties of Record:

Jim Lamke
Custom Built Structures, Inc.
6520 -212th Street SW, #205
Lynwood, WA 98036

Brenda Wilson
Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Site Development Plan
 - 1-2 Supplemental Application
 - 1-3 Structure Drawing
 - 1-4 Letter dated March 19, 2007 from Dept of Transportation to Applicant
 - 1-5 Letter of Complete Application, dated February 12, 2009
 - 1-6 Form Letter to Tech Committee
 - 1-7 Form Letter to Property Owners
 - 1-8 Mailing Labels
 - 1-9 Preliminary Traffic Study
 - 1-10 Preliminary Stormwater Study
 - 1-11 Property Records/Deeds
 - 1-12 Customer Receipt

- 2 Staff Report, dated September 3, 2009 with Agency Comments attached
- 3 Site Plans
- 4 Plat of Right of Way for Primary State Highway No. 1
- 5 Plat Map
- 6 Aerial Photo
- 7 Zoning Map
- 8 Legal Notice, dated February 16, 2009
- 9 Certificate of Mailing, dated August 21, 2009
- 10 Legal Notice, dated August 27, 2009
- 11 Email from Brenda Wilson cancelling June hearing

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 September 3, 2009, a copy of which is attached hereto and 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.

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 of a storage building for sand can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (1 through 8). Subject to the Conditions of Approval attached to 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 Custom Built Structures, Inc. for the proposed construction of a building for sand storage to be located on Assessor's Parcel No.400136 328080, 7399 Delta Line Road, Custer, Washington, subject to the following conditions:

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. The Applicant shall comply with the conditions of the Division of Engineering outlined in the memorandum dated February 27, 2009, unless modified by the Division of Engineering or appealed to the appropriate agency.
3. The Applicant shall comply with the conditions of the Whatcom County Plans Examiner, memorandum dated February 23, 2009, unless modified by the Plans Examiner or appealed to the appropriate agency.
4. The Applicant shall comply with the conditions of the attached Whatcom County Health Department, memorandum dated March 3, 2009, unless modified by the Health Department or appealed to the appropriate agency.
5. It shall be the applicant's responsibility to request a Certificate of Occupancy from Planning and Development Services upon completion of all conditions in order to finalize the Conditional Use Permit.
6. 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 cir-

cumstances must be shown to obtain an extension of more than one year. The Hearing Examiner shall obtain the comments of Whatcom County Planning and 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 11th day of September 2009.

Michael Bobbink, Hearing Examiner

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive,
Bellingham, WA 98226-9097
360-676-6907, TTY 800-833-6384
360-738-2525 Fax



David Stalheim
Director

J.E. "Sam" Ryan
Assistant Director

June 3, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of
Custom Built Structures, Inc
For a Zoning Conditional Use
Permit for a storage building

CUP2009-00003
FINDINGS, CONCLUSIONS
AND RECOMENDATIONS

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicant is requesting a zoning conditional use permit to construct a 2.392 square foot storage building for the Washington State Department of Transportation. The building will be used to store sand for distribution on roads during the winter months.

Recommendation: Staff recommends approval of the request, subject to the attached conditions.

II. PRELIMINARY INFORMATION

Applicant: Custom Built Structures, Inc.

Property Address: 7399 Delta Line Road
Ferndale, WA.

Legal Description: Located within the SE1/4 of Section 36, Township 40 N., Range 1E., W.M.

Assessor's Parcel 400136328080

Zone: Agriculture

Subarea: Birch Bay/Blaine Subarea Plan

Comprehensive Plan: Agriculture

SEPA Review: SEPA EXEMPT – WAC 197-11

AUTHORIZING ORDINANCES:

1. Whatcom County Comprehensive Land Use Plan.
2. Whatcom County Code Chapter 15, Building Code
3. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
4. Whatcom County Code Chapter 16.16, Critical Areas
5. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
6. Whatcom County Code Title 24, Health Regulations

III. FINDINGS

In order for the Conditional Use permit to be approved, the proposal must satisfy the criteria of WCC 20.84.200 (.200) 1 through 8. In summary, these criteria state that the proposal must: be harmonious and in accordance with the general and specific goals and policies of Whatcom County's Comprehensive Plan and zoning regulations, be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area, will not be hazardous or disturbing to existing or future neighboring uses, be serviced adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services, not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community, not involve uses, activities, processes, materials, equipment and property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors, have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets, and not result in destruction, loss or damage of any natural, scenic or historic feature of major importance.

Applicable Codes and Policies

Public facilities are conditionally permitted in the Agriculture zone pursuant to WCC20.40.151.

The Whatcom County Comprehensive Plan establishes a goal of retaining the rural character of Whatcom County. The proposed building will blend in with the existing rural landscape of the area due to the type of construction proposed.

Site Description

The Washing State Department of Transportation currently operates a Rest Stop facility serving the Custer vicinity of Interstate 5 on this 85 acre site. The project is proposed just south of the Rest Stop location. The project site is flat and contains no existing ground cover other than grass. There is an existing tree buffer to the north and east separating the proposed building site from the Rest Stop Facilities.

Surrounding Properties to the north, south and east are zoned Agriculture and to the west is Interstate 5.

Zoning Comments

SETBACKS:

Access to the parcel is provided via Interstate 5. The Official Whatcom County Zoning Ordinance provides for a setback of 45' from the front property line along Interstate 5 and a 5' minimum side and rear setback (WCC 20.80.210).

LOT COVERAGE:

Maximum lot coverage in the Agriculture Zone District is 25% of the overall lot size, per WCC 20.40.450. The square footage of the proposed storage structure is well within the 25% maximum lot coverage requirement.

PARKING:

In view of the fact the proposed use of the building is to house sand and the Department of Transportation trucks will be there temporarily to load, there will not be any parking requirements associated with this proposal.

LANDSCAPING:

This proposal is exempt from landscaping requirements pursuant to WCC 20.80.315(5).

SIGNAGE:

No new signs have been associated with this proposal.

IV. PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in WCC 2.33.

Notice of Application: The Notice of Application for this proposal was published on February 16, 2009. Notice was also mailed to property owners within 1000 feet of the site.

- Public Input: During the public comment period for the Notice of Application, the County received no public comment.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site. The notice was included in a one-time newspaper publication.

V. STATE ENVIRONMENTAL POLICY ACT (SEPA)

The proposal is exempt for SEPA pursuant to WAC 197-11 (Categorical Exemptions)

VI. FINDINGS OF FACT and CONSISTENCY WITH REGULATIONS

A. Building Code (WCC Title 15)

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 Plans Examiner supplied a memo dated February 23, 2009 with conditions of approval for this proposal. The applicant shall comply with all of the conditions of the Plans Examiner unless modified by the Plans Examiner or appealed to the appropriate agency.

The Whatcom County Plans Examiner required conditions for the above permit which is located in Section IX (Conditions) of this report.

Staff has determined that, as conditioned, the project meets the requirements of WCC Title 15.

B. Critical Areas (Title 16)

WCC Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible.

The above application has been routed to critical areas staff in conformance with WCC 16.16 (Critical Areas Ordinance). Staff has determined that there are no critical areas impact and has approved the project without reservation.

VII. AGENCY COMMENTS

Traffic, Drainage, and other Engineering Comments

Sanja Barisic of Whatcom County Public Works Department, Engineering Services provided comment on February 27, 2009. See attached memo for entry into the Hearing Examiner File as an exhibit and Condition of Approval.

Safety and Fire Comments

Bill Hewett, Fire Inspector of the Whatcom County Fire Marshal's Office provided comment on February 20, 2009. See attached memo for entry into the Hearing Examiner File.

Utilities and Health Department Comments

The Whatcom County Health Department provided a memo dated March 3, 2009. See attached memo for entry into the Hearing Examiner File as an exhibit and Condition of Approval.

Building Services Comments

Curtis Metz, Whatcom County Plans Examiner provided comment on February 23, 2009. See attached memo for entry into the hearing Examiner File as an exhibit and Conditions of Approval.

VIII. RECOMMENDATION

Planning and Development Services recommends approval of the Zoning Conditional Use Permit application subject to the following conditions:

IX. CONDITIONS OF APPROVAL

- 1) The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
- 2) The applicant shall comply with the attached conditions of the Division of Engineering's memo dated February 27, 2009, unless modified by the Division of Engineering or appealed to the appropriate agency.
- 3) The applicant shall comply with the conditions of the attached Whatcom County Plans Examiner's memo dated February 23, 2009, unless modified by the Plans Examiner or appealed to the appropriate agency.

- 4) The applicant shall comply with the conditions of the attached Whatcom County Health Department memo dated March 3, 2009, unless modified by the Health Department or appealed to the appropriate agency.

- 5) It shall be the applicant's responsibility to request a Certificate of Occupancy from Planning and Development Services upon completion of all conditions in order to finalize the Conditional Use Permit.

Report prepared in coordination with the Technical Review Committee by:
Brenda Wilson
Senior Planner