

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit) CUP2009-0011
Application for)
)
Kara Black) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
“Tree Frog Night Bed & Breakfast”) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Conditional Use Permit to construct a two bedroom building adjacent to an existing residence to house the proposed operation of a Bed and Breakfast business.

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: Kara Black

Property Address: 1727 Mt. Baker Hwy
Bellingham, WA 98226

Legal Description: NW ¼ of Section 11, T38N, R3E, W.M.

Zone: R5A, Rural-1 Unit/5 Acres

Subarea: Urban Fringe

Comprehensive Plan: Rural

Fire District: Fire District No.1
School District: Mt. Baker School District No. 507

Water District: City of Bellingham

Sewage Disposal: On site sewage system

Neighboring Uses: North: Residential
South: Residential
East: Residential
West: Residential

Existing Development: Single Family Residence

Legal Notices: Posted – August 5, 2009
Mailed – July 23, 2009
Published – May 28 and July 30, 2009

Hearing Date: August 19, 2009

Parties of Record:

Kara Black
1727 Mt. Baker Highway
Bellingham, WA 98226

Greg and Bernadette Jahn
1733 Mt. Baker Highway
Bellingham, WA 98226

Blake and Kenalyn Ambers
1737 Mt. Baker Highway
Bellingham, WA 98226

Brenda Wilson
Planning and Development Services

Exhibits:

- 1 Land Use Application
- 1-1 Supplemental Application

- 1-2 Receipt
 - 1-3 Letter of Completeness, dated May 26, 2009
 - 1-4 Form Memo, dated May 28, 2009
 - 1-5 Mailing Labels
 - 1-6 PDS Instructions - addresses
 - 1-7 Statutory Warranty Deed
 - 1-8 Stewart Title
 - 1-9 City Public Works, water system notification, dated May 11, 2009
 - 1-10 County Land Disturbance Application
 - 1-11 PDS Instructions for Site Plans
 - 1-12 Preliminary Traffic Info
 - 1-13 Preliminary Stormwater Proposal
 - 1-14 Revocable Encroachment Permit Application
-
- 2 Aerial Map
 - 3 Plat Map
 - 4 Zoning Map
 - 5 Record of Survey
 - 6 Legal Notice, dated May 28, 2009
 - 7 Certificate of Posting, dated August 5, 2009
 - 8 Certificate of Mailing, dated July 23, 2009
 - 9 Legal Notice, dated July 30, 2009
 - 10 Site Plan
 - 11 Emails with Applicant and Staff
 - 12 Request for Notice of Hearing
 - 13 Staff Report, dated August 12, 2009
 - 14 Letter of Concern, dated August 10, 2009, from Greg and Bernadette Jahn

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 #13, dated August 12, 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 the Conditions of Approval requested by Staff. There was no public comment on this matter at the public hearing.

III.

The neighboring property owner to the east of the existing residence and another property owner in the vicinity submitted written comments of concern and opposition to the proposed operation of a bed and breakfast business on this site. The proposed facility will consist of two small bed and breakfast suites in a building adjacent to the residence. The proposed building will have approximately 737-square feet. Two public comments received discussed safety concerns, suggesting that the users of the bed and breakfast would somehow endanger the community; a large deflation in the value of the neighboring homes and destruction of the neighborhood; incompatibility with the neighborhood; clearing on the Applicants' lot, which the neighbor suggestions reduces their privacy and quiet; and from the neighbor to the east, concerns about "walk-in" customers from the proposed B&B into the neighbors' wholesale perennial growing business.

There is nothing in the file which would indicate any significant impacts from this small, two-unit bed and breakfast. Adjoining neighbors are well screened from this proposed site by existing vegetation. The Conditions of Approval should require that the Applicants limit the removal of vegetation on the site to that necessary to develop and use the small, proposed bed and breakfast building.

Normally a bed and breakfast facility of this size would have little impact on neighboring property owners or the surrounding community. There is no evidence in the record that would indicate that this proposal will be any different. As long as adequate landscaping and screening are maintained, safe access is provided, and parking is adequate, the Hearing Examiner sees no reason to denying the Zoning Conditional Use Permit.

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 proposed construction and operation of a Bed and Breakfast business 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 Kara Black for the proposed construction and operation of a two-bedroom Bed and Breakfast business to be located adjacent to the existing residence on Assessor's Parcel No.380311 042456, 1727 Mt. Baker Highway, Bellingham, 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 outlined in the Whatcom County Public Works, Division of Engineering memorandum, dated June 16, 2009, unless otherwise agreed upon by the Public Works Department, Division of Engineering, or appealed to the Whatcom County Hearing Examiner.
3. The Applicant shall comply with the conditions outlined in the Whatcom County Fire Inspector's memorandum, dated June 16, 2009, unless otherwise agreed upon by the Fire Marshal's Office or appealed to the Whatcom County Hearing Examiner.
4. The Applicant shall comply with the conditions of the Whatcom County Plans Examiner as outlined in the memorandum, dated June 2, 2009, unless otherwise agreed upon by the Plans Examiner or appealed to the Whatcom County Hearing Examiner.
5. All buildings on site must have inspections and building permits prior to approval of occupancy for the Bed and Breakfast.
6. A parking plan with a five foot perimeter landscape strip shall be submitted at the time of building permit issuance. Existing vegetation may be used to meet this condition.
7. A minimum of a two space gravel parking area shall be provided on the site for guest parking per WCC 20.80.580(37) – Parking Space Requirements for motels.
8. Weddings and events that would increase on-site impacts shall be coordinated with the Fire Marshal's Office.
9. Land clearing, grading, filling, removal of vegetation and alteration of natural features shall be kept to the minimum that is reasonably necessary to accommodate approved development. Disturbed areas shall be re-vegetated as soon as possible. As little vegetation as possible should be removed between the existing home and the neighbors' home to the east. No

vegetation should be removed from this area unless absolutely necessary to facilitate the construction and operation of the two-unit bed and breakfast.

10. Issuance of this permit does not release the Applicant from any other Federal, State, or local statutes or regulations applicable to the development.
11. 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 & 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 1st 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

August 12, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

The application of **Kara Black** for a Zoning Conditional Use Permit | **CUP2009-00011**
| FINDINGS, CONCLUSIONS AND
| RECOMMENDATIONS

I. SUMMARY OF APPLICATION & RECOMMENDATION

Project: The proposed project consists of the new construction of a small building in the existing single family residence developed footprint to accommodate a two bedroom bed and breakfast with a laundry facility.

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

II. BACKGROUND & SITE DESCRIPTION

Applicant: Kara Black

Applicant's Representative: N/A

Property Address: 1727 Mt. Baker Hwy
Bellingham, WA. 98226

Legal Description: NW ¼ of Section 11, T38N., R. 3E., W.M.

Zone: R(5) Rural-1 Unit/5 Acres

Subarea: Urban Fringe

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Water District: City of Bellingham

Sewage Disposal: On site sewage system

Neighboring uses:
 North: Residential
 South: Residential
 East: Residential
 West: Residential

Existing Development: Single Family Residence

Proposed Development:

III. FINDINGS OF FACT & ANALYSIS OF CRITERIA

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

SEPA Review: WAC 197-11 and WCC Title 16.08
 The proposed project is exempt from SEPA review pursuant to WAC 197.11.800(1).

Land Use Review Comments

Below are eight questions regarding CUP criteria based on Whatcom County Code requirements and eight responses or findings about those criteria from staff.

WCC 20.84.220 Criteria. [Conditional Uses]

Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use districts defining the conditional use are fulfilled, and shall find adequate evidence showing that the proposed conditional use at the proposed location:

(1) Will be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan and zoning regulations?

The proposed conditional use is harmonious and in accordance with the objectives of Whatcom County's Comprehensive Plan. For example, the Introduction section of Chapter Seven "Economics" sets forth under Purpose: 1. Maintenance of a strong sustainable economic base. Also, Chapter Seven states in part...Economic vitality can also be described as private capital investment. The proposed Bed and Breakfast contributes to the maintenance of a strong economic base and economic vitality through private capital investment. In addition, the proposed use of the land is in accordance with zoning regulations provided standards and conditions are met for the Bed & Breakfast. These standards include fire, safety, engineering (i.e. traffic safety), health, building and zoning requirements.

(2) Will 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?

The proposed new construction is designed with a residential character and is very similar in style to the main house. In view of the fact the bed and breakfast consists of only 2 bedrooms the operation of the business will have a minimal impact and the maintenance will be shared with the maintenance required for the residence and will be provided primarily by the owner and resident.

(3) Will not be hazardous or disturbing to existing or future neighboring uses?

No known additional hazards or disturbances are created by this proposal.

(4) Will be serviced adequately by necessary 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?

No new services are required. The site is served by the Mt. Baker Highway and the access was reviewed by John Tellesbo, Washington State Department of Transportation. Attached is an e-mail dated June 1, 2009 in which he indicated WSDOT has no concerns at this time.

(5) Will 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?

The proposed Bed & Breakfast will not create a need for additional public facilities or services and will be an asset to the economic welfare of the community.

(6) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors?

The small scope of the proposal will not create excessive production of traffic, noise, smoke, fumes, glare or odors.

(7) Will vehicular approaches to the property be designed so as not to create interference with traffic on surrounding public streets?

The existing driveway and approach is a 20' paved access and the WSDOT has no concerns at this time.

(8) Will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance?

Since the proposal consists of using an existing developed footprint it will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance.

:

Site Design Requirements

Parking Space Requirements set forth in WCC 20.80.580(37) and Off-street parking and loading requirements set forth in WCC 20.800.500 will be incorporated into the design of the site.

IV. AGENCY AND PUBLIC COMMENT

Public Comments

Requirements for public notice are contained in WCC 2.33.

Notice of Application: The Notice of Application for this proposal was published on May 28, 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, PDS received one public comment (phone call). A summary of the comments regarding the proposal and a response follows:

- Too much development on the parcel of land.

Response: Whatcom County Code provides for 35% maximum lot coverage and the proposal, together with the existing development will total considerably less coverage of the five acre parcel than 35%. In addition, the proposal has been conditioned with parking and the associated landscaping/screening requirements in order to mitigate the impact on adjoining properties and uses.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site and mailed to individuals who provided written correspondence to the County. The notice was included in a one-time newspaper publication.

AGENCY COMMENT:

Public Works—Engineering Comments

Sanja Barisic, Whatcom County Public Works Engineering Services provided comment on June 16, 2009. See attached memo for entry into the Hearing Examiner File.

Fire Comments

Bill Hewett, Fire Inspector, Whatcom County Fire Marshal's Office provided comment on June 16, 2009. See attached memo for entry into the Hearing Examiner File.

Building Division Comments

Curtis Metz, Whatcom County Plans Examiner provided comment on June 2, 2009. See attached memo for entry into the Hearing Examiner File.

Environmental Comments, Critical Areas, Environmental Review under SEPA

Whatcom County **Critical Areas** Administrator, Lyn Morgan-Hill provided comment on June 10, 2009. See attached memo for entry into the Hearing Examiner File. Critical Areas staff determined that there will be no wetland or habitat conservation area impacts as a result of this proposal.

The project proposal is exempt from SEPA review pursuant to WAC 197.11.800(1).

Health Department Comments

Charles Sullivan, Whatcom County Health Department provided comment on July 21, 2009. See attached memo for entry into the Hearing Examiner File.

V. CONCLUSION & RECOMMENDATION

As a result of the above technical review, Planning and Development Services staff recommends approval of the Zoning Conditional Use Permit, provided that all of the following conditions of approval are met.

VI. 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 conditions outlined in the Whatcom County Public Works Engineering memo dated June 16, 2009, unless otherwise agreed upon by the Public Works Engineering Department or appealed to the Whatcom County Hearing Examiner. (See attached memo/exhibit).
- 3) The applicant shall comply with the conditions outlined in the Whatcom County Fire Inspector's memo dated June 16, 2009, unless otherwise agreed upon by the Fire Marshall's Office or appealed to the Whatcom County Hearing Examiner. (See attached memo/exhibit).

- 4) The applicant shall comply with the conditions of the Whatcom County Plans Examiner memo dated June 2, 2009, unless otherwise agreed upon by the Plans Examiner or appealed to the Whatcom County Hearing Examiner. (See attached memo/exhibit).
- 5) All buildings on site must have inspections and building permits prior to approval of occupancy for the Bed and Breakfast.
- 6) A parking plan with a five foot perimeter landscape strip shall be submitted at the time of building permit issuance. Existing vegetation may be used to meet this condition.

- 7) A minimum of a two space gravel parking area shall be provided on the site for guest parking per WCC 20.80.580(37) – Parking Space Requirements for motels.
- 8) Weddings and events that would increase on-site impacts shall be coordinated with the Fire Marshall's Office.
- 9) Land clearing, grading, filling, removal of vegetation and alteration of natural features shall be kept to the minimum that is reasonably necessary to accommodate approved development. Disturbed areas shall be re-vegetated as soon as possible.
- 10) Issuance of this permit does not release the applicant from any other Federal, State, or Local statutes or regulations applicable to the development.

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