

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Variance ) VAR2008-0002  
Application for )  
 )  
*David Koch / Nancy Quigg* ) FINDINGS OF FACT,  
 ) CONCLUSIONS OF LAW,  
 ) AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting a Zoning Variance to reduce the front yard setback from 20-feet to five-feet to accommodate the construction of a new single-family residence with an attached garage.

Decision: The requested Zoning Variance 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: David Koch and Nancy Quigg

Property Location: 985 Brighton Crest Drive  
Bellingham, Washington

Legal Description: Lot B-15, Viewpoint No. 1 Short Plat  
Assessor’s Parcel No. 370224 555398

Zoning: RR-2A (Rural Residential-Two Units per Acre)

Comprehensive Plan: Suburban Enclaves

Subarea: Chuckanut-Lake Samish

Authorizing Ordinances: WCC 20.84.100 Variances  
WCC 20.92 Hearing Examiner

SEPA Review: The proposal is Categorically Exempt from the State Environmental Policy Act per WAC 197-11-800(1)(b)(i) and WAC 197-11-800 (6) (b).

Legal Notices: Posted – July 29, 2009  
Mailed – July 23, 2009  
Published – February 3 and July 30, 2009

Hearing Date: August 12, 2009

Parties of Record:

David Koch and Nancy Quigg  
1440 10<sup>th</sup> Street, #317  
Bellingham, WA 98225

Jesse Lawrence  
Zervas Group Architects  
209 Prospect  
Bellingham, WA 98225

Brenda Wilson  
Planning and Development Services

Exhibits:

- 1 Land Use Application
  - 1-1 Supplemental Application
  - 1-2 Receipt
  - 1-3 Letter of Completeness, dated January 28, 2009
  - 1-4 PDS Instructions
  - 1-5 Property Mailing Labels
  - 1-6 Assessor's MetroScan/Whatcom
  - 1-7 Agent Authorization
  - 1-8 Form Letter, dated February 3, 2009
  - 1-9 Form Memo, dated February 3, 2009
  - 1-10 Statutory Warranty Deed
- 2 Vicinity Maps
- 3 Zoning Map
- 4 Aerial Photo

- 5 Site Plan
- 6 Legal Notice, dated February 3, 2009
- 7 Certificate of Mailing, dated July 23, 2009
- 8 Certificate of Posting, dated July 29, 2009
- 9 Legal Notice, dated July 30, 2009
- 10 Staff Report, dated August 3, 2009, with Health Memo, dated June 2, 2009, attached
- 11 Agency Comments

**II.**

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Zoning Variance Permit, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit #10, dated August 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. The Findings of Fact in the Staff Report are hereby adopted by the Hearing Examiner as the Findings of Fact 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 requested reduction in the front yard setback 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 Zoning Variance Criteria. The requested Zoning 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 David Koch and Nancy Quigg reducing the front yard setback from 20-feet to five-feet to accommodate the construction of a new single-family residence with an attached garage to be located on Assessor's Parcel No.370224 555398, 985 Brighton Crest Drive, 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 project shall comply with all applicable Whatcom County Development Standards as well as all applicable Federal, State, and local laws and regulations.
3. The Applicant shall comply with conditions set forth in the memo from the Whatcom County Plans Examiner, dated February 18, 2009, unless modified by the Plans Examiner or appealed to the appropriate governing body.
4. The Applicant shall procure all necessary permits prior to any on site work. A complete set of building plans and elevations shall be submitted for all proposed construction, and all required permits shall be obtained prior to construction of the new residence. The proposed height shall be depicted on the structural plans and shall not exceed the building height limit of 35-feet, per Whatcom County Code, WCC 20.32.400 Height Regulations, and the building height shall be measured as defined in Whatcom County Code, WCC 20.97.040.
5. The Applicant shall comply with the conditions set forth in the memo from the Whatcom County Fire Marshal's Office, dated May 6, 2009, unless modified by the Fire Marshal's Office or appealed to the appropriate governing body.
6. The Applicant shall comply with the conditions set forth in the memo from the Whatcom County Public Works, Division of Engineering, dated February 20, 2009, unless modified by the Public Works, Division of Engineering, or appealed to the appropriate governing body.
7. The Applicant shall comply with the conditions set forth in the memo from the Whatcom County Health Department, dated April 14, 2009, unless modified by the Health Department, or appealed to the appropriate governing body.
8. Regarding cultural resources, the following inadvertent discovery language condition shall be adhered to: 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 (384-2298) 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 LNTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws

pertaining to archaeological resources is required.

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 14<sup>th</sup> day of August 2009.

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Michael Bobbink, Hearing Examiner



August 3, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of <b>David Koch/Nancy Quigg</b> For a Zoning Variance Permit		<b>VAR2008-00008</b> FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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**I. SUMMARY OF APPLICATION AND RECOMMENDATION**

Application: The applicant requests approval of a Zoning Variance permit to reduce the front yard setback from 20-feet to five feet to accommodate the construction of a new single-family residence with an attached garage.

Recommendation: Staff recommends approval of the requested Zoning Variance permit subject to the conditions outlined in this report.

**II. BACKGROUND**

Applicant: Jesse Lawrence/Zervas Group Architects

Property Location: 985 Brighton Crest Drive

Legal Description: Lot B-15, Viewpoint No. 1 Short Plat  
APN#370224555398

Zoning: RR-2 (Rural Residential-2/Units/Acre)

Comprehensive Plan: Suburban Enclaves

Subarea: Chuckanut-Lake Samish

Authorizing Ordinances: WCC 20.84.100 Variances  
WCC 20.92 Hearing Examiner

SEPA REVIEW: The proposal is categorically exempt from the State Environmental Policy Act per WAC 197-11-800(1)(b)(i). And WAC 197-11-800 (6) (b).

### III. ZONING REVIEW, FINDINGS AND CONCLUSIONS

#### Site Description

The subject property is located at 985 Brighton Crest Drive. The property is currently not developed.

The applicant proposes to build a new single-family residence. Due to the steep topography of the site, the applicant has applied for a variance to reduce the front yard setback from 20 feet to five feet in order to place the single-family residence and drainfield on this parcel.

Building height in the RR-2 (Rural Residential-2 Units/Acre) zone is limited to 35-feet per WCC 20.32.400.

#### Variance Review

##### Applicable Policies and Regulations

In order for a variance to be approved it must satisfy the criteria of WCC 20.84.100 (.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.

#### Analysis of criteria

1) A zoning variance is requested in order to:

**Reduce the front yard setback from the standard 20 feet to five feet.**

2) The variance is needed to accommodate the construction of:

**A single family residence with an attached garage.**

3) Describe the circumstances that apply to your property, such as size, shape, topography, location or surroundings, which make it difficult or impossible to meet the standard requirements of the ordinance.

**The size and shape of the subject parcel make it difficult if not impossible to meet**

**the front yard setback requirements. The topography is steep in the area where the house could be placed, and the location of the drainfield and driveway would make it impossible to meet the standard 20 foot front yard setback.**

4) Are such circumstances common to other properties in the area?

**Yes, there are properties in the area with steep slopes similar to this one, but most are not as constrained as this particular parcel.**

5) Describe how a strict application of the ordinance causes a hardship and deprives your property of rights and privileges enjoyed by other properties in the vicinity and within the same zoning classification.

**A strict application of the ordinance causes a hardship due to the topography of the site and the constraints of the location of the existing common drainfield easement. If a 20 foot setback is required, then it would be implausible to access the residence via the driveway due to the existing steep slopes adjacent to the road right of way. In other words, if the house location was required to be located 20 feet west from the front property line along the right of way then it would not be feasible to access the residence from the driveway due to the steep slopes adjacent to the road right of way. Strict application of the ordinance deprives the property owner of rights and privileges enjoyed by other property owners in the vicinity and within the same zone classification because other property owners in the area enjoy the right to construct a single family residence and their properties are not as constrained with steep slopes and common drainfield easements. Although other properties in the area are constrained with steep slopes, the steep slopes on this property are located in such a way to require the residence to be located closer to the front property line along the road right of way than permitted by the zoning code.**

6) Would granting of the requested variance be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity?

**No, the new single family residence will be located outside of both the shared drainfield easement and the shared access easement. It will be placed well below and out of sight of Brighton Crest Drive.**

7) Is the variance proposal arbitrary, based on convenience, a self-imposed hardship or financial consideration?

**Staff has no reason to believe that this variance has been requested for financial reasons alone, or by any previous actions of the property owners.**

#### **IV. PUBLIC AND AGENCY COMMENTS**

##### **Public Comment**

No public comment was received during the review of this project proposal.

##### **Public Works**

The Whatcom County Public Works Department provided a memo dated February 20,

2009 which is incorporated into the conditions section of this report.

#### **Health Department**

The Whatcom County Health Department provided a memo dated April 14, 2009 which is incorporated into the conditions section of this report.

#### **Critical Areas Ordinance**

A memo was provided on February 3, 2009 by the Technical Administrator of the Critical Areas Ordinance stating that based on a review of the proposal, critical areas staff have determined that there will be no wetland or habitat conservation area impacts as a result of this proposal. See attached memo.

#### **Fire Marshal's Office**

The Whatcom County Fire Marshal's Office provided a memo dated February 10, 2009 indicating they have no conditions or comments for this proposal.

#### **Building Services**

The Whatcom County Plans Examiner provided a memo dated February 18, 2009 which is incorporated into the conditions section of this report.

### **V. CONCLUSIONS AND RECOMMENDATION**

Based on the above findings and technical review, Staff recommends approval of the requested Zoning Variance permit, subject to the following conditions:

### **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 project shall comply with all applicable Whatcom County Development Standards as well as all applicable federal state, and local laws and regulations.
3. The applicant shall comply with conditions set forth in the memo from the Whatcom County Plans Examiner dated February 18, 2009 unless modified by the Plans Examiner or appealed to the appropriate governing body.
4. The applicant shall procure all necessary permits prior to any on site work. A complete set of building plans and elevations shall be submitted of all proposed construction, and all required permits shall be obtained prior to construction of the new residence. The proposed height shall be depicted on the structural plans and

shall not exceed the building height limit of 35' per Whatcom County Code 20.32.400 height regulations and the building height shall be measured as defined in Whatcom County Code 20.97.040.

5. The applicant shall comply with the conditions set forth in the memo from the Whatcom County Fire Marshal's Office dated May 6, 2009; unless modified by the Fire Marshal's Office or appealed to the appropriate governing body.

6. The applicant shall comply with the conditions set forth in the memo from the Whatcom County Public Works Department dated February 20, 2009; unless modified by the Public Works Department or appealed to the appropriate governing body.

7. The applicant shall comply with the conditions set forth in the memo from the Whatcom County Health Department's Office dated April 14, 2009, unless modified by the Health Department Office or appealed to the appropriate governing body.

8. Regarding cultural resources, the following inadvertent discovery language condition shall be adhered to:

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 (384-2298) 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 LNTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.

Report prepared in coordination with the Technical Review Committee by:

Kathy Barrett  
Planning Technician

And

Brenda Wilson  
Senior Planner