

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Variance Permit ) VAR2008-0007  
Application for )  
 )  
NCW Land Group ) 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 Permit to reduce the front yard setback from 45 feet to 15 feet to accommodate construction of a single-family residence. Further research has shown that since this parcel is in the Lake Whatcom Watershed the front yard setback is only 30 feet. The Applicant, therefore, is requesting a Zoning Variance to reduce the front yard setback from 30 feet to 15 feet.

**Decision:** The requested Zoning Variance Permit is approved.

**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:** NCW Land Group

**Site Location/Address:** North Shore Road  
Bellingham, Washington

**Assessor's Parcel Number(s):** 380326420170

**Zoning:** Residential Rural (RR2)

**Comprehensive Plan:** Suburban Enclaves

**Subarea:** Lake Whatcom Subarea

Total Acreage: Approximately 0.62 acres

Roads: Public: North Shore Road

Water Supply: Private Well

Sewage Disposal: Sewer

Fire Protection: Whatcom County Fire District No. 4

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Bellingham School District No. 501

Topography: The lot is long and narrow and parallels North Shore Road. The property slopes downward (southwest) towards Dellestra Drive at varying degrees. In some areas, it is a 2:1 slope.

Vegetation: Vegetation consists mostly of pasture grass and trees.

Adjacent Land Uses: North: Residential  
East: Residential  
South: Residential  
West: Residential

Easements: No recorded easements per First American Title.

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 – September 8, 2011  
Mailed – May 6, 2011  
Published – January 26, 2009, and May 12, 2011

Hearing Date: September 21, 2011  
Record opened for additional sight distance comments on October 4 through October 20, 2011

Parties of Record:

NCW Land Group  
Attn: Pamp Maiers  
P.O. Box 850  
Moses Lake, WA 98837

BluePrint Design Consultants  
Jim DeGolier  
4071 Hannegan Road  
Bellingham, WA 98226

Scot Swanson  
Belcher Swanson Law Firm, PLLC  
900 Dupont Street  
Bellingham, WA 98225

Kris Ungern  
2095 North Shore Road  
Bellingham, WA 98226

Holly Telfer  
2152 Dellesta Drive  
Bellingham, WA 98226

Ronald Delbecq  
2135 Dellesta Drive  
Bellingham, WA 98226

Sanja Barisic  
Division of Engineering

Suzanne Bosman  
Planning and Development Services

Exhibits:

- 1 Land Use Application
  - 1-1 Supplemental Application
  - 1-2 Authorization of Representation
  - 1-3 PDS Form Memo, Tech Committee, January 26, 2009
  - 1-4 PDS Form Letter, Property Owners, January 26, 2009
  - 1-5 Letter dated May 20, 2008 from PDS Michael Kershner to Sam Crawford re: APN Lot of Record confirmation
  - 1-6 Sewer Availability Notification, January 19, 2009
  - 1-7 Property Owners Labels
  - 1-8 Letter of Complete Application, January 22, 2009
  - 1-9 Customer Receipt, November 12, 2008
  
- 2 Staff Report, April 21, 2011

- 3 Staff Comments
- 4 Comment Letter, John Herda, May 19, 2011
- 5 Public Comments
  - Lee First, email, January 27, 2009
  - Ron Delbecq, emails, Feb 6 and 9, 2009
  - Jim Allsop, email, Feb 10, 2009
  - John Herda, email Feb 11, 2009
  - Kris Ungern, email Feb 9, 2009
  - Dave and Jan Lunde, Jan 29, 2009
  - John Herda letter, Feb 5, 2009
  - Holly Telfer, request for hearing notice, Feb 8, 2009
- 6 Preliminary Sight Distance Review, WEB Engineering, July 29, 2010 with map attached [#6-1]
- 7 Plat Map
- 8 Aerial Photos [2]
- 9 Zoning Map
- 10 Site Plans
- 11 PDS Legal Notice of Application, January 26, 2009
- 12 Certificate of Mailing Notice of Public Hearing, May 6, 2011
- 13 Legal Notice of Public Hearing, May 12, 2011
- 14 Staff email re: Scheduling Public Hearing
- 15 Posting Notice of Public Hearing, September 8, 2011
- 16 Survey
- 17 Sight Distance Plans
- 18 Email from Ron Delbecq beginning September 27, 2011 request permission to submit comments from Jones Engineering and himself regarding sight distance safety concerns and ending Oct 13, 2011 with receipt of email comments from Mr. Delbecq.

- 19 Memorandum dated October 20, 2011 from Sanja Barisic re: County's response to Hearing Examiner on Mr. Delbecq's comments, dated October 13, 2011
- 20 Email from Ron Delbecq on October 21, 2011 re: phone conversation with Whatcom County Sheriff's Office on Northshore Road safety/accidents with response from Sanja Barisic dated Oct 21, 2011, offering Traffic Department explanation
- 21 Email from Sanja Barisic to Carole Magner, dated October 24, 2011 re: Engineering Staff adequacy of response to Mr. Delbecq's comments.

## 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 April 21, 2011, 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 Hearing Examiner has reviewed the Staff Report, the exhibits in the record, and conducted a public hearing. The Hearing Examiner finds that the Findings of Fact set forth in the Staff Report are supported by the record as a whole. These findings are hereby adopted by the Hearing Examiner as Findings of Fact herein.

There was a number of public comments on this matter. The Staff has addressed each of these in a thorough manner in the attached Staff Report. Most of the issues raised were not issues relevant to the granting of a Zoning Variance.

At the request of one member of the public who was not able to attend the hearing, the Hearing Examiner re-opened the matter for additional comment and review. The issue that was raised concerned sight distance. The record as a whole supports a finding that there is adequate sight distance at the proposed access to North Shore Drive and that the sight distance available meets the applicable standards.

## 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 reduction in the front yard setback for a parcel located in the Lake Whatcom Watershed for the construction of a single-family residence can be approved if it is consistent with

the Zoning Variance Criteria of WCC 20.84.120. Subject to the Conditions of Approval attached to the granting of this permit, the proposal is consistent with the Zoning Variance Criteria. The request for a Zoning Variance is based on the fact that the subject lot is narrow and combining this with the topography and other applicable regulations, the failure to grant a Zoning Variance would deny the property owner a reasonable permitted use of the property. A Zoning Variance 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 Variance is hereby granted to NCW Land Group to reduce the front yard setback from 30-feet to 15-feet for the construction of a single-family residence to be located on Assessor's Parcel No.380325 420170, North Shore Road, Bellingham, Washington.*

### 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 4<sup>th</sup> day of November 2011.



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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



**EXHIBIT**

#2

J.E. "Sam" Ryan  
Director  
**RECEIVED**

MAY 04 2011

WHATCOM COUNTY  
HEARING EXAMINER

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

April 21, 2011

The application of <b>NCW Land Group</b> for a Zoning Variance	VAR2008-00007 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: The applicant requested a zoning variance from the Whatcom County Code, Title 20 setback criteria to reduce the front yard setback from 45 feet to 15 feet to accommodate construction of a single-family residence. Further research has shown that since this parcel is in the Lake Whatcom Watershed the front yard setback is only 30 feet. Therefore, the applicant is requesting a zoning variance to reduce the front yard setback from 30 feet to 15 feet.

Recommendation: The Technical Review Committee recommends approval of the zoning variance request subject to the attached conditions.

**II. PRELIMINARY INFORMATION**

**A. BACKGROUND INFORMATION**

<u>Owner:</u>	NCW Land Group P.O. Box 850 Moses Lake, WA 98837
<u>Agent/ Representative:</u>	BluePrint Design Consultants Jim DeGolier 4071 Hannegan Road Bellingham, WA 98226
<u>Site Location/Address:</u>	North Shore Road
<u>Legal Description:</u>	Due to the length of the legal description,

please refer to the deed.

Assessor's Parcel Number(s): 380326420170

Zoning: Residential Rural (RR2)

Comprehensive Plan: Suburban Enclaves

Subarea: Lake Whatcom Subarea

Total Acreage: Approximately .62 acres

Roads: Public: North Shore Road

Water Supply: Private Well

Sewage Disposal: Sewer

Fire Protection: Whatcom County Fire District No. 4

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Bellingham School District #501

Topography: The lot is long and narrow and parallels North Shore Road. The property slopes downward (southwest) towards Dellestra Drive at varying degrees. In some areas it is a 2:1 slope.

Vegetation: Vegetation consists mostly of pasture grass and trees.

Adjacent Land Uses: North: Residential  
East: Residential  
South: Residential  
West: Residential

Easements: No recorded easements per First American Title.

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).

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

1. Whatcom County Comprehensive Plan
2. Whatcom County Code Chapter 12.08, Development Standards
3. Whatcom County Code Chapter 15, Building Code
4. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
5. Whatcom County Code Chapter 16.16, Critical Areas
6. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
7. Whatcom County Code Title 24, Health Regulations

**III. Site Description**

The subject property is an approximate .62 acre lot of record located near the 2000 block of North Shore Road.

The undeveloped site consists of mainly evergreen trees. It is located between North Shore Road to the north and Delesta Road to the south. The subject site is on a narrow strip of land that was part of the Burlington Northern Railroad right-of-way. The site does not directly abut Lake Whatcom. It is outside of the shoreline designation as it is more than 200 feet from the ordinary high water mark (OHWM).

The subject site and all neighboring parcels are zoned Residential Rural (RR2) with the exception of parcels located to the north which are zoned Rural (R5A).

**IV. PROJECT PROPOSAL**

The applicant, Jim DeGolier of Blue Print Design Consultants, on behalf of NCW Land Group (Pamp Meiers), submitted an application to Whatcom County on November 12, 2008 to request a zoning variance from the setback criteria established in the Whatcom County Zoning Ordinance, Title 20. More specifically, the applicant requested to reduce the front yard setback 75% from 45 feet to 15 feet to accommodate construction of a single-family residence.

While conducting research on the subject site, staff determined the parcel is located within a Water Resource Protection Overlay District whereby the setback criteria is different.

In the Lake Whatcom Watershed, the front yard setback in the Rural Residential (RR) zone district decreases to 30 feet. Therefore, the applicant is requesting a zoning variance to reduce the front yard setback 50% from 30 feet to 15 feet.

The proposed residence including the garage and covered porch will be 2,626 square feet and will be situated 15 feet south of the northern property line and 30 feet south of the centerline of North Shore Road.

## **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 January 26, 2009. The fifteen (15) day comment period ended on February 10, 2009.

Pursuant to WCC 20.84.235(2), Notices were mailed on January 26, 2009 to forty three (43) property owners whose property boundaries lie within 1,000 feet of the subject site.

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 Comments and Staff's Response:**

During the public comment period the County received nine letters in opposition of the proposal. Much of the correspondence included more than one concern.

The citizens concerns are addressed in more detail in the section of this report titled, "*Findings of Fact and Consistency with Regulations*", Pages 6-12.

The following is a brief summary of the major concerns addressed in the letters of opposition regarding the proposed use:

1. Why would Whatcom County consider granting a setback variance to move the home closer to North Shore Road, when the locations of the sewer line and sewer easements have not been determined?

The purpose of this zoning variance is to reduce the front yard setback due to the unique topography of the property. The purpose of this zoning variance is to determine whether or not reducing the front yard setback from 30 feet to 15 feet complies with the variance criteria found in WCC 20.84.100. If approved, the property owner will be responsible to comply with all Whatcom County codes and regulations. The sewer line and easement will need to be shown on the site-plan when the applicant applies for a building permit for the single-family residence.

2. The storm water runoff from the property will adversely affect the properties on Dellesta Road due to the slope and grade of the site.

If the setback variance is approved the property owner will have to identify storm water containment prior to building permit issuance.

3. A citizen states that he has a quit claim deed from the heirs of the property stating that he is the owner of the lot. This person is requesting that the variance determination be delayed until the ownership of the property is

settled.

Staff is unaware of any civil litigation pending regarding the ownership of the property. In order for a variance application to be deemed complete the applicant must supply the County with a copy of the most current deed. The sale of the subject property in 1999 to NCW Land Group, Inc., is the first real conveyance of the property within the current legal description. On May 20, 2008 a lot of record determination was made by Michael Kershner of Whatcom County Planning & Development Services. The lot was conveyed from Burlington Northern Railway to the current owner, NCW Land Group Inc. in 1999 under AF#1990902331.

4. The site would require the removal of trees and other native vegetation. Due to the downhill slope of the site, what mitigation will be done to reduce the impact of storm water runoff?

The removal of trees within the Lake Whatcom Watershed requires a Land Disturbance Permit (LDP). Within water resource special management areas clearing activities must conform with the criteria specified under WCC 20.80.735 including but not limited to Best Management Practices (BMP's) for sedimentation and erosion control.

In a memo dated January 26, 2009 staff from the watershed team stated that clearing of existing tree canopy areas (stands of native trees) for a building site, driveways, parking areas, and landscaped areas shall not exceed a cumulative total of 5000 square feet or 35%, whichever is greater, of the existing canopy area.

5. The proposed site plan for the single-family residence has a lot of impervious surfaces including the house, driveway, and sidewalk pavers. The proposed residence does not appear to be in compliance with the Whatcom County Code impervious surface regulations.

If the zoning setback variance is approved, the single-family residence will be reviewed by the watershed team for compliance with WCC 20.71.302(1) which requires at least 80 percent of the lot or parcel be kept free of structures and impervious surfaces.

6. If the variance is approved what will happen if Whatcom County decides to widen North Shore Road?

As previously stated, if the variance is approved the property owner will be required to apply for a building permit for the single-family residence. This application will trigger review by Whatcom County Public Works, the Whatcom County Health Department, the Whatcom County Fire Marshal's Office and Building Services. This includes, but is not limited to compliance with watershed, zoning, critical areas, and shoreline regulations.

Since issues have already been raised as to whether the owner will be able to obtain easement rights to access off of Dellesta Road, the applicant has consulted with Whatcom County Public Works to obtain access from North Shore Road.

On September 22, 2009, the County road inspector visited the site to review the location of the proposed driveway access. Based on his inspection and evaluation of the site, Whatcom County Public Works will be requiring the applicant/owner to hire a professional engineer or certified land surveyor to conduct a sight distance analysis. In addition, the professional will need to prepare a design for the proposed driveway access to include a paved apron. The new access will need to be perpendicular to North Shore Road. The design professional shall provide a driveway profile that includes the percent of slope and include drainage issues associated with the new driveway.

7. The stormwater runoff in this block range of North Shore Road runs through a culvert into a ditch along North Shore Road and then flows through another culvert and into a drain that runs beneath a citizen's house which leads to Lake Whatcom. Would the construction of this home impact the culvert beneath North Shore Road?

When the applicant applies for a building permit they will be required to complete a Revocable Encroachment Permit application since a new driveway and paved apron will be constructed within the County right-of-way. Whatcom County Public Works, Division of Engineering, will review this proposal for stormwater runoff and as a result may require the installation of another culvert.

## **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. This proposal was determined to be categorically exempt from the State Environmental Policy Act pursuant to WAC 197-11-800(1)(b)(i), and WAC 197-11-800(6)(b).

## **VII. FINDINGS OF FACT and CONSISTENCY WITH REGULATIONS**

The Hearing Examiner has the authority to grant a variance from the provisions of the Whatcom County Zoning Code, Title 20, when, in the opinion of the hearing examiner, the conditions set forth in WCC 20.84.120 have been found to exist. In such cases, a variance may be granted which is in harmony with the general purpose and intent of the ordinance.

### **A. Planning (WCC Title 20)**

#### **WCC 20.84.120:**

Before any variance may be granted, it shall be shown that the following circumstances are found to apply:

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;
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;
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. (Ord. 87-12, 1987; Ord. 87-11, 1987).

**Discussion:**

That portion of North Shore Road located in Section 26 of Township 38, Range 3 East, has a road classification of Minor Arterial – Urban. Pursuant to WCC 20.80.210, Setback Criteria, the front yard setback in the Rural Residential (RR) Zone District is 45 feet for the front yard, and 5 feet for the side and rear yard setbacks. However, in the Water Resource Protection Overlay District the front yard setback actually decreases to 30 feet. See chart below:

Residential (RR)							
Road Type						Other	
Commercial, Industrial, I-5, State Hwys, Principal & Minor Arterials	Collector Arterials or Major Collectors	Minor Collectors	Local Access Streets	Neighborhood Collector	Minor Access Streets	Side Yard	Rear Yard
45'	35'	25'	25'	25'	20'	5' <sup>1,2</sup>	5' <sup>1</sup>
Water Resource Protection Overlay							
30'	30'	20'	20'	20'	20'	5'	5'
1. Setbacks shall be increased to 100 feet for those parcels situated adjacent to the Forestry Zone District, except that such parcels whose owners have filed an agreement with the county auditor as							

specified in WCC 20.32.651 shall be subject to the standard setback in WCC 20.80.210.

2. A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.

<sup>1</sup>Roof overhangs or other additional features shall not project further than 18 inches into the side or rear yard setbacks. Such overhangs may extend six feet into the front yard setback; however, in no case will they extend more than one-half the depth of the front yard setback.

The Water Resource Protection Overlay District is an overlay zone that is intended to impose additional controls to preserve and protect unique and important water resources within Whatcom County. The overlay district is designed to protect the long-term viability of our watersheds which includes Lake Whatcom.

The reason for reducing the front yard setback criteria in the Water Resource Protection Overlay District is to reduce the length of driveways in the watershed thus reducing the impervious surface.

The request to reduce the front yard setback from thirty (30) feet to fifteen (15) feet must comply with the three criteria for a variance as specified in WCC 20.84.120, as outlined on Pages 6 and 7 of this document:

1. The granting of a variance to reduce the front yard setback requirement will not grant a special privilege to the owner/applicant. The granting of the variance is not a result of a hardship caused by previous actions of the property owner, nor is it based upon pecuniary reasons alone (WCC 20.84.120(1)).
2. The granting of the request for a variance is due to the special circumstances applicable to the subject property. The site is a narrow rectangular strip of land that was once part of the Burlington Northern Railroad right-of-way.

The length of the parcel is 340.05 feet. The width of the parcel is only 80 feet long and it slopes downward to the southwest towards Dellesta Drive. If the applicant is forced to comply with the 30 foot front yard setback requirement there will be little room for a backyard and/or patio. In addition, it would force the residence to be located closer to the slope which in turn would reduce the landscaping that serves to stabilize the slope.

The property owner is not proposing to construct an enormous house. The house is a modest 1,246 square feet. It attaches to a breezeway leading to a 650 square foot garage. The strict application of the zoning

ordinance would cause a hardship and deprive the subject property of a use or improvement otherwise allowed in the identical zone classification. The width of the proposed home and garage is approximately 25 feet which is not excessive in size for a single-family residence.

WCC20.84.120(2) states, "...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." It is staff's opinion that the proposed single-family residence has been designed in a manner which is not based on aesthetics but based on the topography and size of the subject parcel.

3. Lastly, 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 it is situated (WCC20.84.120(3)). If the zoning variance is approved, the property owner will be required to comply with all Whatcom County codes and regulations. The cost of any construction, surveys, mitigation, building permits and professional surfaces will be at the cost of the property owner.

There is anticipated concerns regarding access to the site from North Shore Road since there is a curve in the road east of the subject site which could impair sight distance. The applicant will be required to work with Whatcom County Public Works and a professional engineer or certified land surveyor to ensure the proposal complies with the Whatcom County Road Standards so that the site access does not pose any dangerous situations to the public.

The Technical Review Committee has determined that the proposal meets the three variance requirements for approval pursuant to WCC Chapter 20.84.120.

### **B. Building Code (WCC - Title 15)**

Although conditions are not a requirement for approval of a variance, Whatcom County routed the application and associated documents to staff for their review and comments. The purpose of these comments is to inform the applicant and property owner of some of the major concerns that may need to be addressed if the variance is approved. However, this does not preclude additional requirements, permits, and conditions that may be required pursuant to other County ordinances.

WCC Title 15 adopts and amends the applicable building 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 Chief Plans Examiner submitted a memo dated January 29, 2009 with comments regarding this proposal. The change of the zoning setback does not adversely affect any requirements from the building department. A building permit will be required for this proposal. Due to the scope of the proposed project, the applicant must apply to the Building Official for a pre-application screening prior to building permit application submittal.

The applicant shall comply with all of comments by the Chief Plans Examiner unless modified by the Chief Plans Examiner or appealed to the appropriate agency.

The Technical Review Committee has determined that these are minimum requirements by Whatcom County Planning and Development, Division of Building Services. Additional requirements may result in order to approve and issue a building permit.

### **C. Fire Code (WCC - Title 15)**

WCC Title 15 adopts and amends the applicable fire codes. The Fire Marshal is authorized to promulgate such rules, policies and/or procedures as deemed necessary for safety, designated in IBC Section 103.1 and pursuant to the International Fire Codes hereby referred to as the Office of the Fire Marshal.

The Whatcom County Fire Marshal did not submit any comments regarding this variance request since a building permit is required for the construction of a single-family residence. At the time a SFR permit application has been submitted, the Whatcom County Fire Marshal's Office will review the proposal pursuant to the applicable Whatcom County codes.

The applicant shall comply with all of the conditions on the building permit by the Fire Marshal's Office unless modified by the Fire Marshal or appealed to the appropriate agency.

### **D. Critical Areas (WCC - 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 Whatcom County Natural Resource Specialist submitted a memo dated February 9, 2009. Based on review of the submitted materials and a site inspection by critical area staff, Whatcom County determined that there will be no wetland or habitat conservation area impacts as a result of the proposal.

The Technical Review Committee has determined that if the variance is approved the project will comply with the requirements of WCC Chapter 16.16.

### **E. Watershed Review (WCC - Title 20)**

The Whatcom County Watersheds staff reviewed the proposal and had no objection regarding the request for a zoning variance. If the variance is approved the applicant/owner will need to comply with the following conditions outlined in a memo to staff dated January 26, 2009. These are minimum conditions. Additional requirements may be required as a condition of the building permit for the single family residence:

- 1.) ESC measures shall be installed and inspected per an approved site plan at the time of development permit application. Failure to have measures inspected and signed off will delay any subsequent building inspections. All exposed soils shall be covered with appropriate mulch within two days of disturbance.
- 2.) At the time of development permit application, the manufacturer's specifications for the proposed pervious pavers shall be included on the site plan. Inspection of the sub-base of the pervious pavers as shown on the site plan shall occur prior to installation of top course. Inspection of top course shall occur prior to final inspection. Installation shall be in accordance with manufacturer's specs. Any deviation from the approved plans will require further review and approval.
- 3.) Clearing of existing tree canopy areas (stands of native trees) for a building site, driveways, parking areas, and landscaped areas shall not exceed a cumulative total of 5000 square feet or 35%, whichever is greater, of the existing tree canopy area.
- 4.) Please note that clearing activity as defined in WCC 20.97.054 that will result in exposed soils exceeding 500 square feet shall not be permitted from September 1<sup>st</sup> through April 30<sup>th</sup>.

The applicant shall comply with all of the conditions by the Watersheds staff unless modified by a Whatcom County Watershed Administrator or appealed to the appropriate agency.

The Technical Review Committee has determined that if the variance is approved the project will comply with the requirements of WCC 20.

### **F. Health Code (Title 24)**

The purpose of Title 24 is to provide minimum standards to safeguard public health and welfare by regulating and controlling the activities considered in this title and any related work.

The Whatcom County Health Department did not submit any comments regarding this proposal. However, when the applicant/owner makes application for a building permit for the single-family residence the file will be routed to the Whatcom County

Health Department for review.

The applicant shall comply with all of the conditions placed on the building permit by the Health Department unless modified by the Whatcom County Health Department or appealed to the appropriate agency.

**G. Public Works (WCC Chapter 12.08)**

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.

In a revised memo dated, April 21, 2011, the Whatcom County Public Works, Division of Engineering submitted the following comments regarding this proposal:

**\*\*\*\*\*All development shall comply with WC Development Standards.**

1. The applicant shall obtain an address from the Engineering Services for the proposed SFR.
2. The proposed development is subject to Lake Whatcom watershed review. Detailed drainage proposal and TESC Plan shall address all clearing activities associated with a fill and grade permit or building permit.
3. The proposed access point on North Shore Rd shall meet Whatcom County min. sight distance criteria. Sight distance analyses prepared by the professional engineer or licensed land surveyor shall be submitted with the building permit application for the review and approval.
4. The applicant shall obtain a Revocable Encroachment Permit from the Engineering Services for installation of paved apron on North Shore Rd.
5. An approved turn around shall be provided on the site so vehicles can enter the travel way in a forward motion. Scaled Site Plan clearly showing access location and turnaround area shall be submitted with the building permit application.

The applicant shall comply with all of the comments provided in this document by Whatcom County Public Works, Division of Engineering unless modified by Whatcom County Public Works or appealed to the appropriate agency.

### **VIII. RECOMMENDATION**

Pursuant to WCC 20.84.100, the hearing examiner shall have authority to grant a variance from the provisions of this ordinance when, in the opinion of the hearing examiner, the conditions set forth in WCC 20.84.120 herein have been found to exist. In such cases, a variance may be granted which is in harmony with the general purpose and intent of this ordinance so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done; provided, that no variance shall be granted which authorizes a use which is not permitted by the underlying zoning.

The granting of the request for a variance is due to the unique topography and special circumstances applicable to the subject property. The strict application of the zoning ordinance would cause a hardship and deprive the subject property of a use or improvement otherwise allowed in an identical zone classification.

The Technical Review Committee recommends approval of this zoning variance request to reduce the front yard setback from 30 feet to 15 feet subject to the comments made by staff and pursuant to all other applicable Whatcom County codes.

Report prepared for the Technical Review Committee by:

Suzanne Bosman,  
Senior Planner