

ORIGINAL

No. 40178-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON
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WILLIAM ANTHONY,

Appellant,

v.

MASON COUNTY,

Respondent.

APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR MASON COUNTY

The Honorable Amber Finlay, Judge
Cause No. 09-2-00269-3

An appeal of HEX2008-00040
P. Olbrechts, Hearing Examiner

RESPONSE BRIEF

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TABLE OF CONTENTS

A. APPELLANT’S ASSIGNMENT OF ERROR..... 1

B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR..... 1

C. STATEMENT OF THE CASE..... 2

D. ARGUMENT..... 2

 1. STANDARD OF REVIEW

 2. THE HEARING EXAMINER DID NOT ENGAGE IN AN UNLAWFUL PROCEDURE AND DID NOT FAIL TO FOLLOW A PRESCRIBED PROCESS.

 3. THE HEARING EXAMINER’S DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

 4. THE HEARING EXAMINER’S DECISION IS A CORRECT APPLICATION OF LAW AND IS NOT CLEARLY ERRONEOUS.

 5. THE TERM REASONABLE DEVELOPMENT PROPOSAL IS NOT UNCONSTITUTIONALLY VAGUE.

E. CONCLUSION..... 15

TABLE OF AUTHORITIES

Cases

State

Cingular Wireless, LLC v. Thurston County, 131 Wn.App. 756, 129 P.3d 300 (2006).....9, 10, 12
Sunderland Family Treatment Services v City of Pasco, 127 Wn.2d. 782, 903 P.2d 986 (1995).....14, 15
Vance v. Department of Retirement Systems, 114 Wn.App. 572, 59 P.3d 130 (2002).....11
Whatcom County v. City of Bellingham, 128 Wn.2d. 537, 909 P.2d 1303 (1996).....5

MCC

15.01.020.....12
15.09.030.....4
15.09.057..... 3-8, 12, 13,
17.05.....2
17.05.034..... 3-7, 11, 14
17.05.035..... 3,4,6-8

Rules

RAP 10.3(b).....1

A. APPELLANT’S ASSIGNMENTS OF ERROR

- 1.) The Examiner who made the land use decision engaged in unlawful procedure and failed to follow a prescribed process, and the error was not harmless.
- 2.) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise.
- 3.) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise.
- 4.) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court.
- 5.) The land use decision is a clearly erroneous application of the law to the facts.
- 6.) The land use decision violates the constitutional rights of the party seeking relief.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- 1). Whether the Hearing Examiner either engaged in an unlawful procedure or failed to follow a prescribed process. [Appellant’s Assignment of Error 1]
- 2). Whether the decision is an erroneous interpretation of law. [Appellant’s Assignments of Error 1,2,3,4,5]
- 3). Whether the term “reasonable development proposal” is unconstitutionally vague [Appellant’s Assignment of Error 6]

C. STATEMENT OF THE CASE

Pursuant to RAP 10.3(b), Mason County accepts recitation of the facts set forth in Appellant's opening brief (excepting those portions which are clearly argument or opinion rather than fact, primarily beginning at page 10 of Appellant's Brief).

D. ARGUMENT

1. STANDARD OF REVIEW.

Mason County agrees with Anthony's description of the Standard of Review set forth at Appellant's Brief pages 13 to 15.

2. THE HEARING EXAMINER DID NOT ENGAGE IN AN UNLAWFUL PROCEDURE AND DID NOT FAIL TO FOLLOW A PRESCRIBED PROCESS.

Mason County Code (hereinafter MCC) contains development and zoning regulations in several code sections. Most pertinent to this appeal are the Development Regulations found in Title 15 of the MCC and the Zoning Regulations found in Title 17.05 of the MCC.¹ MCC 17.05 addresses both variances that come before the Hearing Examiner and those that are subject to administrative approval. MCC 17.05.035 refers the reader to MCC 15.09.057 for the findings required for approval of a

variance. MCC 17.05.035 does not differentiate between a variance granted by a Hearing Examiner and a variance granted by an administrative process.

While most requests for variances are heard by the Hearing Examiner, MCC 17.05.034 authorizes administrative variances in certain delineated circumstances:

(c) The administrator may allow a reduction in the required front yard setback or rear yard setback by administrative variance under the following circumstances: for existing lots of record as of March 5, 2002, where physical attributes of the lot (such as steep slopes, wetlands, streams, soils; lot width at the front yard line of no more than fifty feet or lot size of no more than one-quarter acre; and existing improvements of buildings, septic systems, and well areas) preclude a proposed development from meeting the twenty-five-foot front yard setback or twenty-foot rear yard setback standards. The front yard setback or rear yard setback shall be the minimum necessary to accommodate a reasonable development proposal, but not less than ten feet distance from the property line or road access easement boundary. The administrator shall document in the property file the rationale for the administrative variance decision.

(d) The administrator may allow a reduction in the required side yard setback by administrative variance under the following circumstances: for existing lots of record as of March 5, 2002 that are parcels designated as Rural Residential 2.5, Rural Residential 5, Rural Residential 10, or Rural Residential 20; and where physical attributes of the lot (such as steep slopes, streams, wetlands, and soils; lot width at the front yard line of no more than fifty feet or lot size of no more than one-half acre; and existing improvements of buildings, septic

¹ Mason County Code is available online at www.co.mason.wa.us. Copies of the cited-to sections of MCC are appended for the Court's convenience.

systems, and well areas) preclude a proposed development from meeting the twenty-foot side yard setback standard. The variance to the side yard setback shall be the minimum necessary to accommodate a reasonable development proposal. This side yard setback shall not be less than five feet distance from the property line. The administrator shall document in the property file the rationale for the administrative variance decision.

MCC 15.09.030(a)(4) lodges the authority to grant or deny administrative variances for yard setbacks in the Mason County Director of Community Development. The decision to grant an administrative variance is discretionary: “[T]he administrator *may* allow..” see MCC 17.05.034 cited above (emphasis added).

As Anthony notes in his statement of the case at page 8, the County adopted an administrative variance procedure to lessen the burden to landowners of small parcels following zoning changes triggered by the Growth Management Act. In doing so however the County did not eliminate consideration of MCC 15.09.057 in the context of an administrative variance for yard set-backs as is clear from the language in MCC 17.05.035. All variances are subject to the considerations laid out in MCC 17.05.035 by its very terms. The difference is in the application of the considerations in that section of code to administrative variances.

The rules of statutory construction require, if possible, that no section of code be read to render another meaningless and all of the language used:

In interpreting a statute, we do not construe a statute that is unambiguous. *Food Servs. of Am. v. Royal Heights, Inc.*, 123 Wash.2d 779, 784-85, 871 P.2d 590 (1994). If the statute is ambiguous, the courts must construe the statute so as to effectuate the legislative intent. In so doing, we avoid a literal reading if it would result in unlikely, absurd or strained consequences. *State v. Elgin*, 118 Wash.2d 551, 555, 825 P.2d 314 (1992). The purpose of an enactment should prevail over express but inept wording. *Id.*; *State ex rel. Royal v. Board of Yakima County Comm'rs*, 123 Wash.2d 451, 462, 869 P.2d 56 (1994). The court must give effect to legislative intent determined “within the context of the entire statute.” *Elgin*, 118 Wash.2d at 556, 825 P.2d 314; *State ex rel. Royal*, 123 Wash.2d at 459, 869 P.2d 56. Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. *Stone v. Chelan County Sheriff's Dep't*, 110 Wash.2d 806, 810, 756 P.2d 736 (1988); *Tommy P. v. Board of County Comm'rs*, 97 Wash.2d 385, 391, 645 P.2d 697 (1982). The meaning of a particular word in a statute “is not gleaned from that word alone, because our purpose is to ascertain legislative intent of the statute as a whole.” *State v. Krall*, 125 Wash.2d 146, 148, 881 P.2d 1040 (1994).

Whatcom County v. City of Bellingham 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).

Here, the Hearing Examiner dealt with MCC 17.05.034 and MCC 15.09.057 by saying that MCC 15.09.057 is not considered in an administrative variance—that the administrative variance hinges on whether the requested variance is for a “reasonable development proposal.” While that decision results in maintenance of both of those

two sections of code, it obviates the clear, unambiguous language of MCC 17.05.035. It is also inconsistent with the Hearing Examiner's final decision.

If one reads MCC 17.05.035 as applying the considerations contained in MCC 15.09.057 to all variances (which its plain language does) but that the discretionary language in MCC 17.05.034 allows for evaluation of the considerations in MCC 15.09.057 rather than the mandatory evaluation of those same conditions for a non-administrative variance, each of the code sections remains viable.

Such an interpretation is consistent with the rules of statutory construction. Such an interpretation would also be entirely in line with the policy considerations of lessening a burden to certain landowners as discussed above at page 4. Such an interpretation would also help define what a "reasonable development proposal" is for the purpose of an administrative variance. Such an interpretation gives a rational and legal basis to consider impacts on neighboring properties (see MCC 15.09.057(3)) in considering whether to grant an administrative variance. Further, since MCC 17.05.034 and .035 were adopted by Mason County after the adoption of MCC 15.09.057, if the Board of County Commissioners wanted to completely divorce consideration of the factors

in MCC 15.09.057 in an administrative variance the Board could have clearly said so in MCC 17.05.034 or .035 but chose not to.

The Hearing Examiner was correct in determining that the standard variance criteria should not be applied in their strict form to an administrative variance, contrary to the argument by Mr. Cooper, the affected landowner. CP19 at 19 (46).² The Hearing Examiner correctly observed that nothing in MCC 15.09.057 states it is the only consideration in granting or denying a variance request. CP19 at 20 (47).

The Hearing Examiner's final decision rested on his determination that Anthony's request was not a reasonable development:

whether or not a development proposal is reasonable or not depends in part on the impacts it has upon adjacent properties.

...

the impacts upon the Cooper property are as severe as any could be for impairment of views. Even compensating for the fact that only the encroaching portion of the building should be taken into account, the view and aesthetic impacts to the Cooper's are devastating. It is also obvious, with or without the letter from the County Assessor (Exhibit 19), that this view encroachment will significantly affect the value of the Cooper's home.

CP 19 at 21-22 (48-49). "Impacts on adjacent properties" is one of the considerations contained in MCC 15.09.057(3). Perhaps without even

² Since Anthony identified references by using the sequential number placed on the Clerk's Papers by the clerk at the page bottoms, the County will identify both by the Clerk Paper document number with page and parenthetically by sequential number to assist with cross-referencing.

realizing, the Hearing Examiner correctly gave consideration, in the manner of interpretation argued above, to at least some of the standards in MCC 15.09.057 as required by MCC 17.05.035.

The Hearing Examiner did not hold Anthony to the strict standards of MCC 15.09.057 as if this was a request for a non-administrative variance. The Hearing Examiner did not import an improper process. If anything, the Hearing Examiner, perhaps inartfully, perhaps even unknowingly, applied the correct process and standards in denying Anthony's appeal.

3. THE HEARING EXAMINER'S DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

As argued above, consideration of the impacts on adjacent properties are a valid and necessary consideration not only in the regular variance process but also in the administrative process. Therefore, contrary to Anthony's argument, impacts on neighboring property can be substantial evidence.

Substantial evidence is evidence that would persuade a fair-minded person of the truth of the statement asserted. *Freeburg*, 71 Wash.App. at 371, 859 P.2d 610. Our deferential review requires us to consider all of the evidence and reasonable inferences in the light most favorable to the party who prevailed in the highest forum that exercised fact-finding authority. *Freeburg*, 71 Wash.App. at 371-72, 859 P.2d 610. Here, that was the hearing examiner.

Cingular Wireless, LLC v. Thurston County 131 Wn.App. 756, 768, 129

P.3d 300 (2006). The Hearing Examiner noted that the:

color photographs in Exhibits 7 and 18 show that this encroachment would have a severe impact on the water view corridor of the Coopers. The proposed garage would completely block the view of everything on the waterward side of the home. The encroachment itself would take up a significant portion of that view. The view impacts would be significant and severe.”

CP 19 at 19 (46). The Hearing Examiner also considered the Exhibit 19, the evidence from the Assessor’s Office about the impact of the proposed project on the Coopers’s property. CP 19 at 22 (49). The decision clearly rests on substantial evidence of diminished values, both aesthetic and monetary.

Anthony’s assertion that the Hearing Examiner’s decision is flawed because there is no evidence in the record of alternative storage for Anthony’s water toys is misplaced. Anthony himself testified that he had discussed renovating his existing garage and chose not to based on cost which was estimated at double the cost of a separate building. RP 91 (CP 228). This testimony alone shows that there are alternatives, even if it is expensive or inconvenient.

4. THE HEARING EXAMINER'S DECISION IS A
CORRECT APPLICATION OF LAW AND IS NOT
CLEARLY ERRONEOUS

Anthony argues that aesthetics alone may not be the sole basis for denying a proposed use. Appellant's Brief at 23. The Hearing Examiner's decision rests on in part on diminished value. This argument fails on its face.

Anthony argues that community opposition or unsubstantiated fear of reduced value alone are insufficient. While the community here obviously opposed the variance, the Hearing Examiner's decision is based on the aesthetic and value impacts to Cooper's property. This argument also is facially flawed and must fail.

Anthony asserts that the Hearing Examiner's decision is clearly erroneous since it is based on the same arguments forwarded in support of his claim that the decision was an incorrect application of law.

The clearly erroneous standard (d) test involves applying the law to the facts. *Citizens to Preserve Pioneer Park, L.L.C. v. The City of Mercer Island*, 106 Wash.App. 461, 473, 24 P.3d 1079 (2001). Under that test, we determine whether we are left with a definite and firm conviction that a mistake has been committed. *Citizens to Preserve*, 106 Wash.App. at 473, 24 P.3d 1079. Again, we defer to factual determinations made by the highest forum below that exercised fact-finding authority. *Citizens to Preserve*, 106 Wash.App. at 473, 24 P.3d 1079.

Cingular Wireless at 768. Again, the Hearing Examiner properly considered the evidence before him concerning view impacts, monetary

impacts and alternatives and is entitled to deference in his factual determinations. The decision is not clearly erroneous.

5. THE TERM REASONABLE DEVELOPMENT PROPOSAL IS NOT UNCONSTITUTIONALLY VAGUE.

“Reasonable Development Proposal” as used in MCC 17.05.034 is not defined in Mason County Code.

In the absence of such a definition, statutory construction requires that we give undefined words their common and ordinary meaning. *Id.*; *State v. Argueta*, 107 Wash.App. 532, 536, 27 P.3d 242 (2001). To ascertain this meaning, we may use a dictionary. *Argueta*, 107 Wash.App. at 536, 27 P.3d 242. In determining the meaning of a term in a statute, we must also consider the intent of the Legislature. *Pac. Towers*, 108 Wash.App. at 340, 30 P.3d 504. If statutory language is susceptible to more than one definition, we will adopt the definition that promotes the purpose of the statute. *Id.* at 340-41, 30 P.3d 504.

Vance v. Department of Retirement Systems 114 Wn.App. 572, 577, 59 P.3d 130 (2002).

Anthony argues that this Court’s conclusion is dictated by the discussion between the planner and Hearing examiner about whether or not view-related impacts should be considered in the administrative variance context. Appellant’s Brief at 32. The proper consideration however is given by applying the rules of statutory construction as cited herein.

As a compound phrase, the real crux in determining whether “reasonable development proposal” is so vague as to require a person of ordinary intelligence to guess at it’s meaning³ is what does “reasonable” mean in this context. Development is defined in MCC 15.010.020 as “means any land use permit or action regulated by Titles 6, 7, 8, 14, 16, and 17 MCC, including but not limited to construction permits, conditional use permits, variances, or subdivisions.”

Reasonable has been defined as agreeable to reason or sound judgment; logical; not exceeding the limit prescribed by reason; not excessive; moderate; endowed with reason; capable of rational behavior.⁴ The term reasonable is not an obscure or arcane term. It is used repeatedly in the law (e.g. reasonable inference, reasonable doubt, reasonable effort) and is unquestionably part of common parlance. To suggest that a person of common intelligence would not have an understanding of the meaning of reasonable is simply laughable.

As pointed out above, the intent of the legislative body is also clear. By creating the administrative variance procedure, the county legislative body granted some level of discretion to the department of community development to grant a variance outside of the strict, mandatory requirements of MCC 15.09.057. The legislative body did not

³ *Cingular Wireless, LLC v. Thurston Co.*, 131 Wn.App. 756, 777, 129 P.3d 300 (2006).

however state that the review authority *could not* consider the factors in MCC 15.09.057. In fact, it is clear that all variances, administrative or otherwise, must be viewed in light of the MCC 15.09.057 factors. The difference is that in an administrative variance, those factors are not mandatory but are there to provide guidance. And the administrative variance decision-making process is not specifically limited to consideration of the MCC 15.09.057 factors.

Imposing a definition on the term “reasonable development proposal” in the context of a discretionary process would obviate the legislative intent of providing potential relief for a class of affected landowners. A definition which spelled out what could be considered in an administrative variance application would by its very nature limit the ability of the review officer to look at the individual characteristics of the application, positive and negative, and exercise the discretion granted by County code.

Anthony complains that the planner’s evaluation of other neighborhood garages is somehow not a consistent, logical and predictable application of the code. The planner stated it was done out of common sense and courtesy. EX 12 (see also Appellant’s Brief at 18). Common sense and courtesy are undoubtedly within the realm of “reasonableness.”

⁴ Definitions from www.dictionary.com

Comparing other similar facilities in the neighborhood, particularly a small neighborhood such as this, is logical and reasonable. The planner did not state that she would not have done a similar evaluation in other circumstances. Nor can it be said that exactly this type of inquiry would not have been predictable under the circumstances.

Whether impacts on neighboring property is considered by direction of the code as argued above, or considered purely under the umbrella of “reasonable development proposal, ” the same evidence is considered and the result is the same: Anthony’s proposal was properly denied.

Would a person of ordinary intelligence have to guess whether a development proposal to double garage space in a manner that completely obliterated a neighbor’s view and negatively impacted that neighbor’s property value not raise a question of reasonableness? Unlikely. The term “reasonable development proposal” as used in MCC 17.05.034 is not constitutionally infirm.

Anthony relies heavily on *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 782, 903 P.2d 986 (1995) for the proposition that general standards are inadequate. That is not what *Sunderland* says. The Court in *Sunderland* at 797 specifically recognizes that Washington “however, has adopted the minority position and does not require specific

standards. We require only general standards, such as those contained in a comprehensive plan.” (emphasis added). The Court in *Sunderland* did find that the City could not justify its decision but did not go so far as to require specific standards.

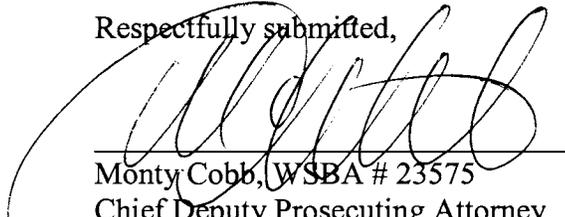
The phrase “reasonable development proposal” is not unconstitutionally vague nor does existing Washington caselaw require more specific criteria.

E. CONCLUSION

Based on the foregoing, the County respectfully asks this Court to affirm the decision of the Hearing Examiner which had previously affirmed the denial of Anthony’s requested variance.

DATED this 29th day of April 2010.

Respectfully submitted,



Monty Cobb, WSBA # 23575
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CASE NAME: ANTHONY v. MASON COUNTY

CASE #: 40178-9-II

CITED SECTIONS OF MASON COUNTY CODE

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15.01.020 Definitions.

The following definitions shall apply to this title:

"Accessory structure" is defined in the relevant code or ordinance.

"Adjacent property owners" means the persons who are owners of lots, as shown on the county assessor records, within three hundred feet, not including street rights-of-way, of the boundaries of the property which is the subject of the meeting or pending action.

"Closed record public meeting" means a public meeting where the hearing body receives the record of past public hearings on the matter and evaluates the proposal based upon that established record of standards and issues brought up previously. Testimony is taken but the issues are limited to the topics of past public hearing review.

"Code" means the Mason County Code or portion of that code.

"Completed application" is per RCW 36.70B.070.

"Comprehensive plan" means the Mason County comprehensive plan, as amended.

"Comprehensive plan amendment" means an amendment or change to the text or maps of the comprehensive plan.

"Date of decision" means the date on which final action occurs and from which the appeal period is calculated.

"Density" is defined in the relevant code or ordinance.

"Development" means any land use permit or action regulated by Titles 6, 7, 8, 14, 16, and 17 MCC, including but not limited to construction permits, conditional use permits, variances, or subdivisions.

"Development code" means the Mason County development code, Title 15 of the Mason County Code.

"Effective date" means the date a final decision becomes effective.

"Final decision" means the final action by the review authority, hearing examiner, or board of county commissioners.

"Lot" is defined in the relevant code or ordinance.

"MCC" means the Mason County Code.

"Open record public hearing" means an open record hearing held by an authorized hearing body, at which evidence is presented, testimony is recorded, and decision is made, to form the local government record on the review and decision-making of the planned action.

"Ordinance" means any or all of the adopted Mason County ordinances or resolutions.

"Party of record" means any person who has testified at a public hearing or has submitted a written

statement related to a development action and who provides the county with a complete address.

"Person" means any person, firm, business, corporation; partnership of other associations or organization, marital community, municipal corporation, or governmental agency.

"Project" means a proposal for development.

"Project permit" is per RCW 36.70B.020(4).

"Review authority" means the director of community development, the director of health services, the fire marshal, or the building official, depending on the responsibility as determined by the respective codes, ordinances, and regulations. Responsibilities of the review authority may be delegated when not contrary to law or ordinance.

"Setback" is defined in the relevant code or ordinance.

"Variance" is defined or used in the relevant code or ordinance.

"Yard" is defined in the relevant code or ordinance.

(Ord. 80-03, Attach. B (part), 2003; Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002; Ord. 88-02, Attach. B (part), 2002; Ord. 116-01, Attach. A (part), 2001; Ord. 129-00, Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.09.030 Type I and Type II review– Without notice.

(a) After the determination of a complete application, the review authority may approve, approve with conditions, or deny the following without notice, unless notice is otherwise required (for example, short subdivision applications):

(1) Type I decisions;

(2) Extension of time for approval;

(3) Minor amendments or modifications to approved developments or permits. Minor amendments are those which may affect the precise dimensions or location of buildings, accessory structures and driveways, but do not affect: (i) overall project character, (ii) increase the number of lots, dwelling units, or density or (iii) decrease the quality or amount of open space;

(4) Adjustment to yard setbacks;

(5) Type II decisions, which are excluded as provided in Section 15.03.010 of this title.

(b) The review authority's decisions under this section shall be final on the date issued.

(Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.09.057 Variance criteria.

Variations from the bulk and dimension requirements of the resource ordinance or the development regulations (zoning regulations) may be allowed as follows. The county must document with written findings compliance or noncompliance with the variance criteria. The burden is on the applicant to prove that each of the following criteria are met:

- (1) That the strict application of the bulk, dimensional or performance standards precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by county regulations;
- (2) That the hardship which serves as a basis for the granting of the variance is specifically related to the property of the applicant, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the county regulations, and not, for example from deed restrictions or the applicant's own actions;
- (3) That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the environment;
- (4) That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief;
- (5) That the public interest will suffer no substantial detrimental effect;
- (6) No variance shall be granted unless the owner otherwise lacks a reasonable use of the land. Such variance shall be consistent with the Mason County comprehensive plan, development regulations, resource ordinance and other county ordinances, and with the growth management act. Mere loss in value only shall not justify a variance.

(Ord. 32-04 Attach. B (part), 2004).

Article IV. Variances

17.05.031 Purpose.

The purpose of this section is to provide a means of altering the requirements of this chapter in specific instances where the strict application of these regulations would deprive a property of privileges enjoyed by other properties which are similarly situated, due to special features or constraints unique to the property involved.

(Ord. 108-05 Attach. B (part), 2005).

17.05.032 Use variances prohibited.

No variance shall be granted to permit the establishment of a use otherwise prohibited within the development area in which the property concerned is located, except as provided in Section 17.05.018 (2). Applications for such variances shall not be accepted for processing or review.

(Ord. 108-05 Attach. B (part), 2005).

17.05.034 Granting of variances authorized.

(a) The hearing examiner shall have the authority to grant a variance from the provisions of this chapter when, in their opinion, the conditions set forth in Section 17.05.036 have been met. The hearing examiner shall have the authority to attach conditions to any such variance when, in their opinion, such conditions are necessary to protect the public health, safety or welfare, or to assure that the spirit of this chapter is maintained.

(b) The administrator shall have the authority to grant a variance from the provisions of this chapter when the granting of such variance will result in a measurable deviation of ten percent or less from the provisions set forth in this chapter. In issuing such variance, the administrator shall make a positive determination that the conditions set forth in Section 17.05.035 have been met. The administrator shall have the authority to attach conditions to any such variance when, in his (her) opinion, such conditions are necessary to protect the public health, safety or welfare, or to assure that the spirit of this chapter is maintained.

(c) The administrator may allow a reduction in the required front yard setback or rear yard setback by administrative variance under the following circumstances: for existing lots of record as of March 5, 2002, where physical attributes of the lot (such as steep slopes, wetlands, streams, soils; lot width at the front yard line of no more than fifty feet or lot size of no more than one-quarter acre; and existing improvements of buildings, septic systems, and well areas) preclude a proposed development from meeting the twenty-five-foot front yard setback or twenty-foot rear yard setback standards. The front yard setback or rear yard setback shall be the minimum necessary to accommodate a reasonable development proposal, but not less than ten feet distance from the property line or road access easement boundary. The administrator shall document in the property file the rationale for the administrative variance decision.

(d) The administrator may allow a reduction in the required side yard setback by administrative variance under the following circumstances: for existing lots of record as of March 5, 2002 that are parcels designated as Rural Residential 2.5, Rural Residential 5, Rural Residential 10, or Rural Residential 20;

and where physical attributes of the lot (such as steep slopes, streams, wetlands, and soils; lot width at the front yard line of no more than fifty feet or lot size of no more than one-half acre; and existing improvements of buildings, septic systems, and well areas) preclude a proposed development from meeting the twenty-foot side yard setback standard. The variance to the side yard setback shall be the minimum necessary to accommodate a reasonable development proposal. This side yard setback shall not be less than five feet distance from the property line. The administrator shall document in the property file the rationale for the administrative variance decision.

(Ord. 108-05 Attach. B (part), 2005).

17.05.035 Findings required for approval of a variance.

See Mason County Code Title 15 Development Code Section 15.09.057.

(Ord. 108-05 Attach. B (part), 2005).

17.05.036 Procedural requirements for a variance.

(a) Application for a variance shall be made to the department of community development, on forms furnished by the county.

(b) Any application for a variance shall include an application fee as established by the board.

(c) Variance applications decided by the hearing examiner shall require a public hearing, as set forth in Section 17.05.050 of this chapter.

(Ord. 108-05 Attach. B (part), 2005).

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

WILLIAM ANTHONY,)
)
 Appellant,)
)
 vs.)
)
 MASON COUNTY,)
)
 Respondent,)
 _____)

No. 40178-9-II

DECLARATION OF
FILING/MAILING
PROOF OF SERVICE

FILED
COURT OF APPEALS
10 APR 30 PM 12:19
STATE OF WASHINGTON
BY _____
DEPUTY

I, TRICIA KEALY, declare and state as follows:

On April 29, 2010, I deposited in the U.S. Mail, postage properly prepaid, the documents related to the above cause number and to which this declaration is attached (RESPONSE BRIEF with CITED SECTIONS OF MASON COUNTY CODE), to:

Kristin L. French
P.O. Box 1400
Shelton, WA 98584

I, Tricia Kealy, declare under penalty of perjury of the laws of the State of Washington that the foregoing information is true and correct.

Dated this 29th day of April, 2010, at Shelton, Washington.


Tricia Kealy

Mason County Prosecutor's Office
521 N. Fourth Street, P.O. Box 639
Shelton, WA 98584
(360) 427-9670 ext. 417
(360) 427-7754 FAX