



## PUBLIC HEARING

The public hearing commenced on May 11, 2006 at 10:33 p.m.

1. The hearing was attended by Dean Peterson, appellant; Stacey Abbott, PDS; and Ed Good, Deputy Hearing Examiner.
2. Parties were sworn, exhibits were entered, testimony was taken, examination and cross-examination were offered, and rebuttal was available.

The hearing concluded at 11:57 p.m.

**NOTE:** For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS OF FACT**

Based on all the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.
2. Appellant Dean Peterson timely filed on February 21, 2006 an appeal from an administrative decision of February 6, 2006 which had denied him a variance which, if granted, would have allowed an already built four-car garage (with a dwelling as its second story) within eight feet from the road setback from 231<sup>st</sup> Street instead of the 20 feet required by SCC 30.23.030(1).
3. The garage and it's second story dwelling (the "bonus room") had been built without a building permit and occupied in violation of SCC 30.22.030. As a consequence, a Notice and Order had been issued by Snohomish County on December 13, 2004. Appellant Peterson had appealed from that Notice and Order and the result was a decision by Snohomish Hearing Examiner Robert J. Backstein entered July 26, 2005 imposing a monetary penalty of \$300.00 upon Mr. Peterson unless, by August 25, 2005, he had either obtained an occupancy permit or had ended the occupancy of the dwelling over the garage. Nine months later, the unlawful occupancy continues in a dwelling unlawfully intruding 12 feet into a 20-foot road setback. Further, the \$300.00 fine remains unpaid.
4. In pursuit of a resolution, appellant Peterson filed the instant application for a variance from the setback. The application was denied on February 1, 2006. This appeal is from that denial. On appeal, Mr. Peterson asserts that a 150-foot setback from Swamp Creek combined with two front yard setbacks due to being a corner lot create a special circumstance that does not so restrict other parcels in the vicinity and, therefore, denies him a substantial property right possessed by others in the vicinity. (See criteria 1 and 2, variance approval criteria, SCC 30.43B.100.) He asks:

"...where on this property could one build anything? My property is only 165 feet wide!" (Appeal statement, Exhibit 1)

5. The evidence of record answers what can be built on the subject site: the site now contains a home built many years ago, a cottage, the subject four-car garage and the subject dwelling comprising the second floor of that same garage.
6. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

**CONCLUSIONS OF LAW**

Based on the findings of fact entered above, the following conclusions of law are entered.

1. The appellant has not met the burden of proving by a preponderance of the evidence that he is denied the reasonable use of the subject property by special circumstances not applicable to similarly situated lots in the vicinity. Thus, he fails to satisfy the first two criteria for approval of a variance.
2. When the appellant purchased the subject site, he knew or had reason to know the development constraints applicable to the site. Had he applied for a building permit early on, he would have learned the specifics of setbacks and might have chosen to build a garage with fewer than four car bays, or angled it differently, or learned that another dwelling is unlawful on the lot whether above a garage or not. Despite the constraints, the lot is providing a home and outbuildings which amount to a reasonable use in comparison to other lot in the vicinity and zone.
3. The decision of the Department of Planning and Development Services should be, and herein is, affirmed.
4. Any conclusion in this decision which should be deemed a finding of fact is hereby adopted as such.

**DECISION:**

For all of the above reasons, the appeal is **DENIED** and the Department’s decision is **AFFIRMED**.

Decision issued May 26, 2006.

\_\_\_\_\_  
Ed Good, Deputy Hearing Examiner

<p><b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b></p>
--

This decision of the Hearing Examiner is final and conclusive with right of judicial review in Superior Court pursuant to the Land Use Petition Act, Chapter 36.70C RCW. However, reconsideration by the Examiner may also be sought by one or more parties of record. (The Examiner’s action on reconsideration would be subject to appeal to Court.) The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration procedures, please see Chapter 30.72 SCC and the Examiner rules of procedure.

Reconsideration

Any Party of Record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2802 Wetmore Avenue, 2<sup>nd</sup> Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **JUNE 5, 2006**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” (SCC 30.72.065)**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner’s decision which could not reasonably have been produced at the Examiner’s hearing; and/or
- (f) changes to the application proposed by the applicant in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the county file number in any correspondence regarding this case.

**EXPLANATION OF APPEAL PROCEDURES**

The following paragraphs summarize the appeal process. For more information about appeals to Superior Court, please see Chapter 36.70C RCW, RCW 43.21C.075, WAC 197-11-680, Chapter 30.85 SCC and applicable court rules.

Pursuant to Chapter 30.85 SCC and Chapter 36.70C RCW, any person having standing under RCW 36.70C.060 may file a Land Use Petition in Superior Court. Service on parties must be as required by RCW 36.70C.040.

The cost of transcribing the record of proceedings, of copying photographs, video tapes, and oversized documents, and of staff time spent in copying and assembling the record and preparing the return for filing with the court shall be borne by the petitioner. [RCW 36.70C.110] Please include the county file number in any correspondence regarding this case.

Staff Distribution:

Department of Planning and Development Services: Stacey Abbott

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.” A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.