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BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)
) **FILE NO. 06 102728 LU**
MATT ECHELBARGER BUILDING COMPANY)
)
Rezone from R-9,600 to LDMR and official site)
plan approval for 24 mixed duplex and single-family)
detached units on a 2.5 acre site)

DATE OF DECISION: March 29, 2007

PLAT/PROJECT NAME: *MEBC – Marino Road*

DECISION (SUMMARY): The proposed rezone and 24-dwelling official site plan are **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: This project is located at 11529 Marino Avenue, Everett, Washington.

ACREAGE: 2.5 acres

ZONING: CURRENT: Residential-9,600 (R-9,600)
PROPOSED: Low Density Multiple Residential (LDMR)

UTILITIES:
Water/Sewer: Alderwood Water and Wastewater

SCHOOL DISTRICT: Mukilteo No. 6

FIRE DISTRICT: No. 1

INTRODUCTION

The applicant filed the Master Application on April 17, 2006. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 9, 10 and 11)

A SEPA determination was made on February 7, 2007. (Exhibit 8) No appeal was filed.

The Examiner held an open record hearing on March 14, 2007, the 144th day of the 120-day decision making period. Witnesses were sworn, testimony was presented and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on March 14, 2007 at 2:00 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved.
2. The applicant, Matt Echelbarger, was represented by S. Michael Smith of Lovell-Sauerland & Associates. Snohomish County was represented by Erik Olson of the Department of Planning and Development Services.
3. No member of the general public participated in this matter except to request party of record status.

The hearing concluded at 3:11 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 of 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. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That report is hereby adopted by the Examiner as if set forth in full herein unless otherwise stated below.

3. The zoning in the area is a mixture of R-9,600, R-7,200 and LDMR. The property directly to the east is zoned Business Park and developed with business uses. Other parcels in the vicinity are developed with single-family homes. The staff report recommends that the offered official site plan be approved as in compliance with SCC Chapters 30.22 through .26. The Examiner concurs.
4. The project would comply with park mitigation requirements under Chapter 30.66A SCC (Title 26A SCC) by the payment of \$1,244.49 for each new single-family home.
5. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B SCC) as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.
6. School mitigation requirements under Chapter 30.66C SCC (Title 26C SCC) have been reviewed and set forth in the conditions.
7. There is a Category 3 wetland on the southern end of the hammerhead. A 25-foot buffer will be established between development and the wetland. Mitigation will be provided for the disturbance caused by installing the drainage outfall to the wetland.
8. The PDS Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC (Title 24 SCC).
9. The Snohomish County Health District has no objection to this proposal provided that public water and sewer are furnished.
10. Public water and sewer service will be available for this development as well as electrical power.
11. The property is designated Urban Medium Density Residential (6-12 du/ac) on the General Policy Plan (GPP) Future Land Use Map (FLUM) and is located within an Urban Growth Area (UGA). According to the GPP, the LDMR designation covers various subarea plan designations which would allow mostly detached housing developments on larger lot sizes. One of the implementing zones is the LDMR zone, which is the zoning requested here.
12. The Urban Medium Density Residential designation covers various sub-area plan designations which allow a combination of detached homes on small lots, townhouses, and apartments in low density, multifamily residential developments. Land in this category may be developed up to a maximum density of twelve dwelling units per acre. Implementing zones include the requested Low Density Multiple Residential zone. The requested rezone to LDMR and proposed official site plan will be consistent with the General Policy Plan designation of the property.
13. Chapter 30.42A covers rezoning requests and applies to site-specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

The hearing examiner may approve a rezone only when all the following criteria are met:

- (1) the proposal is consistent with the comprehensive plan;
- (2) The proposal bears a substantial relationship to the public health, safety, and welfare; and
- (3) Where applicable, minimum zoning criteria found in Chapters 30.31A through 30.31F SCC are met.

It is the finding of the Examiner that the request meets these requirements generally and should be approved.

14. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
15. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report (as amended by agreement of the parties during the hearing) as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their relationship to the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions. The Department of Planning & Development Services recommends that the official site plan be approved regarding compliance with the use allowed in the underlying zone, setbacks, lot coverage, lot size, access to the site and internal circulation, landscaping and parking. The Examiner concurs with the recommendation of those two departments.
3. The request is consistent with the (1) GMACP, GMA-based County codes, (2) the type and character of land use permitted on the site, (3) the permitted density, and (4) the applicable design and development standards.
4. The request is for a rezone and therefore must comply with Chapter 30.42A. This is a site specific rezone that conforms to the Comprehensive Plan and because no evidence was submitted of non-compliance with the requirements of Chapter 30.42A, the project is presumed to meet those requirements.
5. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

DECISION

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The requests for a rezone from Residential-9,600 to Low Density Multiple Residential and official site plan approval for the development of 24 mixed duplex and single-family detached units are hereby **CONDITIONALLY APPROVED**, subject to the following stipulations:

PRE-CONDITION

A record of developer's Chapter 30.66B SCC mitigation obligations and concurrency shall have been recorded with the County Auditor against the real property on which the development is proposed.

CONDITIONS

- A. The official site plan received by PDS on November 1, 2006 (Exhibit 12) shall be the official site plan and approved development configuration.

- B. (1) Minor revisions or changes in the official site plan may be permitted by administrative action of the director and shall be properly recorded within the project file and as a part of the records for the approved building permits. A "minor" revision means any proposed change in an official site plan that does not involve a substantial alteration of the character of the approved development.
(2) Major revisions of an official site plan shall be processed in the same manner as an original application. A "major" revision means any proposed change in conditions that substantially alter the character of the approved development.
(3) The determination of whether a proposed change is a "major" or "minor" revision shall be made by the director.
(4) Any minor revisions or changes shall be noted on the official site plan filed with the department. A major revision requires a new official site plan.

- C. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.

 - ii. The developer shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.

 - iii. A final mitigation plan shall be submitted for review and approval during the construction review phase of this project.

 - iv. A Critical Areas Site Plan (CASP) shall be recorded with the county auditor for critical areas and buffers that lie within a Native Growth Protection Area (NGPA). The following NGPA restrictive language shall be reflected on the CASP: "All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees."

- v. The units within this development will be subject to school impact mitigation fees for the Mukilteo School District No. 6 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given as allowed by 30.66C.150
- vi. Chapter 30.66B SCC requires mitigation payments in the amounts shown below for each single-family residential building permit:

The amount of \$1,635.32 per unit shall have been paid to Snohomish County as mitigation for project impacts on road system capacity within Transportation Service Area “D”,
The amount of \$48.48 per unit for Transportation Demand Management paid to the county,
- vii. The developer shall pay the County \$1,244.49 per new dwelling unit as mitigation for parks and recreation impacts to the Nakeeta Beach Park Service Area No. 307, in accordance with Chapter 30.66A SCC.
- viii. 1.5 feet of additional right-of-way, parallel and adjacent to the existing right-of-way of Marino Avenue shall have been deeded to the County along the development’s entire frontage.

D. Prior to final of the first building permit:

- i. Frontage improvements conforming to county standards shall have been installed along the developments frontage on Marino Avenue.
- ii. The final wetland mitigation plan shall be completely implemented..
- iii. All Marino Avenue frontage landscaping shall be installed.
- iv. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The applicant may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors’ cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to Planning and Development Services for review and approval prior to installation.
- v. Bonding as to any of the above conditions is allowed where permitted by the Snohomish County Code.

E. In conformity with applicable standards and timing requirements:

The preliminary landscape plan (Exhibit 13) shall be implemented. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.

F. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations.

Decision issued this 29th day of March, 2007.

Ed Good, Deputy Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council 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, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **APRIL 9, 2007**. 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 Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application 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.

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **APRIL 12, 2007** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

Staff Distribution:

Department of Planning and Development Services: Erik Olson

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.

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than MARCH 29, 2008.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of

_____, _____.

Certified by:

(Name)

(Title)