



3. On September 27, 2007, the Maulsbys filed an application for an administrative variance from the minimum building setback requirements set forth in SCC 30.23.030 for a 2-car garage that was built on the subject property without permits. The County Code requires that the garage meet setbacks of: (1) 20-feet from the edge of the 60-foot County right-of-way on S.W. Lake Roesiger Road; and (2) 20-feet from the edge of the private driveway (an access easement) that serves the subject property. The variance requests that each of these standards be reduced by 50 percent to 10 feet.
4. The variance was subject to the requirements of SCC 30.43.B.100. On November 26, 2007, the Department of Planning and Development Services (PDS) issued its decision denying the variance request. (Exhibit 2) Mr. and Mrs. Maulsby filed an appeal on December 10, 2007. (Exhibit 1)
5. This appeal is governed by Ch. 30.71 SCC, and the Appellants have the burden of proof to show by a preponderance of the evidence that the Department's decision should be overturned.
6. An open record hearing was held on February 1, 2008. Appellant Charlotte Maulsby appeared and testified on behalf of Appellants. Amy Selia, Eric Olsen and Mark Brown appeared and testified on behalf of PDS.
7. In order to grant a variance, PDS was required to find that all four criteria set forth in SCC 30.43.100 are met. They include: (a) There are special circumstances applicable to the subject property or to the intended use, such as size, shape, topography, location or surroundings, that do not apply generally to other properties or classes of use in the same vicinity and zone; (b) A variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties in the same vicinity and zone but which because of special circumstances is denied to the property in question; (c) The granting of the variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity and zone in which the subject property is located; and (d) the granting of the variance will not adversely affect the comprehensive plan.
8. In the present case, PDS determined that the variance request failed to meet three of the four criteria. In particular, PDS held that (a) there are no special circumstances present in this case; (b) the variance is not required to preserve or enjoy a substantial property right or use held by others in the vicinity; (c) that the applicant has *not* shown that the variance is not detrimental to neighboring properties, and without a survey, the County was unable to determine the effect of the variance on the adjacent county road. (Exhibit 2)
9. The Appellant's land is in a state similar to many other parcels in this area along Lake Roesiger. The Appellants have not provided evidence showing that their property is unique or different from those in the vicinity subject to the same setback requirements. As noted by PDS in its decision, many properties in the area lack parking garages. The evidence reveals that the garage could have been built in a manner that meets the required setbacks. The topography, size and shape of the subject property are substantially similar to other properties located in the area. The facts presented here do not lead the Hearing Examiner to conclude that special circumstances exist on the subject property. To allow the Appellants to avoid the setback requirements absent such special circumstances would amount to the granting of a special privilege not allowed for other parcels in the vicinity. PDS was correct in finding that the request here is contrary to the criteria set forth in SCC 30.43B.100(1). The Appellants have failed to show by a preponderance of the evidence that the PDS decision should be overturned as to this criterion.
10. The Appellants argue that a variance is necessary to preserve a substantial property right or use enjoyed by other properties in the same vicinity. However, the Appellants have failed to show how their use or enjoyment of the subject property is impaired, where that use is otherwise available to other properties in

the vicinity. As noted above, there are many other properties in the vicinity that lack a separate parking structure. Prior to construction of the parking garage, Appellants had a parking pad on which to park their vehicles. This has not changed. Appellants have not argued that any other use of the subject property is impaired by the setback requirements. The Appellants have failed to show by a preponderance of the evidence that the PDS decision should be overturned as to this criterion.

11. Finally, although there was no evidence in the record at the time of the PDS decision that the granting of the variance here would not be detrimental to neighboring properties, the Appellants have provided additional evidence that shows that this criterion has been met. The Appellants have purchased an easement from the Williams. (Exhibit 25) They obtained a boundary line adjustment (Exhibits 26-28), and letters were received from neighboring property owners stating their lack of objection to the parking garage. (Exhibit 25, 26). Accordingly, the Appellants have met their burden of proof of showing that criterion 3 has been met in this case.

## II. CONCLUSIONS OF LAW

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

1. The Hearing Examiner is authorized to hear and decide this matter pursuant to SCC Title 2 and SCC 30.85.
2. A variance to a building setback requirement can only be granted using the criteria found in SCC 30.43.B.100. The Appellants have failed to show by a preponderance of the evidence that PDS erred in denying their variance request. Although the Hearing Examiner finds that based on new evidence presented after PDS made its decision that criterion 3 is met in this case, the Appellants still fail to meet the criterion 1 and 2. All four criteria must be met to approve a variance. Here, no additional special circumstances have been shown. Further, the Appellants are being treated similarly to other similarly situated properties in the area. They continue to enjoy the property rights that existed at the time they purchased the property – that is to live in their residence and park their car on the parking pad serving the subject property. Denying the variance does not change this fact.
3. PDS correctly determined that, under the facts presented here, the variance should be denied. The Appellants have failed to prove by a preponderance of the evidence that PDS erred in making its decision.
4. Any Conclusion in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

## III. DECISION and ORDER

Based on the entire record, and the Findings of Fact and Conclusions of Law, the appeal is *denied*.

Ordered this 13<sup>th</sup> day of March, 2008.

\_\_\_\_\_  
Millie Judge, *Pro Tem* Hearing Examiner

<b>EXPLANATION OF APPEAL PROCEDURES</b>
---

Reconsideration. Reconsideration may be sought by any party of record by filing a written petition for reconsideration with the Hearing Examiner within 10 days of the date of this decision. Additional requirements for reconsideration are set forth in SCC 30.71.120.

Appeals. This decision of the Hearing Examiner is a final and conclusive land use decision of the County, with a right of judicial review in Superior Court pursuant to the Land Use Petition Act, Chapter 36.70C RCW. The date of the final decision for purposes of appeal shall be March 13, 2008.

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.

Please note that the staff of the Office of the Hearing Examiner cannot provide you with legal advice about your appeal. For more information about appeals to Superior Court, please refer to Chapter 36.70C RCW, RCW 43.21C.075, WAC 197-11-680, Chapter 30.85 SCC, as amended, and applicable court rules. If you have questions, you are urged to consult with your legal counsel.

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: Amy Selia, Land Development Specialist

<p>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.</p>
---