



Hearing Examiner's Office

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**FINAL DECISION of the
SNOHOMISH COUNTY HEARING EXAMINER**

Millie Judge
Hearing Examiner

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DECISION DATE: June 30, 2011

PLAT/PROJECT NAME: Mountain Loop Bed and Breakfast

APPLICANT/LANDOWNER: Reza and Roswitha Soltani
7747 18th Avenue NE
Seattle, WA 98115

FILE NO.: 09-105551 LU

TYPE OF REQUEST(S): Conditional Use Permit

DECISION (SUMMARY): **Granted subject to Conditions**

LOCATION: 30528 Mountain Loop Highway, Granite Falls, Washington
Section 7, Township 30 North, Range 8 East, W.M.,
Snohomish County, WA

PDS STAFF RECOMMENDATION: *Approve subject to conditions*

This matter having come before the Hearing Examiner on June 21, 2011, and the testimony of witnesses having been heard and all exhibits having been admitted into evidence and considered, the Hearing Examiner enters the following Findings of Fact, Conclusions of Law and Decision based on a preponderance of the evidence:

FINDINGS OF FACT

1. **The Record.** The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A.1 through I), as well as the testimony of witnesses received at the open record hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

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

2. **Parties of Record.** The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the open record hearing.

3. **Public Hearing.** The Hearing Examiner held an open record appeal hearing on June 21, 2011. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notice of the application and public hearing were made according to

the provisions of SCC 30.70.050(5). (Exhibits E.1, E.2 and E.3) Roxanne Pilkenton and Trace Justice appeared and testified on behalf of the Snohomish County Planning and Development Services Department (PDS), along with Reza and Rosewitha Soltani, the Applicants. No members of the public testified at the public hearing.

4. Application Request. The Applicants are the owners of certain real property known as tax parcel 300807-004-001-00, located at 30528 Mountain Loop Highway in Granite Falls, Washington (hereinafter, the "subject property"). The applicant seeks to obtain a Conditional Use Permit to use a portion of their single-family residence for a bed and breakfast inn. The use requires no additional development of the subject property.
5. Site description. The 8.07 acre site is accessed off of an existing driveway on Mountain Loop Highway. The site is developed with a large, owner-occupied, single-family residence, approved detached accessory apartment and various accessory structures. (Exhibit A.1) The existing single-family residence is setback 280 feet from Mountain Loop Highway, with an expansive intervening lawn and landscaping. The distance to the nearest neighbors on the east and west is 230 feet and 120 feet respectively, to their fence lines. Portions of the site are within the floodway fringe portion of the mapped floodplain of Snohomish County and adjacent to the South Fork of the Stillaguamish River. The current FEMA Federal Insurance Rate Maps show that the existing single-family dwelling in the floodplain. However, the applicant has provided a Letter of Map Amendment (LOMA) (Exhibits F.1 and F.2) showing that FEMA recognizes that the structure is located outside of the mapped floodplain. A sign advertising the bed and breakfast is located on the subject property off of the Mountain Loop Highway.
6. Adjacent uses. The subject property is surrounded by medium and large size lots developed with single-family residences and various outbuildings. The surrounding area is all zoned R-5 and designated Rural Residential-5 (1 DU/5 acres) in the Comprehensive Plan.
7. State Environmental Policy Act Compliance. A SEPA threshold Determination of Nonsignificance (DNS) was made on May 3, 2011. (Exhibit D.2) Notice of the decision was made according to the County's regulations. (Exhibits E.1, E.2 and E.3) No appeal of the SEPA determination was filed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.
8. Issues of Concern
 - A. Public Agency Review. No issues of concern were identified by any reviewing agencies.
 - B. Citizens. The County received comments from the property owner located to the south of the subject property, expressing concerns about flood control and that elevating the berm on the Soltani property fronting along the river would cause increased flooding on their property. (Exhibit G.6) However, no new development, specifically elevating a berm, is proposed or allowed as part of this Conditional Use Permit request. Another neighbor submitted a letter of support for the proposed use.
9. Approval Criteria. The applicant is required to obtain a Conditional Use Permit to operate a bed and breakfast on the subject property and must meet all applicable zoning and development regulations.

9.1 Conditional Use Permit. Conditional use permits are governed by SCC 30.42C.100. This section provides that the hearing examiner may approve, approve with conditions, or deny a conditional use permit only when all the following criteria are met:

- (a) The proposal is consistent with the comprehensive plan;
- (b) The proposal complies with applicable requirements of this title;
- (c) The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
- (d) The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.

The applicant submitted a document (Exhibit H.2) demonstrating the project's consistency with the conditional use permit approval criteria. Said Exhibit is hereby adopted and incorporated herein by this reference as if set forth in full. In addition, the Hearing Examiner finds that no new development is proposed with the Conditional Use Permit application. The existing single-family structure, detached accessory apartment and outbuildings when operated as a bed and breakfast activity will give no outward appearance nor manifest any characteristics of a business, except for its signage. The existing landscaping further minimizes the impacts upon the residential character of the surrounding neighborhood.

9.2 Zoning Regulations. The land use category of "Bed and Breakfast Inn" is allowed as a Condition Use in the R-5 zone. The subject application must also meet the County's zoning regulations. Specifically, the application must be consistent with the County's bed and breakfast performance regulations, bulk, parking, and landscaping standards.

A. Landscaping. Landscaping requirements are set forth in Chapter 30.25, SCC. Table SCC 30.25.020(1) indicates that a 20 foot-wide Type A landscape buffer is required along the property perimeter, apart from the portion of the site abutting public road frontage, where a 10 foot-wide Type B buffer is required per SCC 30.25.020(4). However, the landscaping standards are not applicable to the Conditional Use Permit because it is a change of occupancy where the use would generate a need for five or less additional parking spaces over the number of existing spaces. See, SCC 30.25.012(3)(b). Only four additional parking spaces are required to be provided for the bed and breakfast, as described below.

B. Parking. Per SCC 30.26.030(1), the number of parking spaces required for "Bed and breakfast guesthouses and inns" is two, plus one per guest room. Because there are two guest rooms, four parking spaces are required for the proposed bed and breakfast. The applicant has shown four additional parking spaces in addition to the three car garage attached to the existing single family structure. (Exhibit B.3) One of the spaces shown in Exhibit B is for the approved detached accessory apartment located on site.

C. Sign. A sign for a bed and breakfast inn may be allowed in conjunction with a Conditional Use Permit if the sign is stationary and, if illuminated, is lit with indirect lighting. Lighting which is flashing, blinking, or of variable intensity is prohibited per SCC 30.27.060(4). In the R-5 zone, the sign may be single or double-faced with dimensions not exceeding 15 square feet per face. The applicant shall submit, as part of the application for a Conditional Use Permit, sign designs and elevations that are compatible with the bed and breakfast structure and the surrounding rural character and neighborhood in which the guesthouse or inn is located per SCC 30.27.060(4)(b). Currently an unpermitted three foot

by five foot sign advertising the "Mountain Loop Bed and Breakfast" is located on the subject site. (See, Exhibit F4). The applicant must bring the sign into compliance with the County's regulations as a condition of approval.

9.3 Bed and Breakfast Minimum Performance Standards. The applicant must meet the requirements of the bed and breakfast minimum performance standards, as follows:

- A. Parking requirements shall be in accordance with SCC Table 30.26.030(1). Here, no on-street parking is allowed pursuant to SCC 30.28.020(3)(a). Parking requirements have been met as shown above.
- B. Meal service shall be limited to overnight guests of the establishment. Kitchens shall not be allowed in individual guest rooms per SCC 30.28.020(3)(b). Here, no kitchens will be constructed in any guest room and all meals will be prepared by the owners for guests. (Exhibit H.1)
- C. The owner shall operate the facility and reside on the premises according to SCC 30.28.020(3)(c). The owner has signed a Declaration of Owner Occupancy. (Exhibit A.1) The owners have also stated their intent to reside in the main house and operate the facility. (See also, Exhibit H.1)
- D. One sign for business identification and advertising shall be permitted in conjunction with the bed and breakfast establishment in accordance with SCC 30.27.060(4) per SCC 30.28.020(3)(d). The existing sign must be brought into compliance with the county's regulations.
- E. The bed and breakfast establishment shall be conducted in such a manner as to give no outward appearance nor manifest any characteristics of a business, except as to the sign as allowed above, that would be incompatible with the ability of the neighboring residents to enjoy peaceful occupancy of their properties pursuant to SCC 30.28.020(3)(e). The Hearing Examiner finds that the Bed and Breakfast guests will not significantly alter the low-intensity residential use of the subject property. The house is setback 280 feet from Mountain Loop Highway, with an expansive intervening lawn and landscaping. Nothing about the character or appearance of the property will be altered by the proposed bed and breakfast use. No additional growth or development is proposed. The existing natural area on the lower four acres of property will be preserved. The distance to the nearest neighbors on the east and west (respectively) is 230 feet and 120 feet to their fence lines. Several neighbors have signed a letter which indicates their support of the proposed bed and breakfast use. (Exhibit G.7)
- F. Guests stays at the bed and breakfast are limited to no more than 10 consecutive days at time pursuant to SCC 30.28.020(3)(f). The applicant has agreed to limit the number of days guests may stay at their facility as required by the Code. (Exhibit H.1)
- G. The applicant shall submit a letter from the applicable water purveyor and sewer district, if applicable, stating that each of them has the respective capacity to serve the bed and breakfast inn per SCC 30.28.020(3)(g). This requirement has been met as demonstrated by Exhibits G.3, G.4, G.8, and G.9. Water is available from an onsite well. Sewage disposal will occur through onsite septic. The Snohomish Health District (SHD) has no objection to the proposed Conditional Use Permit provided the water system is approved by the Washington State Department of Health Office of Drinking Water for a Public Water Supply. (Exhibit G.9)

- H. The applicant shall comply with all applicable county codes for fire, health, and building requirements and any applicable food service regulations and on-site sewage disposal requirements of the Snohomish Health District. PDS has reviewed the proposed use and found that the Applicants has met the County's applicable fire, health and building requirements subject to the proposed conditions of approval. (Exhibits I, G.4)
- I. The applicant shall comply with the applicable state regulations pertaining to public water systems, if a water system is to be developed or connected to an existing public water system pursuant to SCC 30.28.020(3)(h). As noted above, the use will be served by a private well, rather than a public water system, so this requirement is not applicable.
- J. If an accessory apartment or temporary dwelling exists on the premises, the maximum number of bed and breakfast guest rooms shall be on less than otherwise permitted per SCC 30.28.020(3)(l). Because an approved detached accessory apartment is located on the subject property, only two, instead of three rooms are allowed to be used for the bed and breakfast. This limitation on the proposed use has been added as a recommended condition of approval.

9.4 Development Regulations. Finally, the Applicant must demonstrate that they have met all other applicable development regulations applicable to the proposed use. Here, in addition to reviewing the applicable zoning and performance standards discussed above, PDS has reviewed the application for its conformance with traffic mitigation and road design standards set forth in Titles 13 SCC and Chapter 30.66B SCC, and found that the project meets those standards or that the standards are not applicable. (Exhibit I) There are no traffic, school or park mitigation impact fees owing as a result of the proposed use. The proposed use and current developed status of the property meets the applicable drainage regulations and the grading regulations do not apply as no new development is proposed. There are no activities proposed that would trigger review under the County's critical areas regulations. (Exhibit I) Based on the foregoing, the Hearing Examiner finds that the application meets the proposed development regulations.

- 10. Any Finding of Fact which should be deemed a Conclusion of Law in this Decision is hereby adopted as such.

CONCLUSIONS OF LAW

- 1. The Examiner has original jurisdiction over the Conditional Use Permit application pursuant to Ch. 2.02 SCC and SCC 30.72.020.
- 2. Based upon the entire record and the Findings of Fact herein, the Examiner concludes that the application has met all of the required approval criteria for a Conditional Use Permit, subject to the proposed conditions of approval set forth in Exhibit I by PDS, which should be adopted.
- 3. The proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.

4. The proposal complies with applicable requirements of Title 30 SCC.
5. The proposal will not be materially detrimental to uses or property in the immediate vicinity.
6. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.
7. Adequate public services exist to serve the proposal.
8. If approved with the recommended conditions, the proposal would make adequate provisions for the public health, safety and general welfare and will not be detrimental to the immediate vicinity.
9. The Examiner concludes that the Conditional Use Permit should be approved.
10. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact is hereby adopted as such.

DECISION AND ORDER

The Conditional Use Permit is **approved, subject to the following conditions:**

CONDITIONS

- A. The site plan received by PDS on 13 April 2010 (Exhibit B.1) shall constitute the official site plan. Any discrepancy between the content of the official site development plan and the performance standards of Title 30 SCC shall be resolved in favor of Title 30 SCC. SCC 30.42C.110 governs revisions to Conditional Use Permits.
- B. Prior to Certificate of Occupancy issuance a commercial mechanical permit shall be applied for, installed and given final approval for the installation of a fully monitored NFPA 72 fire alarm system. The Certificate of Occupancy shall be subject to an annual inspection and renewal pursuant to SCC 30.53A.060.
- C. Meal service shall be limited to overnight guests of the establishment. Kitchen facilities shall not be allowed in individual guest rooms.
- D. Only one single or double faced sign with dimensions not exceeding 15 square feet per face, with indirect lighting shall be allowed on site. Lighting which is flashing, blinking, or of variable intensity is prohibited. Prior to Certificate of Occupancy, a permit for the existing sign, meeting the requirements of the Sign Code, shall be obtained.
- E. Guests shall be permitted to stay at the establishment for not more than 10 consecutive days at a time.
- F. The bed and breakfast shall be limited to two guest rooms in the main single-family dwelling structure. The detached accessory apartment shall not be used in the bed and breakfast operation.

Dated this 30th day of June, 2011.



Millie M. Judge, 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 **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before JULY 11, 2011**. 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 **within 14 days from the date of this decision**. 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 at the Public Assistance Counter of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: 3000 Rockefeller Avenue M/S 604, Everett, WA 98201) **on or before JULY 14, 2011**, and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

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.

Where applicable, the Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by PDS. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Roxanne Pilkenton

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.

PARTY OF RECORD REGISTOR
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