

SPOKANE COUNTY HEARING EXAMINER

RE: Variance from setback requirements,)	
in the Rural Traditional (RT) Zone;)	
Applicant: Dwight Hume)	FINDINGS OF FACT,
File No. VE-02-09)	CONCLUSIONS OF LAW,
_____)	AND DECISION

I. SUMMARY OF DECISION

Hearing Matter: Application for a front yard setback variance in the RT zone, for a single-family dwelling.

Summary of Decision: Approve variance, subject to conditions of approval.

II. FINDINGS OF FACT

1. The application requests a variance from the minimum front yard setback requirements of the Rural Traditional (RT) zone; to allow the construction of a booster pump station, for public water supplied by Moab Irrigation District #20, to be placed a minimum distance of 10 feet from the property line along Morris Road.
2. The site is located at the northeast corner of the intersection of Morris Road and Simpson Road, in unincorporated Spokane County.
3. The site is currently referenced as County Assessor's tax parcel no. 56231.0301.
4. The applicant for the proposed variance is Dwight Hume, 9101 N. Mt. View Lane, Spokane, WA 99218. The site owner is Moab Irrigation District #20, 25805 E. Trent, P.O. Box 81, Newman Lake, WA, 99025.
5. On February 19, 2009, the applicant submitted a complete application for the proposed variance.
6. The variance application is exempt from compliance with the State Environmental Policy Act and the County Environmental Ordinance, pursuant to WAC 197-11-800(6)(b).
7. On May 13, 2009, the Hearing Examiner conducted a public hearing on the variance application. The notice requirements for the public hearing were met. The Examiner conducted a site visit on May 11, 2009.
8. The Hearing Examiner heard the application pursuant to the County Hearing Examiner Ordinance (Chapter 1.46 of County Code), and the County Hearing Examiner Rules of Procedure (County Resolution No. 96-0294).
9. The following persons testified at the public hearing:

Tammy Jones
County Building and Planning Department
1026 W. Broadway Avenue
Spokane, WA 99260

Scott Engelhard
County Division of Engineering and Roads
1026 W. Broadway Avenue
Spokane, WA 99260

Dwight Hume
9101 N. Mt View Lane
Spokane, WA 99218

10. The Hearing Examiner takes notice of the Spokane County Comprehensive Plan, Zoning Code, Phase 2 Development Regulations, Critical Areas Ordinance, and Standards for Road and Sewer Construction; County Code; other applicable development regulations; and past land use decisions in the vicinity.

11. The record includes the documents in the application file at the time of the public hearing, the documents and testimony submitted at the public hearing, and the items taken notice of by the Hearing Examiner.

12. The site is approximately one (1) acre in size, roughly rectangular in shape, and a residential lot in a subdivision recorded in 1984. A single-family dwelling is located in the northwest portion of the site, with an accessory building located in the southwest portion of the site. The residence fronts along Simpson Road. The site contains residential lawn areas and landscaping, and several evergreen trees.

13. A rectangular-shaped easement that is 50 feet wide, 35 feet deep and 1,750-square foot in area burdens the middle of the south end of the site, adjacent to Morris Road. An underground booster pump station for the irrigation district is situated in the south end of the easement, extends a few inches above the surface, and encroaches a few feet into the adjacent right of way for Morris Road. There is no evidence of a building permit being issued for the pump station.

14. A 6-foot high chain link fence and a segmented concrete block retaining wall are located approximately six (6) feet from the north border of the easement area, at the edge of a steep slope that rises up to the front lawn of the residence.

15. The site plan of record submitted on February 19, 2009 illustrates a proposed aboveground booster pump station within the easement area; that is 18 inches feet wide, 14 inches deep, and 10 feet tall to the peaked roof that would cover the structure.

16. The proposed pump station is illustrated 10 feet from the right of way for Morris Road, 4.4 feet from the west border of the easement, and 4.0 feet from the north border of the easement. The existing pump station would be removed.

17. The application materials indicate that placement of the new pump station north of the existing facility will greatly minimize the disruption of service that would result from replacing the new station where the existing station is located; and that the new station cannot be set back

further from the road due to the dimensions of the easement, and the steep slope on the site located northerly of the retaining wall in the easement area.

18. County Critical Areas designate the site in a critical aquifer recharge area (CARA) of high susceptibility to groundwater contamination, and as White-tailed Deer priority wildlife habitat.
19. The site and neighboring land are designated in the Rural Traditional category of the Comprehensive Plan, designated outside the County Urban Growth Area (UGA), and zoned Rural Traditional (RT).
20. The land lying west of the site across Simpson Road is undeveloped and wooded; with other neighboring land consisting of single-family dwellings on acreage parcels of various sizes.
21. Simpson Road and Morris Road are considered Rural Local Access Roads, and consist of paved 2-lane roads without curb or sidewalk. The County Arterial Road Plan designates Starr Road to the southeast as a Rural Major Collector.
22. Neighboring property owners did not comment on the application.
23. County Engineering conditions of approval advise that the County Engineer found the 10-foot setback of the proposed pump station from Morris Road to be acceptable; and require the applicant to submit a parking and traffic circulation plan for review, to ensure consistency with standard engineering practices.
24. County Engineering did not address the treatment of the stormwater generated by construction of the pump station under the CARA regulations of the County Critical Areas Ordinance. A condition of approval should be added that addresses this requirement.
25. The County Building and Planning Department properly did not require the applicant to submit a habitat management plan; considering the lack of response to the application by the Washington State Department of Fish and Wildlife, and the existing easement area has little vegetation.
26. The Staff Report sets forth the purpose and intent of the Rural Traditional category of the Comprehensive Plan.
27. The policies of the Comprehensive Plan for domestic water system are generally supportive of the need for the new pump station. See policies on pages CF-8 and CF-9.
28. The RT zone is intended for large-lot residential uses and resource-based industries, along with rural-oriented recreation. The minimum lot size in the RT zone is 10 acres and the minimum frontage per dwelling unit is 330 feet, outside of rural cluster development. The site is a legal nonconforming lot in the RT zone, with regard to such standards.

7. The variance application, as conditioned, complies with other relevant development standards of the RT zone, the County Critical Areas Ordinance, and other applicable development regulations.
8. The application meets the variance approval criteria set forth in Section 14.406.100 of the County Zoning Code.
9. Minor revisions should be made to the conditions of approval recommended by public agencies, to assure the consistency of the proposed variance with the variance approval criteria set forth in the County Zoning Code, and other applicable development regulations.
10. Approval of the variance application, as conditioned, is appropriate under Section 1.46.110 of the Spokane County Code (Hearing Examiner Ordinance).

IV. DECISION

Based on the Findings of Fact and Conclusions of Law stated above, the application for variance from the minimum front yard setback required in the Rural Traditional (RT) zone, to allow a booster pump station for public water facilities to be constructed a minimum distance of 10 feet from the lot front line of Morris Road, is hereby *approved*; subject to the conditions of public agencies stated below.

Any conditions of approval of public agencies that have been added, or materially revised, by the Hearing Examiner, are *italicized*.

Conditions of Approval

SPOKANE COUNTY BUILDING AND PLANNING DEPARTMENT:

1. All conditions imposed by the Hearing Examiner shall be binding on the "Applicant"; which term shall include the owner and developer of the property, and their heirs, assigns and successors.
2. The variance applies to the property currently referenced as County Assessor tax parcel no. 56231.0301; and more particularly described as Lot 1, Block 2 of Eastwood Terrace, per plat recorded at Book 17, Page 25 of Plats, records of the Spokane County Auditor.
3. The proposal shall comply with the Rural Traditional (RT) zone, except for the setback deviation permitted to the required minimum front yard setbacks; and shall comply with all other applicable provisions of the Spokane County Zoning Code, as amended.
4. The applicant shall develop the subject property in substantial conformance with the Site Plan of Record submitted on February 19, 2009. *The pump station shall be located no closer than 10 feet from the right of way for Morris Road.* All variations must conform to regulations set forth in the Spokane County Zoning Code, as amended.

5. The Building and Planning Department shall prepare and record with the Spokane County Auditor a Title Notice, which shall serve as public notice that the site is subject to the approval of a zoning setback variance and special conditions imposed as a result of the approval. The Title Notice should be recorded within the same time frame as allowed for an appeal and shall only be released, in full or in part, by the Building and Planning Department. The Title Notice shall generally provide as follows:

“The parcel property legally described as “Lot 1, Block 2 of Eastwood Terrace, per plat recorded at Book 17, Page 25 of Plats, records of Spokane County Auditor” is the subject of a land use action by the Spokane County Hearing Examiner on August 3, 2009, approving a setback variance for a water booster pump station and imposing various special development conditions. File No. VE-02-09 is available for inspection and copying in the Spokane County Building and Planning Department”.

SPOKANE COUNTY DIVISION OF ENGINEERING AND ROADS:

Prior to release of a building permit, or use of the property as proposed:


1. The County Engineer has reviewed the requested 10-foot setback from the right-of-way, and found that the request is acceptable for the proposed public utility expansion.
2. A parking plan and traffic circulation plan shall be submitted and accepted by the Spokane County Engineer. The design, location and arrangement of parking stalls shall be in accordance with standard engineering practices.
3. Roadway standards, typical roadway sections and drainage plan requirements are found in Spokane County Resolution No. 3-0770 as amended, and are applicable to this proposal.
4. No construction work is to be performed within the existing or proposed public right-of-way until a permit has been issued by the County Engineer. All work is subject to inspection and approval by the County Engineer.
5. Approach Permits are required for any access to the Spokane County road system.
6. The applicant is advised that there may exist utilities either underground or overhead affecting the applicant's property, including property to be dedicated or set aside future acquisition. Spokane County will assume no financial obligation for adjustments or relocation regarding these utilities. The applicant should contact the applicable utilities regarding responsibility for adjustment or relocation costs and make arrangements for any necessary work.
7. The Spokane County Engineer has reviewed the project for transportation concurrency under the County Phase 2 Development Regulations, and determined that it is exempt under Spokane County Code, Section 13.650.104 (2)(d)(iv).
8. *The site is located in a critical aquifer recharge area (CARA) of High susceptibility to groundwater contamination, under the Spokane County Critical Areas Ordinance (as amended*

by County Resolution No. 9-0609). The Critical Areas Ordinance protects aquifers used for potable water, and requires compliance with the Spokane Regional Stormwater Manual (SRSM).

9. The SRSM requires development to treat stormwater runoff from pollutant-generating impervious surfaces (PGIS), including vehicular traveled ways and parking areas. Treatment is required for the affected runoff within a CARA of moderate or high susceptibility prior to subsurface disposal or discharge to surface waters. In urban areas, the expected treatment method is bio-infiltration ('208') swales. In rural areas, the expected method is natural dispersal.

DATED this 3rd day of August, 2009

SPOKANE COUNTY HEARING EXAMINER


Michael C. Dempsey, WSBA #8235

NOTICE OF FINAL DECISION AND NOTICE OF RIGHT TO APPEAL

Pursuant to Section 1.46.130 of the Spokane County Code, and RCW Chapter 36.70C, the decision of the Hearing Examiner on an application for a variance is final and conclusive unless within twenty-one (21) calendar days from the issuance of the Examiner's decision, a party with standing files a land use petition in superior court pursuant to RCW Chapter 36.70C. Pursuant to RCW Chapter 36.70C, the date of issuance of the Hearing Examiner's decision is three (3) days after it is mailed.

This Decision was mailed by Certified Mail to the Applicant, and by first class mail to other parties of record, on August 3, 2009. The date of issuance of the Hearing Examiner's decision is therefore August 6, 2009. **THE LAST DAY FOR APPEAL OF THIS DECISION TO SUPERIOR COURT BY LAND USE PETITION IS AUGUST 27, 2009.**

The complete record in this matter, including this decision, is on file during the appeal period with the Office of the Hearing Examiner, Third Floor, Public Works Building, 1026 West Broadway Avenue, Spokane, Washington, 99260-0245. The file may be inspected during normal working hours, listed as Monday - Friday of each week, except holidays, between the hours of 8:30 a.m. and 5:00 p.m. Copies of the documents in the record will be made available at the cost set by Spokane County.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.