

BEFORE THE COLUMBIA RIVER GORGE COMMISSION

STEVEN CLARK and CHERYL KEARNEY,)	
)	
Petitioners,)	CRGC No. COA-S-99-04
)	
vs.)	
)	
SKAMANIA COUNTY,)	FINAL OPINION AND
)	ORDER
)	
Respondent,)	
_____)	

This case involves an appeal by Steven Clark and Cheryl Kearney from a decision of Skamania County approving their application to construct a single family dwelling. Mr. Clark and Ms. Kearney assign error to Skamania County's decision approving a variance to the setback requirement from the southern property line instead of approving a variance to the setback requirement from the northern property line as they has requested. We affirm.

The property is located in the Special Management Area and is 5 acres in size. An offer was made to the U.S. Forest Service for acquisition of the property. The Forest Service did not acquire the property; hence, pursuant to section 8(o) of the Scenic Area Act, the property was assigned a GMA land use designation. The property is currently designated Small Woodland. Mr. Clark and Ms. Kearney submitted an application to construct a dwelling on this property.

The property is 330 feet in width. Skamania County Code § 22.08.070(B)(2) requires that all dwellings on forest land shall be set back at least 200 feet from adjacent properties. No dwelling could be sited on this

property in full compliance with these setback requirements. Skamania County Code § 22.08.150 authorizes variances to setbacks if full compliance with one setback would cause the dwelling to be sited within another setback area.

Mr. Clark and Ms. Kearney requested the County allow a variance to the northern setback area, in which case the dwelling would be located within the 200-foot setback area as measured from the northern boundary of the property. The County Planning Director approved the application to construct the dwelling, but allowed a variance to the southern setback area. The Board of Adjustment upheld the Planning Director's decision. Mr. Clark and Ms. Kearney then filed this appeal with the Columbia River Gorge Commission.

The Columbia River Gorge Commission met on February 8, 2000 to hear oral argument and deliberate to a decision.

The issues presented here are both legal and factual in nature. For the legal issues, our review focuses on whether the decision violates a provision of applicable law and is prohibited as a matter of law, or whether the decision improperly construes the applicable law based on the record before us.¹ For the

¹ Commission Rule 350-60-220(1) provides:

"(1) The Commission shall reverse or remand a land use decision for further review when:

- (a) The governing body exceeded its jurisdiction;
- (b) The decision is unconstitutional;
- (c) The decision violates a provision of applicable law and is prohibited as a matter of law; or
- (d) The decision was clearly erroneous or arbitrary and capricious.
- (e) The findings are insufficient to support the decision;
- (f) The decision is not supported by substantial evidence in the whole record;
- (g) The decision is flawed by procedural errors that prejudice the substantial rights of the petitioner(s);

factual issues, our review focuses on whether the decision is supported by substantial evidence in the whole record and thus is not clearly erroneous or arbitrary and capricious.²

Mr. Clark and Ms. Kearney contend that because the land adjacent to the north is designated SMA-Open Space (a designation which does not permit forest practices), siting the dwelling closer to the southern property line will conflict more with potential forest practices to the south than with forest practices to the north. Mr. Clark and Ms. Kearney also contend that siting the dwelling in the southern portion of the property will require additional clearing of forest trees; increase excavation; increase runoff into a nearby stream; increase risk of injury in the event of an explosion along a nearby gas pipeline; and increase possible contamination of a well to the south of the property.

Skamania County contends that the parcels to the south are similar in size and use to the subject parcel and hence less likely than the parcel to the north to be used for forest purposes. Skamania County also contends that on balance, its decision to place the dwelling in the southern portion of the property better meets the requirements for siting dwellings on forest land (SCC 22.08.070(B)(2)) than if the dwelling were sited in the northern portion of the property because the southern location would be closer to the main road, thus minimizing overall disturbance to the parcel, and minimizes the amount of forest land used to site dwellings, structures, access roads, and service corridors.

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- (h) The decision improperly construes the applicable law; or
 - (i) A remand is required pursuant to 360-60-090(2)(d).

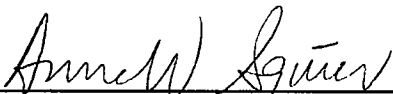
² See Note 1 for the text of 350-60-220(1).

While the Commission recognizes that other decisions might also be consistent with Skamania County's land use ordinance, we do not believe that Skamania County erred in its application of its ordinance.

We hold the County's decision did not violate applicable law and is not prohibited as a matter of law; further we hold the County's decision properly construed the applicable law based on the record before us. We also hold Skamania County's decision was supported by substantial evidence in the whole record and thus is not clearly erroneous or arbitrary and capricious.

The decision of the Skamania County Board of Adjustment is **AFFIRMED**.

DATED this 22nd day of February, 2000



Anne W. Squier, Chair
Columbia River Gorge Commission

NOTICE: You are entitled to judicial review of this Final Order within 60 days from the date of this order, pursuant to section 15(b)(4) of the Scenic Area Act, P.L. 99-663.