Reasonable use exception

Chapter 24.45

Reasonable Use Exception

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24.45.010  Reasonable use exception – Generally.
A reasonable use exception is required when adherence to the provisions of this title would deny all reasonable use of the subject property as a whole, due to the property’s size, topography, or location relative to the critical area and any associated buffer. A reasonable use exception shall only be granted if no other reasonable alternative method of development is provided under this title and the Thurston County Code. The reasonable use exception shall comply with all provisions of this chapter.

24.45.020  Reasonable use exception – Certain properties not eligible.
The inability of an applicant to derive reasonable use shall not be a result of a self-created hardship such as subdividing the property, adjusting a boundary line, or other actions thereby creating the undevelopable conditions after [the effective date of this title], or a self-created hardship created under the applicable standards of Chapter 17.15 TCC after February 1, 1994.
Reasonable use exception – Eligible properties.
Except as otherwise prohibited by this chapter, any property owner may apply for a reasonable use exception to carry out a use or activity not permitted by this title or for which approval has been denied under this title on legally created lots, including but not limited to lots created through subdivisions, short subdivisions, large lot subdivisions, binding site plans, and other legal property divisions.

Reasonable use exception – Review criteria.
The hearing examiner shall approve, or approve with conditions, the reasonable use exception if:

A. No other reasonable use of the property as a whole is permitted by this title; and

B. No reasonable use with less impact on the critical area or buffer is possible. At a minimum, the alternatives reviewed shall include a change in use, reduction in the size of the use, a change in the timing of the activity, a revision in the project design, and a variance for yards and setbacks. Standards required pursuant to Titles 20, 21, 22, and 23 TCC; and

C. The requested use or activity will not result in any damage to other property and will not threaten the public health, safety or welfare on or off the development proposal site, or increase public safety risks on or off the subject property; and

D. The proposed reasonable use is limited to the minimum encroachment into the critical area and/or buffer necessary to prevent the denial of all reasonable use of the property; and

E. The proposed reasonable use shall result in minimal alteration of the critical area including but not limited to impacts on vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions; and

F. The reasonable use being considered is consistent with the requirements, purposes, and intent of this title, and other requirements of the Thurston County Code; and

G. The reasonable use is consistent with the goals and policies of the Thurston County Comprehensive Plan; and

F4. A proposal for a reasonable use exception shall ensure no net loss of critical area functions and values. The proposal shall include a mitigation plan consistent with this title and best available science. Mitigation measures shall address unavoidable impacts and shall occur onsite first, or if necessary, offsite. The report shall also address the other criteria in this section; and

G4. The reasonable use shall not result in the unmitigated adverse impacts to species of concern; and
HJ. The location and scale of existing development on surrounding properties shall not be the sole basis for granting or determining a reasonable use exception.

24.45.040 Reasonable use exception – Hearing and review process.
The hearing and review process for reasonable use exceptions shall be as provided in Chapter 24.05 TCC.Along with a recommendation made by the department, the application shall be heard by the hearing examiner established pursuant to Chapter 2.06 TCC. Notice of the hearing shall be given in the manner required by TCC Section 20.60.020(3).

24.45.050 Hearing examiner decision – Required findings.
Following the closure of a public hearing on a reasonable use exception, the hearing examiner shall enter a decision in conformance with Chapter 2.06 TCC. In making the decision, the hearing examiner shall enter findings of fact upon which the decision is based. The findings of fact shall address each criterion in Section 24.45.030 separately.

24.45.060 Reasonable use exception – Subject to conditions.
The hearings examiner may grant a reasonable use exception subject to conditions and safeguards designed to ensure no net-loss to critical area functions and values. The conditions shall be written in consideration of best available science. The written conditions shall not violate the purpose and intent of this chapter, title and the Thurston County Comprehensive Plan. The conditions shall be included with the decision and findings required by Section 24.45.050.

24.45.070 Reasonable use exception – Application requirements.
The application for a reasonable use exception shall be filed with the Resource Stewardship Department in accordance with Chapter 24.05 TCC. The report shall also address the other criteria in this section.

24.45.080 Reasonable use exception – Limitation on review.
The fact that property may be utilized more profitably than allowed based on strict interpretation of this title shall not be an element of consideration in any review of a reasonable use request. Reasonable use exceptions shall not be permitted for the subdivision of land.

24.45.090 Reasonable use exception – Time limits – Expiration.
A reasonable use exception shall expire if the use or activity for which it is granted is not commenced within three (3) years of final approval by the hearings examiner. The reasonable use exception shall also expire when the use or activity is vacated for a period of three years. Knowledge of the expiration date is the responsibility of the applicant.