Introduction

Thurston County is updating its existing Critical Areas Ordinance, which took effect in 1994. The ordinance governs how development and redevelopment can occur on or near environmentally sensitive lands and lands that affect our community’s public health and safety (such as steep slopes and flood plains). This document summarizes how proposed amendments would affect “nonconforming uses.”

Please be aware that the Board of County Commissioners is currently reviewing the draft Critical Areas Ordinance. The Board will consider all public testimony received at its public hearing. To see draft chapters and fact sheets, visit www.ThurstonPlanning.org and click on the “Critical Areas Update” photo box.

What is a Nonconforming Use?

Generally, a nonconforming use is a land use or development that was legally built or established at the time, but that no longer meets requirements because the requirements have changed.

How Would This Affect Me?

If approved, potential amendments to the Critical Areas Ordinance may expand buffers in some areas, such as streams. If your house was built outside of a buffer, but ends up in a newly expanded buffer under the revised Critical Areas Ordinance, the house would become “legal nonconforming.”

Becoming a “nonconforming use” does not mean that a home is illegal. It does, however, mean that there are limits to expanding the footprint of that home within a buffer, or building new structures within the buffer.

Reasonable Use Exception

As you will see on the following pages, proposed amendments to the Critical Areas Ordinance include some flexibility for property owners. Property owners may also apply for a “Reasonable Use Exception” if they believe Critical Areas Ordinance buffers leave them with no reasonable use of their properties. Applicants must demonstrate that no other reasonable use can occur without impacting the buffers. This process requires a public notification and a public hearing before the Thurston County Hearing Examiner.

Contact Information

Visit www.ThurstonPlanning.org for more information, or contact Andrew Deffobis, Associate Planner. Phone: (360) 754-3355 ext. 5467. E-mail: deffoba@co.thurston.wa.us. To sign up for our web mail service, click the “Web Mail” link near the top of the web site.
SIZE OF WETLAND BUFFERS

Under proposed amendments, the range of wetland buffers would remain the same as the existing ordinance that is now in effect (50 feet to 300 feet); however, the method of determining buffer widths would change. Some buffers may be narrower than they are now, and some may be larger, depending on the wetlands’ functions. The potential amendments would increase pond buffers from about 50 feet to 100 feet to protect water quality.

EXISTING - NATURAL DISASTER
Could rebuild within existing footprint if natural disaster causes damage beyond repair (flooding, fire, accident), but would have to comply with current building codes. (Different rules apply for homes that are in frequently flooded areas. See illustration of frequently flooded areas.)

EXISTING HOME-PARTIALLY OUTSIDE BUFFER
Remodeling could expand footprint on this side.

EXISTING CAN STAY
Remodeling, maintenance and repair would have to remain in existing footprint. Vertical expansions would be ok.

NEW

See “Reasonable Use Exception” described on page 1.

If a lot had less than 5,000 square feet of buildable area because of a buffer...

...development may be able to extend into outer 25% to 50% of buffer to achieve up to 5,000 square feet, depending on critical area. This is roughly the size of a city lot. Mitigation may be required (such as planting native plants).
Riparian Habitat Areas (Stream Buffers)

SIZE OF RIPARIAN HABITAT AREAS

Under proposed amendments, stream riparian habitat areas (buffers) would be set at 100 to 250 feet, depending on how they are classified by the state Department of Natural Resources. Stream riparian areas are now between 25 and 100 feet. A 50-100 foot riparian habitat management zone would be located alongside the buffer. Development could occur in this area, however, standards would be set for uses or activities that would generate excessive nutrients, sediments or pollutants that could reach the stream or buffer.

For salt water shorelines, the riparian habitat area would be 50-250 feet and the riparian habitat management zone would be 50 feet. Marine shoreline buffers are currently 50-100 feet.

EXISTING - NATURAL DISASTER
Could rebuild within existing footprint if natural disaster causes damage beyond repair (flooding, fire, accident), but must comply with current building codes. (If home is in a frequently flooded area, different rules apply. See illustration of frequently flooded areas.)

EXISTING - IN BUFFER
COULD STAY
Remodeling would have to remain in existing footprint. Vertical expansions would be ok.

EXISTING - PARTIALLY OUTSIDE BUFFER
Remodeling could expand footprint on this side.

NEW
See “Reasonable Use Exception” described on page 1.

Dashed lines represent riparian habitat management zone. See description in the first paragraph of this page.

If a lot had less than 5,000 square feet of buildable area because of a buffer, development may be able to extend into the outer 25%-50% of buffer to achieve up to 5,000 square feet, depending on the critical area. This is roughly the size of a city lot. Mitigation may be required (such as planting native plants).
In potential amendments to the Critical Areas Ordinance, “frequently flooded areas” means lands in the floodplain subject to at least a one percent or greater chance of flooding in any given year or areas within the highest known recorded flood elevation, or within areas subject to flooding due to high ground water. These areas may include special flood hazard areas as defined in Chapter 14.38 TCC, streams, rivers, lakes, coastal areas, wetlands, and areas where high ground water forms ponds on the ground surface. Note: The requirements you see on the following illustration are already in effect under the existing Critical Areas Ordinance. They are driven largely by development rules that come from Federal Emergency Management Agency (FEMA) and the National Flood Insurance Program (NFIP). The exception: Potential amendments to the Critical Areas Ordinance would recognize channel migration hazard areas as areas where streams are likely to naturally meander.

Example of Development in a Flood Plain

**Floodplain** - areas that are susceptible to being inundated by floodwaters.

**EXISTING - NATURAL DISASTER**

Can rebuild within existing footprint if natural disaster causes damage beyond repair (flooding, fire, accident) subject to conditions and in accordance with Thurston County building codes (for example, required 2-foot elevation above base flood elevation).

**EXISTING PARTIALLY OUTSIDE FLOODPLAIN**

Remodeling can expand footprint on this side.

**EXISTING CAN STAY**

Remodeling, maintenance, repair must be done in existing footprint. Vertical expansion ok.

**NEW**

See “Reasonable Use Exception” described on page 1.

**Channel Migration Hazard Area.** Same rules apply - ie, no new buildings or expansion of footprint. In the event of a natural disaster, could rebuild within existing footprint. Channel migration hazard areas may lie outside of flood plains.