



COUNTY COMMISSIONERS

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 District One
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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE THURSTON COUNTY
 HEARING EXAMINER**

In the Matter of the Application of)	NO. 2014102628
)	
)	
Sheila and Jerry Hendrex)	
)	FINDINGS, CONCLUSIONS,
)	AND DECISION
For a Reasonable Use Exception)	
_____)	

SUMMARY OF DECISION

The requested reasonable use exception to retain an existing single-family residence and associated development within a Category II wetland buffer is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request

Sheila and Jerry Hendrex (Applicants) requested approval of a reasonable use exception to retain an existing single-family residence and associated development within a 100-foot Category II wetland buffer at 17329 Russian Hill Lane SE, Rainier, Washington.

Hearing Date

The Thurston County Hearing Examiner held an open record public hearing on the request on February 2, 2015.

Testimony

At the open record public hearing, the following individuals presented testimony under oath:

- Tony Kantas, Thurston County Resource Stewardship Department, Associate Planner
- Sara Brallier, Thurston County Public Health
- Jerry Hendrex, Applicant
- Shiela Hendrex, Applicant
- Heidi Haslinger, Applicant representative

Exhibits

At the open record public hearing, the following exhibits were admitted into the record:

- Exhibit 1 Thurston County Resource Stewardship Department Report including the following attachments:
- Attachment a Notice of Public Hearing
 - Attachment b Master Application, received June 10, 2014
 - Attachment c Reasonable Use Exception Application, received June 10, 2014
 - Attachment d 2012 Aerial and Wetlands Map (Thurston County GeoData Center)
 - Attachment e Notice of Application, dated October 7, 2014
 - Attachment f Wetland Delineation Map, dated January 30, 2014, received June 10, 2014
 - Attachment g Wetland Mitigation Map, dated June 7, 2014
 - Attachment h Memorandum from Brad Sangston, Thurston County Public Health and Social Services, dated August 14, 2014
 - Attachment i Memorandum from Kathy Patton, Thurston County Public Works, dated July 1, 2014
 - Attachment j Wetland Delineation Report (including Appendices A - F), dated January 30, 2014
 - Attachment k Revised Wetland Mitigation Plan, dated October 27, 2014
- Exhibit 2 Comments from Chris and Sandra Helligso, dated January 20, 2015

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicants requested approval of a reasonable use exception to retain an existing single-family residence and associated development within a 100-foot Category II

wetland buffer at 17329 Russian Hill Lane SE, Rainier, Washington.¹ No new construction or additional encroachment into the wetland buffer is proposed. *Exhibit 1; Exhibit 1, Attachments B and C.*

2. The subject property is 5.02 acres in area and is developed with a single-family residence, two storage sheds, a well, a septic system, and a driveway. *Exhibit 1; Exhibit 1, Attachments C and F.* It is zoned Rural Residential Resource (RRR) 1/5, a zone that allows single-family residences and associated accessory structures. *Exhibit 1; TCC 20.09A; TCC 20.34.*
3. The eastern portion of the subject property contains a Category II wetland. Under the Thurston County Critical Areas Ordinance, wetland buffer widths are determined by both habitat and water quality characteristics using the Department of Ecology's Wetland Rating System for Western Washington. The Category II wetland on the subject property has a habitat score of 20 points, which corresponds to a 100-foot minimum buffer requirement under Thurston County Code (TCC) 24.30.045. Considering the water quality criteria specified in TCC 24.30.045, the wetland does not have features warranting a buffer of greater than 100 feet. *Exhibit 1, Attachments D, F, and J; TCC 24.30.045.*
4. There are no known fish or wildlife species listed as Priority Species by the Washington Department of Fish and Wildlife on or within 600 feet of the subject property. The wetland is not known to support state-listed threatened, endangered, or sensitive plant species. *Exhibit 1, Attachment K, page 5.*
5. The residence, one of the sheds, the well, the septic tanks, and a portion of the driveway are within the 100-foot wetland buffer.² The residence is set back 42.4 feet from the wetland edge. *Exhibit 1, Attachments C and F.*
6. A previous owner of the subject property constructed the residence without building permits in 1990. The Applicants purchased the subject property in 2004 and are now seeking an after-the-fact building permit to bring the residence into compliance with building code. Although the home was built prior to enactment of the Thurston County critical areas ordinance and at the time of construction no wetland buffers were required, the Applicants must comply with current regulations in order to obtain a building permit. *Exhibit 1; Kantas Testimony.*
7. The existing residence is modest in size, having a footprint of only 870 square feet. The total area of buffer encroachment resulting from the residential development is 8,460 square feet. This figure includes the portion of the wetland buffer occupied by the yard, driveway, septic tanks, well, and 144-square-foot storage shed. *Exhibit 1, Attachments C, G, and J.*

¹ The legal description of the subject property is a portion of Section 25, Township 16 North, Range 1 East; also known as Tax Parcel Number 21625330500. *Exhibit 1, page 1; Exhibit 1, Attachments B and C.*

² The septic drainfields are outside of the 100-foot buffer. *Exhibit 1, Attachment F.*

8. A wetland scientist evaluated the subject property and submitted that relocating the existing development outside the buffer would result in environmental disturbance exceeding the value gained. The plants and wildlife have re-naturalized since the original disturbance 25 years ago. If the development were to move, habitat-providing vegetation would be lost in the areas potentially receiving the structures, and it would take many years to reestablish vegetation in the previously affected areas. *Exhibit 1; Exhibit 1, Attachment K, page 3.*
9. As mitigation for the existing buffer intrusion, the Applicant proposes to designate 8,480 square feet of additional wetland buffer to the west of the existing buffer boundary (consistent with the 1:1 buffer mitigation ratio described in TCC 24.30.080) and to plant the expansion area and existing portions of the buffer along the driveway corridor with native trees and shrubs to improve habitat, hydrologic, and water quality functions. The mitigation plan addresses the location, type, and timing of the plantings; monitoring; maintenance; performance standards; and performance bonds. *Exhibit 1, Attachments G and K.*
10. The location and scale of development on surrounding properties was not a basis for the reasonable use exception request. The sole basis for the request is to formally authorize preexisting residential development, which is modest in scale. No new construction is proposed. The parcels to the east and west of the subject property are undeveloped. *Exhibit 1; Exhibit 1, Attachments C and D; Exhibit 1, Attachment K, page 5.*
11. Thurston County approved the on-site septic system in its existing location in 2007; the record drawing for the system was approved in 2010. The septic tanks and drainfields comply with the minimum surface water setback standards contained in the Thurston County Sanitary Code. The Thurston County Health Department determined that there are no public health concerns resulting from the existing development and recommended approval. *Exhibit 1, Attachment H; Brallier Testimony.*
12. The Thurston County Public Works Department reviewed the application and determined that the requirements of Thurston County Road Standards and the Drainage Design and Erosion Control Manual have been satisfied. The Public Works Department waived submittal of a Drainage and Erosion Control Plan and Grading Plan and recommended approval. *Exhibit 1, Attachment I.*
13. The Thurston County Resource Stewardship Department reviewed the application and submitted that it satisfies all criteria for approval, subject to conditions that the development comply with the mitigation specified in the submitted mitigation plan as well as other applicable regulatory requirements. In testimony, Staff noted that before the hearing the Applicant had already complied with all recommended conditions of approval - including planting specified in the mitigation plan - except for recording the critical area notice. *Exhibit 1, pages 4-7; Kantas Testimony.*

14. Reasonable use exceptions are considered non-project actions that are exempt from the requirements of the State Environmental Policy Act (SEPA). *WAC 197-11-800.*
15. Notice of application was issued on October 7, 2014 with a 20-day comment period; no comments were received. Written notice of the public hearing was sent to all property owners within 500 feet of the site on January 20, 2015. Notice of hearing was posted on site and published in The Olympian on January 23, 2015. *Exhibit 1, page 2; Exhibit 1, Attachments A and E.*
16. One public comment was received on the application before the hearing. Neighboring property owners expressed concern that approval could facilitate future subdivision in the vicinity or otherwise promote infill development that would reduce the average lot size. The comments asserted that the neighbors had purchased their rural parcel in order to live away from "the suburbs". *Exhibit 2.* There was no public comment at hearing.

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for reasonable use exception pursuant to Thurston County Code Chapters 2.06, 24.05, and 24.45.

Criteria for Review

Pursuant to TCC 24.45.030, the Hearing Examiner shall grant the reasonable use exception if all of the following specific findings can be made:

- 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. This may include a variance for yard and setback 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. 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 on-site first, or if necessary, off-site; and

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

Conclusions Based on Findings

1. Considering the property's development history, the uses allowed in the RRR 1/5 zone, and the adverse environmental consequences of enforcing the 100-foot buffer, there is no use of the property more reasonable than approval of the instant application. *Findings 3, 7, and 9.*
2. No reasonable use with less impact on the wetland buffer is possible. The existing development on the site is modest in scale; leaving it in place would cause less impact than relocating it. The proposed mitigation plan would replace the buffer that was lost and improve the functions of the retained and replacement buffer. *Findings 8, 9, and 10.*
3. Maintaining the existing development would not result in damage to other property, nor would it threaten the public health, safety, or welfare or increase public safety risks. Approval would not increase density in the vicinity now or in the future. *Findings 2, 8, 11, 12, 13, and 14.*
4. The proposed use is limited to the minimum encroachment into the wetland buffer necessary to prevent denial of all reasonable use of the property. The encroachment cannot be reduced because the development has been in existence for approximately 25 years. With the proposed mitigation, leaving the development in its present location would have a lesser impact than moving it to a different location. *Findings 6, 7, 8, and 9.*
5. The proposal would result in minimal alteration of the wetland buffer because no new development or removal of existing development is proposed. The only alteration would be the planting of additional native trees and shrubs. *Findings 1, 9, and 10.*
6. As conditioned, the proposal would ensure no net loss of wetland buffer functions and values. The previously disturbed buffer would be replaced on site at a 1:1 ratio and enhanced pursuant to the submitted mitigation plan. *Findings 8 and 10.*
7. The use would not result in unmitigated adverse impacts to any species of concern. *Findings 5 and 9.*
8. The location and scale of existing development on surrounding properties is not the basis for approving the requested reasonable use exception. *Finding 11.*

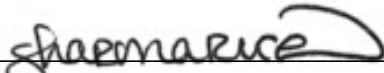
DECISION

Based on the preceding findings and conclusions, the application for a reasonable use exception to retain an existing single-family residence and associated development within a 100-foot Category II wetland buffer at 17329 Russian Hill Lane SE, Rainier, Washington is **APPROVED** subject to the following conditions:

- A. Prior to or in conjunction with the issuance of any building permit, all applicable regulations and requirements of the Thurston County Public Health and Social Services Department, Public Works Department, Fire Marshal, and Thurston County Resource Stewardship Department shall be met.
- B. The Applicant shall complete all wetland buffer mitigation proposed in the Wetland Delineation Report and Mitigation Plan, prepared by Pacific Willow Consulting, Inc. dated October 27, 2014. Any remaining plant installation shall be completed within 90 days of the date of approval of the reasonable use exception.
- C. The Applicant shall record a critical areas notice with the Thurston County Auditor in accordance with TCC 24.65.040 within 30 days of approval of the reasonable use exception.
- D. All development on the site shall be in substantial compliance with the approved reasonable use exception application, as conditioned. Any alteration to the proposal will require approval of a new or amended reasonable use exception. The Land Use and Environmental Review Section will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

DECIDED February 17, 2015.

By:



Sharon A. Rice
Thurston County Hearing Examiner

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$651.00** for a Request for Reconsideration or **\$866.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. _____
Appeal Sequence No.: _____

Check here for: RECONSIDERATION OF HEARING EXAMINER DECISION

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

Check here for: APPEAL OF HEARING EXAMINER DECISION

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
on this _____ day of _____, 20___, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on _____, 20___, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

- 1. Zoning Ordinance _____
- 2. Platting and Subdivision Ordinance _____
- 3. Comprehensive Plan _____
- 4. Critical Areas Ordinance _____
- 5. Shoreline Master Program _____
- 6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED _____

SIGNATURE OF APPELLANT _____

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of \$652.00 for Reconsideration or \$870.00 for Appeal. Received (check box): Initial _____ Receipt No. _____

Filed with the Resource Stewardship Department this _____ day of _____, 20___.