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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. 2016101806
)	
Logan Reed)	
)	FINDINGS, CONCLUSIONS,
)	AND DECISION
For a Reasonable Use Exception)	
_____)	

SUMMARY OF DECISION

The requested reasonable use exception for an expansion of an existing 542 square foot single-family residence by adding a 745 square foot addition in an approximately 1,000 square foot building envelope within a wetland buffer is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request

The Applicant requested reasonable use exception to expand an existing 542 square foot single-family residence by adding a 745 square foot addition in an approximately 1,000 square foot building envelope within a wetland buffer. The subject property is located at 2126 - 26th Avenue NW, Olympia, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted an open record public hearing on the request on May 1, 2017.

Testimony

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

- Leah Davis, Thurston County Resource Stewardship Department, Associate Planner
- Dawn Peebles, Thurston County Environmental Health
- Kim Pawlawski, Cascadia Land Planning, Applicant Representative

Exhibits

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

Exhibit 1 Land Use and Environmental Review Section Report with the following attachments:

- Attachment A Notice of Public Hearing
- Attachment B Master Application, received April 27, 2016
- Attachment C Reasonable Use Exception Application, April 27, 2016
- Attachment D Project Narrative
- Attachment E Site Plan, received April 27, 2016
- Attachment F Notice of Application, dated August 8, 2016
- Attachment G Comment memo from Thurston County Environmental Health, dated March 7, 2017
- Attachment H Comment memo from Thurston County Public Works, dated May 11, 2016
- Attachment I Comment letter from Nisqually Indian Tribe, dated August 26, 2016
- Attachment J Comment letter from Ecology, dated August 25, 2016
- Attachment K Wetland delineation prepared by Skookum Environmental Consulting, dated September 28, 2015
- Attachment L Wetland buffer mitigation plan prepared by Earth Systems Science, Inc., dated April 20, 2016
- Attachment M Arborist's Report prepared by Professional Forestry Services, Inc., dated April 14, 2016

EXHIBIT 2 Corrections to staff report

EXHIBIT 3 Photograph of posted notice

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 Applicant requests a reasonable use exception to expand an existing 542 square foot single-family residence by adding 745 square feet within an approximately 1,000 square foot building envelope in a wetland buffer. The subject property is located in the Olympia urban growth area (UGA) at 2126 - 26th Avenue NW, Olympia.^{1,2} *Exhibits 1, 1.B, and 1.C.*
2. The subject property is relatively flat. Aside from the small residence and some residential landscaping, the 0.44-acre subject property is undeveloped. The Applicant proposes to expand the residence's footprint by only 745 square feet. The proposal would expand the building envelope by 1,000 square feet into an area in the southern half of the parcel that has been developed with lawn for at least 20 years. The northern half of the parcel is forested with coniferous and deciduous trees, and an understory dominated by Himalayan blackberry and English ivy interspersed with salmon berry. Currently, 3% of the site is covered by impervious surfaces. If approved, the project would result in 7% site coverage by impervious surfaces. *Exhibits 1, 1.C, 1.E, 1.J, and 1.L.*
3. The subject property is zoned Residential One Unit per Five Acres (R 1/5). The purpose of this one is to provide for low-density residential development in designated sensitive drainage basins (R 1/5). *Exhibit 1; Thurston County Code (TCC) 22.04.020.B.1.* Single-family residences are allowed outright in the R 1/5 zone subject to applicable design standards. *TCC 23.04.040, Table 4.01.* The R 1/5 zone allows a maximum density of one unit per five acres for residential uses and requires a minimum lot size of four acres for new residential uses. Minimum lot width is 50 feet. Minimum setbacks for structures larger than 120 square feet include: 20 feet from the front property line, five feet from side property lines, and 10 feet from the rear property line. *TCC 23.04.040, Table 4.04.* The subject property is legally nonconforming because it was created prior to adoption of the current zoning standards; its nonconforming size is not a consideration in the criteria for reasonable use exception. *Leah Davis Testimony.*
4. The property contains a small forested wetland that was delineated and categorized by a professional wetland biologist. Less than 1/10th of an acre in area, the wetland extends into the subject property along the northern property line; the majority of it is off-site. It meets the classification of a category III wetland with habitat values of L-M-L. Consistent with the Thurston County critical areas ordinance, the wetland requires a 140-foot buffer which extends south of the southern lot line, encumbering the entire parcel. This wetland is part of a larger 15-acre wetland complex that extends off-site to the north, which includes Kaufmann Pond. *Exhibit 1.K.*
5. The existing home and parking area are within the wetland buffer, placed as far from the wetland edge on-site as is possible. The proposed addition would extend from the existing structure to the west and would not encroach further north into the wetland

¹ The legal description of the property is a portion of Section 4, Township 18 North, Range 2 West, PLAT WEST OLYMPIA BLK 121, LT 11 & 12, Document 001/012 7 VAC S 15 FT ST & E 1/2 VAC STS. *Exhibit 2.*

² See Exhibit 2 for corrections pertaining to the site address, legal description, and parcel size. *Exhibit 2.*

buffer than the existing residence does. Proposed construction would be setback 74.4 feet from the delineated wetland edge. *Exhibits 1, 1.E and 1.L.*

6. Three trees are proposed to be removed in order to construct the addition. According to a professionally prepared tree hazard assessment, two immature red alders are growing near the existing residence, one of which is already leaning towards the structure. One large big leaf maple growing within 30 feet of the planned residential addition is in poor. The arborist determined that the three trees are hazard trees and recommended that they be removed. Remaining trees on the property were assessed and found to be in good condition. *Exhibit 1.M.*
7. Planning Staff recommended that the three hazard trees assessed by the arborist be allowed to be removed and that they should be left in the buffer area to create habitat per TCC 24.30.350(2). Staff asserted that allowing them to stand as snags would be contrary to the safety reasons for their removal and recommended that they be left lying down in the buffer. Staff further noted that hazard the tree removal from wetlands is shall be regulated pursuant to TCC 24.30.350(4), which states: "Hazard tree removal in wetlands shall be mitigated as required by this chapter. At minimum, mitigation shall include replacement with native tree species at a ratio of 3:1 for each tree removed. The replacement trees shall have a minimum fifteen-gallon pot size, a height of four feet, and be three years old." Staff recommended that approval be conditioned to require a tree replacement at a 3:1 ratio. *Exhibit 1; Leah David Testimony.*
8. Planning Staff submitted the opinion that a 542 square foot residence on a 0.44-acre parcel in the Olympia UGA could be considered underdeveloped and asserted that the expectation of any owner of this parcel would be to have a reasonably sized residence. Planning Staff submitted the opinion that a 1,300 square foot residence is a modest proposal and would constitute reasonable use of the property. In reviewing alternatives to the proposed expansion, Planning Staff concluded that requiring a change of use would not be reasonable because of the site's residential zoning in the UGA. Staff asserted that requiring a reduction in the proposed expanded footprint would not be reasonable as the proposed finished size of the structure is already modest. Staff also asserted that a change in timing of the activity would not provide any opportunity to have less impact on the critical area. *Exhibit 1; Leah Davis Testimony.*
9. The Applicant submitted a professionally prepared wetland buffer mitigation plan addressing the proposed 745 square feet of permanent wetland buffer impacts. Proposed mitigation over a 2,975 square foot area between the project and the wetland includes: removal of invasive species (Himalayan blackberry and English ivy), planting native species along the north edge of the lawn to enhance the wetland buffer, and replacing the three removed trees. The report concluded that the mitigation would render any impact of the project minimal on the following grounds: there would be no direct impact to the wetland; vegetation would only be cleared from the proposed building envelope; the removal of invasive species and plantings of native species would result in a habitat function lift overtime compared to the existing site condition; and runoff from the new impervious surfaces would be detained and treated. The mitigation plan recommended

replacing the three hazard trees at a 2:1 ratio, and replacing all other vegetation removed (invasives) at a 4:1 ratio with native species. It further recommended that the cut trees be left standing as snags or be left a large woody debris for habitat purposes. The plan calls for five years of maintenance for the new plantings. *Exhibits 1 and 1.L.*

10. Planning Staff noted that pursuant to TCC Chapter 24.70, County Staff has the authority to require the Applicant to execute and file with the County a surety agreement guaranteeing and covering the installation and monitoring of the mitigation planting together with a reasonable amount to cover possible needed replacements or repairs for a time specified by the approval authority as a condition of permit approval. In recommended conditions, Staff reserved the opportunity to require a surety bond pursuant to cover the potential costs to monitor and replant an approved buffer restoration plan. *Exhibit 1; Leah Davis Testimony.*
11. According to the Washington Department of Fish and Wildlife (WDFW) Priority Habitat Species website, the area surrounding the subject parcel contains communal roosting areas for two priority species of concern: Little brown bat and Yuma myotis (also a bat). *Exhibit 1.*
12. The Thurston County Environmental Health Division (EHD) reviewed the project for compliance with the County's health codes and recommended approval of the project. *Exhibits 1 and 1.G; Dawn Peebles Testimony.*
13. The Development Review Division section of the Thurston County Public Works Department reviewed the project for compliance with Thurston County road standards and the Drainage Design and Erosion Control Manual and recommended approval. *Exhibits 1 and 1.H.*
14. The Nisqually Indian Tribe submitted comments indicating it has no specific concerns about the proposal but requested to be informed in the event of inadvertent discovery of archeological resources or human remains. *Exhibit 1.I.*
15. The Washington State Department of Ecology submitted comments addressing general toxics clean up and water quality standards, without expressing particular concerns about the site. *Exhibit 1.J.*
16. Reasonable use exceptions are non-project actions that are exempt from the requirements of the State Environmental Policy Act (SEPA). *WAC 197-11-800.*
17. The application for the reasonable use exception was submitted on April 27, 2016 and deemed complete on May 26, 2016. *Exhibits 1, 1.B, and 1.C.*
18. Notice of the public hearing was mailed to owners of parcels within 500 feet of the site on April 18, 2017 and posted on-site on April 20, 2017. Notice was published in The Olympian on April 21, 2017. *Exhibits 1 and 1.A.* There was no public comment on the application. *Leah Davis Testimony.*

19. Conditioned as recommended in the staff report, Planning Staff submitted that the proposal would not result in damage to other properties and would not threaten health, safety, or welfare on or off the site. Upon review of the complete record including hearing testimony, the Resource Stewardship Department recommended approval of the reasonable use exception with conditions. *Exhibit 1; Leah Davis Testimony*. The Applicant waived objection to the recommended conditions. *Kim Pawlawski Testimony*.

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for reasonable use exception pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.06 and 24.45 of the Thurston County Code.

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 uses allowed by the zoning ordinance and the property's location within the Olympia urban growth area, residential use is arguably the most reasonable use of the site. Given the extremely small size of the existing residence, it is not reasonably considered a full single-family residence. Because of the site's complete encumbrance by the wetland buffer, there is no way to expand the residence except within the wetland buffer. It would not be reasonable to restrict the use of the site to the existing cabin. *Findings 1, 2, 3, 4, 5, 8, and 19.*
2. No other reasonable use of the property that would have less impact on the wetland buffer has been identified in the record or appears possible. Consistent with the previous conclusion, a change of use is not reasonable and a reduction in the size of the proposed is also unreasonable, given the modest dimensions of the proposed final footprint. The proposed addition would not encroach further into the wetland buffer than the existing residence does. *Findings 1, 2, 3, 4, 5, 8, and 19.*
3. The record contains no evidence of potential harm to off-site properties or improvements. Three hazard trees would be removed, reducing on-site hazards. Total impervious surface coverage would not exceed 7%. The proposed mitigation should result in a significant increase in habitat value on-site. *Findings 2, 4, 9, 11, 12, 13, and 14.*
4. Given the very small footprint of the existing residence, and the fact that the proposed addition would only increase the footprint by 745 square feet, the finished residential footprint would be less than 1,300 square feet on a 0.44-acre parcel. The very modest expansion proposed minimizes wetland buffer encroachment to the extent possible while still allowing reasonable use of the property. *Findings 2, 3, 4, 5, and 8.*
5. The proposal would not result in direct impacts to the critical area. The expansion would reduce an existing lawn area but in return would provide for enhanced wetland habitat through invasive species removal and through planting additional trees and native shrubs in an area now occupied by lawn. The plantings would provide food, nesting, and refuge resources for wildlife. The net result of the proposal would be improved habitat function of the wetland buffer. *Findings 4, 5, 6, 9, 10, 11, 12, and 13.*
6. As concluded previously, the proposed mitigation for the unavoidable impacts to the wetland buffer includes the removal of invasive species and planting native species in the wetland buffer, which would enhance habitat functions and values. As conditioned, the three removed hazard trees would be replaced with nine new trees. The record shows no net loss in critical area functions and values. *Findings 4, 5, 6, 7, and 9.*
7. No adverse impacts to species of concern are anticipated. The only known species of concern in the area are Little brown bat and Yuma myotis. The proposed mitigation

plan would enhance habitat for these and other species over the existing condition.
Findings 4, 6, 9, 11, 12, and 13.

8. Location and scale of existing development on surrounding properties was not considered in Staff's analysis and recommendation for approval. *Findings 1, 3, 4, and 19.*

DECISION

Based on the preceding findings and conclusions, the requested reasonable use exception to expand an existing 542 square foot single-family residence to add a 745 square foot addition in an approximately 1,000 square foot building envelope within a wetland buffer 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, and Thurston County Resource Stewardship Department shall be met.
- B. Mitigation consistent with the approved mitigation plan in the record at Exhibit 1.L shall be completed prior to final inspection of the residence. The Applicant shall provide details on the monitoring of success of the mitigation after initial plantings consistent with TCC 24.35.017. The Applicant is on notice that County Staff may require a surety bond pursuant to TCC Chapter 24.70 to cover the potential costs to monitor and replant an approved buffer restoration plan.
- C. The three hazard trees to be removed shall be left in the buffer area to create habitat consistent with TCC 24.30.350(2). Their removal shall be mitigated by planting new trees at a 3:1 ratio consistent with TCC 24.30.350(4).

DECIDED May 16, 2017.

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 **\$669.00** for a Request for Reconsideration or **\$890.00** 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 \$669.00 for Reconsideration or \$890.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Resource Stewardship Department this _____ day of _____, 20___.