

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2021100613, GARDNER RESIDENTIAL DECK EXPANSION

SEQUENCE NO.: 21 101522 XI – Reasonable Use Exception

TAX PARCEL NO.: 39110103900

LOCATION ADDRESS: 2148 Island Dr NW, Olympia

APPLICANTS/OWNERS: Michael and Sherry Gardner
2148 Island Drive N.W.
Olympia WA 98502

PLANNER: Scott McCormick, MES, Associate Planner

SUMMARY OF REQUEST:

The Applicants request approval of a Reasonable Use Exception (RUE) for a residential deck expansion situated in a critical area, specifically, a landslide hazard area. The Applicants propose replacement of the upper deck which is 8-feet wide by 6-feet and expand it to 19-feet wide by 12-feet and replace the bottom landing by keeping it six-feet wide and extending it to 12-feet. The site is located at 4148 Island Dr. NW, Olympia WA 98502 in Section 33 Township 20 Range 2W Plat CARLYON BEACH COUNTRY CLUB DIV 1 BLK 1 LT 39 Document 013/023.

SUMMARY OF DECISION: Approved with conditions.

DATE OF DECISION: September 16, 2021

PUBLIC HEARING:

After reviewing the Community Planning and Economic Development Department Staff Report and attachments on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on August 17, 2021, at 11.00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT 1 - Community Planning and Economic Development Staff Report**
- Att. A - Notice of Public Hearing**
- Att. B - Zoning/Site Map**
- Att. C - Master Application**
- Att. D - Reasonable Use Exception Application**
- Att. E - Project Narrative**
- Att. F - Site Plan**
- Att. G - Deck Drawings**
- Att. H - Topographical Data**
- Att. HH - Geological Assessment**
- Att. I - Carlyon Beach HOA Building Permit**
- Att. J - Notice of Application for Reasonable Use Exception**
- Att. K - Approval Memo from Amy Crass with TC Environmental Health**
- Att. L - Comment Email from the Squaxin Tribe dated June 4, 2021**
- Att. M - Comment Email from the Squaxin Tribe dated March 1, 2021**
- Att. N - Comment Letter from the Nisqually Indian Tribe, THPO**
- Att. O - Comments from Harry and Peggy Lohne-Luciani**

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

SCOTT McCORMICK, County Associate Planner, appeared and testified that the Applicants are requesting a Residential Use Exception/Residential Deck Expansion at 4148 Island Drive N.W., Olympia. He described the request utilizing the Applicant's narrative (Att. E): "Currently the upper deck is eight feet wide by six feet and the bottom landing is six feet wide by about five feet. We would like to replace the upper deck and expand it to be 19 feet wide by 12 feet. We would like to replace the bottom landing by keeping it six feet wide and extending it to 12 feet." The parcel is 0.25-acres and is non-conforming to the minimum parcel size of the zoning district which is 0.5-acres. Notice of the public hearing was sent and published. The zoning is Residential LAMIRD 1/1 (RL 2/1) and the shoreline designation is Rural. The proposal is exempt from SEPA review.

MR. McCORMICK stated the reasons for the RUE is to reduce the standard 50-foot buffer from a landslide hazard area to zero or near zero based on available County geodata mapping and site plans. The existing and proposed decks are located within the landslide area buffer. Topographic and geological assessments were submitted. The proposal meets the criteria required by the County Critical Area Ordinance, TCC 24.25. As to comments, one citizen comment was supportive, several agencies approved it and neither

the Nisqually Indian Tribe nor the Squaxin Island Tribe requested a cultural resource survey. The County recommends approval with conditions.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 11:20 a.m.

NOTE: A complete record of this hearing is available in the office of the Thurston County Resource Stewardship Department.

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. The Applicants request a Reasonable Use Exception (RUE) for the reduction of the standard 50-foot buffer from a landslide hazard area to zero or near zero based on available County geodata mapping and site plans to replace and expand an upper and a lower residential deck which are currently located within a landslide hazard area buffer. The upper deck, which is 8-feet wide by 6-feet, would be replaced and expanded to 19-feet wide by 12-feet and the lower landing which is 6-feet wide by 5-feet would be replaced by keeping it 6-feet wide and extending it to 12-feet. The existing decks are located within the landslide hazard buffer area and the proposed decks would be extended further into the buffer.
3. The site is located at 2148 Island Dr. NW, Olympia in Section 33 Township 20 Range 2W Plat CARLYON BEACH COUNTRY CLUB DIV 1 BLK 1 LT 39 Document 013/023.
4. The single-family residence and accessory structures are exempt from review under the State Environmental Policy Act (SEPA) per Thurston County Code (TCC) 7.09.055.B and Washington Administrative Code WAC 197-11-800, Categorical Exemptions.
5. The RUE application was completed on March 1, 2021. Written notice of the public hearing was sent to all property owners within 500-feet of the site and notice was published in The Olympian on August 6, 2021, at least ten (10) days prior to the hearing. A 20 day Notice of Application (Att. J) was issued on June 2, 2021.
6. The subject residence and property are located within the shoreline jurisdiction pursuant to the Shoreline Master Program (SMP) and the shoreline designation is rural with the standard 50-foot building setback. The Comprehensive Plan designation is rural residential and the zoning district is Residential LAMIRD 2/1 (RL

- 2/1). The parcel is .25-acres and is non-conforming to the minimum parcel size of the zoning district which is 0.5-acres. Adjacent properties are small, narrow shoreline lots of similar size with single-family residences. Single-family residences are primary uses in the RL 2/1 zoning and the addition of a deck is also allowed.
7. TCC 24.15.015A states in relevant part, "Standard buffer for landslide hazard areas and marine bluff hazard areas, Development in a landslide and marine bluff hazard areas requires an undisturbed buffer of approved vegetation, except as otherwise provided for in this chapter. The required buffer shall be the greater amount of the following: Fifty feet from toe and top of slope."
 8. The request for the buffer reduction was based on available County Geodata mapping and site plans (Att. F and G). Topographic information (Att. H) and a geologic assessment report (Att. HH) supported the proposal. The geological assessment indicated the area was not considered an active landslide area as there were no obvious signs of instability. The Assessment did recommend setbacks from retaining walls and for erosion control, drainage and vegetation.
 9. The County received one letter in support of the proposal from Harry and Peggy Lohne-Luciani. (Att. O) The County Public Health and Social Services Department approved the request but required the Applicants to obtain approval of the Carlyon Beach Homeowners Association which serves the residence with its public water system and handles its wastewater holding tank system. (Att. K) The Health Department and County Public Works also approved the proposal.
 10. In a letter dated March 1, 2021, the Nisqually Indian Tribe indicated they had no comments or concerns regarding the proposal but did request being informed if there are any Inadvertent Discoveries of Archaeological Resources/Human Burials.(Att. N) In emails dated March 1 and June 4, 2021, the Squaxin Island Tribe, given the nature of the proposal, did not have specific cultural resource concerns but would defer to the DAHP recommendations. They were okay with the requirement of the Thurston County Inadvertent Discovery Plan instead of a cultural resource investigation. (Att. L)
 11. Pursuant to TCC 20.12A.010, County Staff have concluded that the proposed development satisfies the purposes of the Thurston County Comprehensive Land Use Plan designation of the property as RR and the zoning as RL 2/1. (Ex. 1 pg 6)
 12. The authority for a RUE is expressed in TCC 24.45. 010:

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.

13. The required criteria for a RUE is stated in TCC 24.45.030:

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;

The property is zoned residential. The proposed deck expansion within a residentially zoned area is considered a reasonable use of the property as an accessory to an approved use.

- 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;

As the property is zoned for residential use, the type of use proposed is consistent with zoning. There should be no impact to critical areas as the proposed deck is a pervious surface and will not cause increased erosion related to stormwater. No vegetation will be disturbed by the project. The proposal seems to be reasonable in terms of scope and size.

- 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;

As proposed and conditioned, the activity will not result in damage to other properties and should not threaten the health, safety, or welfare on or off the site.

- 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.

As proposed, the project is very limited in scope and size and is the minimal encroachment possible. There should be no impacts to critical areas or their buffers.

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

As proposed, the project should have no impact to critical areas, including impacts to vegetation, fish and wildlife resources, hydrological conditions and geologic conditions.

- 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;

There should be 'no net loss' of critical area functions and values; therefore, no mitigation plan is necessary.

- G. The reasonable use shall not result in the unmitigated adverse impacts to species of concern; and

There are no known upland species of concern which would be impacted by the project. The project is designed such that there should be no substantive impacts to species of concern which would require mitigation.

- 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.

The pressure of the critical area was the basis for the RUE. Therefore, development on surrounding properties was not the sole basis for review of the reasonable use exception

- 14. TCC 24.45.020 entitled "Reasonable use exception – Certain properties not eligible" prohibits a RUE if the inability to derive reasonable use is the result of a self-created hardship such as subdividing the property, adjusting a boundary line, or other actions thereby creating the property undevelopable.

Herein, the sole basis for the RUE is the presence of the critical area, specifically the landslide hazard area, and is not a hardship self-created by the Applicants.

CONCLUSIONS:

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
2. The Applicants have demonstrated that the proposal will be consistent with all applicable codes and, therefore, the request for the Reasonable Use Exception for the deck expansion should be approved subject to the following conditions:
 1. The Applicant shall remove all construction related debris to an approved site (landfill or recycling center) outside of critical areas and their buffers.
 2. The project shall be in compliance with the recommendations contained in the project Geological Assessment dated April 5, 2021 (Attachment hh).
 3. Prior to the release of the building permit, the Applicant must obtain approval from the Carlyon Beach Homeowner's association for the proposed project.
 4. All development shall be in substantial compliance with drawings and site plan submitted and made part of this staff report. Any expansion or alteration of this use will require approval of a new or amended approval. The Development Services Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
 5. The Reasonable Use Exception (RUE) 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 RUE 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.

DECISION:

Reasonable Use Expansion is approved with conditions.

ORDERED this 16th day of September, 2021.



STEPHEN R. SHELTON
Deputy Hearing Examiner

TRANSMITTED this day of September, 2021, to the following:

APPLICANTS/OWNERS: Michael and Sherry Gardner
2148 Island Drive N.W.
Olympia WA 98502
sherryandmike@comcast.net

OTHERS:

Harry and Peggy Lohne-Luciani
3403 Steamboat Island Road N.W. PMB 401
Olympia, WA 98502

THURSTON COUNTY

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 Community Planning & Economic Development 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 **\$777.00** for a Request for Reconsideration or **\$1,054.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development 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 \$777.00 for Reconsideration or \$1,054.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.