



COUNTY COMMISSIONERS

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District One

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**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of	)	NO. 2021102638
	)	<b>Schultz Residential Addition</b>
	)	
<b>John and Tamara Schultz</b>	)	
	)	
	)	FINDINGS, CONCLUSIONS
For a Reasonable Use Exception	)	AND DECISION
_____	)	

**SUMMARY OF DECISION**

The request for a Reasonable Use Exception to construct a 640 square foot building addition and 600 square foot deck on an existing cabin within a landslide and marine bluff hazard area buffer is **GRANTED**, subject to conditions.

**SUMMARY OF RECORD**

**Request**

John and Tamara Schultz (Applicants) requested a reasonable use exception (RUE) to construct a 640 square foot building addition and 600 square foot deck on an existing 800 square foot cabin in a landslide and marine bluff hazard area buffer. The subject property is addressed as 3336 Fishtrap Loop NE, Olympia, Washington in unincorporated Thurston County.

**Hearing Date**

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on February 22, 2022. The record was held open through February 24, 2022 to allow members of the public experienced technology or access barriers in trying to join the virtual hearing to submit written comments, with time scheduled for responses by the parties. No post-hearing comments were submitted, and the record closed on February 24, 2022. No in-person site visit was conducted, the Examiner viewed the property on Google Maps.

## **Testimony**

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

Scott McCormick, Associate Planner, Thurston County  
Kim Pawlawski, Bracy & Thomas, Applicant Representative  
Barry Jespersen, Oyster Bay Construction, Project Contractor  
Jane Curtright

## **Exhibits**

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

- Exhibit 1      Community Planning and Economic Development Report including the following attachments:
- A. Notice of Public Hearing, issued February 11, 2022
  - B. Zoning/Vicinity Map
  - C. Master Application, received May 24, 2021
  - D. Reasonable Use Exception Application, received May 24, 2021
  - E. Project Narrative, received January 23, 2022
  - F. Site Plan, received July 29, 2021
  - G. Notice of Application, dated September 24, 2021 with adjacent property owners list, dated September 22, 2021
  - H. Landslide Hazard / Marine Bluff Evaluation by Insight Geologic Inc., dated April 16, 2020
  - I. Thurston County Environmental Health Memo of Approval, dated September 27, 2021
  - J. Comment letter from the Nisqually Tribe, dated June 10, 2021
  - K. Comment email from the Squaxin Island Tribe, dated June 8, 2021
  - L. 11 x 17-inch copy of Site Plan
- Exhibit 2      Memorandum from William Halbert, LEG, dated February 16, 2022, re: deck recommendations

Based on the record developed through the open record hearing process, the Hearing Examiner enters the following findings and conclusions.

### **FINDINGS**

1. John and Tamara Schultz (Applicants) requested a reasonable use exception (RUE) to construct a 640 square foot building addition and a 600 square foot deck on an existing 800 square foot cabin in a landslide and marine bluff hazard area buffer. The subject

property is addressed as 3336 Fishtrap Loop NE, Olympia, Washington in unincorporated Thurston County.<sup>1, 2</sup> *Exhibits 1, 1.C, 1.D, 1.E, and 1.F.*

2. The RUE application was submitted on May 24, 2022 and determined to be complete on June 22, 2022. *Exhibit 1.G; Scott McCormick Testimony.*
3. The subject property is located on the Puget Sound shoreline, on a marine bluff overlooking Dana Passage. The Shoreline Master Program for the Thurston Region (SMPTR) designates the property as a Rural shoreline. Residential development is allowed in the Rural shoreline environment, subject to a building setback of 50 feet from the ordinary high water mark (OHWM). All proposed improvements would be outside of the required shoreline setback. *Exhibits 1, 1.F, and 1.H (Figure 2); Kim Pawlawski Testimony.*
4. The subject property is zoned Residential LAMIRD One Dwelling Unit per Acre (RL 1/1). Primary permitted uses in the RL 1/1 zone include single-family and two-family residences (limited to a single structure), agriculture, and home occupations. In addition to the primary dwelling unit(s), one temporary mobile/manufactured home or modular home may be placed on RL 1/1 lots to house family members, per the criteria of Thurston County Code (TCC) 20.11A.030. *Exhibits 1 and 1.B; TCC 20.11A.020; TCC 20.11A.030.*
5. The subject property is 1.62 acres in area, which conforms to the minimum lot size standard of the RL 1/1 zone. It is developed with an 800 square foot cabin built in 1938 and a triple-wide modular home, which was placed on the property in 2006 to house family members. The cabin is in the northwest portion of the property, near the edge of the marine bluff. Surrounding parcels are developed with single-family residential uses. *Exhibits 1, 1.E, and 1.F.*
6. The marine bluff is approximately 32 feet high and contains slopes reaching 100% in inclination. The bluff meets Thurston County's definition of a landslide hazard area and a marine bluff hazard area. Based on the methodology established in TCC 24.15.015, a 50-foot buffer from the top of the slope is required.<sup>3</sup> *Exhibit 1.H.*

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<sup>1</sup> The legal description of the subject property is a portion of: Section 06 Township 19 Range 1W Quarter S1/2 NE & NW SE PT GOV LT 6 BEING S2 NE & NW SE & TIDELANDS IN FRONT THEREOF DAF BAP ON NLY LN OF CO RD KNOWN AS FISHTRAP, 2334.03 F WLY OF ITS X WITH E LN; also known as tax parcel number 11906412701. *Exhibit 1.*

<sup>2</sup> 3336 Fishtrap Loop NE is the address recognized by the County for the subject property, but the lot contains two residential structures, each of which has its own mailbox and postal address. The postal address for the cabin that is the subject of the RUE application is 3330 Fishtrap Loop NE, and the postal address for the second structure is 3336 Fishtrap Loop NE. *Exhibits 1 and 1.E.*

<sup>33</sup> The Applicant's geologist submitted that the minimum setback for the landslide hazard is 50 feet from the top of the slope but calculated a minimum marine bluff hazard setback of 64 feet from the *base* of the slope, a distance that roughly coincides with the top of the slope, and in one area is on the slope (see Exhibit 1.H, Figure 2). TCC 24.15.015 requires a marine bluff hazard buffer of the greater of 50 feet from the toe and top of the slope, or "a distance from the ordinary high water mark landward at a slope of 2:1 (horizontal to vertical) which intersects with

7. The existing cabin is set back 15 feet from the top of the marine bluff. The proposed addition would be on the landward side of the cabin, in a previously disturbed area 35 feet from the top of the bluff and 89 feet from the toe of the bluff. The addition would be constructed near existing grade and level with the top floor of the cabin, minimizing the need for excavation. No disturbance is proposed on the waterward side of the cabin. The proposed deck, which would be partially covered, would be on the north side of the cabin, parallel to the top of the slope and intruding into the buffer to the same degree as the cabin. *Exhibits 1.F and 1.H; Kim Pawlawski Testimony.*
8. While the 50-foot landslide and marine hazard buffer only encumber the eastern portion of the property, the location of the septic system components and the existing legally placed family member unit limit opportunities for construction of a new residence elsewhere on the parcel to replace the cabin. The Applicants reside in the cabin, and renovation and expansion are needed to allow the Applicants to age in place. Adding to the existing cabin would be a less impactful solution to the Applicants' housing needs. *Exhibits 1.D and 1.F; Kim Pawlawski Testimony.*
9. A licensed engineering geologist evaluated the stability of the slope after conducting a site reconnaissance. Although the Washington State Department of Natural Resources has mapped landslides in the area, the slopes on the subject property  

are underlain by dense glacial till and are generally stable with respect to deep-seated landslides. .... The primary mechanism of failure along waterfront bluffs in the area underlain by glacial till is the sloughing of the outer 12 to 18 inches of weathered material from the face of the bluff... .

*Exhibit 1.H, page 3.* This type of failure has a recurrence interval of approximately 25 years in any one location. The geologist submitted that the building addition is unlikely to reduce the risk of slope failure, as it would not significantly increase loading of the soils and would not extend closer to the bluff face. To reduce the potential for future slope failure, he recommended that no further encroachment towards the top of the bluff occur, that storm drainage be tightlined downslope or to an engineered drainage system and not be allowed to discharge onto the face of the slope, and that low growing vegetation be encouraged within 10 feet of the slope edge and on the slope face to reduce erosion and increase soil strength. *Exhibit 1.H.* Planning Staff's recommended conditions of approval require compliance with the geologist's recommendations. With respect to vegetation, Planning Staff recommended that the Applicant be required to submit a landscaping plan prior to building permit issuance depicting planting within the buffer for purposes of stability and erosion control. *Exhibit 1.*
10. With respect to the deck, the Applicant's geologist concluded that it would have little to no effect on slope stability provided the supports do not extend closer to the bluff than the

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the existing topography of the site;" or the minimum recommended by a geotechnical professional. *TCC 24.15.015 (emphasis added).* In this case it appears that a setback of 50 feet from the top of the slope yields the wider buffer. The undersigned notes that the proposed construction should be considered an intrusion into both a landslide hazard area buffer and a marine bluff hazard area buffer. *Exhibit 1.H.*

existing residence, and if the supports are within 15 feet of the top of the bluff, that concrete piers be used that extend at least four feet into the ground. *Exhibit 2*. County Planning Staff recommended as a condition of approval that both the surface and supports of the deck maintain a minimum setback of 15 feet from the top of the slope. *Scott McCormick Testimony*.

11. Vegetation on the face of the bluff consists predominantly of juvenile maple trees, ivy, and blackberry vines. Upland vegetation consists predominantly of grass and mature fir trees. There are no known upland or aquatic species of concern that would be impacted by the proposal. *Exhibits 1 and 1.H*.
12. Each residential structure on the subject property is served by its own on-site septic system, and both are served by a two-family well located on tax parcel number 11906413800. There is an existing well on site that has been capped. Thurston County Environmental Health Division reviewed the proposal and recommended that approval of the RUE be conditioned on decommissioning the on-site well in accordance with Washington State Department of Ecology standards, maintaining a minimum setback of 10 feet between the waterline serving the cabin and existing septic tanks, and preventing vehicle or equipment travel over septic components during construction. *Exhibit 1.I*. These conditions were incorporated into Planning Staff's recommended conditions of RUE approval. *Exhibit 1*.
13. The construction of a single-family residence and accessory structures is exempt from review under the State Environmental Policy Act. *Exhibit 1; TCC 17.09.055; WAC 197-11-800*.
14. Notice of the open record hearing was mailed to property owners within 500 feet of the subject property on February 7, 2022 and published in *The Olympian* on February 11, 2022. Notice of the application was issued on September 24, 2021. *Exhibits 1, 1.A, and 1.G*. Public comment was in support of the application, from a neighbor who has not observed landslide activity on the subject property over several decades. *Jane Curtright Testimony*.
15. Having heard all testimony and reviewed the complete file, at hearing Planning Staff maintained their recommendation for approval subject to the conditions in the staff report. *Exhibit 1; Scott McCormick Testimony*. The Applicant representative 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 exceptions pursuant to TCC 2.06.010(F) and TCC 24.45.030.

### **Criteria for Review**

Pursuant to TCC 24.45.030, the Hearing Examiner shall grant 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. 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. No other reasonable use of the property as a whole is permitted by the critical areas ordinance. Based on the size and existing use of the site, surrounding land uses, and the uses allowed outright in the RL 1/1 zone, a residential use is the only reasonable use of the property. Due to the extreme age and small size of the cabin, expansion is reasonable to allow the Applicants continued residential use. *Findings 1, 4, 5, 8, and 15.*
2. No reasonable use with less impact on the critical area or buffer is possible. Even with the addition, the residence would be modest in scale. The addition would be oriented away from the face of the bluff and would be designed to minimize excavation, and the

deck would not extend closer to the bluff than the residence. Neither the bluff nor the existing 15-foot buffer would be disturbed. *Findings 1 and 7.*

3. With conditions of approval, the requested development would not result in damage to other property and would not threaten the public health, safety or welfare on or off the development site, or increase public safety risks on or off the subject property. The conditions of approval incorporate the recommendations of a licensed geologist, which are designed to ensure that the project does not destabilize the slope, and of Environmental Health Division Staff, which are designed to protect public health. *Findings 9, 10, 12, and 15.*
4. The proposed reasonable use is limited to the minimum encroachment necessary to prevent denial of all reasonable use of the property. As described in Conclusion 2, the addition would be oriented away from the marine bluff to minimize encroachment. Due to the small area of the existing structure and renovation needs, the size of the addition is reasonable to allow continued residential use of the structure. The conditions of approval require the deck to maintain a minimum 15-foot setback from the top of the bluff. *Findings 1, 7, 8, and 10.*
5. With conditions of approval, the proposed reasonable use would result in minimal alteration of the critical area. The existing 15-foot setback would not be disturbed. The building addition would occur in a previously disturbed area. The conditions of approval require the buffer to be vegetated consistent with geologist recommendations. *Findings 7, 9, and 11.*
6. The proposal ensures no net loss of critical area functions and values. The proposal would not affect protected habitats and would satisfy minimum shoreline setback requirements. No mitigation is needed to ensure no net loss of critical area functions and values, but the conditions recommended by the project geologist are incorporated into this decision to ensure that safety issues associated with development on a marine bluff are addressed. *Findings 3, 9, 10, and 11.*
7. The use would not result in unmitigated adverse impacts to species of concern. *Finding 11.*
8. The location and scale of existing development is not the sole basis for granting the reasonable use exception. The RUE is granted because the landslide and marine bluff hazard buffer prevent reasonable expansion of the existing structure. The scale of surrounding development was not considered, as no evidence on building scale was presented. *Findings 7 and 8.*

### **DECISION**

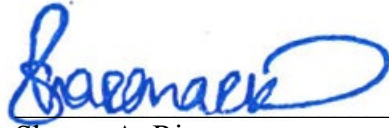
Based on the preceding findings and conclusions, the requested reasonable use exception is **GRANTED** subject to the following conditions:

1. The Applicants 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 Landslide Hazard / Marine Bluff Evaluation by Insight Geologic, Inc., dated April 16, 2020 (Exhibit 1.H).
3. An engineered stormwater and erosion control plan shall be submitted prior to building permit issuance per Exhibit 1.H.
4. Pursuant to the last recommendation on page 4 of Exhibit 1.H, the Applicants shall provide a landscaping plan to Community Planning and Economic Development prior to building permit issuance within the 50-foot landslide hazard area buffer for the purposes of stability and erosion control. The vegetation shall be installed prior to final occupancy approval unless a bond or irrevocable assignment of savings is provided in the amount of 125% of the cost of labor and materials.
5. All development shall be in substantial compliance with the drawings and site plan in the record at Exhibits 1.F and 1.H. Any expansion or alteration of this use requires approval of a new or amended approval. The Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
6. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the Applicants' responsibility to obtain this permit if required.
7. Article III of the Thurston County Sanitary Code requires that any well that is abandoned, unusable, or not intended for future use shall be decommissioned in conformance with the requirements of WAC Chapter 173-160. Prior to final building occupancy approval for the remodeled cabin, the existing abandoned well located on-site must be decommissioned by a licensed well driller per Washington State Department of Ecology standards. A copy of the well log must be submitted to Environmental Health.
8. The waterline serving the existing cabin must meet the minimum setback of 10 feet from the existing septic tanks.
9. Extreme caution must be taken during construction to prevent any vehicle or equipment travel over the existing septic system components and drainfield reserve area. There should be no staging of materials and no parking of vehicles or equipment over any portion of the septic system.



10. The deck and supports shall be set back a minimum of 15 feet from the top of the marine bluff.

**DECIDED** March 9, 2022.



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Sharon A. Rice  
Thurston County Hearing Examiner

NOTE: Pursuant to TCC 22.62.020(C)10, affected property owners may request a change in valuation for property tax purposes.



**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 **\$804.00** for a Request for Reconsideration or **\$1,093.00** 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.



<b>Project No.</b> _____ <b>Appeal Sequence No.:</b> _____
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**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  \$804.00 for Reconsideration or \$1,093.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.