



COUNTY COMMISSIONERS

Carolina Mejia-Barahona
District One

Gary Edwards
District Two

Tye Menser
District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Applications of)	NO. 2021106455
)	
Ryan Deskins)	Grand Mound Plat
)	FINDINGS, CONCLUSIONS,
<u>For Preliminary Plat and Variance</u>)	AND DECISIONS

—

SUMMARY OF DECISION

The request for a variance to reduce the required setback between the existing residence and the proposed private road is **DENIED**. The request for a preliminary plat to subdivide 1.62 acres into seven single-family residential lots is **REMANDED** for additional information and review consistent with this decision.

SUMMARY OF RECORD

Request:

Ryan Deskins (Applicant) requested a preliminary plat to subdivide 1.62 acres into seven single-family residential lots. The proposed plat design is based on a requested variance to reduce the required setback between the existing single-family residence on the subject property and a proposed private road to zero feet. The subject property is addressed as 6411 198th Avenue SW, Rochester, Washington.

Hearing Date:

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the application on April 25, 2023. The record was held open through April 27, 2023 to allow members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing public comments were submitted. The Hearing Examiner also left the record open for five business days to allow the parties to submit information on the procedure for varying the landscaping requirements of TCC 20.45.060. The responses were timely submitted, and the record closed on May 1, 2023.

Testimony:

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

Lacy Garner, Associate Planner, Thurston County

Arthur Saint, Civil Engineer, Thurston County Public Works

Aaron Fuller, Fuller Designs, Project Engineer/Applicant Representative

Ryan Deskins, Applicant

Exhibits:

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

Exhibit 1 Community Planning and Economic Development Department, Land Use & Environmental Review Section Staff Report including the following attachments:

- A. Notice of Public Hearing, issued April 6, 2023
- B. Master and Division of Land Applications, submitted December 1, 2021
- B1. Mazama Pocket Gopher & Prairie Report, drafted August 25, 2021
- B2. Parcel Map Check Report
- BB. Deskins Preliminary Plat Master Application, revised June 23, 2022
- C. Preliminary Plat Notice of Application, mailed February 16, 2022
- D. Bulk submittals cover sheet, submitted June 29, 2022
- E. Latest Preliminary Plat Maps, submitted June 29, 2022
- F. Drainage and Erosion Control Report, dated May 11, 2022
- G. Integrated Pest Management Plan, dated August 6, 2021
- G1. Soil Management Plan, submitted June 29, 2022
- H. Geotechnical Report, dated June 23, 2022
- I. Surrounding Wellhead Exhibit, submitted June 29, 2022
- J. Original Variance Application, submitted September 14, 2022
- JJ. Revised Variance Application with Map, submitted October 20, 2022
- K. Landscape Plan, dated June 8, 2022
- L. Public Works Roads Variance Request, submitted June 28, 2022
- M. Nisqually Indian Tribe memo, dated December 16, 2021
- N. Squaxin Island Tribe email, dated December 17, 2021
- O. Nisqually Indian Tribe response memo, dated November 9, 2022
- P. Squaxin Island Tribe response email, dated March 21, 2023

- Q. Public Works Water Resources notes, dated March 8, 2022
- R. Public Works Water Resources confirmation, dated September 6, 2022
- S. Washington Department of Ecology comments, dated March 8, 2022
- T. Environmental Health memo, dated November 21, 2022
- U. Public Works Development Review memo, dated November 17, 2022
- V. Variance Notice of Application, mailed October 26, 2022
- W. [intentionally left blank]
- X. SEPA Determination of Non-Significance, issued March 24, 2023
- Y. Nisqually Indian Tribe Determination of Non-Significance comment memo, dated March 27, 2023
- Z. Thurston County Addressing Assignments
 - 1. Comment Matrix 1, sent February 15, 2022
 - 2. Applicant Response to Comment Matrix 1, dated June 28, 2022
 - 3. Comment Matrix 2, sent March 9, 2022
 - 4. Comment Matrix 3, sent August 30, 2022
 - 5. Comment Matrix 3.1, sent August 31, 2022
 - 6. Communications with Applicant, dated August 30-31, 2022
 - 7. Applicant Response to Comment Matrix 3.1, dated September 1, 2022
 - 8. Comment Matrix 4, sent October 27, 2022
 - 9. Communications with Applicant, dated January – March 2023
 - 10. Comment Matrix 4 reminder email, sent April 3, 2023
 - 11. Pre-submission Conference Planning notes, sent July 29, 2021
- Exhibit 2 Email from Aaron Fuller to Lacy Garner, dated April 25, 2023 re: Deskins developer position regarding staff report
- Exhibit 3 Memo from Lacy Garner re: Follow-up questions/answers
- Exhibit 4 Memo from Aaron Fuller, dated May 1, 2023 in response to Exhibit 3

No in-person site visit was conducted, but the Hearing Examiner viewed the subject property and its environs on Google Maps.

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

FINDINGS

1. Ryan Deskins (Applicant) requested a preliminary plat to subdivide 1.62 acres into seven single-family residential lots. Also requested was a variance to reduce the required setback between the existing single-family residence on the property, which was proposed to be retained, and a proposed private road to zero feet. The subject property is addressed as 6411 198th Avenue SW, Rochester, Washington.¹ *Exhibits 1, 1.BB, and 1.JJ.*
2. The subject property is relatively long and narrow, with its frontage on 198th Avenue SW 115 feet wide, and its depth 615 feet. It is developed with a single-family residence, which was constructed in approximately 1986 and requires significant renovation. The residence is located at the north end of the parcel near 198th Avenue SW. With the property's current configuration, the residence meets required setbacks from the street and exterior property lines. The Applicant proposes to retain the existing residence on site, within the boundaries of proposed Lot 1. *Exhibits 1 and 1.JJ; Ryan Deskins Testimony.*
3. Surrounding land uses are residential, with varying densities and zoning designations. While there is a residential subdivision immediately east of the subject property with lot sizes similar to those proposed, existing residential lots west of the subject property are substantially larger than the ones proposed; parcels to the west are one or more acres in area. *Exhibits 1 and 1.JJ.* The large parcel of well over one acre to the south appears to be developed with a manufactured home development. *Google Maps site view.*
4. The subject property is within the Rochester Urban Growth Area and is zoned Residential Three to Six Dwelling Units per Acre (R 3-6/1). *Exhibit 1.* The permitted residential density is a minimum of three and a maximum of six residential units per acre, with densities in excess of five dwelling units per acre requiring the purchase of transfer of development rights. *Thurston County Code (TCC) 20.15.050.* The proposed density would be 4.3 dwelling units per acre. *Exhibits 1 and 1.E.*
5. Development standards applicable to the R 3-6/1 zone include a minimum lot size of 5,000 square feet and minimum lot widths of 75 feet for interior lots and 100 feet for corner lots. Minimum building setbacks are 20 feet from the right-of-way edge for collector and local roads, 10 feet from the right-of-way edge for private roads, and five feet from side and rear lot lines. Along the site's frontage, 198th Avenue SW would be subject to a 20-foot setback. The maximum hard surface coverage allowed per lot is 60%. *Exhibit 1; TCC 20.15.060; TCC 20.07.030.*
6. The proposed lots would be arranged in a linear configuration along the depth of the parcel, with access from a private road proposed to run along the eastern property line. Lot 1, containing the existing residence, would be 165 feet wide as measured from the

¹ The legal description of the subject property is as follows: Section 11 Township 15 Range 3W Quarter NE SE Plat GRAND VALLEY FRUIT & GARDEN TRACTS SS-2043 LT 1 Document 008/100. *Exhibit 1.*

proposed private road and 115 feet deep (18,975 square feet in area), with the eastern 30 feet encumbered by private road easement. Lots 2 through 7 would be 75 feet wide and 115 feet deep (8,625 square feet in area), with the eastern 40 feet encumbered by private road easement. *Exhibits 1.JJ and 2.*

7. The Applicant obtained Thurston County Public Works Department approval of a variance from road standards to allow the private road proposed, instead of a public road. The roadway width would be 20 feet, and there would be a five-foot wide sidewalk on the west side of the road. Along Lot 1, the sidewalk would abut the easement edge. Along all remaining lots, there would be an additional 10-foot clear zone between the sidewalk and the easement edge. *Exhibits 1.JJ and 1.L; Arthur Saint Testimony.*
8. With the proposed road configuration, the exterior wall of the existing residence (in a location corresponding to the east side wall of the garage) would be set back 1.86 feet from the edge of the reduced private road easement abutting the rear of the sidewalk. The garage eaves would extend to the edge of the private road easement and sidewalk, with zero setback. The Applicant requested a zoning variance to allow for the reduced setback for the existing residence on Lot 1 only.² All new residences would comply with the 10-foot setback requirement. However, because the right-of-way edge applicable to Lot 1 would be 10 feet east of the right-of-way edge applicable to the remaining lots, the difference in setback would be 20 feet. Acknowledging that the proposed zero-foot setback from the road is unusual, Public Works Staff indicated they do not have safety concerns due to the vertical curb at the western sidewalk edge required by the Public Works variance approval, the projected low speed of the road (due to the narrow road width), and, with respect to sight distance, the visibility provided by the five-foot sidewalk and the residence's setback from 198th. *Exhibit 1.JJ; Arthur Saint Testimony.*
9. Although not explicitly depicted on the project plans, the Applicant submitted evidence demonstrating that the impervious surface limitation of 60% can be met on each lot. Lot 1 would be 18,975 square feet in area, allowing for a maximum impervious surface coverage of 11,385 square feet. The existing residence and driveway have a combined footprint of approximately 2,000 square feet, and the impervious surfaces added by the proposed roadway would be approximately 4,125 square feet (25 feet of combined roadway width and sidewalk multiplied by lot width of 165 feet). Lots 2 through 7 would each be 8,625 square feet in area, allowing for a maximum impervious surface coverage of 5,175 square feet. The roadway would contribute 1,875 square feet of impervious surfaces per lot, leaving a balance of 3,300 square feet per lot for the residence, off-street parking, and driveway. These areas would be adequate to develop the necessary residence and infrastructure. The Applicant intends to sell the undeveloped lots for future residential development by the buyer. Without home designs, the Applicant does not

² In several instances in the staff report and testimony, Planning Staff referenced TCC 20.07.050.4, which prohibits any portion of any structure from being closer than two feet from any property line. *Exhibit 1; Lacy Garner Testimony.* As proposed, the private road would be within an easement and does not create a property line; the existing garage would be more than 30 feet from the east property line of Lot 1.

have more detailed impervious surface calculations for each lot. *Exhibits 1.JJ and 2; Aaron Fuller Testimony.*

10. Although not explicitly depicted on the project plans, the Applicant submitted evidence demonstrating that the off-street parking requirements of TCC 20.44, requiring two off-street parking spaces per lot, can be satisfied. As described previously, each of the smaller lots would have an impervious surface allowance of 3,300 square feet for the residence, off-street parking, and driveway. Each residence would have at least one garage parking space, and each driveway would be 400 to 500 square feet in area and would be wide enough for one to two parked cars. *Exhibit 2; Aaron Fuller Testimony.*
11. In testimony, the Applicant submitted that rolled curbs are proposed to allow the driveways to be placed on either the north or south side of each lot. However, Public Works Staff submitted that the administrative road variance approval (allowing for the street section proposed) was based on providing a vertical curb, which is also required by the Grand Mound Development Guidelines. The vertical curb would serve as a safety feature, helping to prevent cars from striking the existing residence. Administrative road variance approval could be sought for a rolled curb for Lots 2 through 7. *Testimony of Aaron Fuller and Arthur Saint.*
12. Pursuant to TCC 20.45.060(1)(b), a proposed residential subdivision lot that is less than 50% of the size of an existing contiguous residential lot is defined as an incompatible use. Incompatibility is required to be screened by a 30-foot wide vegetated buffer planted with predominantly native and drought tolerant species that provides a very dense sight barrier and physical buffer to significantly separate conflicting uses. A combination of trees, shrubs, berms, fences, and related design features may be selected, provided that the result is sight-obscuring from adjoining properties. *TCC 20.45.060(3); Exhibit 1.*
13. The proposed lots would be less than half the size of the existing contiguous lots to the west and south. The 30-foot incompatible use buffer is not depicted on the project plans, and Planning Staff expressed concern that it might not be possible to meet the requirement on the site. The Applicant acknowledged that the definition of incompatible use is met for the west and south sides of the subdivision but argued that the project is exempt from the standard pursuant to TCC 20.45.060(2)(b), which exempts “individual single-family residences, existing, legal non-conforming uses and properties separated by a public road.” *TCC 20.45.060(2)(b); Aaron Fuller Testimony.* The Applicant representative argued that the intent of the code is to separate lower-density residential uses from apartments, townhouses, or similar higher-density residential uses, but not to separate single-family residences from other single-family residences. *Exhibit 4.*
14. The Applicant’s interpretation of the exemption conflicts with Planning Staff’s longstanding interpretation, which would exempt the proposed new subdivision lots only if they were separated by a public road. Staff submitted that the Applicant could apply for a variance from the requirement, as allowed by TCC 20.45.060(2)(c). If such a variance proposed to reduce the incompatible use buffer width by more than 50%, it

would require Hearing Examiner approval. Because the submitted application materials did not include an incompatible use buffer variance request, new public notice of application would be required. If the requested variance reduced the requirement by less than 50%, the Applicant could seek an administrative variance. *Exhibit 3; Lacy Garner Testimony*. While the Applicant maintained that the incompatible use buffer does not apply to the project, and argued that even if the buffer did apply, modification of the requirement would not require a variance, the Applicant offered to construct a six-foot solid wood fence along the southern and western property lines to provide separation from the adjacent properties. *Exhibit 4*.

15. Pursuant to TCC 20.45.020(1), “a plan of the proposed landscaping and screening shall be provided, which may be incorporated into plans for submitted for preliminary plat, site plan review or building permit review.” *TCC 20.45.020(1)*. Other than the requirements for the incompatible use buffer, TCC 20.45 does not specify any minimum quantity of subdivision landscaping but references the Ground Mound Development Guidelines as applicable within the Ground Mound urban growth area. Planning Staff determined that these guidelines do not apply to the proposal. Based on the 1998 version of the guidelines that is published online, the guidelines do not apply to properties within the R 3-6/1 zone (see Section 1.B on page 1). *Exhibit 1.Z6*.
16. The Applicant submitted a landscape plan which, referencing the Ground Mound Development Guidelines, provides for a landscape strip with street trees along 198th Avenue SW and a five-foot width of landscaping, consisting mainly of shrubs, along the western and eastern property lines. *Exhibit 1.K; Aaron Fuller Testimony*. Planning Staff submitted that the landscaping plan is inadequate because it does not demonstrate compliance with the incompatible use buffer requirement of TCC 20.45.060 or with TCC 20.07.070(1), which restricts landscaping within the vision clearance triangle of corner lots. In this case Lot 1, located at the corner of 198th Avenue SW and the proposed private road, would be a corner lot. Although Planning Staff’s recommended conditions of approval would require landscaping to be installed prior to final plat approval (which the Applicant objected to with respect to Lots 2 through 7, because the lots are proposed to be sold before buildings are constructed), Staff indicated that their concern regarding the timing of landscaping was alleviated after considering the hearing testimony. *Exhibit 1; Lacy Garner Testimony*.
17. Thurston County soil mapping indicates that the subject property has potential to provide habitat for the Mazama pocket gopher, a species listed as threatened pursuant to the federal Endangered Species Act. However, a site-specific study did not detect any Mazama pocket gopher mounds, prairie habitat, Mima mounds, or Oregon white oak trees. *Exhibit 1.B1*.
18. The subject property is within a Category 1 aquifer recharge area, a critical areas designation which does not prohibit residential development, but which requires the project to include best management practices designed to protect groundwater. *TCC 24.10.020; TCC 24.10.030; Exhibits and 1.T*. The Applicant has prepared an integrated

pest management plan that provides a process for pest management that would minimize the application of chemicals within the subdivision. Groundwater would also be protected through the connection of the lots to public water and sewer systems. *Exhibits 1.G and 1.T.*

19. All lots would be served by the Ground Mound public water and sewer system. Based on comments submitted by the Thurston County Public Works Department, the provision of water and sewer would require paying applicable fees, completing infrastructure improvements, submitting engineered plans, decommissioning the existing water well on site, and granting Thurston County utility easements along the private road. These requirements were incorporated into the recommended conditions of preliminary plat approval. *Exhibits 1 and 1.Q.*
20. The proposed road layout provides for two means of access and egress. The private road along the eastern property line would connect to 198th Avenue SW at the northern site boundary and to 200th Avenue at the southern site boundary. Southeast of the subject property, 200th Avenue loops back to 198th Avenue SW via Tamarack Drive SW. All abutting roads - 198th Avenue SW, 200th Avenue SW, and Tamarack Drive SW - are public roads. The Applicant would be required to install frontage improvements along 198th Avenue SW, including a sidewalk, curb, and gutter. *Exhibit 1.E; Arthur Saint Testimony.*
21. The soils underlying the subject property have high infiltration rates. The Applicant proposes to infiltrate all stormwater onsite within two infiltration trenches. One infiltration trench would be installed beneath the private road, and one would be within Lot 1, along to the 198th Avenue SW right-of-way. Runoff from pollution-generating surfaces would be treated in Contech Stormfilter catch basins prior to infiltration. Thurston County Public Works Staff have reviewed the proposed stormwater plan and have not identified any issues of concern. *Exhibits 1.E, 1.F, and 1.U; Arthur Saint Testimony.*
22. The Washington Department of Ecology submitted comments identifying various solid waste management, toxic cleanup, and water quality requirements that apply or might apply to the project. The comment letter notes that clearing, grading and/or excavation that results in the disturbance of one or more acres and discharges stormwater to surface waters of the State requires coverage under the Construction Stormwater General Permit. *Exhibit 1.S.* While the proposed subdivision would disturb more than one acre, stormwater would be infiltrated on site and would not discharge to surface waters. Consequently, the Applicant submitted that the Construction Stormwater General Permit would not be required. *Aaron Fuller Testimony.* The determination of whether one is required ultimately is within the purview of the Washington State Department of Ecology.
23. The Thurston County Public Works Department reviewed the project for compliance with the Thurston County Road Standards and the Drainage Design and Erosion Control

Manual and determined that the preliminary requirements have been satisfied. Public Works Staff recommended approval of the project, subject to conditions as outlined in the County's Staff Report. *Exhibit 1.U.*

24. The Thurston County Environmental Health Division reviewed the project for compliance with the Thurston County Sanitary Code and recommended approval subject to conditions as outlined in the County's Staff Report. The requested environmental health conditions of approval include requirements to decommission the existing well on site, abandon the existing septic system on site consistent with Sanitary Code requirements, finalize the integrated pest management plan including identifying a method of distribution to homeowners, and extend Grand Mound utilities through the subdivision. *Exhibit 1.T.*
25. The subject property is located within the Rochester School District. The nearest schools are Grand Mound Elementary, Rochester Primary Elementary, Rochester Middle, and Rochester High Schools. Impacts to schools would be mitigated through payment of impact fees pursuant to TCC Title 25. There is a school bus route in the area and students would likely be bussed to school. *Exhibit 1; Lacy Garner Testimony.*
26. In response to comments submitted by the Nisqually Indian Tribe and Squaxin Island Tribe, the Applicant had a cultural resources survey prepared for the subject property. The Tribes concurred with the conclusions of the survey, but requested to be notified if there are any inadvertent discoveries of archaeological resources or human burials. *Exhibits 1, 1.M, 1.N, 1.O, and 1.P.*
27. Thurston County acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA). Having reviewed the preliminary plat plans, technical reports, environmental checklist, agency comments, and other documents, the County's SEPA responsible official issued a determination of non-significance (DNS) on March 24, 2023. The DNS was not appealed and became final on April 15, 2023. *Exhibits 1 and 1.X.*
28. In support of the variance application, the Applicant noted that the existing residence was constructed at the present location by a prior owner of the property, that the reduced setback is consistent with "zero lot line" development methods used elsewhere³, that the reduced setback would allow the project to proceed within the existing parcel boundaries, and that it would be more cost-effective and less wasteful of resources to retain the existing residence rather than to replace it. *Exhibit 1.JJ; Ryan Deskins Testimony.* In project correspondence the Applicant noted that it might be possible to increase the setback by removing a section of the existing residence. *Exhibit 1.Z7.*

³ Note: "zero lot line" development typically refers to setbacks applicable to lot lines between lots, not lot lines abutting rights-of-way.

29. Notice of the open record hearing was mailed to surrounding property owners on April 6, 2023 and published in *The Olympian* on April 14, 2023. *Exhibit 1.A*. There was no public comment on the proposal.

CONCLUSIONS

Jurisdiction:

The Thurston County Hearing Examiner is granted jurisdiction to hear and decide applications for variances pursuant to TCC 2.06.010.B, 20.52.010, and TCC 20.60.020. The Examiner is granted jurisdiction to hear and decide preliminary plats of lands within unincorporated Thurston County pursuant to TCC 2.06.010.A and TCC 18.10.030.

Criteria for Review:

Preliminary Plat Criteria

Pursuant to TCC 18.12.090.B, preliminary plat approval may be granted if the following criteria are shown to be satisfied:

1. Appropriate provisions are made for the public health, safety, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
2. The public use and interest will be served by the platting of such subdivision and dedication. If the hearing examiner finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the hearing examiner shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. The county shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

Variance Criteria

The Hearing Examiner may approve an application for a variance only if the following criteria set forth in TCC 20.52.020 are satisfied:

1. That the granting of the proposed variance will not result in the allowance of a use which is not classified as a permitted or special use in the district wherein the use would be located;
2. That special conditions and circumstances exist which are peculiar to the land, such as size, shape, topography or location, not applicable to other lands in the same district and that literal interpretation of the provisions of this title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title;

3. That the special conditions and circumstances are not the result of the actions of the applicant;
4. That granting of the variance requested will not confer a special privilege to the property that is denied other lands in the same district;
5. That the granting of the variance will not be materially detrimental to the public welfare or injurious to other land or improvements in the vicinity and district in which the property is situated;
6. That the reasons set forth in the application justify the granting of the variance, and that the variance, if granted, would be the minimum variance that will make possible the reasonable use of the land;
7. That the granting of the variance will be in harmony with the general purpose and intent of this title and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Additional Applicable Regulations

TCC 20.45.060 Incompatible uses.

1. An incompatible use is defined as:
 - a. A commercial or industrial zoning district or use adjacent to: (1) a residential lot of two acres or less, or (2) a residential zoning district with a density of one unit per two acres or greater.
 - b. A proposed residential subdivision lot that is less than fifty percent of the square footage of an existing contiguous residential lot.
2. Applicability.
 - a. This section applies where the common property line is at least twenty feet in length and where a new proposed use is adjacent to an incompatible use as described in section 1.
 - b. Individual single-family residences, existing, legal non-conforming uses and properties separated by a public road are exempt from the requirements of Section 20.45.060.
 - c. A variance to reduce the buffer width may be permitted pursuant to the applicable sections of TCC 20.07.050.
3. Screening between incompatible uses—Screening shall consist of a thirty foot wide buffer containing the following:
 - a. A vegetated buffer of predominantly native and drought tolerant species that will provide a very dense sight barrier and physical buffer to significantly separate conflicting uses and land use districts.
 - b. Plant materials and ground cover shall be selected and maintained so that the 30-foot buffer will be fully vegetated within three years.

- c. A combination of trees, shrubs, earthen berms, and related plant materials or design features may be selected, provided that the resultant effect is sight-obscuring from adjoining properties. In addition, fences and walls may be incorporated into the landscaping buffer.
 - d. A minimum of one tree per twenty-five linear feet shall be planted. Trees shall be a minimum one inch in caliper measured six inches above the base at the time of planting.
 - e. Shrubs must be capable of growing to a minimum of five feet in height, within three years. Shrubs shall be planted on eight foot centers at minimum.
 - f. Ground cover shall consist of bark, mulch, native grasses and/or native understory vegetation such as salal, Oregon grape, Sword fern, etc.
4. The thirty-foot buffer required by this section may be used for the following so long as the design standards of subsection 3 can be met.
 - a. Storm water treatment facilities.
 - b. Critical area protection.
 - c. Required landscaping.
 5. In the event of a conflict between the standards for individual uses and other general requirements of this chapter, the more stringent shall apply. Determination of the appropriate standards shall be made by the department.

Conclusions Based on Findings:

1. The criteria for variance approval are not satisfied with respect to the requested reduced setback from the internal private road.
 - A. Variance criterion 2 requires that there be special circumstances “peculiar to the land,” such that strict interpretation of the zoning ordinance would deprive the owner of rights enjoyed by other similarly situated properties. In this case, the circumstance is the placement of the existing residence on the lot when combined with the proposed plat layout. The existing residence meets applicable exterior setback standards and the lot meets the dimensional standards of the zone; the issue is that the placement of the residence does not leave sufficient space for a subdivision road while meeting applicable street setback standards. This circumstance is not a circumstance that is inherent in the land, and it does not deprive the Applicant of any rights enjoyed by similarly situated properties. The land, while relatively narrow, is wide enough to subdivide. This is demonstrated by the layout of Lots 2 through 7. The fact that doing so may be costly with respect to the residence on Lot 1 does not constitute a deprivation of rights. It is typical for subdividers to have to move or demolish existing structures, aggregate multiple parcels, or seek a boundary line adjustment with a neighboring parcel to allow for a feasible lot layout. *Findings 2, 5, 6, and 28.*

- B. For the reasons described in Conclusion 1.A, granting the variance would constitute a special privilege contrary to criterion (4).
 - C. The reasons set forth in the application do not justify granting the variance per criterion (6), and the variance is not needed to make possible the reasonable use of the land. Although argument was made regarding the wastefulness of removing the existing residence, the Applicant acknowledged that the residence needs significant renovation and that alternatives might exist such as removing only the garage. Further, the impact to the County's housing supply from removal of the existing residence, if elected, would be temporary and offset by construction of a new residence. *Finding 28.*
2. The Hearing Examiner finds that the incompatible use buffer as established in TCC 20.45.060(1)(b) applies to the proposal, and that a variance would be required to deviate from the standard.
- A. There is no dispute that the proposed residential lots meet the definition of incompatible use contained in TCC 20.45.060(1)(b). The adjacent residential parcels to the west and south are more than twice the area of the proposed lots. *Findings 3 and 13.*
 - B. The exception contained in TCC 20.45.060(2)(b) for "individual single-family residences" cannot be read as exempting proposed subdivision lots. Such an interpretation would completely negate every instance of incompatible use involving "a proposed residential subdivision lot" per TCC 20.45.060(1)(b). A more reasonable interpretation is to read the exemption for "individual single-family residences" as applying to development or redevelopment of individual previously created lots, which were created prior to the buffering requirement, or exempting a proposed plat from providing the incompatible use buffer to individual existing single-family residences that are across a public street from proposed subdivision lots. The lots of a new residential subdivision are expressly subject to the incompatible use buffer requirement when they are directly adjacent to larger residential lots.
 - C. The ordinance provides for only one manner of modifying the incompatible use buffer requirement: seeking a variance pursuant to TCC 20.07.050. Subsection 2 of TCC 20.07.050 provides for an administrative variance from "yard requirements," which is limited to a 50% reduction. All other variances require Hearing Examiner approval pursuant to TCC Chapter 20.52, which as established at TCC 20.52.060 requires an application to be filed and at TCC 20.52.070 requires the Hearing Examiner to make a decision after a public hearing. All public hearings require public notice. None of these procedures have occurred to date with respect to the incompatible use buffer. Because deviation from the buffering requirement has potential to affect adjacent property owners, it would be inconsistent with County Code for the Hearing Examiner to issue a decision based on the current record and on

the notice of hearing that was previously provided, which omitted any reference to variance from incompatible use buffer requirements. *Finding 14.*

3. Due to the changes in site design required in light of variance denial and to the necessary application of the incompatible use buffer to the plat, the preliminary plat map cannot be approved as submitted. Any modification of the private road street section resulting from the denial of the street setback variance must be shown on a revised plat map, and all lots must be shown to be buildable given incompatible use buffer and street setback requirements. Further, if the Applicant elects to apply for a variance from the incompatible use buffer requirement, review of such a request must be incorporated into the instant preliminary plat review process with appropriate notice and opportunity for neighboring property owner comment.

DECISIONS

Based on the preceding findings and conclusions, the request for a variance to reduce the required setback between the existing residence and the proposed private road to is **DENIED**.

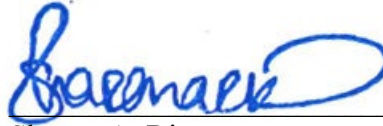
The request for a preliminary plat to subdivide 1.62 acres into seven single-family residential lots is **REMANDED** for the following:

1. Revision of the preliminary plat map to reflect the lot, building envelope, and private road dimensions proposed without a street setback variance and with application of the incompatible use buffer (unless a variance is requested - and approved - per below). If the revision results in additional lots being proposed, new notice of revised application would be triggered.
2. Revision of the landscaping plan to reflect compliance with the incompatible use buffer requirement and the corner lot landscaping limitation of TCC 20.07.070.
3. If the Applicant requests a variance from the incompatible use buffer requirement, a proper application supporting such request shall be submitted and processed by the County prior to a decision on the preliminary plat application. If the variance requires Hearing Examiner approval, the variance will be considered at a reconvened consolidated hearing following proper notice of application and hearing.
4. If Applicant's redesign is based on a 50% or smaller reduction of the incompatible use buffer and the Community Planning and Economic Development Department grants administrative approval thereof, when ready, the parties may either: 1) submit the re-revised plat map with all of the above-required information to have the revised proposal considered by the Examiner without additional hearing, or 2) either party may request the hearing to be reconvened to ensure a full record sufficient to enter the necessary findings and conclusions is provided. If reconvened, notice of the reconvened hearing date and time shall be provided consistent with Code. Following either of these steps, a full

Hearing Examiner decision would issue addressing all then-currently proposed applications.

At the Applicant's option, rather than submitting revised materials, the Applicant may treat this decision as **DENIAL** of the preliminary plat application for purposes of appeal.

Decided May 10, 2023 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 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 **\$821.00** for a Request for Reconsideration or **\$1,112.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center at 3000 Pacific Ave SE, Suite 100 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 ☐ \$821.00 for Reconsideration or \$1,112.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.