



COUNTY COMMISSIONER:

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 Application of)	NO. 2022105675
)	
Sybil Benn)	
)	
For Approval of a Shoreline Substantial)	
Development Permit, Shoreline Conditional Use)	FINDINGS, CONCLUSIONS,
Permit, Administrative Shoreline Variance, and)	AND DECISIONS
Reasonable Use Exception)	

SUMMARY OF DECISIONS

The requested shoreline substantial development permit, shoreline conditional use permit, administrative shoreline variance, and reasonable use exception are **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Sybil Benn (Applicant) requested a shoreline substantial development permit, shoreline conditional use permit, administrative shoreline variance, and reasonable use exception to replace a single-family residence and deck and construct a new retaining wall on a legally nonconforming lot on Steamboat Island. The subject property is located at 2844 Steamboat Island Road NW, Olympia, Washington.

Hearing Date:

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on September 26, 2023. The record was held open through September 28, 2023 to allow members of the public who experienced technology-based barriers to participating in the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing public comment was submitted and the record closed on September 28, 2023. No in-person site visit was conducted, but the Examiner viewed the property and its environs on Google Maps.

Testimony:

At hearing, the following individuals presented testimony under oath:

Heather Tschaekofske, Associate Planner/Biologist Thurston County Community Planning & Economic Development Department

Nick Taylor, Civil Engineer, Applicant Representative

Stephen Benn, Applicant

Carol Clinton

Exhibits:

The following exhibits were admitted in the record:

- Exhibit 1 Community Planning & Economic Development Department Report including the following exhibits:
- A. Notice of Public Hearing, dated September 15, 2023
 - B. Zoning/Vicinity Map
 - C. Master and JARPA Application, received November 9, 2022, with revised JARPA Application, received May 17, 2023
 - D. Master and Shoreline Administrative Variance Application, received November 9, 2022
 - E. Master and RUE Application, received May 17, 2023
 - F. Notice of Application for Shoreline permits, dated December 7, 2022, and for RUE permit, dated June 2, 2023
 - G. Benn Shoreline 300 feet measurements exhibit
 - H. Shoreline Planting plan, dated February 1, 2023
 - I. Revised site plan, dated July 18, 2023
 - J. Variance criteria narrative, submitted May 17, 2023
 - K. RUE Project narrative, submitted May 17, 2023
 - L. Geotechnical Report from Quality Geo NW, dated August 15, 2022
 - M. Habitat Assessment from Russell and Associates, dated July 13, 2023
 - N. Survey site plan for flood review, dated April 2022
 - O. Approval Memos from Thurston County Environmental Health, dated January 11, 2023 and August 2, 2023
 - P. Comment emails from the Squaxin Island Tribe, dated December 13, 2022, and April 6, 2023
 - Q. Comment letters from the Nisqually Indian Tribe, dated December 14, 2022, March 29, 2023, and June 13, 2023

- R. Comment letter from the Department of Archaeology and Historic Preservation, dated March 29, 2023
- S. Inadvertent Discovery Plan for Thurston County

Based on the record developed at hearing, the following findings and conclusions are entered in support of the decision of the Hearing Examiner:

FINDINGS

1. Sybil Benn (Applicant) requested a shoreline substantial development permit (SSDP), shoreline conditional use permit (SCUP), administrative shoreline variance (ASV), and reasonable use exception (RUE) to replace a single-family residence and deck and construct a new retaining wall on a legally nonconforming lot on Steamboat Island. The subject property is located at 2844 Steamboat Island Road NW, Olympia, Washington.¹ *Exhibits 1.C, 1.D, 1.E, 1.I, 1.J, and 1.K.*
2. The shoreline permit applications were received on November 9, 2022 and deemed complete on December 1, 2022. The RUE application was received on May 17, 2023 and deemed complete on June 2, 2023. *Exhibit 1.F.*
3. The subject property is 0.12 acres in area and is located on the east side of Steamboat Island along the Puget Sound shoreline. Existing improvements include a single-family residence built in 1941, driveway, septic system, a bulkhead, two Puget Sound-facing decks - including an upper deck attached to the residence and extending out to the bulkhead and a lower deck located on and extending slightly beyond the bulkhead, - and stairways connecting the decks and providing access to the beach. *Exhibits 1, 1.I, and 1.M.* Surrounding properties are of similar area and are developed with single-family residences and associated structures. *Exhibits 1 and 1.M (see photos).*
4. The Applicant proposes to replace the existing residence and upper deck, which are in poor condition, but retain the lower deck. The existing residence is set back 14.1 feet from the bulkhead and the upper deck extends to the bulkhead. The proposed two-story, one-bedroom residence would be constructed in the same general location as the existing residence but would have a slightly shorter and wider footprint to allow for an increased shoreline setback. The proposed replacement residence would be set back 15.6 feet from the bulkhead at its closest point, and the new upper deck would be set back 8.37 feet from the bulkhead at its closest point. The residence would have a footprint of 920 square feet, and the new upper deck would have a footprint of 280 square feet. A new stairway and landing would lead down from the new deck to the retained deck and stairway at the bulkhead. *Exhibits 1.I and 1.C; Testimony of Nick Taylor and Stephen Benn.*
5. The new retaining wall, which would be placed between the residence and the bulkhead,

¹ The legal description of the subject property is stated as follows in the staff report: [a portion of] "Section 28 Township 20 Range 2W; STEAMBOAT IS L 21,22 & S2 L 23 & 2ND CL TDLS ADJ." It is also known as Parcel no. 76200002100. *Exhibit 1.*

is designed to stop erosion on the site. It would be five to six feet in height and would be constructed by hand with blocks or pre-cast concrete. The distance between the residential building foundation and the retaining wall would be at least eight feet.

Exhibits 1.C and 1.I; Heather Tschaekofske Testimony.

6. Development within 200 feet of the Puget Sound shoreline is regulated by the Shoreline Master Program for the Thurston Region (SMPTR). The SMPTR designates the subject shoreline as a Rural shoreline environment. *Exhibit 1*. Residential development is allowed in the Rural environment, subject to compliance with the policies and regulations of the SMPTR. *Exhibit 1; SMPTR, Section 3, Chapter IV(D)(2)*. However, because the proposed retaining wall not directly supporting a residence is not considered a normal appurtenance to residential use and the SMPTR does not contain any other applicable use category, the retaining wall is considered an unclassified use and requires approval of a SCUP. In addition, the project requires an SSDP because the fair market value would exceed the exemption limit of \$8,504. *Exhibits 1 and 1.C*.
7. The subject property is zoned Residential LAMIRD Two Dwelling Units per Acre (RL 2/1). *Exhibits 1 and 1.B*. Primary permitted uses in the zone include single-family and two-family residences, agriculture, and home occupations. *Thurston County Code (TCC) 20.13A.020*. Although the subject property is nonconforming with respect to the 12,500 square foot minimum lot size of the RL 2/1 zone (TCC 20.13A.030.1.a) as well as the 20,000 square-foot minimum lot size in the Rural shoreline environment (SMPTR Section Three, Chapter XVI (D)(3)(b)), the subject property is considered a legal building lot because it was created through the plat of Steamboat Island in 1927. *Exhibit 1*.
8. The SMPTR requires a minimum residential building setback of 50 feet from the ordinary high water mark in the Rural shoreline environment, but allows for a setback reduction (without a variance) to the average setback of structures within 300 feet of each property line if surrounding structures encroach into the setback. *SMPTR Section 3, Chapter IV(D)(3)(c) and (C)(16)*. The standard 50-foot setback encompasses most of the parcel, extending northwest to a point roughly coinciding with the 20-foot street setback from Steamboat Island Road NW, leaving only approximately 32 square feet available for development. *Exhibits 1, 1.I, and 1.J*. Based on the encroachment of surrounding residences into the 50-foot setback, the required setback could be administratively reduced to the average setback, which is 37.2 feet. However, a 37.2-foot setback would not create sufficient building area for a single-family residence. The Applicant requested an administrative shoreline variance from the setback standard pursuant to Section One, Chapter V(E)(6) of the SMPTR² to allow a setback of 15.6 feet from the bulkhead, a slightly wider setback than exists presently. *Exhibits 1.I, 1.J, and 1.G; Testimony of Heather Tschaekofske and Nick Taylor*.

² This section provides a variance procedure for those cases in which lot size prevents development of a nonconforming lot consistent with applicable setback requirements. *Exhibit 1; SMPTR Section One, Chapter V(E)(6)*.

9. The subject property slopes down to the southeast towards Puget Sound and is classified as a geologic hazard area, in that it is mapped as having Kapowsin silt loam soils, a soil type identified in the Thurston County critical areas ordinance (CAO) as presenting severe erosion hazard.³ *TCC Table 24.15-3; Exhibits 1, 1.L, and 1.I.* Although TCC 24.50.060 allows development on lots that are legally nonconforming with respect to the CAO, such development is limited to 3,500 square feet in the outer 50% of the buffer. A RUE is needed for development within the critical area. *Exhibit 1.*
10. The Applicant submitted a geotechnical report in support of the proposed development within the geologic hazard area. The report includes recommendations that the new retaining wall have a minimum setback from the bulkhead of 2H:1V⁴, that the house foundation have a minimum setback of eight feet from the base of the retaining wall, and that drainage controls be installed to control runoff during and after development. The submitted project plans incorporate the setback requirements and, consistent with the drainage recommendations, depict that runoff would be tightlined downslope to the bulkhead. *Exhibits 1.L and 1.I.*
11. The southeastern portion of the subject property (including an area landward of the bulkhead) is within the FEMA 100-year flood zone, also a designated critical area regulated by the CAO. Although a small portion of the replacement deck and stairway and the southwest end of the proposed retaining wall would encroach into the floodplain, overall there would be a net reduction of structure within the floodplain and the project would not reduce flood storage capacity. The bulkhead would not be disturbed, and no development would occur waterward of the bulkhead. *Exhibits 1, 1.I, 1.M, and 1.N.*
12. Potential project impacts to the floodplain were considered in a habitat assessment. The floodplain above the bulkhead does not exhibit any marine habitat characteristics. Vegetation, where present, consists of poison oak, Pacific madrone, and Douglas fir. Because the bulkhead would separate the construction area from the shoreline, no impacts to the shoreline are anticipated. Erosion and sediment control measures would be used to prevent the delivery of sediment and other pollutants to the shoreline area. *Exhibit 1.M.*
13. Bull trout, Puget Sound Chinook, and Puget Sound steelhead are present in southern Puget Sound and are listed as threatened under the Endangered Species Act. The

³ While the staff report contains a mention of a “mapped landslide hazard on the property” (Exhibit 1, page 3), the geotechnical report mentions landslide hazards as follows: “According to the regional scale interactive [WGIP] map, a small, localized landslide deposit has been mapped on the northern end of the island. Provided LIDAR and hill shade imagery reveals steep slopes across the property, however it does not indicate any recent localized landslide deposits.” *Exhibit 1.L, page 6.* The report does not mention landslide hazards otherwise and does not cite any CAO provisions regarding landslide hazard areas or applicable performance standards. While there are references in both documents to a slope on site, the record does not establish whether the slope is more than 15 feet in height and has requisite grade to meet landslide hazard definitions. Based on this, the instant decision finds there are no landslide hazards on the site that are regulated pursuant to the CAO.

⁴ This is depicted as a horizontal distance of five feet in Appendix C. *Exhibit 1.L.*

conclusion of the habitat assessment was that the project activities “may affect but are not likely to adversely affect” the listed species or critical habitat for those species. *Exhibit I.M.*

14. To minimize erosion risk and to ensure no net loss of critical area functions within the shoreline, the Applicant submitted a planting plan calling for native shrubs and groundcover to be installed the full width of the parcel between the residence and the bulkhead. *Exhibit I.H.*
15. The County’s Flood Reviewer has determined that the proposal is consistent with the County’s floodplain development standards. *Exhibit I; Heather Tschaekofske Testimony.*
16. The subject property is served by the Steamboat Island Inc Group A public water system and an individual on-site septic system. The septic tank, which was recently replaced with Thurston County Environmental Health Division approval, is located between the residence and Steamboat Island Road NW more than 50 feet from the shoreline. Environmental Health recommended approval of the requested project permits, and did not identify any conditions needed to ensure compliance with Thurston County Sanitary Code requirements. *Exhibit I.O.*
17. A cultural resource assessment was conducted for the site, which included a pedestrian and shovel probe survey. No archaeological resources were observed on site, and the archaeologist conducting the assessment recommended that an inadvertent discovery plan be implemented on site during the proposed construction. The assessment was transmitted to the Washington Department of Archaeology and Historic Preservation (DAHP) and affected tribes. DAHP, the Nisqually Tribe, and the Squaxin Island Tribe submitted comments concurring with the results and recommendation. Planning Staff incorporated the inadvertent discovery plan requirement into the recommended conditions of project approval. *Exhibits I, I.R, I.P, I.Q, and I.S.*
18. The project is exempt from review under the State Environmental Policy Act. *Exhibit I.*
19. Notice of the public hearing was mailed to all owners of property within 500 feet of the site on September 11, 2023 and published in The Olympian on September 15, 2023, at least 10 days prior to the hearing. *Exhibits I and I.A.* Public comment was in support of the proposal. *Carol Clinton Testimony.*
20. Having heard all testimony, Planning Staff maintained their recommendation that, if the permits are approved through the instant process, the conditions recommended in the staff report should be imposed. *Exhibit I; Heather Tschaekofske Testimony.* The Applicant waived objection to the recommended conditions. *Testimony of Nick Taylor and Stephen Benn.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide the shoreline substantial development permit and shoreline conditional use permit applications pursuant to Section 19.04.010 of the Thurston County Code and Section One, Part V of the Shoreline Master Program for the Thurston Region.

The Hearing Examiner is granted jurisdiction to hear and decide the application for a reasonable use exception pursuant to TCC 2.06.010(F) and TCC 24.45.030.

The Hearing Examiner has jurisdiction to hear and decide the administrative shoreline variance pursuant to TCC 20.60.025, which allows for the consolidation of multiple permit types using the review and approval process of the highest permit type. In this case the highest permit types (the reasonable use exception, the shoreline substantial development permit, and the shoreline conditional use permit) require Hearing Examiner decision.

Criteria for Review

Shoreline Substantial Development Permit (WAC 173-27-150)

To be approved by the Hearing Examiner, the proposed shoreline substantial development permit must be consistent with:

- A. The policies and procedures of the Shoreline Management Act;
- B. The provisions of applicable regulations; and
- C. The Shoreline Master Program for the Thurston Region.

A. Shoreline Management Act

Chapter 90.58 RCW, the Washington State Shoreline Management Act (SMA) of 1971, establishes a cooperative program of shoreline management between the local and state governments with local government having the primary responsibility for initiating the planning required by the chapter and administering the regulatory program consistent with the Act. The Thurston County Shoreline Master Program (SMPTR) provides goals, policies, and regulatory standards for ensuring that development within the shorelines of the state is consistent the policies and provisions of Chapter 90.58 RCW.

The intent of the policies of RCW 90.58.020 is to foster “all reasonable and appropriate uses” and to protect against adverse effects to the public health, the land, and its vegetation and wildlife. The SMA mandates that local governments adopt shoreline management programs that give preference to uses (in the following order of preference) that: recognize and protect the statewide interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned areas of the shorelines; and increase recreational opportunities for the public in the shoreline. The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state is to be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end, uses that are consistent

with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline, are to be given preference.

B. Applicable regulations from the Washington Administrative Code

WAC 173-27-140 Review criteria for all development.

- (1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.
- (2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

- (1) Each permit for a substantial development, conditional use or variance issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

C. Shoreline Master Program for the Thurston Region

SMPTR Section Two, Chapter V. REGIONAL CRITERIA

The Shoreline Master Program for the Thurston Region contains regional criteria that apply to the proposal. All development within the jurisdiction of this Master Program shall demonstrate compliance with the following criteria:

- A. Public access to shorelines shall be permitted only in a manner which preserves or enhances the characteristics of the shoreline which existed prior to establishment of public access.
- B. Protection of water quality and aquatic habitat is recognized as a primary goal. All applications for development of shorelines and use of public waters shall be closely analyzed for their effect on the aquatic environment. Of particular concern will be the preservation of the larger ecological system when a change is proposed to a lesser part of the system, like a marshland or tideland.
- C. Future water-dependent or water-related industrial uses shall be channeled into shoreline areas already so utilized or into those shoreline areas which lend themselves to suitable industrial development. Where industry is now located in shoreline areas that are more suited to other uses, it is the policy of this Master Program to minimize expansion of such industry.

- D. Residential development shall be undertaken in a manner that will maintain existing public access to the publicly-owned shorelines and not interfere with the public use of water areas fronting such shorelines, nor shall it adversely affect aquatic habitat.
- E. Governmental units shall be bound by the same requirements as private interests.
- F. Applicants for permits shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a Permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.18.180 (1), the person requesting the review shall have the burden of proof.
- G. Shorelines of this Region which are notable for their aesthetic, scenic, historic or ecological qualities shall be preserved. Any private or public development which would degrade such shoreline qualities shall be discouraged. Inappropriate shoreline uses and poor quality shoreline conditions shall be eliminated when a new shoreline development or activity is authorized.
- H. Protection of public health is recognized as a primary goal. All applications for development or use of shorelines shall be closely analyzed for their effect on the public health.

Shoreline Conditional Use Permit (WAC 173-27-160)

- 1. Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
 - A. That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
 - B. That the proposed use will not interfere with the normal public use of public shorelines;
 - C. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
 - D. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
 - E. That the public interest suffers no substantial detrimental effect.
- 2. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
- 3. Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

4. Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

Administrative Shoreline Variance (WAC 173-27-170)

Administrative Shoreline Variances are subject to the shoreline variance review criteria set forth in WAC 173-27-170⁵:

....

2. Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(c), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:
 - a. That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;
 - b. That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
 - c. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;
 - d. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 - e. That the variance requested is the minimum necessary to afford relief; and
 - f. That the public interest will suffer no substantial detrimental effect.

....

4. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

Reasonable Use Exception

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

⁵ See SMPTR Section One, Chapter V, Part E.6. The referenced WAC 173-14-150 no longer exists; the variance criteria are set forth in WAC 173-27-170.

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. As conditioned, the proposal satisfies the criteria for a shoreline substantial development permit.
 - a. Approval of the project is consistent with the policies and procedures of the Shoreline Management Act. The project is reasonable in light of the established residential use of the site and surrounding area. The shoreline in the project area is fully developed. The new retaining wall would protect the residential use while not changing the overall character of the shoreline. The ecology of the shoreline would be protected during construction with erosion control measures and after construction with the proposed native plantings and stormwater management. The habitat assessment found that the project would not likely adversely affect threatened species of fish. Consistent with the procedures of the SMA, a conditional use permit was requested for the retaining wall and a variance for the residence. *Findings 1, 3, 4, 5, 6, 8, 11, 12, 13, and 14.*
 - b. Approval of the project is consistent with the applicable regulations in the Washington Administrative Code. None of the structures would exceed 35 feet in height or obstruct views. Compliance with the height limit would be confirmed during building permit review, and compliance with the WAC's timing restriction would be assured through a condition of approval. *Findings 4 and 5.*

- c. As conditioned, the proposal would be consistent with the applicable policies and regulations of the SMPTR. The Applicant has requested a variance from the residential setback standard of the Rural environment, which, as described below, is approved. With respect to the applicable regional criteria, the proposal would be protective of water quality and the aquatic environment. The conditions of approval address erosion control and mitigation plantings. No work would occur waterward of the bulkhead. The project would not affect public access to the shoreline, as there is no existing public access on site. No evidence was submitted that the subject shoreline is notable for its aesthetic, scenic, historic, or ecological qualities; however, to the extent such qualities exist, the proposed development would preserve them. The proposed structures would be set back farther from the shoreline than the existing structures. Cultural resources, if any exist onsite, would be protected through implementation of an inadvertent discovery plan. No issues of concern were identified with respect to public health. *Findings 4, 5, 6, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.*
2. As conditioned, the proposal satisfies the criteria for a shoreline conditional use permit.
- a. The proposed retaining wall is consistent with the policies of the Shoreline Management Act and the Master Program. The retaining wall would be compatible with and would protect the allowed residential use of the site and would not affect the existing character of the shoreline. *Findings 3, 5, and 6.*
 - b. The retaining wall would not interfere with normal public use of the shoreline. The wall is proposed on private property behind the bulkhead and would not affect public access to the shoreline. *Findings 1, 3, 5, and 10.*
 - c. As a protective measure against erosion, the retaining wall would be compatible with authorized residential land uses. The retaining wall would be behind the existing bulkhead and the area between the wall and the bulkhead would be landscaped with native plants. *Findings 5, 6, and 14.*
 - d. The retaining wall would not cause significant adverse effects to the Rural shoreline environment. The wall is designed to control erosion, and the conditions of approval require erosion control measures to be implemented during construction. The retaining wall would be behind the existing bulkhead, and the area between the wall and the bulkhead would be landscaped with native plants. *Findings 5, 12, and 14.*
 - e. As conditioned, the public interest would suffer no substantial detrimental effect. The conditions of approval require use of an inadvertent discovery plan for protection of cultural resources. *Findings 17, 19, and 20.*
 - f. Potential cumulative impacts have been considered, and no evidence was submitted that approval of additional similar projects would produce substantial adverse effects to the shoreline. The project would stabilize an erosion-prone slope. *Findings 5 and 9.*
 - g. The retaining wall is an unclassified use which, as described above, is consistent with the criteria for a shoreline conditional use permit. *Finding 6.*

- h. Retaining walls are not prohibited by the SMPTR. *Finding 6.*
3. As conditioned, the proposal satisfies the criteria for an administrative shoreline variance.
- a. Strict application of the Rural environment setback standard would preclude or significantly interfere with reasonable use of the property. The proposed residential use is reasonable due to the size and zoning of the parcel, the historic use of the parcel, and the use of surrounding parcels. The scale of residential development proposed (one bedroom residence with footprint of 920 square feet) is modest and could not reasonably be reduced. Due to the small area of the parcel, either the 50-foot standard or 37-foot site-specific setback from the ordinary high water mark would preclude the development. *Findings 3, 4, 7, and 8.*
 - b. The hardship is specifically related to the small size of the property relative to the shoreline setback standard. As context for the 50-foot setback standard, the minimum lot area in the Rural shoreline environment is 20,000 square feet per SMPTR Section Three, Chapter XVI (D)(3)(b). The subject property is roughly one-fourth that size yet is a legal building lot. *Findings 3 and 7.*
 - c. The project design is consistent with surrounding residential uses and, as conditioned, would not cause adverse impacts to the shoreline environment. The site plan provides for increased setbacks from the shoreline as compared to existing conditions. The slope between the residence and the bulkhead would be densely planted. The conditions of approval require erosion control measures to be implemented during construction and stormwater management following construction. *Findings 4, 12, and 14.*
 - d. Based on the character of surrounding properties and the historic use of the subject property, granting the variance (which would allow similar development) would not be a grant of special privilege. *Finding 3.*
 - e. The variance is the minimum necessary to afford relief. The proposed building footprint is modest in scale and is placed as far landward as possible while maintaining minimum setbacks from Steamboat Island Road and providing space for the septic system. The proposed setback is an increase over the existing condition. *Findings 4, 8, and 16.*
 - f. No evidence of potential substantial detrimental effect to the public was submitted. The proposed development is similar in character to the existing development of the site and that on surrounding parcels. Stormwater runoff would be managed as recommended in the geotechnical report. The conditions of approval require use of an inadvertent discovery plan for protection of cultural resources. *Findings 3, 10, and 17.*
 - g. Cumulative impacts have been considered, and it does not appear that they are an issue of concern in this case. The neighborhood is already developed, and the existing residence (as well as the residences on surrounding parcels) encroach into the shoreline setback. The proposed development, while requiring a variance, would decrease the level of nonconformity on the site and, with proposed vegetative

enhancements, would improve the subject shoreline environment. *Findings 3, 4, 8, 12, and 14.*

4. As conditioned, the proposal satisfies the criteria for a reasonable use exception.
 - a. No other reasonable use of the property as a whole is permitted by the critical areas ordinance. Based on the uses allowed in the RL 2/1 zone, the area of the subject property, the historic use of the subject property, and the character of surrounding development, single-family residential use is the only reasonable use of the property, and allowing reconstruction of a new residence with a modest footprint is reasonable. *Findings 3 and 7.*
 - b. No reasonable use with less impact on the critical area or buffer is possible. The proposed residence is modest in scale and could not reasonably be reduced in area. The placement of the residence on the lot maximizes the distance between the septic system and the shoreline. *Findings 4, 9, and 16.*
 - c. 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 project includes a retaining wall between the residence and the bulkhead. The site design incorporates the recommendations of the geotechnical report. The area between the residence and the bulkhead would be landscaped with native plants. Conditions of approval require protection of any cultural resources discovered during construction. The septic system was recently replaced and the Environmental Health Division did not identify any issues of concern with respect to public health. *Findings 5, 10, 14, 16, 17, 18, 19, and 20.*
 - d. The proposed reasonable use is limited to the minimum encroachment necessary to prevent denial of all reasonable use of the property. As noted in Conclusion 4b, the proposed building footprint could not reasonably be reduced. *Findings 3 and 4.*
 - e. As conditioned, the proposed reasonable use would result in minimal alteration of the critical area. The subject property is already developed with a residence in the same location. The area between the residence and the bulkhead would be enhanced with native plants. *Findings 3, 4, and 14.*
 - f. As conditioned, the proposal ensures no net loss of critical area functions and values. Development of the site would be consistent with the geotechnical report and the area between the residence and the bulkhead would be enhanced with native plants, which together with the erosion control to be provided by the retaining wall would lift critical area functions at the site over existing conditions. *Findings 10 and 14.*
 - g. The use would not result in unmitigated adverse impacts to any known species of concern. *Finding 13.*

- h. The location and scale of existing development on surrounding properties is not the sole basis for granting the reasonable use exception. The RUE is granted because critical areas preclude reasonable residential development. *Finding 9.*

DECISIONS

Based on the preceding findings and conclusions, the requested shoreline substantial development permit, shoreline conditional use permit, administrative shoreline variance, and reasonable use exception are **GRANTED** subject to the following conditions:

1. 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 Applicant's responsibility to obtain this permit if required.
2. The Applicant and subsequent property owners must comply with all requirements of state and/or federal law to avoid disturbance and alteration of artifacts, remains, or other cultural resources on site during development. In the event of inadvertent disturbance or alteration, the Applicant must immediately stop work and contact the Tribes and the State Department of Archaeology and Historic Preservation.
3. The inadvertent discovery plan must be posted on site prior to and during all construction (Exhibit 1.S).
4. All activities shall be in substantial compliance with the submitted plans and accepted critical area reports, including but not limited to the setbacks drainage controls recommended in the geotechnical report in the record at Exhibit 1.L.
5. Prior to or in conjunction with the issuance of any building permit, all regulations and requirements of the Thurston County Environmental Health Department, Thurston County Public Works Department, and the Thurston County Community Planning and Economic Development Department shall be met.
6. The proposed project must be consistent with all applicable policies and other provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region.
7. Any revision to the shoreline permit must be in compliance with WAC 173-27-100.
8. The Applicant must obtain a building permit from the Thurston County Community Planning and Economic Development Department for the residential structure and retaining wall. Engineered plans must be submitted with the building permit application.
9. No discharge of sediments into Puget Sound shall be permitted at any time. Erosion control shall be in place prior to any ground disturbance on site.

10. During construction, all releases of oils, hydraulic fluids, fuels, other petroleum products, paints, solvents, and other deleterious materials must be contained and removed in a manner that will prevent their discharge to waters and soils of the state. The cleanup of spills should take precedence over other work on the site.
11. Restoration and enhancement of the site shall occur in accordance with the submitted shoreline planting plan dated February 1, 2023.
12. All removed debris resulting from this project must be disposed of at an approved site. Contact the Department of Ecology or the local jurisdictional health department for proper management of these materials.
13. This project shall comply with the Stormwater Management Manual for Western Washington, developed by the Washington Department of Ecology. Erosion control shall be in place during all site disturbance.
14. Construction activity shall be limited to the hours of 7:00 am to 7:00 pm to minimize noise. All activities onsite shall fully comply with noise limitations outlined in WAC 173-60.
15. This approval does not relieve the Applicant from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicant.
16. 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 SSDP/CUP and/or RUE. The Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
17. Construction pursuant to the permit shall not begin and is not authorized until 21 days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

Decided October 13, 2023.



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____.