



COUNTY COMMISSIONERS

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District Two

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District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2016105477
)	
Jordan Gritton)	FINDINGS, CONCLUSIONS,
)	AND DECISION
For a Reasonable Use Exception)	
)	

SUMMARY OF DECISION

The request for a reasonable use exception to construct a single-family residence and maintain an existing treehouse within a marine riparian habitat area and freshwater riparian habitat areas associated with a stream and a drainage is **DENIED**.

SUMMARY OF RECORD

Request

Jordan Gritton (Applicant) requested a reasonable use exception to construct a single-family residence and to officially recognize and retain an existing treehouse within a marine riparian habitat area and freshwater riparian habitat areas associated with a regulated stream and a drainage of uncertain classification. The subject property is located at 4836 Field Lane NW, Olympia, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted an open record public hearing on the request on December 12, 2017.

Testimony

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

Leah Davis, Associate Planner, Thurston County Resource Stewardship Department
Dawn Peebles, Thurston County Environmental Health Division
Arthur Saint, Thurston County Public Works Department
Chris Aldrich, Hatton Godat Pantier, Applicant Representative
Jordan Gritton, Applicant

Exhibits

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

EXHIBIT 1 Land Use and Environmental Review Section Report with the following Attachments:

- | | |
|--------------|--|
| Attachment a | Notice of public hearing |
| Attachment b | Master application received November 8, 2016 |
| Attachment c | Reasonable use exception application received November 8, 2016 |
| Attachment d | Project narrative dated November 8, 2016 |
| Attachment e | Critical areas report received November 8, 2017 |
| Attachment f | Revised site plan received October 17, 2017 |
| Attachment g | Revegetation plan received March 29, 2017 |
| Attachment h | Notice of application dated November 7, 2017 |
| Attachment i | Comment memo from Kyle Overton, Thurston County Public Health and Social Services Department, dated October 19, 2017 |
| Attachment j | Comment letter from Jackie Wall with the Nisqually Indian Tribe, dated November 21, 2016 |
| Attachment k | Comment letters from the Washington State Department of Ecology, dated December 1, 2016 and November 27, 2017 |

EXHIBIT 2 Photos of posted hearing notice (two photos)

EXHIBIT 3 Updated plan set (six pages)

Based upon the record developed at the open record hearing, the Hearing Examiner enters the following findings and conclusions.

FINDINGS

1. The Applicant requested a reasonable use exception to construct a single-family residence and to officially recognize and retain an existing treehouse within a marine riparian habitat area and freshwater riparian habitat areas associated with one regulated stream and one drainage of uncertain classification. The subject property is located at

4836 Field Lane NW, Olympia, Washington (Tax Parcel No. 12930330206). *Exhibits 1 (pages 1-3), 1.B, 1.C, and 1.D.*

2. The subject property is on Young Cove of Puget Sound. The upland portion of the subject property is 2.71 acres, and the associated tidelands are 2.3 acres. The County considers the lot, platted in 2001, to be a legally nonconforming lot under the applicable Rural Residential Resource - One Dwelling Unit per Five Acres (RRR 1/5) zoning regulations. The RRR 1/5 zone allows agricultural uses, single and two-family residences, home occupations, and accessory farm housing. *Exhibit 1, page 3; TCC 20.09A.020.*
3. The Young Cove shoreline forms the northern boundary of the subject property. The southern 60 feet of the subject property is encumbered by an access easement for Field Lane NW. *Exhibit 3.*
4. The subject property is developed with a 169-square-foot treehouse structure built by the Applicant in 2014 approximately 45 feet from the shoreline. It does not have plumbing or electricity and is located entirely off the ground. *Exhibits 1.D and 3; Jordan Gritton Testimony.*
5. Surrounding development consists of single-family residential uses on lots of varying sizes. *Exhibit 1, page 2.*
6. The on-site Puget Sound shoreline is designated as a Conservancy shoreline environment by the Shoreline Master Program for the Thurston Region (SMPTR). Conservancy shorelines are regulated under the Thurston County critical areas ordinance (CAO), which requires a 250-foot wide marine riparian habitat area buffer, measured from the ordinary high water mark (OHWM), plus an additional 50-foot wide marine riparian management zone. On the subject property, the marine riparian habitat area and management zone occupy all but the southwest corner of the subject property adjacent to Field Lane NW. *Exhibits 1 (page 3) and 3.*
7. A seasonal Type Ns stream runs along the eastern property boundary, flowing directly into Puget Sound. The stream, which is largely confined within culverts, is fed from a roadside ditch on the south side of Field Lane NW. The Thurston County CAO requires a 150-foot wide freshwater riparian habitat area buffer for Type Ns streams that flow directly into Puget Sound. Planning Staff also identified a dry swale that flows along the western property boundary into Puget Sound as a regulated stream subject to the same 150-foot wide buffer requirement. This feature is not shown on the project plans. As described in the Applicant's critical areas report, the Applicant's environmental consultant did not find clear evidence of the passage of water and did not consider the feature to be a stream. *Exhibits 1 (page 3) and 1.E; Leah Davis Testimony.*
8. Considering only the marine riparian habitat buffer and the freshwater riparian habitat area from identified regulated stream to the east, only a small portion in the southwest corner of the parcel located immediately adjacent to the road would be outside regulated

areas. The record does not provide the measurement of this area, but visually on the site plan it appears too small to develop with a single-family residence and normal appurtenances even if a buffer for the disputed feature along the western site boundary is excluded. If the disputed drainage is properly regulated as a critical area, the subject property is 100% encumbered by critical areas. For existing nonconforming lots that do not have 3,500 square feet of buildable area outside of the critical areas and buffers, TCC 24.50.060 allows a development area of up to 3,500 square feet within the outer 25% of a riparian habitat area through an administrative critical areas permit review. On the subject property, reducing the marine riparian habitat area to 187.5 feet (25% reduction) and the freshwater riparian habitat area for the stream to the east to 112.5 feet (25% reduction) would not provide sufficient area to construct the proposed single-family residence and associated appurtenances. *Exhibits 1 (page 3) and 1.D; Leah Davis Testimony.*

9. The footprint of the proposed residence, including the garage, would be 3,727 square feet. With an anticipated second story, the Applicants contemplate approximately 5,000 square feet of living space. The total development area (called the "development site area" on the project plans), including the driveway and a 20-foot wide area around the building envelope and driveway (excluding the septic drainfields), would be 13,464 square feet. This development would occur in previously cleared areas. At the proposed location, the edge of the residence would be 172 feet from the ordinary high water mark of Puget Sound, at least 150 feet from the stream running along the eastern site boundary, and approximately 60 feet from Field Lane NW. The Applicant also requested, through the instant RUE application, that the existing treehouse be officially recognized and allowed to remain as built. *Exhibits 1.D and 3; Leah Davis Testimony; Jordan Gritton Testimony.*
10. The subject property is partially forested. The southern portion (including the proposed development site area) is vegetated primarily with lawn grasses, trees, and understory vegetation along the periphery. The Applicant proposes to replace the non-native grasses outside of the development area with native plants and trees and to revegetate an existing driveway access. The Applicant's revegetation plan provides for 321 new native shrubs and 12 trees. The Applicant's biologist submitted the position that the proposed mitigation would improve critical areas functions and values over existing conditions. *Exhibits Exhibit 1 (page 5), 1.E, and 3.*
11. The Applicant agent testified that the proposed residence with a 3,700 square foot footprint would be consistent with neighboring development and, and proposed, would be set back a greater distance from the ordinary high water mark than surrounding residences; however, no data were submitted in the record detailing the sizes and setbacks of surrounding residential development. The submitted site plan depicts building footprints on the neighboring parcels to the east and west that are substantially smaller than the proposed footprint, but since only a portion of the neighboring parcels are shown, it is not clear whether there are additional structures on the parcels. *Chris Aldrich Testimony; Exhibit 3.*

12. The residence would be served by an existing single-family well that is located in the southeast corner of the subject property. A second well on the subject property, located in an easement adjacent to Field Lane NW, serves a neighboring property. *Exhibits 1.I and 3.*
13. The Applicant proposes to serve the residence with an on-site sewage disposal system, but has not yet obtained design approval from the Thurston County Environmental Health Division. The Applicant proposes to place the drainfield in the southwest corner of the subject property, adjacent to Field Lane NW and outside of the marine riparian habitat area. The required reserve drainfield is proposed waterward of the primary drainfield, which is as far from the OHWM as possible on the parcel. *Exhibits 1.I and 3; Dawn Peebles Testimony.*
14. Notice of the open record hearing was mailed to owners of property within 500 feet of the subject parcel on November 27, 2017, published in *The Olympian* on December 1, 2017, and posted on-site on November 30, 2017. *Exhibits 1 (page 2), 1.A, and 2.*
15. The Nisqually Indian Tribe reviewed the proposal and commented that the subject property is in an area of high likelihood for discovery of archaeological artifacts. The Tribe requested that a cultural resource survey be conducted prior to ground disturbing activities. This request was incorporated into Planning Staff's recommended conditions of reasonable use exception approval. *Exhibits 1 (page 7) and 1.J.*
16. The Washington Department of Ecology submitted comments detailing potentially applicable soil/groundwater contamination, water quality, and groundwater withdrawal regulations. Compliance with these regulations was incorporated into the recommended conditions of reasonable use exception approval. *Exhibits 1 (page 7) and 1.K.*
17. In response to request for Planning Staff analysis addressing RUE criteria B, D, and E, Planning Staff testified that she is not qualified to submit an opinion on what constitutes "reasonable use of the property for the Applicants." *Leah Davis Testimony.* The County recommended approval of the proposed residence at the proposed location, but denial of the retention of the treehouse. Staff submitted that if the residence provides for reasonable use of the property, then the treehouse could not also satisfy the criteria for approval because only one structure would be allowed. *Exhibit 1, page 4; Leah Davis Testimony.* The Applicant indicated that the proposed residential footprint is necessary because the family has three children, and that they would really like to retain the treehouse because it is well built and up in a tree, not impacting the ground in the critical areas. *Jordan Gritton Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for reasonable use exceptions pursuant to TCC 2.06.010(F) and TCC 24.45.030.

Criteria for Review

Pursuant to TCC 24.45.030, the Hearing Examiner shall grant the reasonable use exception if:

- A. No other reasonable use of the property as a whole is permitted by this title; and
- B. No reasonable use with less impact on the critical area or buffer is possible. At a minimum, the alternatives reviewed shall include a change in use, reduction in the size of the use, a change in the timing of the activity, a revision in the project design. This may include a variance for yard and setback standards required pursuant to Titles 20, 21, 22, and 23 TCC; and
- C. The requested use or activity will not result in any damage to other property and will not threaten the public health, safety or welfare on or off the development proposal site, or increase public safety risks on or off the subject property; and
- D. The proposed reasonable use is limited to the minimum encroachment into the critical area and/or buffer necessary to prevent the denial of all reasonable use of the property; and
- E. The proposed reasonable use shall result in minimal alteration of the critical area including but not limited to impacts on vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions; and
- F. A proposal for a reasonable use exception shall ensure no net loss of critical area functions and values. The proposal shall include a mitigation plan consistent with this title and best available science. Mitigation measures shall address unavoidable impacts and shall occur on-site first, or if necessary, off-site; and
- G. The reasonable use shall not result in the unmitigated adverse impacts to species of concern; and
- H. The location and scale of existing development on surrounding properties shall not be the sole basis for granting or determining a reasonable use exception.

Conclusions Based on Findings

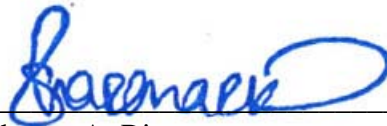
1. The record does not demonstrate compliance with reasonable use exception criteria B, D, or E, which require RUE proposal to produce “the least impact on the critical area or buffer as possible” (B), the “minimum encroachment into critical area and/or buffer possible” (D), and “minimal alteration to the critical area” (E). While the Hearing Examiner agrees that single-family residential use is the only reasonable use of the subject property, the proposed residence and overall development footprint exceed what is necessary to provide for this reasonable use. “Reduction in the size of the use” and “revision in the project design” are both explicitly suggested in criterion B as means of arriving at and ensuring the least impact to the critical area or buffer as possible. Aside

from assertions by the Applicant and Applicant agent that other homes are of a similar size as that proposed, there is no evidence of the sizes of surrounding residences in the record. The undersigned notes there are many single-family residences in Thurston County that have smaller footprints than 3,700 square feet and total areas of less than 5,000 square feet, including many on lots not encumbered at all (much less entirely) by regulated critical areas and associated buffers. Although not dispositive, guidance on what is reasonable can be taken from TCC 24.50.060, which allows buffers to be administratively reduced if the critical areas and buffers do not allow a development area of at least 3,500 square feet. In this case, the proposed building envelope exceeds 3,500 square feet by more than three times. The Applicant did not provide persuasive evidence that the proposal represents the minimum necessary to prevent denial of all reasonable use of the property. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 17.*

DECISION

Based on the preceding findings and conclusion, the application must be **DENIED**.

DECIDED December 27, 2017.



Sharon A. Rice
Thurston County Hearing Examiner

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

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$669.00** for a Request for Reconsideration or **\$890.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. _____
Appeal Sequence No.: _____

☐ Check here for: RECONSIDERATION OF HEARING EXAMINER DECISION

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

☐ Check here for: APPEAL OF HEARING EXAMINER DECISION

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
on this _____ day of _____, 20__, as an APPELLANT in the matter of a Hearing Examiner's decision
rendered on _____, 20__, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED

SIGNATURE OF APPELLANT

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of ☐ \$669.00 for Reconsideration or \$890.00 for Appeal. Received (check box): Initial _____ Receipt No. _____

Filed with the Resource Stewardship Department this _____ day of _____, 20__.

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