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**COMMUNITY PLANNING &
ECONOMIC DEVELOPMENT DEPARTMENT**

Creating Solutions for Our Future

Joshua Cummings, Director

**Thurston County Community Planning & Economic Development
Staff Report**

HEARING EXAMINER HEARING

December 12, 2023

PROJECT NO.: 2019103224; Veloni Retaining Wall

SEQUENCE NO.: 19 108060 XK

APPLICANT/ OWNER: Eric Veloni

REQUEST:

The applicant requests approval of an after the fact Conditional Use Permit (CUP) for replacement of a retaining wall in the rural shoreline designation.

GENERAL INFORMATION

- A. Owner/Applicant: Eric Veloni
5725 Sunrise Beach Road Rd NW
Olympia, WA 98502
- B. Representative Owner
- C. Location: 5725 Sunrise Beach Road Rd NW
Olympia, WA 98502
- D. Legal Description: 36-19-3W 1.08 A L 2 & SE SW COM SW SEC COR S 49-2-0 E
441.6 F N 6. - Parcel No. 13936340700
- E. Land Area: 1.08 acres

PROJECT DESCRIPTION

The applicant is requesting an after-the-fact Conditional Use Permit for replacement of a retaining wall. The wall is approximately 10 feet inland from an existing bulkhead and the retaining wall measures 83 feet long and 5.14 feet tall. The retaining wall is built into the steep hillside of the property. The original wall was built of cottage stone to increase and maintain bank stabilization. The replacement wall was built with 13" x 6" stacked/interlocking cottage stones within the same footprint as original retaining wall and further provides bank stability. The retaining wall is located within the 100-year floodplain of the Puget Sound which triggered a requirement for a Habitat Assessment (Attachment p).

BACKGROUND

The property is zoned Residential Lamird One Dwelling Unit per Acre (RL1/1) within rural, unincorporated Thurston County. The property is within the Rural Shoreline designation of the Shoreline Master Program for the Thurston Region (SMPTR).

The subject property is 1.08-acres in size and contains a single-family residence and accessory structures including a boat house along the shoreline. Single family development is permitted within the Rural Shoreline Environment subject to compliance with policies and regulations of the SMPTR. Properties in the vicinity are developed primarily as residential, consistent with zoning.

The unpermitted replacement retaining wall and boat house reroof and residing was discovered through a building permit application for interior remodel of the existing residence. The county requested the applicant to submit requests for after the fact permits for this work. The applicant stated the cost of the project was \$2500, therefore not requiring a Shoreline Substantial Development Permit. A Shoreline Substantial Development Exemption was approved for the boat house repair on July 1, 2020 (Attachment g). A Geotech report (Attachment l) was submitted and approved by Mark Biever through the building permit application.

However, a retaining wall is not considered a normal appurtenance and is not a classified use within the SHMPTR, per WAC 173-27-030 (4). Therefore, a Conditional Use permit is required and required hearing examiner approval.

NOTIFICATION

Written notice of the public hearing was sent to all property owners within 500 feet of the site on November 28, 2023. Notice was published in The Olympian on December 1, 2023 at least ten (10) days prior to the hearing. Notice was posted on or before December 1, 2023.

ENVIRONMENTAL EVALUATION

The project was determined to be categorically exempt from SEPA review. There is no grading or in water work involved with the project.

APPLICABLE THURSTON COUNTY LAND USE AND OTHER LAND USE REGULATORY CODES REGULATORY CODES

Thurston County Zoning Ordinance: Chapter 20.11A
Thurston County Critical Areas Ordinance: Title 24
Shoreline Master Program: Section 1-Administration, II. Permits
Washington Administrative Code 173-27-140, 173-27-160

DEPARTMENT ANALYSIS**A. Underlying Property**

The existing residential lot is a legal, conforming use within the Residential Lamird One unit per one Acre (RL1/1) rural Thurston County.

The construction of the retaining structure within a steep slope requires the project to comply with Thurston County Critical Areas Ordinance (CAO) and Shoreline Master Program for the Thurston Region (SMPTR).

The area is defined as a Geological Hazard Area, which is defined by the CAO, TCC Title 24, Chapter 24.03.010 Definitions as follows:

"Geologic hazard areas" means those areas that because of their susceptibility to erosion, land sliding, earthquake, volcanic lahar, liquefaction or other geological events, are not suited to siting commercial, residential or industrial development consistent with public health or safety concerns.

The Applicant submitted a Geotechnical Report (Attachment l) for the property. The Geotechnical Report discusses existing and pre-existing site conditions and provides recommendations. The project appears to meet the standards of TCC 24.15.150 – Slope Stabilization-New and is allowed, subject to a critical area review permit. This would be completed through the building permit for retaining wall.

Typically, mitigation would be required for new retaining walls, however the replacement wall did not increase the development footprint or cause significant environmental impacts. The ivy-covered bluff restricts the opportunity to provide meaningful mitigation and removing the ivy would destabilize the 80% slope. Therefore, the county has not requested a mitigation plan.

The retaining wall is located within the 100-year floodplain of the Puget Sound which triggered a requirement for a Habitat Assessment (Attachment p).

"Floodplain, one hundred-year," "one hundred-year floodplain" or "flood hazard areas" means those lands which are subject to a one percent or greater chance of flooding in any year.

The Habitat Assessment was reviewed and approved by Thurston County Biologist/Associate Planner, Heather Tschaekofske.

B. Shoreline Master Program

The Shoreline Master Program for the Thurston Region (SMPTR) designated the shoreline jurisdiction of the subject property as Rural.

Retaining walls are not classified in the Shoreline Master Program and are not considered to be an accessory structure. Retaining walls are not normal or customary to the shoreline. The retaining wall cost approximately \$2,500 per the JARPA application (Attachment d). A SSDP is not required if the structure's value is less than \$7,047 in fair market value as defined in WAC 173-27-030(8).

SMPTR Section Two, Chapter V. REGIONAL CRITERIA (pg. 22)

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 policies:

- (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.*

Staff comments: Not applicable. No public access exists or is proposed as part of the project.

- (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.*

Staff comments: Water quality impacts are not a concern as the construction has already taken place and the site has been stabilized.

- (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.*

Staff comments: The retaining structure is not an industrial activity, as defined by the SMPTR.

- (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.*

Staff comments: Not applicable. The residence on site is already existing.

(E) Governmental units shall be bound by the same requirements as private interests.

Staff comments: This standard is not pertinent to the subject application as it is a private residential project.

(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.

Staff comments: This requirement is noted. The applicant will also have additional opportunity to address any outstanding issues at the public hearing for the project.

(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.

Staff comments: There should be no impact on aesthetics or scenery from the project.

(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.

Staff comments: This application has been reviewed by the Thurston County Public Health and Social Services Department for public health issues. No significant health issues have been identified and the County Health Department recommends approval (Attachment h).

C. Review Criteria for all development (WAC 173-27-140)

(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.

Staff comments: Staff finds the project 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.

Staff comments: There will be no structures over 35 feet in height or other structures which would impact views. The retaining wall follows the contours of the ground.

D. Review Criteria for Shoreline Conditional Use Criteria (WAC: 173-27-160)

The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

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;

Staff comments: The retaining wall 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;

Staff comments: There will be no impact to the shoreline if properly managed and erosion control is maintained.

(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;

Staff comments: The retaining wall is compatible in that it is directly related to the permitted residential use of the property. The reason for the retaining structure is to protect the existing home and property including the existing boat house.

(d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

Staff comments: There should be no significant adverse effect from the project, as it was a replacement wall. There is a significant decrease in risk of erosion.

(e) That the public interest suffers no substantial detrimental effect.

Staff comments: There should be no impact to public resources. With the retaining wall in place, risk of erosion is decreased and prevents impact to water quality.

- 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.*

Staff comments: The purpose of the project is to protect and stabilize a steep bank below an existing residence. The project has little to no impact, as the wall was a replacement. The project creates very little, if any new impervious surface and should help limit erosion to adjacent shoreline.

- 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.*

Staff comments: The applicant has demonstrated consistency with the Shoreline Management Act and Shoreline Master Program for the Thurston Region.

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

Staff comments: The use is not prohibited by the Shoreline Master Program or the Shoreline Management Act.

D. **Review Agency Comments**

Staff from Thurston County Public Health and Social Services Department submitted comments on this proposed (Attachment h). The Public Health and Social Services Department recommends approval.

The Nisqually Indian Tribe submitted two comment letters (Attachment i), with the most recent letter stating they were not requesting a cultural resources survey for the project, but to keep them informed if any cultural resources were discovered.

The Squaxin Island Tribe submitted a comment email (Attachment j) stating that they have no concerns for this project, but if Washington State Department of Archaeology and Historic Preservation (DAHP) recommends a survey, or any other additional recommendations, they concur with DAPH's recommendations.

Washington State Department of Ecology provided comment (Attachment m and n) regarding notification if contamination occurs and requiring erosion control to ensure water quality. A site visit was also conducted with Ecology as requested. Ecology's

comments after site visit (Attachment o) concluded that the wall appears to be consistent with WAC 173-27-160.

Conditions related to comments will be included in the recommendations of the project.

E. **Public Comments**

No comments were received in response to the Notice of Application mailed for the project.

DEPARTMENT RECOMMENDATION

If the Hearing Examiner grants approval of the Shoreline Conditional Use Permit, then based on the above analysis, the Community Planning & Economic Development Department recommends the following conditions:

1. The Applicant must obtain a building permit from the Thurston County Building Department.
2. 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.
3. 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 Shoreline Substantial Development Permit and/or Shoreline Conditional Use Permit. The Development Services Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
4. Washington State Water Quality Laws, Chapter 90.48 RCW Water Pollution Control and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, define quality of state waters. Any discharge of sediment-laden runoff or of other pollutants to waters of the state is in violation of these state laws and may be subject to enforcement action.
5. 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

Abbie Adams
Associate Planner

LIST OF EXHIBITS**EXHIBIT 1 Community Planning & Economic Development Staff Report with the following attachments:**

Attachment a	Notice of Public Hearing
Attachment b	Zoning Vicinity Map
Attachment c	Master Application, received June 28, 2019
Attachment d	JARPA permit Application, received June 28, 2019
Attachment e	Site plan, received June 28, 2019
Attachment f	Notice of Application, dated January 3, 2020
Attachment g	Shoreline Administrative Exemption, Approval Letter, Scott McCormick, July 1, 2020; Project #2019103224 Folder Seq. No. 19 108060 XL - Boathouse Repair
Attachment h	Comment Memorandum from Amy Crass, Thurston County Public Health & Social Services Department, dated August 8, 2019
Attachment i	Comment letter, Nisqually Indian Tribe, January 13, 2019
Attachment j	Comment letter, Squaxin Island Tribe, January 3, 2020
Attachment k	Site Assessment - Parcel 13936340700. Technical Memorandum, KPFF; dated June 3, 2019; submitted June 28, 2019
Attachment l	Steep Slope/Landslide Hazard Assessment, Insight Geologic, dated September 24, 2018; received June 28, 2019
Attachment m	Comment Letter, Dept. of Ecology, Southwest Regional Office, January 23, 2020
Attachment n	Comment Letter, Dept. of Ecology, Southwest Regional Office, July 29, 2019
Attachment o	Email, Dept. of Ecology, Lizzie Carp, August 15, 2023
Attachment p	FEMA Habitat Assessment, KPFF Consulting Engineers, February 6, 2020