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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE THURSTON COUNTY
HEARING EXAMINER**

In the Matter of the Application of)	NO. 2018102606
)	
)	
Peter Conn)	FINDINGS, CONCLUSIONS,
)	AND DECISION
)	
For a Reasonable Use Exception)	
_____)	

SUMMARY OF DECISION

The requested reasonable use exception to construct a 329 square foot addition to an existing single-family residence on a 4.4-acre lot within a landslide hazard area and a stream buffer is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request

The Applicant requests a reasonable use exception to build a 329 square foot addition on an existing single-family residence on a 4.4-acre lot at 5730 Libby Road NE, Olympia, Washington. The proposed development envelope is located in a landslide hazard area and stream buffer.

Hearing Date

The Thurston County Hearing Examiner conducted an open record public hearing on the request on March 26, 2019. After close of the record and prior to decision issuance, the undersigned requested five additional days for issuance, which the Applicant granted.

Testimony

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

Scott McCormick, Associate Planner

Dawn Peebles, Thurston County Environmental Health

Peter Conn, Applicant

Exhibits

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

Exhibit 1 Community Planning and Economic Development Department Staff Report with the following attachments:

- A. Notice of public hearing, issued March 15, 2019
- B. Zoning/site map
- C. Master application, received May 11, 2018
- D. Reasonable use exception application, received May 11, 2018
- E. Amended project narrative, received February 28, 2019
- F. Amended site plans, received November 9, 2018
- G. LiDAR map of property (2011 data)
- H. Notice of application for reasonable use exception, dated September 13, 2018, with adjacent property owner list, dated August 17, 2018
- I. Steep slope evaluation by Insight Geologic Inc., dated April 27, 2018
- J. Memo from Mark Biever, LPG, LEG, Thurston County Water Resources, dated January 30, 2019
- K. Memo from Dawn Peebles, Thurston County Environmental Health, dated January 15, 2019
- L. Comment letter from the Washington Department of Ecology, dated October 3, 2018
- M. Comment letter from the Washington Department of Ecology, dated June 28, 2018
- N. Comment letter from the Nisqually Indian Tribe, dated June 14, 2018

Exhibit 2 Photographs of posted notice of hearing

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicant requests a reasonable use exception to construct a 329 square foot addition to an existing 1,400 square foot single-family residence located in a landslide hazard area and stream buffer. The subject property is located at 5730 Libby Road NE, Olympia, Washington.¹ *Exhibits 1, 1.C, 1.D, and 1.E.*

¹ The legal description of the property is a portion of Section 19, Township 19 North, Range 1 West, Quarter SW SW; SS-1181 LT 2 Document 011/531; also known as Tax Parcel No. 11919330300. *Exhibit 1.*

2. The 4.4-acre subject property is in the rural portion of Thurston County, despite its Olympia address. The parcel measures 620 feet east to west and approximately 325 feet north to south. Woodard Creek, a water course that is regulated pursuant to the Thurston County critical areas ordinance (CAO), crosses the eastern half of the parcel. The ravine in which the creek travels has slopes up to 60 feet tall that meet the CAO definition of a landslide hazard area between the house and the west bank of Woodard Creek. It is assumed that the slope was carved by Woodard Creek over time. Pursuant to Thurston County Code (TCC) 24.25.020, Table 24.25-1, Woodard Creek requires a 250-foot buffer, while the landslide hazard area requires a buffer of 50 feet from the top of slope with an additional 15-foot building setback pursuant to TCC 24.15.015 and TCC 24.01.035(G). Although there are salmon species in Woodard Creek, there are no known upland species of concern or endangered species that would be impacted by the project. Woodard Creek is not a shoreline that is regulated pursuant to the Shoreline Management Act and the Shoreline Master Program for the Thurston Region (SMPTR). *Exhibits I and I.G; see also, aerial photo with topography annotations at Exhibit I.H.*
3. The subject property is located in the Rural Residential Resource one dwelling unit per five acres (RRR 1/5) zoning district and is designated by the Thurston County Comprehensive Plan as Rural Residential. At 4.4 acres, it is legally nonconforming as to minimum parcel size. The purpose of RRR 1/5 zone is to encourage residential development that: maintains the County's rural character; provides opportunities for compatible agricultural, forestry, and other rural land uses; is sensitive to the site's physical characteristics; provides greater opportunities for protecting sensitive environmental areas and creating open space corridors; enables efficient road and utility systems; and does not create demands for urban level services. *TCC 20.09A.010*. Single-family residential development is an allowed use in the RRR 1/5 zone, subject to applicable bulk dimensional standards. An addition to the residence would be allowed subject to review for consistency with applicable bulk dimensional standards. *Exhibits I and I.B; TCC 20.09A.020 and .050.*
4. Surrounding parcels are developed with single-family residential uses. *Exhibits I and I.B.*
5. The subject property is developed with an existing 1,265 square foot single-family residence, built in 1957, and accessory structures, including a detached garage, carport, and an agricultural building permitted in 2008. The residence is served by on-site septic and a well. The existing residence and driveway are located wholly within the 250-foot stream buffer, and the residence and detached garage are set back approximately 25 feet from the top of the steep slope, meaning any expansion of the existing footprint requires land use approval in the form of a reasonable use exception. *Exhibits I, I.D, I.E, and I.F.*
6. The Applicant proposes to demolish the existing detached garage and carport and replace them with a kitchen, bathroom, bedroom, and attached two car garage. Improvements would include a new foundation, structure framing and siding, and roofing. The project would expand the footprint of the existing residence by 329 square feet, four feet to the

south, three feet to the west, and six feet to the north. No expansion is proposed to the east, or towards the landslide hazard area and creek. In other words, while all expanded area would be within the CAO buffers, the resulting footprint would not be closer to the critical areas. The request would reduce the standard 250-foot stream buffer to 90 feet at its minimum and acknowledge the reduction of the 50-foot landslide hazard area buffer and 15-foot building setback to a minimum of 25 feet. No trees would be removed. The area proposed for the expansion is currently occupied by lawn or existing structures to be removed. The proposal would result in a three bedroom home totaling approximately 1,600 square feet. *Exhibits 1, 1.E, and 1.F; Peter Conn Testimony.*

7. The Applicant retained a geotechnical consultant to evaluate the safety of the proposal on-site. The geotechnical report indicates that the proposed construction area is flat (as is the developed envelope) and that the steep slope is vegetated with firs, cedars, maples, alders, and a dense fern understory. The consultants measured the steepest slope as 50 feet tall with a maximum inclination of 70%, with a 10-foot vertical section at the toe of the slope. The consultants observed no evidence of historic slope failure and concluded that future slope failure was unlikely as a result of the proposed residential remodel activities. The geotechnical report included two recommendations for future site work, including: piping all stormwater runoff to the toe of the slope, and planting/maintenance of low growing vegetation on the 10 feet closest to the top of the bluff. *Exhibit 1.I.*
8. The County's hydrogeological specialist, Mark Biever, reviewed the Applicant's geotechnical report and conducted a site visit during which he confirmed the measurements and conditions identified in the consultant report. Mr. Biever confirmed that the report was consistent with the reporting requirements of TCC Chapter 24.35 and recommended that the report be adopted and relied upon for purposes of review of the instant application. *Exhibit 1.J.*
9. The Applicant submitted, and Planning Staff concurred, that there is no alternate location on the subject property outside of required critical area buffers in which an addition could be added to the residence. Planning Staff submitted that although it would be possible to avoid minimal additional impacts to critical areas by denying the request, the anticipated impacts from the project are so minimal that there could not be a lesser impact without prohibiting reasonable use of the property. *Exhibits 1, 1.D, and 1.E.*
10. Because the residential expansion would be placed on the side of the home away from the critical areas, and because only lawn and existing impervious surfaces would be altered, Planning Staff did not require any mitigation for impacts to critical areas, as no impacts are anticipated. Staff submitted there would be no net loss of critical area functions and values. *Exhibits 1 and 1.F.*
11. The Applicant indicated that in addition to the desire to expand and upgrade the existing residence, the project is in part motivated by the fact that the existing garage and car ports are not built to current building code and he considers them unsafe. *Peter Conn Testimony.*

12. The application was filed on May 11, 2018 and deemed complete on June 15, 2018. Notice of the application was sent to reviewing agencies and surrounding property owners within 500 feet on September 13, 2018. *Exhibits 1, 1.C, and 1.H.*
13. The Development Review Division section of the Thurston County Public Works Department reviewed the project for access, traffic, and stormwater control requirements and offered no comments regarding this proposal. *Exhibit 1.*
14. The Department of Ecology submitted comments indicating that the project must be consistent with the Shoreline Management Act, the Shoreline Management Program Thurston Region, and requirements for toxics cleanup, water quality, and solid waste management, as applicable. *Exhibits 1, 1.L, and 1.M.*
15. The Nisqually Indian Tribe submitted comments indicating the Tribe has no concerns about the project, but the Tribal representative requested to be made aware of any inadvertent discoveries of cultural resources. *Exhibit 1.N.*
16. The Thurston County Environmental Health Division (EHD) reviewed the project for compliance with the County's health codes. EHD Staff noted that the existing septic system is approved to serve one kitchen and a maximum of three bedrooms and recommended approval. *Exhibits 1 and 1.K; Dawn Peebles Testimony.*
17. Reasonable use exceptions are non-project actions that are exempt from the requirements of the State Environmental Policy Act (SEPA). *TCC 17.09.055.B; WAC 197-11-800.*
18. Notice of the public hearing was posted on-site, mailed to all owners of parcels within 500 feet of the site, and published in The Olympian on March 15, 2019. *Exhibits 1 and 1.A.* There was no public comment at hearing.
19. After considering all evidence including hearing testimony, Planning Staff submitted that the proposal would be consistent with the Comprehensive Plan and recommended approval with conditions. *Scott McCormick Testimony; Exhibit 1.* The Applicant waived objection to the recommended conditions. *Peter Conn Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for reasonable use exception pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.06 and 24.45 of the Thurston County Code.

Criteria for Review

Pursuant to TCC 24.45.030, the Hearing Examiner shall grant the reasonable use exception if all the following specific findings can be made:

- 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. Considering the uses allowed by the zoning ordinance and surrounding existing residential development, residential use is arguably the highest and most reasonable use of the site. The proposed addition of 329 square feet would result in a residence of approximately 1,600 square feet and three bedrooms, which is reasonable residential use. Given the site's extensive encumbrance by critical areas, there is no way to reasonably expand the residence without a reasonable use exception. *Findings 1, 2, 3, 4, 5, and 6.*
2. The proposed residential remodel would be a reasonable use of the property and, based on geotechnical evidence in the record, would have negligible impact on the landslide hazard and stream buffers. *Findings 2, 5, 6, 7, and 8.*
3. The Applicant's geotechnical report was reviewed and accepted by the County's engineering geologist. As conditioned, the project would have no impact on the slope or the creek. The record contains no evidence of any threat to health, safety, or welfare on or off the site. *Findings 7, 8, 13, 14, 15, 16, and 19.*
4. The project would result in a three bedroom residence with a footprint of approximately 1,600 square feet. Although the project would result in 329 additional

square feet of residential footprint within the creek buffer, the existing setback to the slope and creek would not be reduced, and no vegetation between the residence and the slope would be altered. Conditioned to comply with the stormwater management and planting recommendations in Exhibits 1.I, the proposal represents the least encroachment into the critical areas possible. *Findings 5, 6, 7, 9, and 10.*

5. The proposed building envelope for the residential expansion would occupy previously disturbed areas, replacing two existing structures, away from the critical areas. The proposal represents the minimum alteration to critical areas that is possible if the residence is to be remodeled. Conditions would ensure compliance with the recommendations of the Applicant's geotechnical consultant. *Findings 5, 6, 7, 9, 10, and 19.*
6. As previously concluded, the project would not result in site disturbance any closer to critical areas than the existing condition. The small expansion would be built away from critical areas in a location already disturbed with buildings, impervious surface, and lawn. The project would not impact critical habitat or result in any net loss of critical area functions and values. Conditions of approval would ensure that the project manages stormwater consistent with County Code requirements, preventing any impact to slope stability. *Findings 5, 6, 7, 9, and 10.*
7. The site contains no known upland species of concern. As conditioned, the project would not result in impacts to the creek or the bluff, which means there would be no impact to wildlife in the creek. *Findings 2, 5, 6, 7, and 10.*
8. The location and scale of existing development on surrounding properties was not cited as the basis of the request and is not a basis for the instant approval. *Findings 2, 5, 6, 9, and 11.*

DECISION

Based on the preceding findings and conclusions, the requested reasonable use exception to construct an addition to an existing single-family residence at 5730 Libby Road NE is **APPROVED** subject to the following conditions:

1. A storm drainage and erosion control plan shall be submitted to Thurston County Community Planning and Economic Development for review and approval prior to building permit issuance.
2. Prior to building permit issuance, erosion control shall be installed and inspected by Thurston County Community Planning and Economic Development Staff. Erosion and stormwater controls, i.e. silt fencing and straw waddles, must be installed such that uncontrolled storm water cannot reach the adjacent landslide hazard area.

3. Prior to final occupancy approval, the Applicant shall request a final inspection of the revegetation of the buffer area between the new construction and landslide hazard area. Revegetation may be accomplished by reseeding the existing lawn or installation of other native plantings and grasses.
4. Erosion and stormwater control best management practices meeting Thurston County standards in TCC Chapter 15.05 shall be employed during all phases of the project. Proper erosion and sediment control practices shall be used on the construction site and adjacent areas to prevent upland sediments from entering the shoreline environment. All areas disturbed or newly created by construction activities shall be seeded, vegetated, or given some other equivalent type of protection against erosion.
5. The Applicant shall remove all construction related debris to an approved site (landfill or recycling center) outside of critical areas and their buffers.
6. The maximum impervious surface on the parcel shall not exceed 6% (TCC 20.09A.050.6.a.ii.).

DECIDED April 16, 2019.

By:



Sharon A. Rice
Thurston County Hearing Examiner

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

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

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

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

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

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

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

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

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

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$750.00** for a Request for Reconsideration or **\$1,020.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

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



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 ☐ \$750.00 for Reconsideration or \$1,020.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.