



COUNTY COMMISSIONERS

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District One

Gary Edwards  
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. 2019103680
	)	
<b>Rob Arnold</b>	)	
	)	FINDINGS, CONCLUSIONS,
For a Zoning Variance	)	AND DECISION
_____	)	

### SUMMARY OF DECISION

The request for a variance from the five-foot side yard setback standard of the RL 2/1 zone to remodel a residence that is located zero feet from the east property line at 12001 Bryant Street SE is **GRANTED** subject to conditions.

### SUMMARY OF RECORD

#### Request

Rob Arnold (Applicant) requested a variance from the five-foot side yard setback standard of the RL 2/1 zone to remodel a residence that is located zero feet from the east property line. The remodel would add height to the existing structure but would maintain the existing building footprint. The subject property is located at 12001 Bryant Street, Tenino, Washington.

#### Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on February 9, 2021. The record was held open until February 11, 2021 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing comments were submitted, and the record closed on February 11, 2021.

#### Testimony

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

Ron Buckholt, Senior Planner, Thurston County<sup>1</sup>

<sup>1</sup> Representatives from Thurston County Public Works and Public Health both attended the hearing, but neither felt the need to add testimony to the documentary record.

Rob Arnold, Applicant  
Rich Lough, Neighbor

### **Exhibits**

Through the virtual open record public hearing process, 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
- B. 2018 Aerial Photo
- C. Master Application, received January 15, 2020
- D. Variance Application, received January 15, 2020
- E. Letter of Complete Application
- F. Comment letter from Steve Gunsolley, dated January 2, 2020
- G. Amended site plan, received January 19, 2021
- H. Notice of Application
- I. Comment email from Susan Finkel, dated March 31, 2020
- J. Memorandum from Amy Crass, Public Health and Social Services Department, dated March 11, 2020
- K. Squaxin Tribe comment email from Shaun Dinubilo, dated January 31, 2020
- L. Nisqually Indian Tribe comment letter from Brad Beach, dated January 31, 2020

EXHIBIT 2 Comment email from Rebecca Pogue, dated February 2, 2021<sup>2</sup>

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

### **FINDINGS**

1. The Applicant requested a variance from the five-foot side yard setback standard of the RL 2/1 zone to remodel an existing residence that is located zero feet from the east property line. The remodel would add height to the structure but would maintain the existing building footprint. The subject property is located at 12001 Bryant Street, Tenino, Washington.<sup>3</sup> *Exhibits 1 and 1.D.*

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<sup>2</sup> This document was identified prior to hearing as Exhibit 2.A; however, as no further written public comment was submitted after publication of the staff report, it is referred to Exhibit 2 in these findings.

<sup>3</sup> The subject property is known as Tax Parcel Number #11732420200. *Exhibit 1.*

2. The application was submitted on January 15, 2020 and determined to be complete on February 12, 2020. *Exhibits 1.C, 1.D, and 1.E.*
3. The subject property is 0.3 acres in area and is zoned Residential LAMIRD – Two Dwelling Units per Acre (RL 2/1). Single-family dwellings are an allowed use in the RL 2/1 zone. The minimum required side yard building setback for single-family residences is five feet. *Thurston County Code (TCC) 20.13A.020; TCC 20.07.030; Exhibit 1.*
4. The subject property is legally nonconforming with respect to lot width. Whereas current RL 2/1 standards require a minimum lot width of 75 feet, the subject property is 50 feet wide. *Exhibits 1 and 1.G; TCC 20.13A.030(2)(a).*
5. The subject property is developed with a single-family residence, which was constructed in 1923 prior to the County’s adoption of zoning regulations. The southeast corner of the residence abuts the eastern side property line, resulting in a side yard setback of zero at that location. Due to the orientation of the residence on the property, the minimum five-foot setback from the eastern property line is met at the northeast corner of the residence. *Exhibits 1 and 1.G.*
6. The Applicant proposes to remodel the residence within the existing building footprint, which is 35 feet wide and 38 feet deep. The remodel would include the addition of a foundation to level and strengthen the structure and replacement of the roof. The new roof would have a steeper pitch (12:12) to allow for an upstairs loft space, but the wall height would remain the same. The resulting building height would still be less than the 35-foot maximum allowed in the RL 2/1 zone. *Exhibits 1.D and 1.G; Rob Arnold Testimony.*
7. The subject property is on the Lake Offut shoreline, which is under the jurisdiction of the Shoreline Master Program for the Thurston Region (SMPTR) as a Rural shoreline environment. The residence’s setback of at least 60 feet from the shoreline exceeds the 50-foot minimum established in the SMPTR for Rural shorelines. The proposed remodel would maintain the existing setback. *Exhibits 1 and 1.G.*
8. The Thurston County Environmental Health Division reviewed the proposal and did not identify any issues of concern. Environmental Health recommended approval of the variance request. *Exhibit 1.J.*
9. The proposal is exempt from review under the State Environmental Policy Act (SEPA). *Exhibit 1; TCC 17.09.055(B).*<sup>4</sup>
10. Notice of the open record hearing was mailed to property owners within 300 feet of the site on January 25, 2021 and published in The Olympian on January 29, 2021. *Exhibits 1 and 1.A.*

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<sup>4</sup> The state SEPA rules exempt from review “minor new construction” (in rural Thurston County, this includes the construction of up to four dwelling units) and the granting of a variance based on special circumstances. *WAC 197-11-88(1) and (6)(e); TCC 17.09.055(B).*

11. The owners of the parcel to the east of the subject property support the variance request, and the Applicant owns the parcel to the south. *Exhibits 1.D, 1.F, and 2.* The owner of the vacant parcel to the west questioned whether there would be encroachments to the west, and whether the raised roofline would affect views from his parcel. *Rich Lough Testimony.*
12. In response to this public comment, the Applicant noted that no westward expansion of the residence is proposed, and the existing residence provides a setback from the western site boundary of 10 to 15 feet. He submitted that a residence constructed on the neighboring parcel at the minimum setback line from the lake would be adjacent to (not behind) the subject residence, and noted that while the roof pitch is changing to create a loft space, the walls would not be substantially taller; the Applicant submitted that any resulting views to a potential future residence on the parcel to the west would be minimally noticeable and would be more of an impact to territorial view than to direct views of the lake. *Rob Arnold Testimony; Exhibit 1.G.*
13. Having heard all testimony and considered all application materials for compliance with applicable codes, Planning Staff recommended approval subject to conditions in the staff report. *Ron Buckholt Testimony; Exhibit 1.* The Applicant waived objection to the recommended conditions. *Rob Arnold Testimony.*

## **CONCLUSIONS**

### **Jurisdiction**

The Hearing Examiner has jurisdiction to decide variance applications under Sections 2.06.010 and 20.52.010 of the Thurston County Code.

### **Criteria for Review**

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

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

5. That the granting of the variance will not be materially detrimental to the public welfare or injurious to other land or improvements in the vicinity and district in which the property is situated;
6. That the reasons set forth in the application justify the granting of the variance, and that the variance, if granted, would be the minimum variance that will make possible the reasonable use of the land;
7. That the granting of the variance will be in harmony with the general purpose and intent of this title and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

### **Conclusions Based on Findings**

1. Granting the variance would not allow a use that is not classified as a permitted or special use in the district in which the use would be located. Single-family residences are a permitted use in the RL 2/1 zone, and the existing residence has been in place nearly 100 years. *Findings 1 and 3.*
2. Special circumstances exist on the parcel, including the narrow parcel width and the placement of the existing residence at the side property line. Both of these circumstances were established prior to adoption of the zoning ordinance. Literal interpretation of the five-foot side yard setback standard would prevent the Applicant from more fully utilizing the height allowance enjoyed by other properties in the RL 2/1 zone. *Findings 3, 4, 5, and 6.*
3. The special circumstances are not the result of actions of the Applicant. *Findings 4 and 5.*
4. Granting the variance would not be a grant of special privilege, as it would not result in an expansion of the existing building footprint and would not allow building height in excess of zoning allowances. *Findings 1, 6, 11, 12, and 13.*
5. As conditioned, granting the variance would not be materially detrimental to the public welfare or injurious to other land or improvements in the vicinity and in the RL 2/1 zone. The Thurston County Environmental Health Division did not identify any issues of concern. The owner of the parcel most affected by the request is in support of granting the variance. The conditions of approval require a building permit to be obtained prior to commencing work and do not allow any disturbance of the minimum 50-foot shoreline setback. *Findings 7, 8, 11, 12, and 13.*
6. The reasons set forth justify the variance, and, due to the existing location of the residence at the side property line, the variance is the minimum needed to allow for the reasonable project proposed. *Findings 5 and 6.*

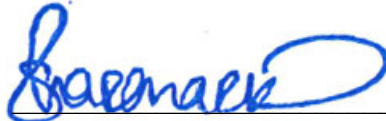
7. For the reasons stated in Conclusion 5, granting the variance would be in harmony with the general purpose and intent of Title 20 and would not be injurious to the neighborhood or otherwise detrimental to the public welfare. The purpose of Title 20 is to “maintain, enhance and perpetuate environmental quality and to promote the public health, safety and general welfare by guiding development according to the goals, objectives and policies set forth in the Thurston County Comprehensive Plan and in adopted subarea plans.” *TCC 20.02.010; Findings 7, 8, 11, 12, and 13.*

### **DECISION**

Based on the preceding findings and conclusions, the request for a variance from the five-foot side yard setback standard of the RL 2/1 zone to remodel a residence that is located zero feet from the east property line at 12001 Bryant Street SE is **GRANTED**, subject to the following conditions:

1. Pending administrative building permit #19-109119 BS shall be obtained prior to the commencement of any work related to the subject proposal.
2. The proposed residential remodel scope of work related to the subject variance request shall not involve any work or disturbance within the 50 foot shoreline buffer/setback (measured from the ordinary high water mark or legally established bulkhead).
3. The proposed remodel scope of work related to the subject variance request shall adhere to the site plan (Exhibit 1.G).

**DECIDED** February 22, 2021.



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Sharon A. Rice  
Thurston County Hearing Examiner

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

<b>NOTE:</b> 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).
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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 **\$777.00** for a Request for Reconsideration or **\$1,054.00** 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 ☐ \$777.00 for Reconsideration or \$1,054.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.