



COUNTY COMMISSIONERS

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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. 2020105307 |
| |) | |
| Yelm Community Schools |) | Southworth Elementary Reconstruction |
| |) | |
| |) | FINDINGS, CONCLUSIONS, |
| For Special Use Permit and |) | AND DECISIONS |
| Variance |) | |

SUMMARY OF DECISIONS

The requested special use permit and variance to reconstruct the existing Southworth Elementary School and to increase the building coverage to 48,883 square feet are **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request

Yelm Community Schools (Applicant) requested a special use permit (SUP) and a variance to reconstruct (i.e., demolish and replace on same site) the existing Southworth Elementary School and to increase the site's building coverage to 48,883 square feet. The subject property is located at 13849 Yelm Highway SE, Yelm, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on April 27, 2021. The record was held open until April 29, 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 public comment was submitted. The record was also held open through May 4, 2021 to allow the Applicant and County Staff to address the question of proposed gymnasium height that arose at the end of the hearing.

Responsive information was submitted by both County and Applicant and was admitted. The record closed on May 4, 2021. No in-person site visit was conducted, but the Examiner viewed the subject property on Google Maps.

Testimony

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

Scott McCormick, Associate Planner, Thurston County
Dawn Peebles, Environmental Health Specialist, Thurston County
Arthur Saint, Civil Engineer, Thurston County
Kasey Wyatt, Program Manager for Yelm Community Schools Capital Projects
Todd Sawin, Civil Engineer with AHBL, Applicant Representative

Exhibits

Through the open record public hearing process, the following exhibits were admitted in the record:

- Exhibit 1 Community Planning & Economic Development Staff Report including the following attachments:
- A. Notice of Public Hearing
 - B. Master Application, dated October 30, 2020
 - C. Special Use Permit Application, dated October 30, 2020
 - D. Variance Application (revised), dated December 7, 2020
 - E. Project narratives (2 pages)
 - F. Notice of Application, dated February 10, 2021
 - G. Vicinity/zoning Map
 - H. Storm water scoping report, dated October 27, 2020
 - I. Site Plans
 - J. SEPA Determination of Non-Significance (DNS) issued November 19, 2020 by Yelm Community Schools
 - K. SEPA Checklist by Yelm Community Schools
 - L. Letter from Washington Department of Ecology, dated March 2, 2021
 - M. Letter from Nisqually Indian Tribe, dated February 24, 2021
 - N. Approval Memo from Thurston County Public Works, dated March 8, 2021
 - O. Approval Memo from Thurston County Environmental Health, dated March 8, 2021
 - P. Comment email from Squaxin Tribe, dated December 7, 2020
- Exhibit 2 Project Reports
- 2a. AHBL Preliminary Drainage Report, October 2020
 - 2b. AHBL Preliminary Maintenance Plan, October 2020

2c. AHBL Preliminary Stormwater Pollution Prevention Source Control Plan,
October 2020

2d. BCRA Vegetation Management Plan

Exhibit 3 Planning Staff post-hearing recommendation regarding gymnasium height, dated
April 28, 2021

Exhibit 4 Applicant post-hearing response regarding gymnasium height, dated May 3, 2021

Following thorough review of the record developed through the open record hearing process, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. Yelm Community Schools (Applicant) requested a special use permit (SUP) and a variance to reconstruct (i.e., demolish and replace on same site) the existing Southworth Elementary School, and to increase the currently nonconforming site coverage by building to 48,883 square feet and the impervious surface site coverage by 3.15%. The existing school is located at 13849 Yelm Highway SE, Yelm, Washington.¹ *Exhibits 1, 1.B, 1.C, 1.D, 1.E, and 1.I.*
2. The application was submitted on November 2, 2020 and determined to be complete for purposes of commencing project review on December 4, 2020. *Exhibit 1.F.*
3. The subject property is 17.3 acres in area and is zoned Urban Reserve - One Dwelling Unit per Five Acres (UR 1/5). *Exhibits 1, 1.G, and 1.I; Testimony of Scott McCormick and Todd Sawin.* The purposes of the UR 1/5 zone are to:
 1. Provide for low density residential uses, agriculture, forestry, conservation and associated uses in areas contiguous to urban growth areas, cities and towns that appear to be capable of eventually supporting urban density development; and
 2. Provide for development in a configuration that enables efficient redevelopment at urban densities upon inclusion in an urban growth area and provision of urban utilities and services.

Thurston County Code (TCC) 20.09D.010. Primary permitted uses in the UR 1/5 zone include single-family residences, agriculture, forest practices, and outdoor recreation. *TCC 20.09D.020.* Schools are allowed in the UR 1/5 zone following special use permit review and approval. *TCC 20.54, Table 1.* The existing school is considered a legal nonconforming use because it was developed without SUP review and approval prior to the adoption of the County's zoning regulations. *Exhibit 1; Testimony of Scott McCormick and Todd Sawin.*

¹ The legal description of the subject property is: Section 11 Township 17 Range 1E PT SW SE LYING SWLY OF OLY YELM RD & WLY OF LINE COM S LINE SW SE 74 1.85F E OF SE COR; N13-33W 1192F TO RD; Tax Parcel No. 21711430400. *Exhibit 1.*

4. Surrounding land uses are residential to the east and south. The SR-510 right-of-way borders the northern property boundary, and undeveloped Joint Base Lewis-McChord land borders the western property boundary. *Exhibit 1; Google Maps site view.*
5. The use-specific special use standards applicable to schools include a maximum density of one hundred students per acre of ground and a maximum of one square foot of floor area to two square feet of ground area. In addition, any portion of the site abutting a residential use must be screened in a manner to reduce the noise generated on school grounds. The height of any auditorium or gymnasium is set by the approval authority. *TCC 20.54.070(1); Exhibit 1.*
6. The Applicant does not propose any change in the number of staff or student enrollment on site. With the current student enrollment capacity of 550 students and a land area of 17.3 acres, the school meets the density standard of TCC 20.54.070(1). *Todd Sawin Testimony; Exhibit 1.C.*
7. The new school building would have approximately 63,000 square feet of floor area total. With the site area of 753,588 square feet, the ratio of floor area to ground area would not exceed the 1:2 limitation of TCC 20.54.070(1). *Todd Sawin Testimony; Exhibit 1.I.*
8. There is existing native vegetation including mature trees along the eastern and southern property boundaries. These buffers from adjacent residential uses would be maintained. In their existing condition, they are adequate to meet site screening requirements. *Exhibits 1, 1.C, and 1.I; Scott McCormick Testimony.*
9. The maximum height of the gymnasium would be 38 feet, two inches, or 40 feet, nine inches when mechanical equipment is included in the measurement. While this amount exceeds the standard maximum building height of 35 feet for the zone, it is typical for school gymnasiums to exceed 35 feet in height and TCC 20.54.070(1) allows the height to be set by the approval authority. County staff recommended approval of the gymnasium height proposed. The remainder of the building would comply with the 35-foot height limitation. *Testimony of Todd Sawin and Kasey Wyatt; Exhibits 3 and 4.*
10. The setback requirements applicable to the reconstructed school include a minimum setback from SR-510 of 20 feet and minimum side and rear setbacks of five feet. The site plan depicts that the new building would be set back approximately 100 feet from the nearest property line. *Exhibit 1.I; TCC 20.07.030.*
11. The existing school site is legally nonconforming with respect to impervious surface coverage. The maximum impervious surface coverage in the UR 1/5 zone is 10% for lots 2.5 acres and greater, while the existing impervious surface coverage is 27.96%. The Applicant proposes to increase the impervious surface coverage to 31.11%, which is a 3.15% increase. The additional impervious surfaces would provide for drive aisles and parking. *Exhibits 1.E and 1.I; TCC 20.09D.050(6).* Planning Staff recommended approval of the expanded nonconforming site coverage by impervious surface pursuant to TCC 20.56.030(2), which allows for administrative (rather than quasi-judicial) review of

increases up to 5%, and stated that hearing examiner variance approval was not required for this portion of the request. *Exhibit 1; Scott McCormick Testimony.*

12. The existing school is legally nonconforming with respect to site coverage by building. The maximum building coverage allowed on the subject property pursuant to the UR 1/5 zoning is 20,000 square feet, while the existing building coverage is 44,450 square feet. The Applicant requested a special use permit and variance for the school reconstruction project because the proposed building coverage would be 48,883 square feet, an increase of 9.97% increase over the existing nonconforming condition. The Applicant submitted that the building coverage requested is needed for the elementary school use, and that reducing the building coverage would require construction of another elementary school on an undeveloped parcel. *TCC 20.09D.050(3); Exhibits 1, 1.D, 1.E, and 1.I.*
13. In addition to the school building, site improvements would include new fire access lanes, separate bus and parent pick-up/drop-off loops, parking areas, and play areas. Ninety-six parking stalls would be provided. Activities on site would be consistent with existing conditions and, as indicated previously, the student and staff population would not increase. The proposed building expansion would allow students to be moved from portable classrooms into the main school building. Vehicular traffic to and from the site would not increase. *Exhibits 1, 1.C, 1.E, 1.J, and 2a.*
14. Potable water is provided to the school from the Southworth Elementary Group A public water system, which is permitted by the Washington State Department of Health (DOH). There are two wells on site, with one serving as the primary water source and one serving as an emergency water source. With respect to the emergency source, the wellhead is in the northern portion of the site in the area of proposed driveway/parking improvements. The project plans depict that the Applicant proposed to incorporate the well into the design by lowering the wellhead beneath finished grade and installing a traffic-rated access lid. However, the DOH has since denied the Applicant's request to lower the wellhead. The County Environmental Health Specialist submitted that the driveway would need to be redesigned or a new well developed to comply with DOH requirements. The Applicant submitted that a redesign would not substantially change the project, as additional parking could be added in the western portion of the site. Per the County Environmental Health Division's recommended conditions of approval, alterations of the public water system would require DOH approval prior to release of the building permit. *Exhibits 1.I and 1.O; Testimony of Dawn Peebles and Todd Sawin.*
15. Wastewater is treated by a large on-site sewage system (LOSS), which is permitted by the DOH. The Applicant proposes minor alterations to the LOSS, including new service point connections and relocation of a control panel. Per the County Environmental Health Division's recommended conditions of approval, alterations of the LOSS would require DOH approval prior to release of the building permit. *Exhibit 1.O.*
16. Stormwater generated on site would be infiltrated or dispersed to match existing and predeveloped drainage patterns. Enhanced water quality treatment would be provided through use of bioretention cells located adjacent to pollution-generating surfaces and compost-amended vegetated filter strips. Several underground infiltration trenches would

be constructed to provide complete infiltration of runoff from the parking lot in the western portion of the site, the playground area, and the school building. *Exhibit 2a.*

17. The Thurston County Public Works Department has reviewed the project plans and drainage report and has determined that the preliminary requirements of Thurston County Road Standards and the Drainage Design and Erosion Control Manual have been satisfied. Public Works recommended approval of the project, subject to the conditions outlined in a memorandum dated March 8, 2021. *Exhibit 1.N.*
18. The subject property is within a Category I Aquifer Recharge Area, a regulated critical area. The Applicant has prepared and received Environmental Health Division approval of an Integrated Pest Management Plan for the project, which outlines landscape management practices to reduce impacts to surface and ground water. *Exhibits 1.O and 2d.*
19. There are Oregon white oaks in the eastern portion of the subject property, which are protected under the Thurston County Critical Areas Ordinance. All the Oregon white oaks are outside of the proposed redevelopment footprint and would not be impacted. *Exhibit 1.J; Todd Sawin Testimony.*
20. Yelm Community Schools acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA) and issued a determination of non-significance (DNS) on November 19, 2020. The DNS includes recommended conditions of project permit approval (intended to be imposed as permit conditions rather than as DNS mitigation measures), which require the Applicant to comply with a geotechnical study, test for contaminants if contamination is suspected, perform a hazardous materials survey prior to demolition, obtain a Construction General Stormwater Permit if required, stop work if historic or cultural resources are discovered during construction, conduct a good faith asbestos survey, and ensure the building design complies with state maximum background noise levels for schools. *Exhibit 1.J.*
21. The Nisqually Indian Tribe and Squaxin Island Tribe commented that they have no issues of concern but requested to be notified if there are any inadvertent discoveries of archaeological resources or human burials. This request was incorporated into the recommended conditions of project approval. *Exhibits 1, 1.M, and 1.P.*
22. Notice of the open record hearing was mailed to property owners within 500 feet of the site on April 8, 2021 and published in *The Olympian* on April 16, 2021. *Exhibit 1.A.* There was no public comment on the proposal. *Scott McCormick Testimony.*
23. Having heard all testimony and reviewed the entire application file, Planning Staff recommended approval of the proposal with the conditions in the staff report. *Scott McCormick Testimony; Exhibits 1 and 3.* Applicant representatives waived objection to the recommended conditions. *Testimony of Kasey Wyatt and Todd Sawin; Exhibit 4.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to decide special use permit applications under Sections 20.06.010 and 20.54.015(2) of the Thurston County Code, and variance pursuant to Section 20.52.010 of the Thurston County Code.

Criteria for Review: Special Use Permit

The Hearing Examiner may approve an application for a special use permit only if the following general standards set forth in TCC 20.54.040 are satisfied:

- A. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan, and all applicable federal, state, regional, and Thurston County laws or plans.
- B. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.
- C. Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:
 1. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though said adverse effects may occur.
 2. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

Criteria for Review: Variance

Pursuant to TCC 20.52.020, the Hearing Examiner may grant a variance if the following criteria 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.

Additional Applicable Code Provisions

TCC 20.54.070 Use—Specific standards.

1. Academic Schools.
 - a. Minimum Site Size.
 - i. For Public Schools. Minimum site size shall be as required by the Superintendent of Public Instruction.
 - ii. For Private Schools. In addition to complying with the minimum lot size requirements of the zoning district in which located, the minimum lot area of a private school in excess of four students, shall be determined by the approval authority.

The density shall not exceed one hundred students per one acre of ground nor shall there be more than one square foot of floor area to two square feet of ground area.
 - b. Any portion of the site which abuts upon a residential use shall be screened in such a manner as to reduce the noise generated by activities on the school grounds.
 - c. The height of any auditorium or gymnasium shall be set by the approval authority.

TCC 20.56.030 Expansion and intensification of nonconforming, nonresidential uses.

1. Nonconforming, nonresidential uses may be expanded as provided in subsections (2), (3), and (4) below, and all applicable special use standards described in Section 20.54.070. An intensification of use is permitted outright and occurs when the intensified use is contained within the existing structure, or use area if no structure is involved, and is not different in kind from the existing nonconforming use.
2. Expansions of nonconforming, nonresidential uses no greater than five percent may be handled through the administrative special use permit process provided all other requirements of this chapter, including the findings under subsection (3) of this section, are met, pursuant to the application and review procedures prescribed in Chapter 20.60.

3. A nonconforming, nonresidential use may be expanded up to fifteen percent if the hearing examiner issues a special use permit for the expansion of the nonconforming use, pursuant to the application and review procedures prescribed in Chapter 20.60. The percentage shall be cumulative, based on the extent of the use at the time of the initial expansion request following March 19, 2001. The examiner may issue the permit only after finding that:
 - a. The expansion of the structure conforms to the requirements of this title, provided that the vertical enlargement of a structure which fails to conform to horizontal setback requirements need not conform to that setback requirement;
 - b. Measures will be taken, if necessary, to protect the neighborhood from detrimental land use effects which might result from the expansion of the nonconforming use;
 - c. The expansion will occur on the same lot upon which the existing nonconforming use is located;
 - d. A nonconformance will not be created with other standards that conform to the development regulations elsewhere in this title;
4. Expansions of nonconforming, nonresidential uses involving critical areas shall be subject to the provisions of the Thurston County Critical Areas Ordinance (Title 24) and the Thurston County Agricultural Activities Critical Areas Ordinance (Chapter 17.15).

Conclusions Based on Findings

Special Use Permit

1. With conditions of approval, the proposed use at the proposed location would comply with applicable laws and plans, including the Thurston County Sanitary Code, the Thurston County Critical Areas Ordinance, the Thurston County Zoning Ordinance, the State Environmental Policy Act, and the requirements of the Washington Department of Health. The existing structure is legally nonconforming with respect to impervious surface coverage and building coverage, and the variance addresses the building coverage increase proposed. The mitigation measures identified in the SEPA DNS have been included in the conditions of this decision. As conditioned, none of the proposed improvements would impact critical areas. *Findings 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, and 23.*
2. The use complies with the general purposes and intent of the UR 1/5 zone and with applicable setback and bulk standards. The school use supports current and future urban development in the project vicinity. The existing structure is legally nonconforming with respect to impervious surface coverage and building coverage. Aside from the gym and its rooftop mechanical equipment (addressed in conclusion 4 below), the new school building would comply with the height limitation of the UR 1/5 zone and exceed the minimum UR 1/5 setback standards. The small portion of increased height for the new building exceeding 35 feet would be setback at least 100 feet from any property boundary. *Findings 3, 9, 10, 11, and 12.*

3. With conditions, the proposed use is appropriate in the location for which it is proposed.
 - a. As conditioned, the use would not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety, and welfare. The school has existed onsite since 1975, and the proposed expansion in building area would not affect the operational characteristics of the school. Traffic would not be impacted, and significant additional parking would be provided on site. All Oregon white oaks on the subject property are outside the proposed development envelope and would be preserved. As proposed and conditioned, the critical aquifer recharge area would be protected. Enhanced stormwater treatment measures are proposed. The conditions of approval (which incorporate the mitigation measures of the District's DNS) include a requirement to stop work and provide notice to the Washington Department of Archaeology and Historic Preservation in the event of discovery of cultural resources. The conditions also require Department of Health approval of water system and septic system changes. *Findings 3, 4, 6, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 23.*
 - b. As conditioned, the use would be adequately served by and would not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area. The site is served by an existing public water system and LOSS, which are under the jurisdiction of the Washington DOH. Proposed modifications to these systems will require DOH approval. *Findings 14 and 15.*
4. As established in TCC 20.54.070(1)(c), the hearing examiner (or other designated County decision making authority) are authorized to determine the appropriate building height for the gym. Thus, gyms are exempted from the zoning height limit and a hearing examiner-authorized gym height that exceeds the maximum height in the underlying zone is not nonconforming. All portions of the expanded building, including the gym, would be setback at least 100 feet from any property boundary. The requested gym height of 38 feet, two inches, and 40 feet, nine inches for roof top mechanical equipment on the gym, are approved. *Findings 9 and 10.*
5. The County's nonconforming use provisions at TCC 20.56.030(3) require special use permit approval to authorize the expansion of the nonconforming nonresidential use. These provisions speak to nonconforming *uses*, which the existing Southworth Elementary school is considered to be, since its presence in the zone requires a special use permit and the existing school predates the adoption of the zoning, such that it is in place without a previously approved SUP. However, the existing school building is also a nonconforming *structure*, in that it is already more twice the maximum building size allowed in the zone. The County Code's nonconformity provisions contain a section on the alteration or expansion of nonconforming *residential* structures, but there are no parallel provisions regulating the expansion of nonconforming *nonresidential* structures. Thus, although the "school use" of the site is not itself increasing or intensifying (to the extent that no additional students and staff are anticipated as a result of the project), the proposed expansion of the school infrastructure can only be reviewed under the 'expansion of nonconforming *use*' provisions. However, pursuant to TCC

20.56.030(3)(a), a nonconforming, nonresidential use (or structure in this case) may be increased by up to 15% *only* if expansion of the structure complies with four criteria, the first of which requires the expanded nonconforming “use” to satisfy all provisions of “this title” (the zoning ordinance). Because the project would necessarily increase the already nonconforming site coverage by building, it cannot satisfy the requirements the zoning ordinance. This is apparently the reason the Applicant was required to apply for a variance.²

6. The nonconformity provisions at TCC 20.56.020(2) allow nonconforming nonresidential uses to be expanded up to 5% through an administratively reviewed process, and because of this, Planning Staff asserted that no hearing examiner variance was needed for the requested increase in the existing nonconforming site coverage by impervious surfaces of 3.15%. However, a close reading of TCC 20.56.030(2) requires such administratively reviewed up-to-5% expansions to demonstrate compliance with the same four criteria as the up-to-15% hearing process expansions. Again, the first of those four criteria at TCC 20.56.030(3)(a)) requires a demonstration of compliance with the zoning ordinance. The existing site coverage by impervious surface area already exceeds the 10% allowed in the UR 1/5 zone, and thus the requested increase cannot satisfy the zoning ordinance without a discretionary exemption. Based on testimony, Staff relied on the existence of the administrative process for an up-to-5% increase in deciding impervious surface coverage was excused from requiring a variance. This analysis appears to have inadvertently failed to apply the four criteria.³ The undersigned reads the Code to require the same compliance with zoning standards whether the expansion is considered in an administrative or in a quasi-judicial process. Thus, hearing examiner variance approval is also required for the requested expansion in site coverage by impervious surfaces.

Variance

7. Schools are an allowed special use in the UR 1/5 zone, and approval of the requested variances would not alter the use to one not allowed in the zone. *Finding 3.*
8. With respect to the requested expansion of the building’s area by 9.97%, special circumstances exist in that the school is legally nonconforming, that schools are a unique use requiring uniquely large building areas, and that the 17.3-acre size of the parcel is very large relative to the 20,000 square foot building coverage limitation. Further, the floor area to ground area ratio proposed is consistent with the County’s use-specific special use standards. Strict application of the building coverage limitation would prevent the modest growth proposed. Regarding the requested 3.15% expansion of the site’s nonconforming impervious surface coverage, the same special circumstances apply

² County Staff’s analysis did not reach a discussion of nonconforming use vs. nonconforming structure in the zoning provisions, and it was not initially clear why the variance had been required, because nonconforming uses are explicitly to be expanded through the SUP process per TCC 20.56.030(3). This conflation of nonresidential use and nonresidential structure in the Code’s nonconformity provisions may benefit some review and clarification by the County legislators.

³ Further, an administrative variance allowing expansion of up to 5% would surely also require an issued administrative decision with findings and conclusions, which was not provided in the record and does not appear to have been conducted.

- that the school use requires more paved area for parking, school bus queuing and maneuvering, and for play areas, than 10% of the site. *Findings 1, 3, 5, 7, and 12.*
9. The need for greater than 20,000 square feet in building area and greater 10% site coverage by impervious surfaces were not “created” by the Applicant, in that the school was lawfully established and that student populations have necessarily increased over time, as have the state guidelines for what constitutes adequate area for elementary school purposes. *Findings 3 and 12.*
 10. Granting the variance would not confer a special privilege due to the legally nonconforming status of the school and the nature of the use. Similarly situated schools or other public uses would be able to apply for similar variances as needed. *Findings 1, 3, 6, 7, 8, 9, 10, 11, and 12.*
 11. Granting the variance would not be materially detrimental to the public welfare or injurious to other land or improvements in the vicinity and UR 1/5 zone. Even with the expanded building coverage, the school would far exceed minimum building setback standards. The requested increased impervious site coverage would be approximately 5.4 acres, leaving nearly 12 acres of the site pervious. Proposed storm drainage improvements would address stormwater runoff from the expanded building and site coverage. *Findings 4, 10, and 16.*
 12. Granting the variance is justified by the application materials, which support the conclusions that the requested variance is the minimum necessary to make possible the reasonable use of the land. Denial of the modest increases in site coverage would result in facilities that are inadequate to the Applicant’s need and would eventually cause new school capacity to be required to be developed elsewhere. Such an outcome would be unreasonable given the generous size of this site and the lack of impact to adjacent uses. *Finding 12.*
 13. Approval of the requested variance would be in harmony with the general purpose and intent of the zoning ordinance and would not be injurious to the neighborhood or otherwise detrimental to the public welfare. The school is a pre-existing use that provides a service to the public, especially the immediately surrounding community. Schools are a permitted special use in the UR 1/5 zone. The variance would allow a building coverage increase of less than 10%, and impervious surface coverage increase of 3.15%. Even with the expanded building and site coverage, the school would far exceed minimum building setback standards. Proposed storm drainage improvements would address stormwater runoff from the building. Existing perimeter screening vegetation would be retained and would continue to provide the required screening for the school use. *Findings 3, 4, 8, and 12.*

DECISIONS

Based on the preceding findings and conclusions, the request for special use permit and variance approval to authorize reconstruction of the existing Southworth Elementary School with

increased building coverage of 48,883 square feet and increase site impervious surface coverage of 31.11% are **GRANTED** subject to the following conditions:

Public Works Conditions

1. The Applicant shall comply with conditions contained in the Public Works Memorandum dated March 8, 2021 (Exhibit 1.N).

Environmental Health Conditions

2. The Applicant shall comply with conditions contained in the Environmental Health approval Memorandum dated March 8, 2021 (Exhibit 1.O).

Planning and Other Conditions

3. Affected Tribes and Thurston County Community Planning & Economic Development shall be notified if cultural resources are identified.
4. Lighting shall be designed and shall function in a manner that shields direct light from adjoining streets and properties.
5. The Applicant shall maintain all landscape and planting areas in a healthy condition and replace any dead or dying vegetation. This expressly requires maintenance of sight-obscuring vegetation along site boundaries that abut residentially zoned parcels.
6. If new signage is proposed, it shall comply with TCC 20.54.040(5).
7. All activities on-site shall fully comply with noise limitations outlined in WAC 173-60.
8. All development on the site shall be in substantial compliance with the approved site plan and project narrative, except as conditioned above. Any expansion or alteration of this use, beyond that initially approved by the Hearing Examiner and any changes imposed by the Washington State Department of Health that do not further increase nonconformity related to site coverage by impervious surface beyond the increases allowed in TCC 20.56.030, will require approval of a new or amended special use permit. The Community Planning & Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
9. The Applicant shall comply with the mitigation measures listed in the November 19, 2020 determination of non-significance (Exhibit 1.J), which specify as follows:
 1. Project design and construction are required to follow the recommendations in the Geotechnical Feasibility Study prepared by Landau Associates, dated October 2018 and as subsequently updated or amended.
 2. If contamination of soil or groundwater is suspected, discovered, or occurs during the construction of the new elementary school building, testing of the potentially contaminated media must be conducted. If contamination is revealed by testing, Washington State Department of Ecology must be notified. Contact the

Environmental Report Tracking System Coordinator for the Southwest Regional Office (SWRO) at (360) 407-6300.

3. A Hazardous Materials Survey is required to be completed prior to the demolition of the existing school buildings. The Hazardous Materials Survey is required to be posted at the site during demolition and contractors will be required to follow the recommendations of the report as well as all state requirements for hazardous materials abatement.
4. The Applicant shall obtain a Construction General Stormwater permit (NPDES), if required, prior to clearing, grading, or excavation activities.
5. The contractor is required to notify the project archaeologist should artifacts or evidence of historic or cultural resources be observed during construction activities. If cultural resources are found, all work in the immediate vicinity should stop and the area be secured. All site work will stop until Washington State Department of Archaeology and Historic Preservation (DAHP) provides further guidance. The Nisqually Tribe and Squaxin Island Tribe will be notified depending upon DAHP guidance/procedures.
6. A good faith asbestos survey must be conducted on the structure by a certified Asbestos Hazardous Emergency Response Act (AHERA) building inspector. If asbestos is found during the survey, an Asbestos Removal Notification must be completed and all asbestos containing material must be properly removed prior to the demolition. A Demolition Notification must be submitted to ORCAA regardless of the results of the asbestos survey.
7. The building design shall comply with WAC 246-366A-030 and 110 which provide maximum background noise levels for schools.

DECIDED May 18, 2021.



Sharon A. Rice
Thurston County Hearing Examiner

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

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| 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). |
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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____.