

DRAFT ORDINANCE NO. _____

AN ORDINANCE RELATING TO EXISTING NONCONFORMING USES, STRUCTURES, AND LOTS; ADOPTING AMENDMENTS TO THURSTON COUNTY CODE TITLE 24, CHAPTER 24.03 ADDING NEW AND AMENDING DEFINITIONS; CHAPTER 24.50 ADDING NEW AND REVISED CODE LANGUAGE

WHEREAS, Thurston County is required to plan under Chapter 36.70A RCW, the Growth Management Act (GMA), which contains fourteen goals intended to guide development and adoption of comprehensive plans and development regulations, which relate to urban growth, rural development, reduced sprawl, transportation, housing, economic development, property rights, permits, natural resource industries, open space, recreation, the environment, citizen participation and coordination, public facilities and services, and historic preservation; and

WHEREAS, Thurston County has performed professional review, provided public notice, and received public comment with respect to these development code amendments; and

WHEREAS, the GMA requires development regulations to demonstrate and uphold the concepts of internal consistency, conformity, and concurrency; and

WHEREAS, the development regulations, including the official zoning maps, in Thurston County adopted under GMA must be consistent with the Thurston County Comprehensive Plan and associated Joint Plans; and

WHEREAS, Thurston County-wide Planning Policy 10.1 states that the County will recognize our dependence on natural systems and maintain a balance between human uses and the natural environment.; and

WHEREAS, pursuant to RCW 36.70A.130, development regulations shall be subject to continuing review and evaluation by the county; and

WHEREAS, the Thurston County Planning Commission has reviewed, held a public hearing and made a recommendation on June 15, 2022 on the amendments to the Nonconforming Uses, Structures and Lots Chapter of the Critical Areas Ordinance in rural Thurston County and urban growth areas; and

WHEREAS, pursuant to RCW 36.70A.106, a notice of intent to adopt was sent to the Washington State Department of Commerce on May 8, 2022;

WHEREAS, pursuant to the State Environmental Policy Act (SEPA) and WAC 197-11, a non-project Determination of “Non-Significance” (DNS) was issued on July 6, 2022; and

WHEREAS, the Planning Commission's recommendation and minority report dated June 15, 2022 on the proposed code amendments was received by the Board on August 3, 2022 at a regularly scheduled briefing and the Board directed staff to set a public hearing; and

WHEREAS, the Board held a public hearing with notice requirements consistent with the Thurston County Code and state law on September 27, 2022 to take public testimony on the proposed Nonconforming Use, Structures and Lots Chapter of the Critical Areas Ordinance; and

WHEREAS, the Board agrees with the findings of recommendation of the Thurston County Planning Commission and has determined that the amendments contained in this ordinance are consistent with the Thurston County Code (TCC) and other titles, chapters, and sections of the TCC; and

WHEREAS, the Board believes adopting the amendments is necessary for the preservation of the public health, safety, and general welfare of Thurston County residents.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THURSTON COUNTY, AS FOLLOWS:

SECTION 1. TITLE 24 CRITICAL AREAS ORDINANCE. The Thurston County Code is hereby amended as shown in Attachment A.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause, phrase or other portion of this Ordinance or its application to any person is, for any reason, declared invalid, illegal or unconstitutional in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

SECTION 3. CORRECTIONS. Upon approval of the Prosecuting Attorney's Office, the Clerk of the Board is authorized to make any necessary corrections to any section, subsection, sentence, clause, phrase or other portion of this Ordinance for scrivener's or clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect *immediately upon adoption.*

ADOPTED: _____

ATTEST:

BOARD OF COUNTY COMMISSIONERS
Thurston County, Washington

Clerk of the Board

Chair

APPROVED AS TO FORM:

JON TUNHEIM
PROSECUTING ATTORNEY

Vice-Chair

Travis Burns
Deputy Prosecuting Attorney

Commissioner

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Attachment A

Section I: Title 24, Chapter 24.03 Definitions

Section II: Title 24, Chapter 24.50 Existing Nonconforming Uses, Structures and Lots

Deleted Text: ~~Strikethrough~~ Proposed Changes: Underlined
Staff Comments: *Italics* Unaffected Omitted Text ...

The proposed amendments contained herein are included on the 2022/2023 Official Development Code Docket as Item A-27. Development Code Docket Item A-27 is a legislative proposal to expand administrative review and approval of small-scale projects associated with existing nonconforming uses, structures and lots that have minimal to no functional impact to the critical area. This proposal is comprised of two (2) chapters that would be amended, including revised definitions, references, and revisions to existing regulations.

I. Thurston County Code Chapter 24.03 TCC (DEFINITIONS) shall be amended to read as follows:

...

24.03.010 – Definitions.

...

"Alteration, structure" means change to, ~~addition to,~~ or modification of an existing physical structure beyond routine repair and maintenance, but not amounting to complete replacement. This includes changes to the supporting members of a building such as bare walls, columns, beams, floor joists, roof joists, girders, rafters, or changes in roof. An alteration also includes activity that requires a building permit. ~~The cost of an alteration shall not exceed fifty percent of the structure's current market value as determined by an accredited appraisal or the assessor's valuation, at the owner's option. The value shall be determined based the value of the structure either before the repair, maintenance, alternation, or expansion is started, or if the structure has been damaged, and is being restored, before the damage occurred.~~

...

"Alteration, use" means change to, ~~addition to,~~ or modification of an existing use, including any human activity that results or is likely to result in an adverse impact upon the existing condition of a critical area or its buffer. "Alteration" does not include passive recreation such as walking, fishing or similar low impact activities.

...

"Expansion" means alteration of, or addition to, a structure beyond the existing building footprint, or the alteration of a use beyond the existing use area. ~~Also see definition of "alteration."~~

...

"Nonfunctioning Buffer Area" means that a significant development exists that creates a complete barrier to the biological and hydrological functions of the buffer area. Significant development may include built public infrastructure such as paved roads and railroads, or private developments like houses or commercial structures.

...

~~"Related Normal residential appurtenances"~~ means those improvements or structures which are connected to the use and enjoyment of the primary structures~~single-family residence~~ and are located landward of the ordinary high-water mark and includes a garage, deck, driveway, on-site septic system, and utilities.

...

As amended in 24.50.040, replacement of nonconforming structures would be permitted outright.

~~"Replacement" or "total replacement" of a structure involves the removal of more than fifty percent of the lineal footage of existing exterior ground floor walls or the cost of repairs exceeds fifty percent of the structure's current market value as determined by an accredited appraisal or the assessor's valuation, at the owner's option. The value shall be determined based the value of the structure either before the repair, maintenance, alternation, or expansion is started, or if the structure has been damaged, and is being restored, before the damage occurred.~~

II. **Thurston County Code Chapter 24.50 TCC (EXISTING NONCONFORMING USES, STRUCTURES AND LOTS) shall be amended to read as follows:**

The purpose of the non-conforming code chapter is to establish provisions for developing and redeveloping existing uses, structures and lots affected by critical areas that do not conform to the Critical Areas Ordinance (Title 24).

...

24.50.020 – Alteration, maintenance or vertical expansion of legally established nonconforming structures—General rules.

Alteration or expansion of legally established nonconforming structures or uses, including structures or uses that do not require a permit, is allowed subject to all of the following:

A. Maintenance. All legally established, nonconforming structures can be maintained (e.g., painting and repairs);

~~B. Alteration and Vertical Addition. Interior remodels and the addition of upper stories or increased height to legally established nonconforming structures are permitted, subject to the requirements of 24.50.020(C). Except as specifically allowed under this Chapter, such additions shall not be cantilevered into or extend beyond the existing or approved building footprint into a critical area or associated buffer; Legally established nonconforming structures may be altered within their existing building footprint. Additionally, attached decks, porches, and patios may be altered in their existing footprint, excluding the addition of permanent roof structures. If applicable, also see Chapter 24.20 TCC regarding limitations in frequently flooded areas. Legally established, attached nonconforming decks, porches, or patios shall not be enclosed for use as livable space, unless the deck, porch, or patio is already covered by an existing permanent roof structure as determined by the approval authority;~~

~~C. Expansion of conforming portions of a legally established nonconforming structure. If only a portion of the structure is nonconforming (e.g., lies within an important habitat area), expansion of the conforming portion of the structure is permitted provided the expansion does not extend into the critical area or associated buffer.; and~~

~~CD. Vertical Additions. Alterations to legally established nonconforming structures shall only be allowed for the addition of height consistent with applicable height regulations in the underlying zoning district in effect at the time of addition. Within marine bluff or landslide hazard areas, or their buffers, vertical additions are only allowed if a geological assessment demonstrates that it will not negatively impact slope stability. Expansion of the established nonconforming portion of the structure is prohibited, except for vertical additions consistent with applicable height regulations in the zoning district. Additions shall not be cantilevered to extend beyond the existing structure's footprint (outside wall at the foundation) into a critical area or associated buffer. Vertical additions to legally established portions of a nonconforming structure are only allowed within marine bluff or landslide hazard areas, or their buffers, if a geological assessment demonstrates that it will not negatively impact slope stability.~~

~~E. Cantilevered alterations, expansions or additions to nonconforming portions of structures shall not extend beyond the existing building footprint into the critical area or its associated buffer.~~

24.50.025 - Expansion of impervious surfaces in riparian areas, wetland buffers and pond buffers.

The expansion of impervious surfaces within riparian areas, wetland buffers and pond buffers is prohibited, except as provided as follows:

A. Impervious surface expansion. The approval authority may allow up to a five hundred square foot expansion of impervious surface, ~~including an existing structure's footprint,~~ within a riparian ~~habitat-area,~~ wetland buffer or pond buffer if it is determined that:

1.A. All new impervious surfaces, which include structures, will be sited at a distance that is greater than or equal to the primary~~original~~ structure(s) setback from the water body;

2.B. The expansion would occur at least one hundred feet from a Type "S" or "F" stream and Type "N" stream draining to a Type "S" or "F" stream, wetland edge, or marine waters;

3.C. The area proposed for the expansion was lawfully developed prior to July 24, 2012 or, if not, the unlawful development was not caused by the present landowner or did not occur within the past seven years;

4.D. If the riparian ~~habitat~~ area, ~~the outer 25% of~~ wetland buffer or pond buffer located on the site between the water body and the primary structure has been degraded on the site, the degraded area, or a portion of the degraded area equal to the size of the expansion, whichever is less, will be restored with native trees and vegetation. The degraded area chosen for restoration must be located the area nearest the most sensitive habitat as determined by the approval authority;

5.E. The expansion, coupled with any proposed mitigation, would be at least as effective in protecting all of the riparian ~~area~~~~habitat~~, wetland buffer, or pond buffer's functions as under current conditions;

6.F. The proposed expansion would be consistent with the shoreline master program for the Thurston Region, as amended, the impervious surface limits in the applicable zoning district, and other applicable provisions of this title;

7.G. If final inspection occurs prior to restoration being complete, ~~t~~The applicant shall provides a performance surety consistent with Chapter 24.70 TCC to ensure survival or replacement of plants used in the restoration;

8.H. No previous expansion has been allowed pursuant to this subsection; and

9.I. Prior to final inspection, ~~t~~The applicant shall~~will~~ record a covenant or other restriction document with the subject property's title indicating that no further expansion of the structure's footprint or impervious surface is allowed within the riparian ~~habitat~~ area, wetland buffer or pond buffer on the site~~property~~.

B. Nonfunctioning Buffer Areas. Riparian, wetland, and pond buffers or portions of the buffer areas that are both physically separated from a critical area by a legally established development and not protecting the critical area from adverse impacts shall be excluded from critical area buffers otherwise required by TCC Chapter 24.50 provided:

1. The nonfunctioning buffer areas occurred due to topographic breaks (e.g., bluffs) or a legally established road (not including logging roads), railroad or

other lineal facility, primary structure, or barrier established prior to July 24, 2012, that physically separates and impedes the biological and hydrological functions of a portion of the buffer.

2. Where physical separation is caused by a nonconforming primary structure established prior to July 24, 2012, any proposed expansions into a nonfunctioning buffer area shall be limited to the width of the structure, extending away from the critical area.

3. The applicant provides the approval authority with sufficient information pursuant to Chapter 24.40, Critical Area Review Permit, to determine whether the buffer performs any biological or hydrological function. The approval authority may require concurrent technical review by a state or federal agency, or affected tribe. If concurrent review is required, the agency or tribe shall be afforded a two-week comment period as part of the Critical Area Review Permit process.

C. Expansion of conforming portions of a legally established nonconforming structure. If only a portion of the structure is nonconforming (e.g., lies within an important habitat area), expansion of the conforming portion of the structure is permitted provided the expansion does not extend into the critical area or associated buffer.;

24.50.035 - Intensification.

An intensification of a legally established nonconforming use is permitted provided that it is consistent with all of the following:

A. The use is contained within the existing or expanded structure as set forth in this title (~~per this title for nonconforming structures and uses~~) structure, or an area that has been legally used to accommodate the use;

B. It is not different in kind from the legally existing nonconforming use; and it would not cause increased harm to the critical area, or increase the risk associated with the hazard, as determined by the approval authority;

C. Intensification of a legally established nonconforming use shall not exacerbate flood or channel migration hazards, or pose an increased risk of water contamination in the event the site is inundated with flood waters, as determined by the approval authority;

D. Intensification of legally established nonconforming uses shall not increase the net amount of impervious surface within a critical area and its associated buffer except as provided for in this title; and

E. The approval authority may require use of best management practices to avoid potential impacts associated with the more intensive use.

24.50.040 — Destruction, restoration and replacement restoration.

Restoration or ~~rebuilding~~ replacement of legally established nonconforming structures and/or related appurtenances damaged or destroyed by accident, fire, explosion, act of God, or public enemy may be allowed pursuant to the applicable requirements of this chapter, ~~and the shoreline master program for the Thurston Region, as amended, and in compliance and satisfaction of the following provided that:~~

A. Restoration or replacement of legally established nonconforming structures and/or related appurtenances shall not be allowed in the floodway; Except however, restoration or replacement of legally established nonconforming structures and/or related appurtenances is permitted in a one-hundred-year floodplain, one-hundred-year channel migration hazard area, or high groundwater flood hazard area NDZ, in accordance with Chapter 14.38 TCC. The cumulative value of all past known restorations or replacements conducted on or after July 24, 2012, shall be included when determining the cost of a proposed project;

B. Restoration or replacement of legally established nonconforming structures and/or related appurtenances may be permitted subject to configurations existing immediately prior to the time the structure(s) was damaged or destroyed. The structure may be restored or rebuilt in a nonconforming manner to the same extent (e.g., building footprint, impervious surface and square footage) that, but no more than, the pre-existing structure was nonconforming, as determined by the approval authority, unless the nonconforming structure is located in a one hundred year floodplain, one hundred year channel migration hazard area, or high groundwater flood hazard area NDZ, where restoration or reconstruction of a nonconforming structure is only permitted in accordance with Chapter 14.38 TCC. The cumulative value of all past known restorations or replacements conducted on or after July 24, 2012, shall be included when determining the cost of a proposed project;

C. The building permit necessary applications to restore or replace any legally established nonconforming structures and/or normal residential appurtenances for repair or reconstruction shall be submitted within twenty-four months of the occurrence of damage or destruction;

D. The building or structure is not voluntarily destroyed, including that resulting from neglect of maintenance or repair; and

E. If the building or structure is proposed to be relocated from the original building site, a structure and/or related appurtenance is relocated, then the original building site and other degraded areas immediately adjacent to the building site shall be restored with native vegetation as a condition of the relocation, as required by the approval authority. Important wildlife habitats and areas regulated by the shoreline master program, as amended, may have additional vegetation requirements. The applicant shall submit a restoration plan that employs native trees and vegetation. If final inspection shall occur prior to restoration being complete, the applicant shall provide a performance surety

consistent with Chapter 24.70 TCC to ensure survival or replacement of plants used in the restoration.

24.50.050 - Discretionary replacement or relocation of nonconforming structures.

Discretionary replacement of legally established nonconforming structures and/or related appurtenances may be allowed pursuant to the applicable requirements of this chapter, and the shoreline master program for the Thurston Region, as amended, and in compliance and satisfaction of the following~~provided that~~:

- A. Discretionary replacement of legally established nonconforming structures within frequently flooded areas, one-hundred-year channel migration hazard areas, and high groundwater flood hazard area NDZ is prohibited;
- B. There is no alternative outside of the critical area and associated buffer, or there is not minimally sufficient buildable area (not to exceed three thousand five hundred square feet) on the property outside the critical area and associated buffer to accommodate the building/structure, as determined by the approval authority;
- C. The replacement of a nonconforming structure and/or related appurtenances shall ~~be prohibited if located within the shoreline management jurisdiction, unless otherwise permitted by the~~ conform to the provisions of the shoreline master program, as amended;
- D. If there is no alternative location outside of the critical area and associated buffer to accommodate the structure, then replacement/relocation would occur consistent with this section and provisions for the development of existing lots in TCC Section 24.50.060 and TCC Section 24.50.065, if applicable;
- E. When possible and practical, driveways, patios, and walkways located within a critical area buffer shall be made of pervious materials and roof top runoff shall be dispersed and directed into bioretention facilities. See Chapter 15.05 TCC for additional requirements. In geologic hazard areas, the approval authority may require stormwater to be treated, tight lined and/or infiltrated, as warranted, to avoid destabilizing a slope or bluff (See TCC Section 24.15.170); and
- F. If a structure is relocated, the original building site and other degraded habitat immediately adjacent to the original building site shall be restored. The applicant shall submit a restoration plan that employs native trees and vegetation. If final inspection occurs prior to restoration being complete, the applicant shall provide a performance surety consistent with Chapter 24.70 TCC to ensure survival or replacement of plants used in the restoration~~The applicant shall provide a performance surety consistent with Chapter 24.70 TCC to insure that the vegetation used in the restoration project survives or is replaced.~~

24.50.060 - Development of existing lots—Critical areas excluding frequently flooded areas.

Existing lots with critical areas and their associated buffers, excluding frequently flooded areas, for which a complete application for a short plat, large lot subdivision, or subdivision, as defined in Chapter 18.08 TCC, was submitted before July 24, 2012, and other legally existing lots may be developed as follows with a critical area review permit:

A. Except for seismic, volcanic, and mine hazard areas, all new construction of structures, facilities, utilities, access driveways and related appurtenances shall be located outside of the critical area and the associated buffer unless otherwise permitted in this title;

B. New development may be permitted on legal lots containing wetlands or buffers, consistent with other applicable provisions of this title.

C. No new development or construction of structures, facilities, utilities, access driveways and related appurtenances shall create a public safety risk, as determined by the approval authority;

D. Enhancement or restoration (mitigation) of the affected critical area or associated buffer shall be required to offset the impacts of the proposed development, as approved by the approval authority;

E. If a legal lot has less than three thousand five hundred square feet of buildable area outside of the critical area and its associated buffer, to accommodate ~~at~~ the single family residential development including the primary structure, ~~related~~ ordinary normal residential appurtenances, landscaping, and accessory structures, the approval authority may, ~~with a critical area review permit,~~ allow permit development to occupy a portion of the critical area buffer to the minimum extent necessary to provide a development site totaling no more than three thousand five hundred square feet provided:

1. The development site shall be located in the outer fifty percent of the standard critical area buffer, or no closer than 100 feet from wetland and / or stream edge for wetland and riparian area buffers, whichever provides the greater buffer. ~~except for wetlands and riparian habitat areas, where the development site shall be located in the outer twenty-five percent of the standard buffer. Development in the critical area and the inner fifty percent of the associated critical area buffer or inner seventy-five percent of wetland and riparian area buffers will require a reasonable use exception;~~

2. The applicant shall demonstrate that due to physical constraints (e.g., topography, soil conditions, or the site's configuration), another configuration would not allow the development to occur without intrusion or with less intrusion into the critical area or buffer than the proposal;

3. The location and scale of existing development on surrounding properties shall not be the basis for granting or determining the location, scale and impact of a single family use allowed under this section;
4. The encroachment into the critical area buffer shall be consistent with other requirements of this section for development on existing lots, requirements for a critical area review permit, and shall not have an adverse impact on species of concern, as determined by the approval authority;
5. Site development, including clearing, grading, construction of structures, utilities, related appurtenances, and landscaping shall occupy the minimum area necessary to accommodate the use;
6. Native tree and vegetation removal shall only be permitted to the minimum extent necessary to accommodate the proposed development, and shall not create a public safety risk;
7. A ~~restoration revegetation~~ plan consistent with this title for disturbed areas shall be submitted with the development application, and shall be completed prior to final occupancy or use. If final inspection occurs prior to restoration being complete, the applicant shall provide a performance surety consistent with Chapter 24.70 TCC to ensure survival or replacement of plants used in the restoration;
8. Landscaping shall not extend more than fifteen feet from the primary structure toward the important habitat or wetland;
9. Any new structures within a critical area buffer shall be sited to avoid the creation of hazard trees;
10. The approval authority may establish a construction setback to avoid encroachment into portions of the buffer not authorized for development, consistent with TCC Section 24.01.030;
11. The approval authority may authorize use of additional area to the minimum extent necessary in a critical area buffer to accommodate a driveway, associated utilities, and / or an onsite sewage disposal system or well, consistent with other requirements of this title, only if there is no alternative; and
12. The use of this single-family residential exception shall not be a result of a self-created hardship such as subdividing the property, adjusting a boundary line, or other actions thereby creating the undevelopable conditions after July 24, 2012, or a self-created hardship created under the applicable standards of Chapter 17.15 TCC after February 1, 1994; and

F. All other development or construction of primary structures, accessory structures, and related appurtenances in the critical area and associated buffer shall conform to the provisions set forth herein~~is prohibited~~.