Pacific County
HEARINGS EXAMINER

January 18th, 2024

Crystal Neprud
13510 T Ln.
Long Beach, WA 98631

RE: CARL Variance, Application No. P2300873 - APPROVED
Tax Parcel ID No.: 10090243026

Dear Property Owner/Applicant:

The Pacific County Hearings Examiner acted at the January 4th, 2024 hearing to approve the above referenced application. Enclosed you will find a copy of the decision that includes the Findings of Fact and Conclusions of Law. The complete case file is available for review Monday through Thursday, 7:30 a.m. - 12:00 p.m. / 1:00 p.m. – 3:00 p.m., at our South Bend office. Please contact me to set up an appointment to ensure that we are able to assist you.

The Hearings Examiner decision is final and conclusive unless an appeal is filed in accordance with RCW 36.70C. If no appeal is filed within the 21-day appeal period, the project is allowed to proceed once all other permits have been obtained.

The enclosed invoices are a result of the time spent for the hearing as determined by the Hearing Examiner. If you have permits pending as a result of this hearing, they cannot be issued until the balance is paid. Any outstanding balance will be forwarded to collections if not paid within 30 days from the date listed above.

If you have any questions, please do not hesitate to contact me at 360-642-9382 or via email zjohnson@co.pacific.wa.us.

Sincerely,

Zane Johnson
Planner
Enclosure

c: Parties of Record
Parcel File

January 15, 2024

Pacific County Hearing Examiner's Decision

Permit application: P2300873

Subject property: Parcel # 10090243026, 273 North Valley Road, Naselle.

Applicants: Crystal Neprud and Jamie Nielson, owners

Hearing: January 4, 2023, 7013 Sandridge Road, Long Beach, Washington, and over the internet via a Zoom meeting.

Witnesses:
Zane Johnson, Senior Planner, Pacific County Department of Community Development (DCD)
Crystal Neprud, owner.

Documentary Evidence:
DCD staff report and application packet, including application and related documents.

Summary of Application and Testimony

This is an application for a variance to allow construction of a single-family residence with attached garages and septic system, impacting around 12,100 square feet of Category II wetland buffers and a Type F stream buffer.

During the hearing, Zane Johnson summarized his report. He offered his staff report and its supporting documentation into evidence.

Crystal Neprud testified that the request was for the minimum necessary for their intended use, as a family home for them and their three children.

Findings of Fact

Jamie Nielson and Crystal Neprud have applied for a variance to the Critical Areas and Resource Lands (CARL) Ordinance 193 to allow construction of a single-family residence on this 5.15 acre parcel located at 273 North Valley Road, Naselle, Washington. The parcel is undeveloped and logged. The DCD report states that "In 2014, the property was logged and the previous owner was permitted in 2014 to clear one acre of the harvest area and convert it to residential development." P.4 As part of this previously permitted development, previous owners put in a gravel

driveway extending from North Valley Road to a slight small ridge on which the applicants propose to build.

The owners hired Ryan Crater to perform a wetland analysis of their parcel and proposed building site, and to create a mitigation proposal. His report on the site is credible. This report finds that the parcel is bisected east to west by a Type F stream. A type F stream has, or could have, fish in it at some time of the year. His field study showed that this stream had a depth of about 5 inches in a channel of about 12 inches. Mr. Crater found that this Type F stream had a 9.5-acre wetland associated with it, of which 1.9 acres were on the owners' parcel. The owners propose no impact to the stream or the wetland. To quote Mr. Ryan's report, "Buffer impacts are unavoidable as all accessible areas of the property are encumbered by the Category II wetland buffer, as well as some overlapping areas impacted by the Type F Stream buffer."

The building site is part of the acre that was previously cleared, so it has already had significant environmental impacts. The DCD report notes that the County has no record of a wetland report or analysis provided by the previous owners when they sought and received the permitting for this logging and development.

The owners propose to impact approximately 12,100 square feet of wetland and stream buffers. The owners provided a floor plan for their proposed house. P.54/167 Ms. Neprud testified that it was a Hiline Home, out of their book of floor plans. The plans show a footprint for the building of 3,552 square feet, of which 804 square feet are for the two attached garages (16x20 and 22x22). The floor plan includes 4 bedrooms, two full baths, laundry room, storage/powder room, butler's pantry , kitchen, dining room, great room, and foyer. The DCD report states, "The proposed impact includes 3,310 square feet for a 4-bedroom home, which includes a 24x24 attached garage." P. 4/167

The owners propose to mitigate the impact to the buffers by planting approximately 12,100 square feet of native trees, bushes, and ground cover across 27,286 square feet of land to "enhance a portion of the buffer and wetland where native vegetation is currently lacking." Crater report, P. 21. The map for this area to be remediated is on p. 14/167 and is included by reference.

Conclusions of Law

I have jurisdiction to hear this proposal. The CARL Ordinance 193 §3.I.1 states, "The Administrator shall process variance requests according to a Type II procedure delineated in Ordinance 177. The burden of proof shall be on the person requesting the variance to bring forth evidence in support of the variance." Section 3.I.2 sets the criteria. "The Administrator shall grant a variance if the person requesting the variance demonstrates that the requested variance conforms to all of the criteria set forth below:"

a. (S)pecial conditions and circumstances exist that are peculiar to the land;

The subject property is almost entirely encumbered by a wetland or wetland buffer. No more development is possible on parcel 10090243026 without a variance.

b. (L)iteral interpretation of the provisions of this Ordinance would deprive the person seeking the variance of rights commonly enjoyed by other properties conforming to the terms of this Ordinance;

Literal interpretation of the provisions of Ordinance 193, without a variance, would deny development on this property any greater than that foreseen in Section 3.J, reasonable use. There was no evidence of similarly situated people or property from which to discern whether this would be a deprivation. If this variance were denied but another similar application was granted, it would be a deprivation of right commonly enjoyed by others.

c. (T)he special conditions and circumstances do not result from the actions of the person seeking the variance;

The special conditions and circumstances are inherent in the subject property and do not result from the actions of the applicants, unless seeking to build in a wetland buffer is the action that creates the special circumstance.

d. (T)he granting of the variance requested will not confer on the person seeking the variance any special privilege that is denied by this Ordinance to other lands, structures, or buildings under similar circumstances;

The answer to this criterion is similar to that of "b" above. There have been no other properties or requested variances offered into evidence from which to compare. If this application were granted, it might create a new 'floor' for similar requests but that is inchoate. There is no evidence that any similarly situated applicant was previously denied.

e. (T)he variance requested is the minimum necessary to afford relief;

This is a very difficult question. The "reasonable use exception" detailed in Ordinance 193 §3.J gives the legislative floor for the minimum necessary to afford relief. Section 3.J.2 states, "The applicant may apply for an administrative reasonable use exception without first applying for a variance if the portion of the site where the provisions of this chapter allow for construction of a single-family residence and appurtenances less than 3,000 square feet (a '3,000 square foot reasonable use exception')." Not only is a garage an "appurtenance" but so too is a septic system (as recognized in Section 3.J.6.f). At 12,100 square feet of wetland buffer, the owners are seeking to impact an area over four times the area of the

minimal "reasonable use exception." Even the DCD report says that "[T]otal new permanent construction impacts would be 5,785 square feet for the residence with the attached garage and septic system." P.8/167. That is 93 percent over the minimum reasonable use exception.

The DCD report did not directly address whether this is the minimum necessary. It cited the total area of living space, under 3,000 square feet. It characterized the 24 x 24 garage as "modest" but with no basis of comparison. The ordinances give no guidance as to whether a reasonable use exception can have one or two or three car garages. The report stated that the wetland soils would require a septic system of 2,475 square feet. It does state that the owners "have designed a house that will fit all of their needs, while still trying to minimize the impacts to the surrounding buffer areas." P.8/167

Ms. Neprud testified that the design was "the minimum for our use."

Her application stated,

> The landowner is requesting the minimum relief necessary to allow for the construction of a reasonably sized SFR. All development will occur within a previously disturbed area. The proposed buffer reductions have been set to allow only the minimum area necessary to accommodate the proposed development. The proposed development envelope/buffer impact area has been limited to the proposed home, and septic, with a 15-foot setback around the home and a 5-foot (or less) protective area around some of the septic infrastructure. The home is reasonably sized compared to other homes in the area, and will house a family of five. P.17/167

Mr. Crater answered this question in his report:

> The landowner is requesting the minimum relief necessary to allow for the construction of a reasonably sized SFR. All development will occur within a previously disturbed area. The proposed buffer reductions have been set to allow only the minimum area necessary to accommodate the proposed development (See Site Plan in Appendix B.) The proposed development envelope/buffer impact area has been limited to the proposed home, and septic, with a 15-foot setback around the home and a 5-foot (or less) protective area around some of the septic infrastructure. All other existing disturbed areas outside of the development envelope will either be restored through the mitigation plan or allowed to naturally re-vegetate. P.39/167

The criterion is not "minimal for the use desired by the owner." The standard is not "what are we willing to live without." "Minimum necessary" is not "reasonably sized single family residence."

This variance request is not the minimum necessary to afford relief. But, this failure is balanced out by the next criterion.

f. (T)o afford relief the requested variance will not create significant impacts to critical areas and resource lands and will not be materially detrimental to the public welfare or contrary to the public interest.

There was no particular public interest in this requested variance. The building site has already suffered environmental degradation by logging and clearing without any mitigation. The proposed construction of the residence, garage(s), and septic system, with the proposed mitigation planting plan, would improve the ecological functioning of this plot. This variance, everything else being equal, would not create a significant impact to this Category II wetland buffer and would not be materially detrimental to the public welfare or contrary to the public interest.

The applicants have met their burden of proof set by Ordinance 193.

All conclusions of law that are in fact conclusions of fact shall be deemed as such. All conclusions of fact that are conclusions of law shall be deemed as such.

Conclusion

The application is approved with the conditions that:

1. The development complies with all other county and state regulations;

2. The applicants receive all necessary permits prior to construction;

3. The applicants must record the variance decision on the title and provide proof of recording to Pacific County Department of Community Development prior to insuance of the permit, once the appeal period has concluded;

4. The applicants must submit a copy of the As-Built Installation plan, prepared by a professional, to Pacific County prior to any building permits being finalized on the property; and

5. The applicants shall submit monitoring reports as described in their mitigation plan.

The permit shall not begin and is not authorized until 21 days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-24-130, as amended, or until all review proceedings initiated within 21 days from the date of such filings have been terminated, except as provided in RCW 900.58.140(5)(c) and (d).

Please note that any appeal of this decision shall comply with the requirements of RCW 36.70C. The deadline for filing any appeal is both swift and definite. If

you have any questions concerning this deadline or the appeals process, please consult an attorney.

Signed this 17th day of January, 2024.

Eric Weston, Hearings Examiner