Pacific County
HEARINGS EXAMINER

March 22nd, 2024

Catherine Freshley & Tom Leineweber
4065 NE 16th Ave.
Portland, OR 97212

RE: CARL Variance, Application No. P2300915 - APPROVED
Tax Parcel ID No.: 12111022075

Dear Property Owner/Applicant:

The Pacific County Hearings Examiner acted at the March 13th, 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 Long Beach 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

March 18, 2024

Pacific County Hearing Examiner's Decision

Permit application: P2300915

Subject property: Parcel # 12111022075, 33616 Sandridge Road, Oysterville.

Applicants: Catherine Freshley and Tom Leineweber

Hearing: March 13, 2024, 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)
Chris Freshley, neighbor.

Documentary Evidence:
DCD staff report and application packet, including application and related documents.
Email by Gloria Freshley March 12, 2024, in support of application.

Summary of Application and Testimony

This is an application for a variance to allow placing a single-family residence, detached garage, septic system and driveway in a Category III wetland buffer, impacting approximately 4,355 square feet.

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

Catherine Freshley was available for questions but did not testify.

Chris Freshley, the applicant's father and neighbor to the south, testified in support of the application.

Findings of Fact

Owners Catherine Freshley and Tom Leineweber applied for a variance to Pacific County's Critical Areas and Resource Lands (CARL) Ordinance 193 to allow them to impact approximately 4,355 square feet of Category III wetland buffer in Oysterville.

They intend to move a house and a garage from another parcel in Oysterville to this parcel. The existing house will be separated into two buildings, the main structure and a bedroom structure. They intend to service this newly placed residence with an on-site septic system and driveway.

The building site is a .86-acre parcel with a driveway and septic system already on it, having been approved by the County as a reasonable use exception. Because the addition of the structures would be beyond that original permit, the applicants now seek to join all into a single variance request.

The property is in the Oysterville Historic District and has a companion request subject to design review. The site is generally flat with a wetland depression on the western portion of the site. This seasonal wetland has an associated 110-foot Category III buffer that encumbers most of the site. There are single-family residences to the east and south of the site, with a wooded area to the north.

The owners propose to mitigate the impact on the wetland buffer by purchasing mitigation credits at the Long Beach Mitigation Bank in a 1:1 x .30 ratio. They previously purchased .016 credits from this bank for previous impacts. The additional impacts of this variance request would require purchase of an additional .014 credits.

They would need to remove seven trees to move the structures into place, and they propose to mitigate this environmental damage by planting twice as many native trees in their place.

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 entirely encumbered by a wetland buffer. No more development is possible on parcel 12111022075 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;

While it would always be possible to construct smaller buildings, the request to place a house, an associated building, a garage, a septic system and a driveway – with their associated impacts – is not unreasonably large. The applicants should be credited with saving structures that would otherwise become trash.

This request is the minimum necessary to afford relief.

> 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.

The only public interest demonstrated in this request were the applicants neighboring parents' statement in support of the application. The State of Washington has determined that mitigation banks are an appropriate method of mitigating impacts to such critical areas as this wetland buffer. The proposed mitigation package sufficiently addresses any impacts to critical areas.

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 shall otherwise comply with all other county and state regulations;

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

3. Proof of credit purchase from the Long Beach Mitigation Bank will need to be recorded with the Pacific County Auditor's Office and a copy of that recorded document must be submitted to Pacific County Department of Community Development prior to the issuance of permits.

4. Proof of completion for the proposed tree planting must be submitted to Pacific County DCD within 30 days of completed planting, but before final occupancy permitting of the residence.

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 18th day of March, 2024.

Eric Weston, Hearings Examiner