Pacific County
HEARINGS EXAMINER

March 27th, 2024

Sandra Morrell
P.O. Box 608
Seaview, WA 98644

A+ Design & Consulting LLC
P.O. Box 751
Long Beach, WA 98631

RE: CARL Variance, Application No. P23000061 - APPROVED
Tax Parcel ID No.: 10112821206

Dear Property Owner/Applicant:

The Pacific County Hearings Examiner acted at the March 18th, 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. – 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 26, 2024

Pacific County Hearing Examiner's Decision

Permit application: P2400061

Subject property: Parcel #10112821206, 1902 40th Street, Seaview.

Applicant: A+ Design and Consulting on behalf of Sandra Morrell, owner

Hearing: March 18, 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)
Sandra Morrell, owner
Amber Smith, daughter-in-law of owner
Jeffrey Smith, son of owner
Leonard Taylor, A+ Design and Consulting

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 new 2,100 square-foot single-family residence in a Category III wetland buffer located at 1902 40th Street in Seaview.

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

Amber Smith testified that she is the owner, Sandra Morrell's, daughter-in-law. She said that Ms. Morrell is being treated for cancer. She said that they idea would be for them to move in with Ms. Morrell to care for her. She said that they recently adopted their 3-year-old niece. She said that she works from home doing medical billing and that her husband, Jeffrey, could work from home doing his arts and crafts. She said that the plan was to build the new house, and then use the old manufactured house as a commercial office.

This hearing examiner asked about the mobile home on the site. Mr. Johnson clarified that there were two buildings on the site now – a manufactured home that

would be the new office building and a mobile home trailer. Mr. Smith testified that the trailer has been moved.

Leonard Taylor testified that he had looked at the oldest historical aerial imaging, from 1996, and that the site was then already heavily impacted before the imposition of the CARL ordinance. He said that the new design removed the septic system from the wetland buffers and that he designed the rest to fulfill the need for a new residence while minimizing the impact to the buffers.

Findings of Fact

A+ Design and Consulting has applied on behalf of Sandra Morrell to construct a 2,100 square-foot single-family residence in a Category III wetland buffer. This buffer has a septic system that will be removed and a single-wide trailer that will be removed if it has not already. Because this septic system and single-wide trailer are currently impacting the buffer, and will be removed, the applicants propose removing their footprint, 565 square feet, from the total area that the new house would impact, leaving 1,535 square feet of new buffer impact.

This construction would be on a 1.04-acre parcel # 10112821206, 1902 40th Street in Seaview. There is a single-wide manufactured home, garage, shed, and maybe an RV/single wide trailer on the site already. The applicants propose to remove the trailer if it hasn't already and to use the existing home as a commercial office building. The property is within the Community Commercial Zone which would allow such a commercial use of the building.

There are wetlands at the northwest corner of the lot and along the western boundary of the lot. Their associated buffers encumber most of the parcel.

The owner proposes to mitigate the impact on the wetland buffer by purchasing mitigation credits at the Long Beach Mitigation Bank at a proposed ratio of 1:1 x .30. The applicant reports that the total new area impacted by the development will be 1,535 square feet, not counting the area already impacted. This would mean purchase of .011 credit.

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 nearly entirely encumbered by a wetland or wetland buffer. Little development is possible on parcel 1011282106 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 further development on this property. But because they have existing buildings that pre-existed the CARL ordinance they already have "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. The only need for a new building is the desire of the property owner. She already has a house. She already has reasonable use. She just wants more than what she has.

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;

The relief requested is a new house. The owner already has a house, but she wants a bigger house so that she can have more people live in it with her to care for her. The relief requested is not 'reasonable use,' as she already has it. She simply wants more than what she has, though what she has is already beyond the minimum necessary for affording her use of her property. Beyond the new house, she wants to keep the old house. She says that it won't be used as a residence but as commercial property.

Her daughter-in-law testified that she already works 'from home' in a rental in Oregon, so therefore she wouldn't absolutely need the old house as commercial space. Ms. Smith testified that the old house had what she could use as an office, with its own bathroom. With the County's record of being complaint driven in its enforcement, and little follow-up for enforcing future remediation of sites, it is unlikely that anyone is going to monitor that this existing manufactured home is never used as a residence again.

The variance requested is not the minimum necessary to afford relief. I'm unwilling to deny their request but perhaps someone would want to appeal this decision on this point. Their need counterbalances the minimal impacts to this already degraded ecosystem.

Incidentally, the Development Site Plan in the applicant's materials shows the "existing mobile home to be converted to commercial office space." While this is not before me, the diagram shows the home to be something other than a rectangle. I don't believe that County code allows for building additions on to mobile homes. Any new development on this parcel should also require bringing that mobile home back up to code if it is noncompliant.

> 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 public interest demonstrated in this 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 complies 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. The applicant must submit documentation or an application to change the existing residence to a business or storage structure prior to any building permits being approved for a new residence on this lot.

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 26th day of March, 2024.

Eric Weston, Hearings Examiner