Pacific County
HEARINGS EXAMINER

September 4th, 2024

Raoul Calderon
3538 Coeurd'lane Dr.
West Linn, OR 97068

RE: CARL Variance, Application No. P2400497 - DENIED
Tax Parcel ID No.: 76005003008

Dear Property Owner/Applicant:

The Pacific County Hearings Examiner acted at the August 18th, 2024 hearing to deny 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 will be considered denied.

The enclosed invoices are a result of the time spent for the hearing as determined by the Hearing Examiner. 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

September 2, 2024

Pacific County Hearing Examiner's Decision

Permit application: P2400497

Subject property: Parcel # 76005003008, no site address on 357th Lane, Oysterville.

Applicant: A+ Design and Consulting LLC on behalf of Raoul Calderon, owner

Hearing: August 19, 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)
Tyler Starks, A+ Design and Consulting
Brian Sheldon, neighbor
Jennifer Campbell Gance, neighbor
Jeb Sheldon, neighbor

Documentary Evidence:

DCD staff report and application packet, including application and related documents.

Summary of Application and Testimony

Raoul Calderon seeks a variance to Pacific County's Critical Areas and Resource Lands (CARL) Ordinance 193 to build two single-family residences with a shared septic system and common driveway and parking area in a Category III wetland buffer in a flat low area near Oysterville. The applicant would mitigate the impacts to the wetland buffer by purchasing credits at the Long Beach Mitigation bank.

Zane Johnson, senior planner for the Pacific County Department of Community Development, testified concerning the request and offered his report and its associated documents into evidence.

Tyler Starks, an employee of A+ Design and Consulting, testified that they had minimized the impacts to the wetland buffer as much as they could. He said that they placed the proposed buildings as far as they could from the wetland buffer while respecting the necessary county setbacks. He said that they combined the septic system to reduce its impact.

Brian Sheldon testified that he has a long history in the area and owns numerous lots near and similar to the subject property. He said that in fact the entire property is wetland. He said that people owning other nearby properties had attempted to make them developable by illegally placing fill dirt on them. He said that the recreational vehicles noted in the County's report on neighboring properties were uninhabited and abandoned illegally. He said that there are no hemlock trees on the property, but instead cut grass and salal – plants associated with wetlands. He said that 200 feet to the west (on the other side of the subject property and farther from Willapa Bay) the water table was infiltrated with salt water. He said that the ditches routinely filled with rain and that the subject property would be too wet to build. He said that variances were meant to mitigate small pieces of a property, not 62 per cent of the lot size. He said that there were no other homes out there, but only treed lots because of the periodic saturation.

Jennifer Campbell Gance testified that she lived in the house to the west of the subject property. It was built in 1969. She said that her property and the subject property flood all winter long. She said that she had to wear boots to walk from the driveway to her home to avoid soaking her shoes. She said that she bought the house three and a half years ago and that the septic system had been red-tagged because of the flooding. She said that if the variance was granted, it would create an additional flooding risk for her property. She said that the humidity in her house required three large humidifiers to eliminate the mold. She said that thirty years ago her property had to have the entire floor and subfloor rebuilt to remediate water damage. She said that when she drilled for a well they could not find potable water. The water that she gets is red and smells. She has to bring in water to drink and she has to filter the well water to be able to take a shower. She said that she spent $10,000 on a water filtration system that does not work.

Jeb Sheldon testified that he opposed the proposed development because the wetland could not and should not be developed. He said that he echoed Brian Sheldon's statements.

Ms. Campbell Gance asked Mr. Starks whether the owner planned to reside in one of the proposed residences or whether he was developing this property for subsequent sale. Mr. Starks declined to answer that question. (This intention of the property owner is irrelevant to the application criteria.)

Mr. Starks said that they have addressed the drainage issues. He said that they had done a wetland analysis by looking in part at the soil analysis data. He said that the higher water table to the west did increase the flood potential there but their GIS data demonstrated that this subject property is inches higher. He said that they had a drainage plan to avoid the flooding referenced by Ms. Campbell Gance.

Brian Sheldon had a question as to what notice was required, and Mr. Johnson addressed the question in reference to what was required for impacts to a Category

II wetland. Mr. Johnson clarified that the proposed construction would have to get separate approval for its water run-off characteristics to obtain a building permit.

Findings of Fact

A+ Design and Consulting LLC has applied on behalf of Raoul Calderon to build two single-family residences near Oysterville with a shared septic system, lawn and parking area in a Category III wetland buffer on subject parcel 76005003008. There is no address for this tract but there is an adjacent road, 357th Lane. The two houses would total 2,016 square feet of footprint and the complete development would impact approximately 6,977 square feet of the wetland buffer. Mr. Calderon proposed to mitigate the impacts to the Category III wetland buffer by purchasing credits from the Long Beach Mitigation Bank at a 1.1 x .50 ratio. For the 6,977 square feet at a .5 ratio would require the purchase of a .08 credit. The site itself is a .26-acre parcel that is covered in forested underbrush. A small portion of a Category III wetland is on the southwest portion of the lot and its associated buffer encumbers the rest of the property. It is in a neighborhood of undeveloped properties with a few residences and RV lots farther west.

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 or wetland buffer. No development is possible on parcel 76005003008 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 a 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;

There have been no other properties or requested variances offered into evidence with which to compare. If this application were granted, it would create a new 'floor' for similar requests. The granting of this request, as explained in (e) below, would confer on the applicant a special privilege.

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

Ordinance 193 §3.J sets the presumptive minimum necessary to afford relief. This would allow the applicant to build a single residence with appurtenances totaling 3,000 square feet, with an additional 600 square feet for the associated driveway. This exception thus provides for a total of 3,600 square feet of allowed impact. The combined size of the proposed residences is 2,016 square feet, about the size of one 'normal' sized small house. If the shared septic system, driveway, parking area, and lawn were reduced to 1,584 square feet there would be no problem – the total impact would be the same as the reasonable use exception. The applicant requests a total of 6,977 square feet of buffer impact. The appurtenances and driveway of the proposed development total 4,961 square feet of impact to the wetland buffer. The request is almost twice (193 percent) that of the "reasonable use exception" but the applicant has not explained why he should be granted this relief.

The County's analysis (page 5) that both houses together impact 2,016 square feet (less than 3,000 square feet of the reasonable use standard) and the combined parking area impacts 576 square feet (less than the 600 square feet of the reasonable use standard) fails to address the total impact of 6,977 square feet – nearly twice the total allowed under the reasonable use exception of 3,600 square feet.

Why two houses rather than one, with nearly twice the impact? This was not addressed and so the applicant has failed to prove more likely than not that his application is the minimum necessary to provide relief.

If this were granted, why not impact the entirety of the wetland buffer on this property and purchase mitigation credits? The applicant has failed to draw the

distinctions necessary to prove his case more likely than not. Why is the reasonable use exception too little, and what would be too much?

While Ordinance 194 §11.B.2 allows two residential dwellings per lot, Ordinance 193 §3.J is silent on doubling the reasonable use exception to allow two residential dwellings in the critical area and resource land of a Category III wetland buffer.

> 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 public interest demonstrated in this request concerned the characteristics of this property that made it a poor choice for development. These characteristics included poor drainage, unlikelihood of useable water, and too high humidity for residential properties. None of these concerns address the impact of the proposed development on the protected Category III wetland buffer. 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 would sufficiently address the impacts to critical areas if this were the minimum necessary for the applicant to be afforded relief.

The County fulfilled its notice obligations of Ordinance 177. The development is not subject to Shoreline Designation or Floodplain analysis, is exempt from SEPA, and is congruent with the County Comprehensive Plan and Zoning regulations.

Because the applicant has failed to prove by a preponderance of the evidence that this is the minimum impact necessary to afford him relief, he has **not** met his burden of proof set by Ordinance 193 and the application is denied.

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 denied.

Should a higher court overturn this decision and grant the application, it should be subject to the following conditions:

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

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

3. The approved impacted area shall be clearly marked before construction begins.

4. Proof of credit purchase from the Long Beach Mitigation Bank will need to be submitted to Pacific County Department of Community Development prior to the issuance of permits.

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 2nd day of September, 2024.

Eric Weston, Hearings Examiner