Pacific County
HEARINGS EXAMINER

September 4th, 2024

John Pearson
P.O. Box 260
Seaview, WA 98644

RE: CARL Variance, Application No. P2400416 - APPROVED
Tax Parcel ID No.: 73026006002 & 10112044628

Dear Property Owner/Applicant:

The Pacific County Hearings Examiner acted at the August 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. - 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

September 2, 2024

Pacific County Hearing Examiner's Decision

Permit application: P2400416

Subject property: Parcel #s 10112044628 and 73026006002, 4106 J Lane, Seaview.

Applicant: John Pearson, 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)
John Pearson, owner
Robert Bogar, wetlands consultant for owner
David Oliver, neighbor

Documentary Evidence:

DCD staff report and application packet, including application and related documents.
Supplementary illustration, received August 12, 2024. Not file stamped.

Summary of Application and Testimony

John Pearson has applied for a Critical Area and Resource Lands (CARL) variance to permit him to build a 1,440 square-foot garage that would impact approximately 819 square feet of Category II wetland buffer. He proposes to mitigate the impact by purchasing credits from the Long Beach Mitigation Bank.

Zane Johnson, chief planner, restated the request and offered his report and its supplementary materials into evidence.

Robert Bogar, Licensed Hydrogeologist and wetlands expert who created the wetlands evaluation, impact statement, and proposed mitigation plan testified. He said that the building site was Westport sands and thus well drained. He said that purpose of the wetland buffer was to reduce the impacts to the wetland and that this type of soil reduced the impact to the wetland because the water drained down and not laterally towards the wetland.

Mr. Pearson testified that he had attempted to mitigate the impacts to the wetland by the design. He reduced the total area of the garage from his original desire. He

moved the building site 5 feet east, away from the wetland, although this created an issue in being able to back his boat and trailer in the narrow space left. He said he was likely to have to buy a mover/mule for backing the trailer in such a cramped space.

David Oliver testified that he owned the property to the immediate south of the subject property and that he supported the application. He also noted the reduction in size and placement farther east.

Brian Sheldon appeared, but withdrew his testimony after realizing that his interest was in the other application being heard that afternoon.

Findings of Fact

John Pearson has applied to construct a 24' x 60' (1,440 square foot) garage/utility building on his property located at 4106 J Lane in Seaview. Mr. Pearson owns two adjacent parcels. The eastern parcel is a .31-acre lot that has a single-family residence. Mr. Pearson applied to place the utility building on the western 2.25-acre parcel that extends out to the beach. While the building is characterized throughout the application as a garage, it also includes a separate 24' x 23' room at the western side of the building. This separate room is walled off from the garage area with an interior access door, per the added sketch of the plans. It includes a bathroom and a storage closet walled off on the northern part of this western extension. The balance of the western extension from the garage area was labeled "open storage" on the supplementary illustration.

Mr. Bogar is a credible expert witness concerning the wetland, its buffer, and the impacts. He has identified a Category II interdunal wetland on the western parcel with a 110' buffer that would extend approximately 20 feet into the proposed building site. The first five western feet of the 20 feet is the area impacted by the construction and landscaping to the west of the building.

Per the Site Plan (page 18 of the DCD report packet) Mr. Pearson could eliminate the bathroom and west room while retaining the garage storage area for his boat and truck, and not impact the wetland buffer. Merriam-Webster defines a garage as "A shelter or repair shop for automotive vehicles." He could have his garage and not need a variance. However he obviously wants a multi-use building, with bathroom, in addition to that garage. He could also reduce the size of the western room, keep the size of the actual garage area, and solve his problems in backing his trailer.

However, rather than build this utility building Mr. Pearson could theoretically instead develop this separate parcel with its own single-family residence with appurtenances under the reasonable use exception of Ordinance 193 §3.J and instead be impacting 3,000 square-feet for the buildings and 600 square-feet for

driveway. On balance it damages less wetland buffer to permit the utility room than to build a new residence.

The applicant proposes to mitigate the impacts to the wetland buffer by purchasing .008 credits at the Long Beach Mitigation Bank per the formula stated in Mr. Bogar's proposal. His explanation of the unique soil quality of the affected wetland buffer justifies the .35 buffer multiplier figure.

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 partially encumbered by a Category II interdunal wetland and associated wetland buffer. The requested utility building could not be constructed without impacting 819 square-feet of the eastern edge of that buffer.

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 encourage development on this property to 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 is possible to construct a smaller utility building to obviate the need for a variance, this 1,440-square foot utility building with its associated impacts is not unreasonably large. Building this garage prevents the construction of a residence, reducing the impact to the wetland and buffer.

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 was a neighbor's 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. Granting this variance will not create significant impacts to the critical areas and resource lands and will prevent the greater impacts of constructing a 'reasonable use exception' single family residence instead on the subject parcel.

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.

The applicant has met his burden of proof set by Ordinance 193 and the application is granted subject to the conditions enumerated below.

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 applicant must record the variance decision on the title and provide proof of recording to Pacific County Department of Community Development prior to the issuance of the permit after the appeal period has concluded.

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

5. The approved impact area must be clearly marked in the field prior to commencing construction.

6. Prior to issuing a building permit for the garage, the applicant shall file a Land Use Deed Restriction with the Auditor's Office combining Parcels 10112044628 and 73026006002.

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 2nd day of September, 2024.

Eric Weston, Hearings Examiner