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BEFORE THE HEARING EXAMINER FOR THE CITY OF PORT ORCHARD

RE: Bollinger)	
)	
Variance)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND FINAL DECISION
LU-23-VAR-01)	
)	
)	
)	

Introduction

Catherine Bollinger has applied for a variance to the 40 foot front yard setback imposed by POMC 20.3.010(5) for accessory structures for her property located at 792 SW Bay Street. Ms. Bollinger would like to reduce the front yard setback to zero. The variance is approved subject to conditions.

Testimony

A public hearing for this application was held on Thursday, March 21, 2024 at 10:00 A.M. using remote meeting technology. Stephanie Andrews, Senior Planner, summarized the staff report. Neither the applicant nor any members of the public testified. Additionally, no written comment was received by the City in regard to this application.

Exhibits

Exhibits 1-14 of the Index to the Record attached to the staff report were admitted into the record during the hearing.

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FINDINGS OF FACT

Procedural:

1. Applicant. The applicant and property owner is Catherine Bollinger, 792 SW Bay Street, Port Orchard, Washington 98366.
2. Hearing. A hearing was held before the Hearing Examiner on the subject application at 10:00 AM on March 21, 2024.

Substantive:

3. Project/Site Description. Catherine Bollinger has applied for a variance to the 40 foot front yard setback imposed by POMC 20.3.010(5) for accessory structures for her property located at 792 SW Bay Street. Ms. Bollinger would like to reduce the front yard setback to zero for an accessory structure that is a 12'x14' (168 sq ft) shed with a porch facing the water.

The subject parcel is a legal lot of record containing a legal, pre-existing, non-conforming residence that fronts on Sinclair Inlet. The subject property is parallelogram shaped with the upland area almost completely occupied by the existing residence (Exhibit 1(i), and Exhibit 13) with the balance of the lot being nearshore and intertidal area. The applicant has indicated that no person who currently has an interest in the property was involved in the establishment of the lot (Exhibit 1(d)).

4. Surrounding Area. All adjacent properties are similarly zoned (Greenbelt) with current residential use to the east, the WA SR-166 / SW Bay Street to the south, Sinclair inlet to the north and a vacant parcel with no useable area waterward of SW Bay Street to the west. The general configuration of the lot is similar to that found on other properties in the immediate area. These properties are typically narrow and span a small area between the edge of pavement of SW Bay Street and the shore of Sinclair Inlet, with lot depths that average 30-40'. These lots have less square footage available and applying typical zoning standards can prove difficult in these atypical situations.

5. Adverse Impacts. There are no significant adverse impacts associated with the project. The SEPA Responsible Official determined that the project is categorically exempt from SEPA under WAC 197-11-800(1)(b)(i) and WAC 197-11-800(6)(e) as variances are an exempt land use decision. The proposal will not create any significant land use impacts. The proposed project will establish a small accessory shed within a Greenbelt District. This property has used lawn area and parking/driveway area within the SW Bay Street right-of-way as if it were private property for many years, similar to other shoreline properties in this vicinity. The maintenance of the existing shed will not increase intensity of the proposed use as it will be similar to other uses already established

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1 within the district. As the intensity of use for this district has been anticipated by the City in the
2 Comprehensive Plan and its implementing regulations, there is no risk of cumulative impacts,
3 provided that all variance criteria are met.

4 6. Adequacy of Infrastructure. The proposal is to allow a shed to be established as accessory
5 to a residential use that is currently served by existing infrastructure. Pertinent infrastructure areas
6 addressed as follows:

7 A. Utilities. The subject site is served by adequate utilities. As an existing developed site, the
8 accessory shed will not create additional impacts on utilities. No new utility connections are
9 needed.

10 B. Transportation. The subject site is adequately served by transportation facilities. A street use
11 permit will be required to allow the shed to remain with the ROW. Issues associated with any
12 potential impact on the function of the ROW due to the location of the accessory will be assessed
13 through that process.

14 **Conclusions of Law**

15 1. Authority. Table 20.22.020 POMC classifies non-administrative variance applications as
16 Type III applications. Section 20.22.050 POMC identifies that the hearing examiner holds hearings
17 and issues final decisions on Type III applications, subject to judicial appeal.

18 2. Zoning Designation. Greenbelt.

19 3. Review Criteria. Section 20.28.180(2) POMC governs the criteria for non-administrative
20 variance review and Section 20.24.100 POMC adds additional standards that apply to all land use
21 applications. Applicable criteria are quoted below in italics and applied through corresponding
22 conclusions of law.

23 **POMC 20.28.180(2)(a)**: *That, because of special circumstances applicable to the property, including*
24 *its size, shape, topography, location or surroundings, the strict application of these regulations will*
25 *deprive such property of privileges enjoyed by other property in the same vicinity and zone as the*
26 *subject property;*

4. Criterion met. As determined at Finding of Fact 3 and 4, the subject lot is located within an
area that is characterized by irregular lot shapes and development patterns due to its immediate
shoreline location and the close proximity of the SW Bay Street ROW. These lots have less available
square footage for development and applying typical zoning standards can prove difficult in these
atypical situations. The unique location of the subject and property and the limited footprint available
for development constitutes a special circumstance. A strict application of the setback standard would
deprive this property of the ability to have a small accessory structure which would be similarly
allowed for other existing residences in the surrounding area. Therefore, the subject property is

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1 characterized by special circumstances and the strict application of the setback standard would
2 deprive this property of privileges enjoyed by other property in the same vicinity and zone and this
3 criterion is met.

4 **POMC 20.28.180(2)(b):** *That a grant of a variance will be subject to conditions to ensure that the*
5 *adjustment authorized is the minimum variation needed and that it will not constitute a grant of*
6 *special privilege(s) inconsistent with the limitations upon other properties in the vicinity and zone in*
7 *which such property is located;*

8 5. Criterion met. The application of a front yard setback at anything greater than 0' would cause
9 this structure to be located closer to the shoreline of Sinclair Inlet and no longer be eligible for a
10 Shoreline Exemption. It is reasonable to conclude that activities permitted by a Shoreline Exemption
11 have been found to have less impact to the nearshore environment than those which would typically
12 require a Shoreline Variance. Therefore, the requested front yard variance would be the minimum
13 necessary to allow applicability of the assured lower-impact exemption. Additionally, if future property
14 owners within the vicinity of the project on the water side of Bay Street wanted to construct a single-
15 family residence or a typical appurtenance such as a shed, a variance from the zoning setback will be
16 needed for those properties as well. Therefore, the requested variance is the minimum needed and will
17 not constitute a grant of special privilege and this criterion is met.

18 **POMC 20.28.180(2)(c):** *The special circumstances applicable to the property are not self-imposed by*
19 *any person having an interest in the property; and*

20 6. Criterion met. The special circumstances are not self-imposed because they are the result of the
21 shape and size of the lot. The property dimensions and location between Sinclair Inlet and SW Bay
22 Street are creating the necessity for the variance. Any residential accessory structure would require a
23 variance in this area. Typical lot depth from the ROW is approximately 30', which would make a 40'
24 accessory structure setback impossible to meet without seeking a variance.

25 **POMC 20.28.180(2)(d):** *The variance will not allow the establishment of a use which: (i) is materially*
26 *detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone*
in which the subject property is situated; (ii) is not otherwise permitted in the zone; (iii) would result
in the extension of a nonconforming use or structure; or (iv) would change the terms of the zone
applicable to any or all of the subject property.

7. Criterion met. As determined at Finding of Fact 5, the requested variance will not create adverse
impacts that would be materially detrimental to the public welfare or have an adverse effect on
surrounding properties. The site has been historically established as single-family residential and the
proposed accessory use is permitted within the Greenbelt zoning district. The request does not alter the
existing use, but implements it more fully by allowing accessory structures that are normal and expected
for other single-family residences within the City.

Universal Permitting Criteria

1 **POMC 20.24.100:** *The criteria set forth below shall apply to all Type I through IV land use and*
2 *development permit applications:*

3 (1) *Determination of Consistency. The applications are reviewed by the city to determine*
4 *consistency between the proposed project and the applicable land use and development regulations*
5 *and the comprehensive plan. A proposed project's consistency with the city's land use and development*
6 *regulations shall be determined by consideration of:*

- 7 (a) *The type of land use;*
- 8 (b) *The level of development, such as units per acre or other measures of density;*
- 9 (c) *Availability of infrastructure, including public facilities and services needed to serve the*
10 *development; and*
- 11 (d) *The character of the development, such as development standards.*

12 (2) *Upon review of an application, the decision-maker shall also determine whether the building*
13 *and/or site design complies with the following provisions:*

- 14 (a) *The comprehensive plan;*
- 15 (b) *The applicable provisions of this title;*
- 16 (c) *The Washington State Environmental Policy Act (SEPA), pursuant to Chapter 20.160 POMC,*
17 *if not otherwise satisfied;*
- 18 (d) *The city's public works design standards.*

19 (3) *Additional Review Criteria. Additional review criteria appear in each chapter or section of the*
20 *POMC relating to the development regulations for an individual project permit application or other*
21 *approval. All of the criteria in this section and the criteria relating to the individual application(s) must*
22 *be satisfied in order for the city to make a determination of consistency and issue an approval.*

23 (4) *Limitations on Review. During project review, the city shall not reexamine alternatives to or*
24 *hear appeals on the review requirements of this section except for issues of code interpretation.*

25 (5) *Burden of Proof. The burden of proof for demonstrating that the application is consistent with*
26 *the applicable regulations is on the Applicant.*

8. Criterion met. The criterion is met. As identified in the staff report, City staff have reviewed the application and found the proposal to conform to City standards. No issues of compliance have been raised by the public or City staff and none are found in the record. As previously determined, the proposal is found to comply with all applicable criteria as relevant to variance review. As determined in Finding of Fact No. 6, the proposal will be served by adequate infrastructure.

DECISION

Variance Application No. LU-23-VAR-01 satisfies all applicable criteria as determined in the Conclusions of Law of this decision and is therefore approved as conditioned:

1. The Applicant shall apply for a Street Use Permit from the City of Port Orchard Public Works Department within six (6) months from the date of this approval. If the City does not receive the application within the

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timeline specified, or denies the requested Street Use Permit, the subject accessory shed shall be removed or relocated. Other permits may be necessary if the subject shed is moved.

DATED this 4th day of April 2024.

Phil Olbrechts
Hearing Examiner for Port Orchard

Appeal Right and Valuation Notices

POMC 20.22.050(8) provides that the final decision of the Hearing Examiner is subject to appeal to superior court. Appeals of final land use decisions to superior court are governed by the Land Use Petition Act (“LUPA”), Chapter 36.70C RCW. LUPA imposes short appeal deadlines with strict service requirements. Persons wishing to file LUPA appeals should consult with an attorney to ensure that LUPA appeal requirements are correctly followed.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.