

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS, AND DECISION**

Applicant(s): Mike Carlson Enterprises  
c/o Michael and Julia Carlson  
2165 West Valley Road  
Friday Harbor, WA 98250

Agent: John Geniuch  
Design Solutions Development Group  
P.O. Box 3258  
Friday Harbor, WA 98250

File No.: PCUP00-17-0007

Request: Conditional Use Permit (CUP)

Parcel No: 450132007

Location: 2165 West Valley Road, San Juan Island

Summary of Proposal: Application for conditional use permit to allow expansion  
of an existing shop that is a nonconforming use

Land Use Designation: Rural Farm Forest

Public Hearing: May 18, 2017

Application Policies and Regulations: SJCC 18.80.100(D) CUP Criteria

Decision: Approved subject to conditions

S.J.C. DEPARTMENT OF

JUN 05 2017

COMMUNITY DEVELOPMENT

**BEFORE THE HEARING EXAMINER  
FOR SAN JUAN COUNTY**

In the Matter of the Application of )  
)  
)  
**Mike Carlson Enterprises** )  
)  
)  
for approval of a conditional use permit )  
to allow expansion of a nonconforming use )  
at 2165 West Valley Road, San Juan Island )

NO. PCUP00-17-0007 S.J.C. DEPARTMENT OF  
JUN 05 2017  
COMMUNITY DEVELOPMENT  
**Mike Carlson Enterprises CUP**

**SUMMARY OF DECISION**

The request for conditional use permit for expansion of an existing shop that is a nonconforming use at 2165 West Valley Road, Friday Harbor, San Juan Island is **APPROVED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Mike and Julia Carlson (Applicants) requested a conditional use permit to expand an existing 3,312 square foot shop that is part of a nonconforming commercial use at 2165 West Valley Road, Friday Harbor, San Juan Island.

**Hearing Date:**

The San Juan County Hearing Examiner held an open record public hearing on the request on May 18, 2017.

**Testimony:**

At the open record public hearing, the following individuals presented testimony under oath:

Julie Thompson, Planner, San Juan County Department of Community Development  
John Geniuch, Applicant Agent  
Mike Carlson, Applicant

**Exhibits:**

The following exhibits were admitted in the record:

- A. Department of Community Development Staff Report, dated May 4, 2017, with the following attachments:
  - 1. Request for Review/Comment

2. Determination of Non-Significance
3. Environmental checklist
4. Application materials, including: application form, existing/proposed elevations, and aerial photographs showing existing conditions and location of proposed expansion
5. Legal advertising materials
6. Notice verification from the Applicants
7. Conditional Use Permit 92CU008, Board of Adjustment decision, application materials, and comment letters (from previous hearing authorizing nonconforming use)
8. Land Disturbances and Impervious Surfaces Worksheet, dated received May 11, 2017

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

#### FINDINGS

1. The Applicants requested conditional use permit approval to expand an existing shop that is part of a legally nonconforming use at 2165 West Valley Road, Friday Harbor, Washington.<sup>1</sup> The commercial operation, known as Mike Carlson Enterprises, obtained a previous conditional use permit in 1992 (92CU008) to expand the size of then-existing structures. The Board of Adjustment determined at that time that the existing commercial use was a legal, nonconforming use and that expansion was allowed through the conditional use permit process. A conditional use permit is required for the instant proposed expansion pursuant to San Juan County Code (SJCC) 18.40.310.F because the existing commercial use remains nonconforming under SJCC Title 18. *Exhibits A, 1, 4, and 7.*
2. The neighborhood surrounding the subject parcel is rural with residential development to the north and agricultural land uses to the south, east, and west. *Exhibits A and 4.*
3. The subject parcel has a Rural Farm Forest (RFF) zoning designation. *Exhibit A.* Pursuant to SJCC 18.60 Table 6.2, the RFF zone requires buildings to be setback 40 to 45 feet from the fronting road and 15 feet from rear and side property boundaries. Building height is limited to 35 feet and maximum coverage of the site by impervious surfaces is 15%. A minimum of 30% of the total site area is required to be retained in open space. *SJCC 18.60 Table 6.2.*
4. Planning Staff submitted that the existing site and improvements comply with both the RFF bulk dimensional standards and the applicable requirements of SJCC 18.40.110 relating to standards for site development for commercial uses, and indicated that

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<sup>1</sup> The property subject to the application is known as Tax Parcel number 450132007. *Exhibit 1.*

expansion of the existing shop would not result in noncompliance with these standards. *Exhibit A; Julie Thompson Testimony.*

5. The 30.75-acre subject property is part of a working cattle ranch. It is irregularly shaped with access along its short frontage on West Valley Road. Topography is gently sloping. The existing structures on-site, including a hay barn, three sheds, and an equipment repair shop containing offices, are screened from the road by dense, mature trees on the parcel along the frontage and surrounding the uses where they abut an adjacent property to the south. Critical areas on the subject property are limited to the County-wide critical aquifer recharge area and regulated wetlands. The on-site wetlands are located approximately 800 feet south of the proposed expansion, well outside any buffer imposed under the County's critical areas regulations. Two small farm ponds on-site are located more than 200 feet from the proposed improvements. No part of the subject property is within 200 feet of a regulated shoreline pursuant to the County's shoreline master program. There are no nearby airports. *Exhibits A, 3, and 4.*
6. The proposal would expand the existing 3,312 square foot shop building by an additional 1,400 square feet. The addition is proposed to be 16 feet tall. All construction is proposed to occur on existing gravel driveway and parking surfaces; no clearing or grading is required. The expanded shop would be finished with a barn appearance similar to the existing buildings on-site. Currently 10 to 12 people work on the subject property; the proposal would not increase the number of employees on-site. The expanded structure is needed to provide more indoor area to work on vehicles and equipment, which is the activity currently happening in the shop; no change in use is proposed. The proposal would not increase vehicle traffic to the site or the numbers of vehicles used on-site; no new parking spaces are proposed. The existing shop is served by adequate access, fire protection, stormwater control, water, and sewage disposal facilities. No increase in demand for services is anticipated; no expansion to septic or water service is proposed or required to serve the new building area. The expanded shop building would not affect entering/exiting sight distance at the subject property's driveway connection to West Valley Road; it would be screened from the road by dense trees. *Exhibits A, 3, and 4; Mike Carlson Testimony; John Geniuch Testimony.*
7. Currently, the site contains 74,503 square feet of impervious surfaces, which is less than 6% of the total site area. The project would not create any new impervious surface but would convert approximately 1,400 square feet of graveled/paved ground surface into 1,440 square feet of roof. In order to ensure compliance with SJCC 18.60.070 and the County's stormwater standards, the Applicant would be required to obtain/provide certification of compliance with Minimum Requirement #2 at the time the building permit application is submitted. *Exhibits A and 8.*
8. All of San Juan County is designated as a critical aquifer recharge area (CARA) regulated pursuant to the County's critical areas ordinance. Applicable standards regulate the storage and handling of substances that could, if spilled, result in a health hazard in drinking water. *SJCC 18.35.080.* There have been no known adverse impacts to the

CARA from the existing nonconforming use, and it is not anticipated that the proposed expansion, which would not change the use, would result in adverse impacts. However, the use does involve vehicles and equipment that contain/use petroleum products and other fluids, which if accidentally spilled could damage groundwater. Planning Staff recommended a condition of approval that would require submittal of chemical safety data sheets and a spill prevention and cleanup plan for review and approval by County staff at the time of building permit submittal. *Exhibits A and 3.*

9. Consistent with the State Environmental Policy Act (SEPA), San Juan County acted as lead agency for review of the probable, significant adverse environmental impacts of the proposal. A determination of non-significance (DNS) was issued on March 15, 2017. No comments or appeals were filed. *Exhibits A and 2; Julie Thompson Testimony.*
10. The application was submitted February 24, 2017. Notice of application and public hearing was published on March 15, 2017 and April 19, 2017, posted on-site and mailed to owners of surrounding properties within 300 feet on September April 19, 2017. *Exhibits A, 4, 5, and 6.* Notice of the application was sent to the Washington State Department of Ecology. *Exhibit 1.* There was no public comment on the application. *Julie Thompson Testimony.*
11. Having reviewed all submitted materials and heard testimony at hearing, Planning Staff concluded that the proposal can be conditioned to comply with all applicable provisions of the County Code and recommended approval subject to such conditions. *Exhibit A; Julie Thompson Testimony.* The Applicants waived objection to the recommended conditions. *Testimony of Mike Carlson and John Geniuch.*

## CONCLUSIONS

### Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for conditional use permit pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.22 and 18.80 of the San Juan County Code, including SJCC 18.80.090.C.

### Criteria for Review

Pursuant to SJCC 18.80.100.D, a conditional use permit shall be granted by the County only if the following criteria are met:

1. The proposed use will not be contrary to the intent or purposes and regulations of this code or the Comprehensive Plan;
2. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located;
3. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;

4. The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval;
5. The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities;
6. The location, size, and height of buildings, structures, walls and fences, and screening vegetation associated with the proposed use shall not unreasonably interfere with allowable development or use of neighboring properties;
7. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood;
8. The proposal complies with the performance standards set forth in Chapter 18.40 SJCC;
9. The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70.547); and
10. The proposal conforms to the development standards in Chapter 18.60 SJCC.

#### **Other Applicable Code Provisions**

##### *SJCC 18.40.310 Nonconforming structures and uses.*

- A. When a nonconforming use or structure is proposed for alteration, modification, intensification, or expansion under this section, the total impact of the nonconforming use will be considered as well as the added impact of the incremental changes being proposed and the consistency of the changes with the applicable land use designation.
- B. Ordinary maintenance and repair of a nonconforming structure and its equipment or fixtures is permitted up to and including total replacement; provided, that the existing three-dimensional building envelope remains unchanged.
- C. If a nonconforming use or structure is destroyed by fire or other act of God, it may be rebuilt to the configuration existing immediately prior to the time that the structure was destroyed; provided, that rebuilding is completed within 24 months of the date of destruction.
- D. Nonconforming structures may be modified or altered, provided the degree of nonconformity of the structure is not increased.
- E. Any nonconforming use or structure may be altered, modified, or remodeled beyond the external dimensions present on the effective date of the ordinance codified in this chapter for the purpose of providing access required under Chapter 51-20 WAC. The extent of the alteration or modifications shall be limited to the provisions of access necessary to comply with Chapter 51-20 WAC as determined by the administrator.

- F. Expansion, modification, or intensification of a nonresidential nonconforming use is allowable subject to a conditional use permit, provided:
  - 1. A nonconformance with the standards of this code shall not be created or increased;
  - 2. The proposal shall comply with the standards of this code to maximum extent feasible; and
  - 3. The proposal shall not have an adverse impact on an environmentally sensitive area.
- G. Unless specifically provided otherwise, any nonconforming structure or use under the jurisdiction of the Shoreline Master Program shall be subject to the nonconforming use provisions in WAC 173-27-080.
- H. Nonconforming uses may be relocated on the same parcel where they occur if the degree of nonconformity is not increased, and subject to a discretionary use permit.
- I. No Replacement of Nonconforming Uses when Airport Hazard. No structures or obstructions of any kind or nature whatsoever constituting a nonconforming use shall be rebuilt, repaired, or replaced where such repairing, rebuilding, or replacement constitutes an airport hazard.
- J. Abandonment. Nonconforming uses shall be considered abandoned if the use ceases to operate or is discontinued for 24 consecutive months.

*SJCC 18.40.110 Commercial uses – General standards for site development.*

- A. All Commercial Uses. The following standards apply to all commercial uses as listed in Tables 18.30.030 and 18.30.040 and to any use determined by the director to be commercial use.
  - 1. Water supplies and sewage disposal facilities adequate to serve the proposed use shall be provided. Occupancy shall not be permitted before water supplies and sewage disposal facilities are approved and installed.
  - 2. Use of a County access road or private road for access to new commercial development shall be permitted only if the applicant demonstrates that public health, safety, and welfare will be protected, and if traffic and maintenance impacts to the road are minimized by conditions on the permit.
  - 3. No use shall be made of equipment or material which produces unreasonable vibration, noise, dust, smoke, odor, or electrical interference to the detriment of adjoining property.
- B. Commercial Development in Rural Designations. The following standards apply to all commercial uses located in the rural land use designations listed in Table 18.30.040, as determined by the director.

1. The proposed use will result in minimal additional demands on services and utilities available in rural areas and will not result in more than a minimal and manageable increase in demand on community water supplies, sewage disposal systems, or roads.
2. Building coverage impacts identified in Table 8.2 in SJCC 18.80.090 as medium or low may be allowed. Traffic and parking impacts need not necessarily meet the levels criteria of Table 8.2.

SJCC 18.35.080 Critical aquifer recharge areas

- A. Purpose. The purpose of this section is to assure a safe and adequate water supply by protecting the quantity and quality of water available for recharge of the County's aquifers. The quality of groundwater in an aquifer is inextricably linked to its recharge area. An aquifer's vulnerability to contamination is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. Because of the hydrogeologic characteristics listed in subsection (B) of this section, all of the land area of San Juan County is classified as highly susceptible. High vulnerability is indicated by activities that contribute to the risk of contamination, such as those listed in subsection (E) of this section. In addition to the requirements of this chapter, groundwater protection is addressed in the following sections of the San Juan County Code:
1. Chapter 8.06 SJCC, Water Wells and Water Systems;
  2. Chapter 8.16 SJCC, On-Site Sewage Disposal;
  3. SJCC 18.60.030, Wastewater disposal;
  4. SJCC 18.60.070, Storm drainage standards.
- B. Classification of Critical Aquifer Recharge Areas. The following characteristics define the hydrogeologic conditions of San Juan County's aquifers. These multiple factors combine to characterize all of San Juan County's recharge areas as highly susceptible to degradation and all of San Juan County is hereby designated a critical aquifer recharge area.
1. Hydrogeologic susceptibility to contamination has been determined as moderate to high using Washington State Department of Ecology guidelines (Cook, 2002) and a recharge analysis performed by the United States Geological Service (WRIR 02-4114, 2002).
  2. San Juan County's aquifers are sole source aquifers, recharged by local rainfall only.
  3. Many of the County's aquifers are located in bedrock and are at risk from direct surface contamination.
  4. The County's small land areas and extensive shoreline create conditions where the balance between the sea water and fresh water interface is critical to prevent sea water intrusion.
  5. Groundwater is an important source of water to lakes and streams that provide both drinking water and water for fish and wildlife.

- C. Groundwater Protection Requirements. In accordance with state and federal laws, pesticides, petroleum products and other chemicals that could be a health hazard in drinking water shall:
1. Be used in accordance with the manufacturer's directions;
  2. Be stored, handled and disposed of in a manner that prevents them from coming in contact with the ground surface, or with ground or surface water; and
  3. Not be disposed of in floor drains, injection or drywells, septic or sewage disposal systems.
  4. Use of a product in accordance with the manufacturer's directions and treatment in accordance with a practice approved by the department does not constitute disposal. Guidance on acceptable management practices can be found in the Washington Department of Ecology 2005 Stormwater Management Manual for Western Washington: Volume IV, Source Control BMPs (Publication 05-10-032).
- D. Plan Review. Prior to approval, the department shall review plans for commercial, industrial, public and institutional facilities for conformance with the requirements of this section. To facilitate this review, the applicant shall provide a list of the quantities and types of chemicals that will be used, proposed spill containment plans, and a plan for disposal of waste materials.

*SJCC 18.60.070 Storm drainage standards*

All new development and redevelopment must conform to the standards and minimum requirements set by the Washington Department of Ecology Stormwater Management Manual for Western Washington, Publication Nos. 05-10-029 through 05-10-033. In addition, the best management practices identified in the January 2005 Low Impact Development Technical Guidance Manual for Puget Sound, produced by the Puget Sound Action Team, are acceptable alternatives for managing runoff, controlling soil erosion, and maximizing and protecting recharge.

**Conclusions Based on Findings**

1. As conditioned, the proposed expanded building as part of a legally nonconforming use in the RFF zone would be consistent with the intent and regulations of the Unified Development Code (UDC) and the County's Comprehensive Plan. Pursuant to SJCC 18.10.020, the UDC is a principal tool for implementing the goals and policies of the San Juan County Comprehensive Plan. As proposed, the expansion of the existing structure would comply with the bulk dimensional requirements of the RFF zone and with the general standards at SJCC 18.40.110 that apply to site development for commercial uses. Nonconforming uses and structures. The proposed expansion would comply with the standards applicable to nonconforming uses at SJCC 18.40.310 based on the following. There would be negligible if any offsite impact from the expansion of the existing building. The nature of the nonconforming use would not change, and there would be no change in number of employees, traffic, hours of operation, or water/septic capacity. The use has not generated harmful discharges to the critical aquifer recharge area and the

expansion of the shop is not expected to create harmful discharges; nevertheless, a condition of approval would ensure compliance with SJCC 18.35.080.D, a hazardous materials spill and cleanup plan, would be required at time of building permit. No shoreline, wetland, or any other critical areas would be affected. The expanded building would have no impact on airports. As proposed and conditioned, the proposal is consistent with the UDC and the Comprehensive Plan. *Findings 1, 3, 4, 5, 6, 7, 8, 9, and 11.*

2. The proposed expansion of the shop would comply with the setback, building height, maximum impervious surface area, and minimum open space requirements applicable to the RFF zone. The expansion would mirror the appearance of existing structures on-site. *Findings 3, 4, and 6.*
3. No clearing of vegetation, grading, or disruption of unpaved ground surface would be required, and no new impervious surface would be created. The proposed expansion of the shop would be screened from neighbors and from the road by existing mature vegetation. A condition of approval would ensure compliance with regulations relating to protection of the critical aquifer recharge area. *Findings 6, 7, and 8.*
4. It is unlikely that approval would result in future additional proposals, because the existing use is legally nonconforming in the zone. However, if additional expansions of other legally nonconforming uses are proposed, the record submitted supports a conclusion that there would not be adverse impacts as a result. There is no evidence showing significant adverse impacts to the human or natural environments from the proposed expansion. Conditions of the instant approval would ensure that future uses comply with all applicable regulations regarding the use of potentially hazardous materials, including maintenance and implementation of spill plans. The proposal was reviewed for compliance with SEPA and the DNS issued was not challenged. *Findings 1, 5, 6, 7, 8, and 9.*
5. The existing shop enjoys adequate access, water, septic, stormdrainage, and emergency services response. There is no evidence suggesting that expansion of the shop would increase demand for any of these services. *Findings 6 and 11.*
6. The proposed 16-foot-tall expansion would be setback from all property boundaries in a manner that meets or exceeds zoning setback requirements. It would be screened from off-site view by mature vegetation that would be retained. No nearby property owners submitted concerns about impacts. The record does not support a conclusion of unreasonable interference with the use of surrounding properties. *Findings 2, 3, 5, 6, and 10.*
7. No additional pedestrian or vehicular traffic would result from approval. The expanded building would be setback a significant distance from the site entrance and would not be visible from the site entrance; it would not impact sight distance. *Findings 6 and 11.*

8. The proposed expansion of the existing shop building would continue to comply with all applicable standards relating to site development for commercial uses. *Findings 6 and 11.*
9. There are no airports or airfields in the vicinity of the subject property, and the new construction would be a maximum of 16 feet tall. *Findings 5 and 6.*
10. The proposal would not render the site out of compliance with the applicable standards of SJCC Chapter 18.60. Water and sewage disposal exist, and no capacity increase is required. No clearing or grading is needed. The Applicant would be required to demonstrate compliance with applicable stormwater management regulations at building permit review; however, the project would convert pollution generating surfaces to non-pollution generating surfaces without increase impervious surface area and would have net positive impacts on stormwater as a result. *Findings 4, 6, 7, and 11.*

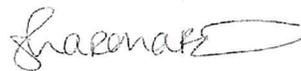
#### DECISION

Based on the preceding findings and conclusions, the request for conditional use permit for expansion of an existing shop building that is part of a nonconforming use at 2165 West Valley Road, San Juan Island is **APPROVED** subject to the following conditions:

1. Certification of compliance with Minimum Requirement #2 is required at the time the building permit application is submitted.
2. In compliance with SJCC 18.35.080(D), the Applicant shall provide a list of the quantities and types of chemicals that will be used, proposed spill containment plans, and a plan for disposal of waste materials at the time of building permit application.
3. Development authorized through this permit shall be completed within five years from the date of permit approval or the permit shall become null and void. An extension of up to one year may be granted by the decision making authority if the permittee demonstrates good cause for an extension.

Decided June 2, 2017.

By:



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Sharon A. Rice  
San Juan County Hearing Examiner

**Effective Date, Appeal Right, and Valuation Notices**

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology pursuant to RCW 90.58.140, WAC 173-27-130 and SJCC 18.80.110.

This land use decision is final and in accordance with Section 3.70 of the San Juan County Charter. Such decisions are not subject to administrative appeal to the San Juan County Council. See also, SJCC 2.22.100.

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service requirements may result in dismissal of the appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and consult with a private attorney.

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