IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WILLIAM ANTHONY, Appellant, v. MASON COUNTY, Respondent.	No. 40178-9-II UNPUBLISHED OPINION

Penoyar, C.J. – William Anthony appeals from a decision affirming the Mason County Department of Community Development (Department) decision denying him an administrative variance to build a garage on his Mason Lake property. He claims that the hearing examiner (1) failed to follow Mason County Code (MCC) provisions for appeals; (2) erroneously interpreted the law in defining the scope and criteria for review; (3) made a decision that substantial evidence does not support; (4) based its decision on improper criteria; and (5) violated his substantive due process rights. We affirm.

Facts

In 1991, Joe Cooper created a short subdivision from his Mason Lake waterfront property. The subdivision consisted of four lots, three of which were lake front and one of which was not. Cooper retained the non-lakefront parcel, which contained his home and a commercial storage facility. Anthony purchased the largest of the lakefront lots, which is 98 feet along the shore but 70 feet across where it abuts the Cooper lot. It also has a 25-foot easement for ingress and egress. In 1999-2000, Anthony built a single-family home with an attached three-car garage.

In 2008, Anthony filed a building permit application to build a 19-foot tall, 720 square-

foot storage building for his personal watercraft. Because of the narrowness of his lot and the existing septic system drain field, the only location where he could put the building was within five feet and eight feet of his property lines. The Department responded to the application with a letter of incompleteness, explaining that Anthony would have to seek an administrative variance because the setback requirement under the MCC is a minimum of 20 feet.

On May 29, 2008, Anthony applied for an administrative variance to side yard setbacks. The Department denied the application. The letter informed Anthony that his application was not a "reasonable development proposal" as used in MCC 17.05.034, because it exceeded the size of all garages within 1000 feet of the proposed structure.[1] Administrative Record at Tab B.

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[1] The letter cited section 15.05.034 but this appears to be a typographical error. MCC 17.05.034 provides:

> (a) The hearing examiner shall have the authority to grant a variance from the provisions of this chapter when, in their opinion, the conditions set forth in Section 17.05.036 have been met. The hearing examiner shall have the authority to attach conditions to any such variance when, in their opinion, such conditions are necessary to protect the public health, safety or welfare, or to assure that the spirit of this chapter is maintained.
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> . . . .
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> (d) The administrator may allow a reduction in the required side yard setback by administrative variance under the following circumstances: for existing lots of record as of March 5, 2002 that are parcels designated as Rural Residential 2.5, Rural Residential 5, Rural Residential 10, or Rural Residential 20; and where physical attributes of the lot (such as steep slopes, streams, wetlands, and soils; lot width at the front yard line of no more than fifty feet or lot size of no more than one-half acre; and existing improvements of buildings, septic systems, and well areas) preclude a proposed development from meeting the twenty-foot side yard setback standard. *The variance to the side yard setback shall be the minimum necessary to accommodate a reasonable development proposal.* This side yard setback shall not be less than five feet distance from the property line. The administrator shall document in the property file the rationale for the administrative variance decision.

Emphasis added.

Anthony appealed that decision to the hearing examiner. The hearing examiner accepted testimony and evidence and denied the appeal. The hearing examiner found that the Department erred in finding that the proposed garage was larger than those in the area, specifically noting that the proposal "is within range of garage sizes in the area, even if that proposal exceeds the average by a couple hundred square feet." Clerk's Papers (CP) at 87. The hearing examiner found, however, that the proposed building "would have a severe impact on the water view corridor of the Coopers. The proposed garage would completely block the view of everything on the water ward side of the home. The encroachment itself would take up a significant portion of that view. The view impacts would be significant and severe." CP at 88.

The hearing examiner concluded that the phrase "reasonable development" proposal included the impacts the proposal would have on adjoining properties: "The Examiner concludes that impacts on adjoining uses are a relevant, even priority, consideration in determining whether a proposal constitutes a 'reasonable development.'" CP at 88. He specifically rejected Anthony's argument that such impacts have no relevance to an administrative variance:

> Although it is clear that an administrative variance should be granted more liberally than a standard MCC 15.09.057 variance, it is a long leap to conclude that impacts upon adjoining properties have no relevance. This interpretation discounts almost entirely the purpose of setbacks, which is primarily to protect adjoining uses and the community as a whole. As noted in McQuillan Municipal Corporations, section 25.138 (3d Ed 2010), setbacks "tend to preserve public health, add to public safety from fire, and enhance the public welfare by improving living conditions and increasing the general prosperity of the neighborhood." In the land use context the term "reasonable" is designed to provide flexibility to balance public and private interests. *See, e.g.,* [*Buechel v. Dep't of Ecology*, 125 Wn.2d 196, 884 P.2d 910 (1994)]. Impacts upon adjoining uses are well within the broad purview of a reasonableness analysis.

> Given the various functions of a side yard, it is apparent that one of the most important is the protection of adjoining uses. Adjoining uses have the most to lose when their neighbors encroach into side yards. It strains credulity to take the position that impacts on adjoining uses are irrelevant to a side-yard variance when the primary purpose of the side yard is to protect adjoining property.
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> Considering impacts upon adjoining uses does not subvert the summary review process intended for MCC 17.05.034(D) administrative variance requests. MCC 17.05.034(D) variance requests are still handled administratively. There are several criteria for standard (MCC 15.09.057) variance requests that are significantly more restrictive, such as MCC 15.09.057(6), which prohibits the granting of a variance unless the owner otherwise lacks a reasonable use of the land.
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> Given the factors discussed above, the impacts upon the Cooper property are highly relevant to the resolution of this appeal.

CP at 88-89.

The Hearing examiner concluded:

> The variance must be denied, however, due to the failure of the proposal to constitute a "reasonable development." As discussed in Conclusion of Law No. 6, whether a development proposal is reasonable or not depends in part upon the impacts it has upon adjacent properties. Another factor is the burden on the property owner, which in this case involves the availability of alternatives. As identified in Finding [of] Fact No. 6, the impacts upon the Cooper property are as severe as any could be for impairment of views. Even compensating for the fact that only the encroaching portion of the building should be taken into account, the view and aesthetic impacts to the Coopers are devastating. It is also obvious, with or without the letter from the County Assessor (Exhibit 19), that this view encroachment will significantly affect the value of the Cooper's home. The Appellant proposes to inflict all of this upon the Coopers in order to store his watercraft. He already has a three-car garage, but cannot fit his other watercraft in this garage. In the alternative, the Appellant could increase the size of his existing garage or store his watercraft at some off-site location. The variance is clearly not necessary for the reasonable use of the Appellant's property. The adverse impacts to the Coopers far outweigh the burden placed upon the Appellant by denial of the variance. The Appellant's proposal is not reasonable by any stretch of the imagination.

CP at 90-91.

Anthony appeals.

analysis

I. Standard of Review

The Land Use Petition Act (LUPA) defines our review. It provides:

> (1) The superior court, acting without a jury, shall review the record and such supplemental evidence as is permitted under RCW 36.70C.120. The court may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met. The standards are:
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> (a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;
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> (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
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> (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;
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> (d) The land use decision is a clearly erroneous application of the law to the facts;
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> (e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or
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> (f) The land use decision violates the constitutional rights of the party seeking relief.

RCW 36.70C.130(1).

Anthony's claims fall under (a), (b), (c), (d), and (f). Under LUPA, when reviewing a decision on a land use petition, we stand "in the shoes of the superior court" and we limit our review of the hearing examiner's decision to the administrative record. *Pavlina v. City of Vancouver*, 122 Wn. App. 520, 525, 94 P.3d 366 (2004); *HJS Dev., Inc. v. Pierce County ex rel. Dep't of Planning and Land Servs.*, 148 Wn.2d 451, 468, 61 P.3d 1141 (2003) (quoting *Citizens*

to Preserve Pioneer Park v. City of Mercer Island, 106 Wn. App. 461, 470, 24 P.3d 1079 (2001).

II. RCW 36.70C.130(a): Hearing Examiner's Procedure or Prescribed Process

Anthony first argues that the hearing examiner improperly imported a view-impact analysis into its review when (1) the planner did not rely on it; (2) the planning staff did not know if it applied; and (3) it was inconsistent with the MCC. He argues that the phrase "reasonable development proposal" is unnecessarily vague and the varying positions the planner, the planning staff, and the hearing examiner took as to its meaning demonstrate that it is not applied in a "consistent, predictable, and logical manner." Appellant's Br. at 19, 29, 35 (citing *Mason v. King County*, 134 Wn. App. 806, 813, 142 P.3d 637 (2006)).

The Department responds that one must read the various MCC provisions together to see that the code vests discretion in the county planner when considering a request for an administrative variance. MCC 17.05.034(c) (front or rear setbacks) and (d) (side setbacks) use the language "The administrator *may* allow a reduction in the required . . . setback." Emphasis added. It also points to the language in MCC 17.05.035 referring to MCC 15.09.057 (variance criteria). When read together, the Department argues, these provisions apply the variance criteria to all variance requests but allow the planner to exercise discretion when considering an administrative variance.

The Department argues that this is consistent with the policy of lessening the burden on landowners whose property was affected by the Growth Management Act setback requirements and gives guidelines for determining if the application is a "reasonable development proposal." It notes that MCC 15.09.057 existed when Mason County adopted MCC 17.05.034 and .035 and, if it had wanted to divorce the variance criteria from administrative variances, it could have explicitly done so but it did not.

We agree with the Department and reject Anthony's claim that we must consider MCC 17.05.034(d) in isolation. We read statutes as a whole, giving effect to all language used, without rendering any portion meaningless or superfluous. *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996) (citing *Stone v. Chelan County Sheriff's Dep't*, 110 Wn.2d 806, 810, 756 P.2d 736 (1988); *Tommy P. v. Bd. of County Comm'rs,* 97 Wn.2d 385, 391, 645 P.2d 697 (1982)). Nothing in these provisions evidences an intent to foreclose the planning department's consideration of the variance criteria in deciding whether the application before it is a "reasonable development proposal."

Because impacts on adjoining properties are valid considerations in deciding the reasonableness of a proposal, the hearing examiner did not engage in an unlawful procedure or process in reaching his decision.

III. RCW 36.70C.130(1)(b): Hearing Examiner's Interpretation of the Law

Anthony next complains that the hearing examiner improperly considered view impacts and neighborhood opposition, rather than focusing on the fact that his proposed garage was within the average size of existing garages and that he has a personal need for the garage.

As we noted above, the hearing examiner properly considered the impacts Anthony's proposal had on adjoining landowners. And while it considered the neighborhood opposition to the proposal, it also focused on the real impact the project would have on the Coopers in that it would both destroy any view the Coopers enjoyed but would also greatly diminish the value of the Coopers' property.

Anthony relies on *Sunderland Family Treatment Servs. v. City of Pasco,* 127 Wn.2d 782, 903 P.2d 986 (1995) (unsubstantiated fears about property values); *Maranatha Mining, Inc. v. Pierce County,* 59 Wn. App. 795, 804, 801 P.2d 985 (1990) (community displeasure; not reasons supported by policies and standards); *Kenart & Assoc. v. Skagit County,* 37 Wn. App. 295, 680 P.2d 439 (1980) (lack of evidence coupled with community displeasure).

But these cases are inapposite. Here, the hearing examiner relied on the evidence presented to find that the proposal would greatly diminish the value of the Coopers' property. The hearing examiner also relied on Anthony's testimony that he could modify his existing garage to accommodate his watercraft, though at greater expense.[2]

IV. RCW 36.70C.130(d): Substantial Evidence

Anthony argues that the record does not contain substantial evidence supporting the hearing examiner's finding that he has an option of reconfiguring his existing garage, that the proposed storage space was within the range of average garage sizes in the area, and that the hearing examiner erred in considering view impacts evidence.

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[2] Anthony testified:

> Q And the second question is Mr. Cooper indicated you should build your garage down by your house. Is there a reason you didn't do that?
> A My contractor told me it would be too expensive.
> Q How much more expensive to build down there than --
> A He said it would be probably twice as much.
> Q Why is that?
> A Because of the way the design of the roof is and you would have to reshape the roof and have to do all kinds of adjustment to the roof. It would just cost me too much.

CP at 228.

As we noted above, we review the record to determine whether "[t]he land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court." RCW 36.70C.130(1)(c). Substantial evidence is evidence sufficient to persuade an unprejudiced, rational person that a finding is true. *Isla Verde Int'l Holdings, Inc. v. City of Camas,* 146 Wn.2d 740, 751-52, 49 P.3d 867 (2002).

The hearing examiner relied on the staff report, testimony from Cooper and Johnson, the county planner, and neighbors. It did not err in admitting view impact evidence and relying on it. Exhibit 18 illustrated the impact the proposal would have on the Coopers' lake view and the livability of their home. The Coopers also presented evidence from the Assessor Treasurer showing that the proposal would greatly diminish their property's value. This is substantial evidence supporting the hearing examiner's decision.

V. RCW 36.70C.130(c): Clearly Erroneous

Anthony argues that the hearing examiner erred in considering view impacts in denying his appeal and that the only test of reasonableness is his own use of his property. He reasons that his application was reasonable because he would be building the garage within his historical setback limits, that his overall storage space would be consistent with neighboring properties, that adding on to his garage is not a reasonable alternative, and that he has a reasonable need for the space because his watercraft will not fit in his current garage.

He argues that the hearing examiner's decision was clearly erroneous because (1) relying on view-related objections is inconsistent with the review criteria in MCC 17.05.034(d); (2) that the administrative variance procedure lacks criteria that can be applied in a consistent, predictable, and logical manner; (3) that the purpose of an administrative variance is (i) not to vest upland

owners with view corridors when no such right existed historically; (ii) a five-foot setback historically protected adjoining uses (public health and safety) and his proposal is within these historical parameters; and (iii) public health and safety is the only proper consideration, not view impacts. He notes that the hearing examiner found that MCC 15.09.057 did not apply and that Mason County could have included these variance criteria in the administrative variance provision but it did not.

Under this LUPA provision, we look to the record to see if the hearing examiner properly applied the law to the facts and we will only overturn that decision if we are convinced that the hearing examiner was mistaken. *Cingular Wireless, LLC, v. Thurston County*, 131 Wn. App. 756, 768, 129 P.3d 300 (2006). As we noted above, the hearing examiner correctly applied the law, substantial evidence supports that decision, and the conclusion logically flows from those findings that the proposal would have a severe impact on the Coopers' view and property value, and that Anthony had the alternative of modifying his existing garage or using off-site storage. This was a reasoned decision and was not clearly erroneous.

VI. RCW 36.70C.130(f): Substantive Due Process

Anthony next contends that the "reasonable development proposal" language is unconstitutionally vague. He notes that neither the planner nor the hearing examiner knew whether view impacts were included. The planner averaged garage square-footage in the area but then admitted that doing so is not a common practice. The code provision provides no definition and related code provisions do not apply. And that Mason County did not explicitly include view impacts should mean that they are not to be considered. Thus, he argues, there were no ascertainable standards to apply to his proposal and its denial therefore denied him his right of due

process.

Anthony relies on *Anderson v. City of lssaquah*, 70 Wn. App. 64, 851 P.2d 744 (1993), and *Sunderland Family Treatment Servs.*, 127 Wn.2d 782. In *Anderson*, the question regarded aesthetic standards governing building design in the Issaquah Municipal Code. The reviewing court found the provisions unconstitutionally vague because the criteria were purely subjective, shifting from one development commissioner's view to that of another, resulting in ad hoc decision-making. 70 Wn. App. at 75.

In *Sunderland,* the court reversed a decision denying a special use permit for a group home for troubled youth because the City had no standards in its code and could not justify the denial with substantial evidence. 127 Wn.2d at 797. Significantly, the court noted:

> Washington, however, has adopted the minority position and does not require specific standards. We require only general standards, such as those contained in a comprehensive plan. *Standard Mining & Dev.,* 82 Wn.2d at 329-30.[3] Without such standards, reviewing courts are unable to judge whether an applicant has met the reasonable conditions for issuance of a permit. When such standards have not been adopted, it is appropriate for the decision-making body to have the burden to justify its decision. *See Pentagram,* 28 Wn. App. at 228-29, 622 P.2d 892.[4] The usual presumption of reasonableness does not attach to the permit decision. *Pentagram,* 28 Wn. App. at 229[.]

Sunderland, 127 Wn.2d at 796-797.

The question is not whether the planner and hearing examiner were confused but, rather, whether the code provision provides meaningful standards so that it is applied in a consistent, predictable, and logical manner. *Mason*, 134 Wn. App. at 813. As we noted above, we consider

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[3] *State ex rel. Standard Mining & Dev. Corp. v. City of Auburn*, 82 Wn.2d 321, 510 P.2d 647 (1973).

[4] *Pentagram Corp. v. City of Seattle*, 28 Wn. App. 219, 662 P.2d 892 (1981).

the code provisions together to reconcile any apparent conflicts and to avoid rendering any provision meaningless or superfluous. *Whatcom County*, 128 Wn.2d at 546. We agree with the Department's view that MCC 15.09.057 provides criteria that a planner may use in making a decision on an administrative variance proposal. Here, the hearing examiner relied on the impacts this proposal would have on the Coopers' view and property value. These are certainly reasonable considerations and ones the code allows. We do not find the code provision unconstitutionally vague.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Penoyar, C.J.

We concur:

Bridgewater, J.

Quinn-Brintnall, J.