



COUNTY COMMISSIONERS

Carolina Mejia-Barahona
District One

Gary Edwards
District Two

Tye Menser
District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2021106720
)	
Wei-Tang Li)	FINDINGS, CONCLUSIONS,
)	AND DECISION
For a Reasonable Use Exception)	
_____)	

SUMMARY OF DECISION

The request for a reasonable use exception to construct a 1,200 square foot detached garage within a Category II wetland buffer at least 29 feet from the wetland edge is **GRANTED** with conditions.

SUMMARY OF RECORD

Request

Wei-Tang Li (Applicant) requested a reasonable use exception to construct a detached garage within a Category II wetland buffer. The original proposal was to construct a 1,500 square foot garage as close as 11 feet from the wetland edge. In response to a remand by the Hearing Examiner, the Applicant revised the proposal to construct a 1,200 square foot garage at least 29 feet from the wetland edge. The subject property is located at 2125 113th Avenue SW, Olympia, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the application on February 14, 2023. The record was held open through February 16, 2023 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing public comments were submitted. At the conclusion of the hearing, the Hearing Examiner remanded the application for revision consistent with the RUE criteria at Thurston County Code (TCC) 24.45.030(B) and (D). The Applicant submitted a revised proposal on February 15, 2023 (Exhibits 2a and 2b) and Thurston County Planning Staff submitted an analysis of the revised proposal on February 16, 2023 (Exhibit 3). The record closed on February 16, 2023.

Testimony

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

Sharon Lumbantobing, Senior Planner, Thurston County Community Planning & Economic Development Department

Dawn Peebles, Senior Environmental Health Specialist, Thurston County Public Health and Social Services Department

David Wu, Applicant Representative

Exhibits

At the open record public hearing, the following exhibits were admitted into the record:

Exhibit 1 Community Planning and Economic Development Report including the following attachments:

- A. Notice of Public Hearing, dated January 26, 2023
- B. Master Application and Reasonable Use Exception application, received December 15, 2021
- C. Site plan, received December 15, 2021 and revised December 13, 2022
- D. Project Narrative, received December 15, 2021
- E. Wetland Delineation and Mitigation Report, received December 15, 2021
- F. Monitoring and Maintenance Plan, received December 15, 2021, and revision submitted on January 17, 2023
- G. Impervious Surface Worksheet, received December 15, 2021
- H. Notice of Application for Reasonable Use Exception, dated May 18, 2022
- I. Comment Letter from Squaxin Island Tribe, dated May 24, 2022
- J. Comment Letter from Nisqually Indian Tribe, dated January 3, 2022
- K. Comment Memo from Thurston County Environmental Health, dated December 14, 2022
- L. Communications Matrix, received October 31, 2022

Exhibit 2 Applicant's post-hearing submittals, including:

- 2a. Memorandum dated February 15, 2023 from Gray Rand, PWS, David Evans & Associates with Amended Site Plan
- 2b. Revised Project Narrative dated February 15, 2023 from dwudesign

Exhibit 3 Staff Response to Amended Site Plan and Narrative dated February 16, 2022

Based on the record developed at the open record hearing, the Hearing Examiner enters the following findings and conclusions.

FINDINGS

1. Wei-Tang Li (Applicant) requested a reasonable use exception (RUE) to construct a detached garage within a Category II wetland buffer. The original proposal was to construct a 1,500 square foot garage as close as 11 feet from the wetland edge. In response to a remand by the Hearing Examiner, the Applicant revised the proposal to propose a 1,200 square foot garage at least 29 feet from the wetland edge. The subject property is located at 2125 113th Avenue SW, Olympia, Washington. *Exhibits 1, 1.B, 1.C, 2a, 2b, and 3.*
2. The RUE application was received on December 16, 2021 and deemed complete for purposes of commencing project review on December 28, 2021. *Exhibits 1.B and 1.H.*
3. The subject property is 10.95 acres in area and is on the Scott Lake shoreline. It is developed with a 1,077 square foot mobile home but no garage. The Applicant and his family do not live locally; they use the subject property for recreational purposes. They seek to build a garage to store recreational equipment and supplies. A 1,200 square foot garage is proposed to allow for camper parking in addition to storage. The garage would be unheated and would contain no bathroom or living quarters. *Exhibits 1, 2a, and 2b; David Wu Testimony.*
4. Land uses in the vicinity include single-family residences (at both rural and higher densities), agricultural land, and forested areas. *Exhibits 1 and 1.E.*
5. The subject property is within the rural portion of the County and is zoned Rural Residential Resource One Dwelling Unit per Five Acres (RRR 1/5). Primary permitted uses in the RRR 1/5 zone include single-family and two-family residences, agriculture, accessory farm housing, and home occupations. *Exhibit 1; Thurston County Code (TCC) 20.09A.020.*
6. The Shoreline Master Program for the Thurston Region (SMPTR) designates the subject Scott Lake shoreline as a Rural shoreline environment. Single-family residential development and accessory buildings are allowed in the Rural environment subject to the development standards contained in the SMPTR. In relevant part, these standards require a minimum 50-foot building setback from the ordinary high water mark (OHWM). *SMPTR, Section Three (XVI)(D)(3).* The proposed garage would be set back more than 50 feet from the OHWM. *Exhibits 1 and 2a.* Consistent with Washington Administrative Code (WAC) 173-27-140, which restricts shoreline structures greater than 35 feet in height that will obstruct residential views, the garage would be only 15 feet in height. *Exhibits 1 and 1.C.*
7. Based on evaluation by a wetland scientist, the subject property contains a Category II lake fringe wetland, which covers most of the parcel. With respect to the portion of the parcel that is upland of the OHWM of Scott Lake, only the southeast portion

(corresponding to the trailer and immediate vicinity) and the driveway from 113th Avenue SW are outside of the wetland boundary. *Exhibit 1.E.*

8. The Category II wetland has a habitat score of 7, which pursuant to the County's critical areas ordinance requires a standard buffer width of 240 feet. The 240-foot buffer encumbers the entire upland portion of the parcel. *Exhibits 1 and 1.E; TCC Table 24.30-2; TCC 24.01.035.*
9. The Applicant proposes to place the garage just north of the mobile home. As depicted on the revised site plan, the garage would set back 29 feet, three inches from the wetland edge at its closest point, five feet, four inches from a wellhouse on the property, and 44 feet, eight inches from the east property line. The proposed location is a previously disturbed area that is compacted, largely cleared of vegetation, and historically used for parking. The location minimizes vegetation removal and potential aesthetic impacts to neighbors to the east of the subject property. Prior to selecting the proposed revised garage size and location, the Applicant reviewed the possibility of an alternative location to the northeast, which appears on aerial photography of the vicinity to be largely flat and free of mature trees or other vegetation and which is farther from the wetland. However, this alternative location would require construction of new impervious surface area on site within the wetland buffer to support the structure, while the instant location is largely already cleared and paved. Because the proposed garage would contain no restroom facilities, the Applicant does not want to place the garage so far from the mobile home where the restroom is located. Additionally, the 1,200 square foot garage in the proposed location would result in little to no visual impact to the neighboring property to the east, which the Applicant identified as a concern in discussion with that property owner, while the alternative location would be directly visible to the neighbor absent the planting and maturing of significant vegetation. *Exhibit 2a; David Wu Testimony.*
10. As mitigation for the wetland buffer impact, the Applicant proposes to enhance 1,500 square feet of buffer between the garage and wetland edge. The enhancement would include removing invasive species (primarily Himalayan blackberry and reed canarygrass) and replanting the area with native trees and shrubs, including western red cedar, Douglas fir, cascara, choke cherry, ocean spray, mock orange, nootka rose, serviceberry, thimbleberry, and Indian plum. The Applicant's wetland scientist submitted that the enhancement would ensure an improvement in buffer function through increased vegetative diversity and screening of human activities. The proposal includes a five-year monitoring and maintenance plan. *Exhibits 1.F and 2a.*
11. No evidence was submitted that the project would adversely impact any species of concern. Although the Washington Department of Fish and Wildlife priority habitats and species database indicates one or more records of Townsend's big-eared bat, these records are for the entire township that includes the subject property. *Exhibits 1 and 1.E.*
12. The subject property is served by an on-site septic system and well. The proposed five-foot, four-inch setback from the wellhouse is consistent with the minimum five-foot setback identified by the County's Environmental Health Specialist at the hearing on the

application. *Dawn Peebles Testimony; Exhibit 2a.* The Environmental Health Division reviewed the proposal against the requirements of the sanitary code and recommended approval, subject to a condition that if any unused well is discovered on the property, that it be decommissioned in accordance with Washington Department of Ecology standards. *Exhibit 1.K.*

13. The proposed development is categorically exempt from review under the State Environmental Policy Act. *Exhibit 1; WAC 197-11-800; TCC 17.09.055(B).*
14. The Nisqually Indian Tribe and the Squaxin Island Tribe commented that they have no issues of concern; however, both requested to be notified if there are any inadvertent discoveries of archaeological resources or human burials. County Planning Staff incorporated the request into the recommended conditions of RUE approval. *Exhibits 1, 1.I, and 1.J.*
15. Notice of the open record hearing was mailed to property owners within 500 feet of the site on January 26, 2023 and published in *The Olympian* on February 3, 2023. There was no public comment on the application. *Exhibits 1 and 1.A.*
16. Thurston County Planning Staff reviewed the revised proposal and submitted that it demonstrates compliance with the criteria for RUE approval, including criteria (B) and (D) regarding minimizing impacts and the extent of encroachment. Staff's recommended conditions address mitigation plan implementation, erosion control, critical area signage, protection of archaeological resources, and compliance with agency requirements. *Exhibit 3.* The Applicant representative waived objection to the recommended conditions and agreed to submit the revised proposal, indicating the Applicant wants to do a project that works for the neighbors and the County while meeting his family's needs. *David Wu Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for reasonable use exceptions pursuant to TCC 2.06.010(F) and TCC 24.45.030.

Criteria for Review

Pursuant to TCC 24.45.030, the Hearing Examiner shall grant the reasonable use exception if:

- A. No other reasonable use of the property as a whole is permitted by this title; and
- B. No reasonable use with less impact on the critical area or buffer is possible. At a minimum, the alternatives reviewed shall include a change in use, reduction in the size of the use, a change in the timing of the activity, a revision in the project design. This may include a variance for yard and setback standards required pursuant to Titles 20, 21, 22, and 23 TCC; and

- C. The requested use or activity will not result in any damage to other property and will not threaten the public health, safety, or welfare on or off the development proposal site, or increase public safety risks on or off the subject property; and
- D. The proposed reasonable use is limited to the minimum encroachment into the critical area and/or buffer necessary to prevent the denial of all reasonable use of the property; and
- E. The proposed reasonable use shall result in minimal alteration of the critical area including but not limited to impacts on vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions; and
- F. A proposal for a reasonable use exception shall ensure no net loss of critical area functions and values. The proposal shall include a mitigation plan consistent with this title and best available science. Mitigation measures shall address unavoidable impacts and shall occur on-site first, or if necessary, off-site; and
- G. The reasonable use shall not result in the unmitigated adverse impacts to species of concern; and
- H. The location and scale of existing development on surrounding properties shall not be the sole basis for granting or determining a reasonable use exception.

Conclusions Based on Findings

1. No other reasonable use of the property as a whole is permitted by the critical areas ordinance. Considering the zoning and character of surrounding development and the lakefront location, a residential/recreational use is the only reasonable use of the property. A garage is a reasonable appurtenance to the existing residential use and is especially needed to make reasonable use of the property given the small size of the existing residential structure. The proposed garage would allow recreational vehicles and supplies to be enclosed. Criterion A of TCC 24.45.030 is satisfied. *Findings 3 and 4.*
2. With the revision reducing the area of the garage to 1,200 square feet and increasing the setback from the wetland to 29 feet, no reasonable use with less impact on the critical area or buffer is possible. The proposed location utilizes an existing parking area to minimize disturbance of vegetation and new impervious surfaces within the wetland buffer that encumbers the entire site. The conditions of approval require erosion control measures to be installed prior to building permit issuance and disturbed areas to be revegetated after construction is complete. *Findings 1, 9, 10, and 16.*
3. As conditioned, the proposal would not threaten the public health, safety, or welfare on or off the development site, or increase public safety risks on or off the subject property. The proposed building site provides for a vegetated buffer between the garage and the parcel to the east. The height of the structure would not impact shoreline views. The conditions incorporate the comments submitted by the Nisqually and Squaxin Island Tribes with respect to cultural resources and Thurston County Environmental Health with respect to decommissioning unused wells. No other issues relating to public health,

safety, or welfare were identified during the application review process. Criterion C of TCC 24.45.030 is satisfied. *Findings 6, 12, 14, and 16.*

4. The proposal is the minimum encroachment necessary to prevent denial of all reasonable use of the property. Because the entire upland portion of the parcel is covered by wetland or wetland buffer, it is impossible to construct a garage without encroaching into the buffer. The proposal represents the minimum encroachment because it utilizes an existing disturbed area and because the Applicant reduced the size of the proposed structure in order to minimize impacts. Criterion D of TCC 24.45.030 is satisfied. *Findings 7, 8, and 9.*
5. As conditioned, the proposal would result in minimal alteration of the critical area. No direct impacts to the wetland are proposed. Erosion control measures would be installed prior to construction. The proposed mitigation plan includes 1,500 square feet of native plantings within the reduced buffer between the structure and the wetland edge. Criterion E of TCC 24.45.030 is satisfied. *Findings 9 and 10.*
6. As conditioned to require implementation of the buffer mitigation plan, the proposal ensures no net loss of critical area functions and values. Criterion F of TCC 24.45.030 is satisfied. *Finding 10.*
7. The use would not result in unmitigated adverse impacts to species of concern. Criterion G of TCC 24.45.030 is satisfied. *Finding 11.*
8. This decision is not based on the location and scale of existing development. Criterion H is therefore satisfied. As described in Conclusions 2 and 4, the decision to approve the RUE is based on the Applicant's inability to make reasonable use of the parcel without intrusion into the wetland buffer. The entire parcel is covered by wetland, wetland buffer, or lake. *Findings 3, 7, and 8.*

DECISION

Based on the preceding findings and conclusions, the request for a reasonable use exception to construct a 1,200 square foot garage within a wetland buffer at 2125 113th Avenue SW, as depicted in the revised site plan submitted February 15, 2023, is **GRANTED** subject to the following conditions:

1. In the event an existing well that is not in use is discovered, it must be properly decommissioned by a licensed well driller per Washington State Department of Ecology standards.
2. Construction shall be in compliance with and follow the recommendations and maintenance plan as proposed in the enhancement plan dated January 17, 2023 (Exhibit 1.F).
3. Either proposed mitigation plantings will be installed prior to final occupancy approval on future building permits or a bond or irrevocable assignment of savings in the amount


of 125% of the cost of mitigation plantings shall be submitted and shall be retained by Thurston County until the plantings are installed (TCC 24.70).

4. Prior to building permit issuance, erosion control shall be installed and inspected by Thurston County Community Planning and Economic Development staff. Erosion and stormwater controls, i.e., silt fencing and / or straw wattles must be installed landward of the reduced buffer such that uncontrolled storm water cannot reach the adjacent wetlands.
5. Erosion and stormwater control best practices meeting Thurston County standards Chapter 15.05 shall be employed during all phases of the project. Proper erosion and sediment control practices shall be used on the construction site and adjacent areas to prevent upland sediments from entering the shoreline environment. All areas disturbed or newly created by construction activities shall be seeded, vegetated, or given some other equivalent type of protection against erosion.
6. Best management practices (BMPs) such as completing work during the dry season and maintaining proper working order of equipment, as well as temporary erosion and sediment control (TESC) methods including silt fencing and/or coir logs shall be implemented. All disturbed areas will be promptly backfilled and reseeded following installation, and TESC measures will remain in place until site conditions are restored.
7. Prior to building permit issuance, erosion control shall be placed within four feet of the proposed structure and inspected by County Staff to confirm the location. This is to depict critical area boundary during construction and shall remain in place until construction activities cease. Staff confirmation can be done by photos submitted by the Applicant. This area needs to be returned to a vegetated state after construction is complete.
8. Prior to final occupancy approval, permanent critical area signs shall be installed along the boundary of the wetland buffer per TCC 24.60 and be inspected by Thurston County Community Planning and Economic Development Staff for review and approval. Photos can be submitted in lieu of a site visit by Staff.
9. The Applicant shall remove all construction related debris to an approved site (landfill or recycling center) outside of critical areas and their buffers.
10. The Applicant must comply with all requirements of state and/or federal law to avoid disturbance and alteration of artifacts, remains, or other cultural resources on site during development. In the event of inadvertent disturbance or alteration, the Applicant must immediately stop work and contact the Nisqually Indian and Squaxin Island Tribes and the State Department of Archaeology and Historic Preservation.
11. All development on the site shall be in substantial compliance with the revised site plan submitted February 15, 2023 (Exhibit 2a) as conditioned by this decision. Any alteration to the proposal will require approval of a new or amended Reasonable Use Exception.

The Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

12. Prior to or in conjunction with the issuance of any building permit, all applicable regulations and requirements of the Thurston County Public Health and Social Services Department, Public Works Department, Fire Marshal and Thurston County Community Planning and Economic Development Department shall be met.

DECIDED February 27, 2023.



Sharon A. Rice
Thurston County Hearing Examiner

NOTE: Pursuant to TCC 22.62.020(C)10, affected property owners may request a change in valuation for property tax purposes.

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Community Planning & Economic Development Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$821.00** for a Request for Reconsideration or **\$1,112.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center at 3000 Pacific Ave SE, Suite 100 no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. _____ Appeal Sequence No.: _____

Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

Check here for: **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
 on this _____ day of _____, 20___, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on _____, 20___, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED

SIGNATURE OF APPELLANT

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of \$821.00 for Reconsideration or \$1,112.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Community Planning & Economic Development Department this _____ day of _____, 20___.