

**OFFICE OF THE HEARING EXAMINER**

**THURSTON COUNTY**

**REPORT AND DECISION**

**PROJECT NO.:** 2016103965, Biehl Garage

**SEQUENCE NO.:** 16 115702 XM, Shoreline Variance

**TAX PARCEL NO.:** 45880001500

**LOCATION ADDRESS:** 17110 Lake Point Drive S.E., Yelm, WA

**APPLICANT:** Bob Howard, Jr. Construction  
Attn: Bob Howard, Jr.  
P.O. Box 1260  
Yelm, WA 98597

**OWNER:** James Biehl  
17110 Lake Point Drive S.E.  
Yelm, WA 98597

**PLANNER:** Robert Smith, Senior Planner

**SUMMARY OF REQUEST:**

Shoreline variance to construct a 728 square foot garage within 60 feet of the ordinary high water mark of the canal associated with Lawrence Lake. The property is within the Conservancy Shoreline designation of the Shoreline Master Program for the Thurston Region. The site is located at 17110 Lake Point Drive S.E., Yelm.

**SUMMARY OF DECISION:** Request granted, subject to conditions.

**DATE OF DECISION:** June 15, 2017

**PUBLIC HEARING:**

After reviewing the Resource Stewardship Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on June 5, 2017, at 10:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1" - Resource Stewardship Department Staff Report**
- Att. A - Notice of Public Hearing**
- Att. B - Zoning/Site Map**
- Att. C - Master Application**
- Att. D - JARPA Application**
- Att. E - Impervious Surface Calculations**
- Att. F - Site Plan**
- Att. G - Complete Application Letter**
- Att. H - Notice of Application**
- Att. I - Memo from County Public Health & Social Services Department**
- Att. J - Administrative Variance Approval Letter**
- Att. K - Memorandum from County Resource Stewardship Department**
- Att. L - Letter from Nisqually Indian Tribe**
- Att. M - Letters from Washington State Department of Ecology**
- Att. N - Photograph of Public Notice Sign**
- Att. O - Site Plan**

**The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.**

ROBERT SMITH appeared, presented the Resource Stewardship Land Use and Environmental Review Staff Report, and introduced Exhibit N, photographs of the Public Notice sign and Exhibit O, a larger version of the site plan. The applicant's lot is part of a plat recorded in 1968, prior to the effective date of the earliest shoreline regulations. It is now located in a residential LAMIRD. Lots now require a minimum size of 40,000 square feet and the shoreline setback is a minimum of 100 feet. The applicant's parcel contains 9,465 square feet and is therefore a legal, nonconforming lot. The applicant has improved the parcel with a small house with no garage. Surrounding plat lots have either attached or detached garages, and the County has processed variances for several lots. He then reviewed the State shoreline variance criteria and noted that no public access to the water exists in the area and thus will not be hindered. The applicant also applied for and received an administrative reduction of the front yard setback requirement to ten feet in order to reduce the extent of the shoreline variance. Staff finds that the request complies with all variance criteria, and all departments have reviewed the variance and recommend approval.

DAWN PEEBLES, Thurston County Public Health and Social Services Department, appeared and testified that she has reviewed the project and recommends approval. However, the septic system is nonconforming and the applicant will need to bring the system into compliance.

BOB HOWARD, the applicant's agent, appeared and testified that he agrees with all of Mr. Smith's findings of fact. He also agrees with Ms. Peebles and will address the onsite septic system. They will comply with all conditions of approval.

JAMES BIEHL, applicant, appeared and testified that he has been trying to obtain approval of the garage for two years. He wants to use the building to store his boats and vehicles out of the weather.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 10:15 a.m.

**NOTE:** A complete record of this hearing is available in the office of the Thurston County Resource Stewardship Department.

## **FINDINGS, CONCLUSIONS, AND DECISION:**

### **FINDINGS:**

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. A 728 square-foot, accessory garage is exempt from review pursuant to the State Environmental Policy Act (SEPA) in accordance with TCC 17.09.055.
3. Written notice of the public hearing was sent to all property owners within 500 feet of the site and notice was published in The Olympian on May 23, 2017, at least ten (10) days prior to the hearing. The site was posted May 26, 2017.
4. The applicant has a possessory ownership interest in a rectangular, 9,466 square foot parcel of property that extends from the north side of the private Lake Point Drive S.E. to the south side of a canal associated with Lawrence Lake in unincorporated Thurston County. The parcel is Lot 15 of the Edwards Lake Lawrence Division 4 Subdivision recorded in 1968. Improvements on the parcel include a two story, single-family residential dwelling and a wooden staircase leading from the house to the canal. The single-family dwelling includes a concrete patio on the north and part of the east sides of the house and a wooden deck on the south side of the house facing Lake Point Drive. The onsite septic tank and drainfield are located between the wooden deck and the travel portion of Lake Point Drive, and almost completely within the private road easement.

5. The structure does not include an attached garage, and the applicant desires to construct a new, 26 foot wide, 28 foot long (728 square foot), two car garage with storage loft. The site plan shows the garage located west of the single-family dwelling, 60 feet from the ordinary high watermark of the canal, and ten feet from the private road easement. The garage would be separated from the travel portion of Lake Point Drive by 40 linear feet. The applicant previously applied for and received an administrative variance to the front yard setback requirement to allow the garage ten feet from the road easement. Such allows location of the garage as far as possible from the canal.
6. The applicant's parcel measures 74 linear feet at its south property line that is located within the Lake Point Drive easement. The parcel width reduces to 65 feet at the ordinary high watermark of the canal. The lot varies in depth between 125 feet along the west property line and 152 feet along the east property line. The required, 100 foot wide, shoreline setback extends from the ordinary high watermark of the canal into the private road easement on the west portion of the parcel. Thus, the applicant cannot construct the garage without a shoreline variance.
7. The Shoreline Master Program for the Thurston Region (SMPTR) designates the applicant's parcel as Conservancy Shoreline Environment. The Conservancy Environment authorizes single-family residential homes and accessory structures. Accessory structures must meet the same standards as a primary residential structure. The Conservancy Environment limits structures to a maximum height of 35 feet (Part C5), limits impervious surface coverage to a maximum of 30 percent (Part D4b), and requires a structural setback of 100 linear feet (Part D4c). The proposed garage will not exceed 35 feet, and following garage construction, impervious surfaces will cover approximately 24 percent of the lot. Thus, the proposed garage satisfies all SMPTR criteria with the exception of the 100 foot wide setback. The applicant has therefore requested a shoreline variance to allow construction of the garage 60 feet from the ordinary high watermark.
8. Prior to obtaining a shoreline variance the applicant must show that the request satisfies the criteria set forth in Section 173-27-170 of the Washington Administrative Code (WAC). Findings on each criteria are hereby made as follows:
  - (1) Denial of the variance would thwart policies of the State Shoreline Management Act (SMA) as set forth in RCW 90.58.020. Furthermore, the applicant has demonstrated extraordinary circumstances, and has shown that the public interest will suffer no substantial detrimental effect. Policies of the SMA encourage public use and enjoyment of shorelines, while at the same time, require protection of the public's interest in the shorelines. Policies also allow residential development. In the present case the applicant proposes a normal, accessory use to a single-family residential dwelling that many nearby lots in the Conservancy Environment already

enjoy. Denial of the variance would prohibit the applicant from sheltering and protecting his valuable personal property.

- (2)(a) Strict application of the bulk, dimensional, and performance standard set forth in the SMPTR precludes a reasonable use of the property. The bulk and dimensional requirement of a 100 foot wide setback eliminates any possibility of an accessory garage on this small, nonconforming lot created years before adoption of the SMA and the initial SMPTR. Staff has determined that nearby lots in the Conservancy Environment contain homes with garages, and that a garage is a normal, reasonable, accessory use on a residential lot.
- (2)(b) The hardship that substantiates the variance is specifically related to the property and is the result of unique conditions such as lot size and the application of the SMPTR and not from deed restrictions or the applicant's own actions. The parcel consists of a residential lot legally created prior to adoption of the minimum lot size requirement of 40,000 square feet. As a result of its size, shape, and the fact that 30 feet of its depth is within the Lake Point Drive easement, the applicant cannot construct a garage without the proposed variance. The applicant did not create the lot.
- (2)(c) Design of the project is compatible with other authorized uses in the area and will cause no adverse impacts to the shoreline environment. The lot is part of a large, formal subdivision, and lot owners have constructed homes and garages on many subdivision lots. The applicant's lot would appear no different than others in the area.
- (2)(d) The variance will not constitute a grant of special privilege not enjoyed by other parcels in the area. As previously found most nearby lots are improved with single-family residential dwellings to include garages.
- (2)(e) The variance requested is the minimum necessary to afford relief. The applicant proposes a two car garage with storage loft, a reasonable use for his lot. The applicant previously obtained an administrative variance to allow the garage closer to the Lake Point Drive easement and thus reduced the extent of the shoreline variance.
- (2)(f) Construction of the garage will not cause the public interest to suffer a substantial detrimental effect as many lots in the area already have garages.
- (4) The final criteria requires consideration of the cumulative impacts for additional requests for like actions in the area. In the present case many lots are already improved with single-family dwellings and garages. Even if similar variances are granted in the future to other property owners with similar hardships, the cumulative impacts would not cause the area to

become inconsistent with either the Conservancy Environment or policies of RCW 90.58.020.

9. Prior to obtaining a shoreline variance the applicant must also show that the request satisfies all criteria set forth within the SMPTR. Section Two, Chapter V sets forth said criteria, and findings on each are hereby made as follows:
  - A. The lot presently provides no access for the public to the shoreline, and thus the garage will not interfere with public access thereto. Furthermore, the public in general will have no access to the garage.
  - B. Conditions of approval require compliance with storm drainage and erosion control regulations, and therefore the garage will not impact water quality or aquatic habitat.
  - C. Criteria C, D, E, F, and G are not applicable as they address industrial uses, publicly owned shorelines, governmental units, and degradation of shorelines. The project meets Criteria H as the Thurston County Public Health and Social Services Department has evaluated the project for protection of public health and will address the existing onsite septic system as part of this project.

#### **CONCLUSIONS:**

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
2. The applicant has shown that the request for a shoreline variance satisfies all criteria set forth in the WAC and SMPTR and therefore should be approved subject to the following conditions:
  1. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, The Washington State Department of Ecology must be notified (Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300).
  2. Erosion control measures must be in place prior to any clearing, grading, or construction. These control Measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into the lake. Sand, silt, clay particles, and soil will damage aquatic habitat and are considered to be pollutants.

3. The applicant shall remove construction debris to an approved site (landfill or recycling center) outside of the shoreline area.
4. The maximum impervious surface on the parcel, including the garage, shall not exceed 30%.
5. A building permit is required for the garage.
6. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at:  
<http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>.  
It is the applicant's responsibility to obtain this permit if required.
7. The Applicant shall stop work and contact the proper authorities, including Nisqually Tribe Preservation Officer, Jackie Wall (360) 456-5221, if during excavation there are discoveries of archaeological artifacts or human burials.
8. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.
9. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

**DECISION:**

The request for a shoreline variance to allow construction of a 728 square foot garage with storage loft 60 feet from the ordinary high watermark of the canal associated with Lawrence Lake at a site located at 17110 Lake Point Drive S.E., Yelm, is hereby granted subject to the conditions contained in the conclusions above.

**ORDERED** this 15th day of June, 2017.

  
\_\_\_\_\_  
**STEPHEN K. CAUSSEAU, JR.**  
Hearing Examiner

**TRANSMITTED** this \_\_\_\_\_ day of June, 2017, to the following:

**APPLICANT:** Bob Howard, Jr. Construction  
Attn: Bob Howard, Jr.  
P.O. Box 1260  
Yelm, WA 98597

**OWNER:** James Biehl  
17110 Lake Point Drive S.E.  
Yelm, WA 98597

**OTHERS:**

THURSTON COUNTY



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

<b>NOTE:</b> 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).
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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 Resource Stewardship 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 **\$669.00** for a Request for Reconsideration or **\$890.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex 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 ☐ \$669.00 for Reconsideration or \$890.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_

Filed with the Resource Stewardship Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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