

BEFORE THE CITY OF LAKEWOOD HEARING EXAMINER

IN RE:

HEARING NO. 15151

ROSS/DECOSTA RESIDENTIAL  
VARIANCE,

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
DECISION

**APPLICANTS:** Marc Ross and Virginia Decosta

**PLANNER:** Jerrold Hopkins

**APPLICANTS' REQUEST:**

Applicants seek a variance to construct an Accessory Dwelling Unit (ADU) on top of an existing garage. The existing garage is located 5 feet from the property line. While the garage is legally nonconforming, the proposed ADU would be in violation of the City's 8-foot setback unless a variance is granted, reducing the required setback from 8 feet to 5 feet consistent with the existing garage.

City Staff recommends approval of the requested variance subject to several conditions. The Applicants do not object to the requested conditions. The Application has had some opposition from the adjoining landowner.

**SUMMARY OF DECISION:**

The requested variance is **approved** subject to the conditions recommended by City Staff.

**PUBLIC HEARING**

The public hearing on the application commenced at 1:30 p.m. on Tuesday, April 22, 2205. The hearing occurred remotely utilizing the Zoom platform with City Staff serving as the host. The City appeared through Jerrold Hopkins, Associate Planner. The Applicant, Marc Ross, was present. One member of the public, Marsha Zuniga, was also present and testified briefly. All testimony was taken under oath and a verbatim recording of the proceedings was maintained. Evidence considered at the time of the hearing was the Staff Report prepared by Mr. Hopkins along with the following other exhibits:

*Findings of Fact,  
Conclusions of Law  
and Decision - 1*

**CITY OF LAKEWOOD HEARING EXAMINER**  
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**CHEHALIS, WASHINGTON 98532**  
**Phone: 360-748-3386/Fax: 748-3387**

1 Exhibit A: Staff Report prepared by the City of Lakewood  
2 Exhibit B: Land Use Application including Narrative Prepared by Marc Ross  
3 Exhibit C: Site Plan prepared by Jeff Bones Enterprises  
4 Exhibit D: Plan Set prepared by Jeff Bones Enterprises  
5 Exhibit E: Notice of Application Dated January 17, 2025  
6 Exhibit F: Public Comments dated January 23, 2025 and February 15, 2025  
7 Exhibit G: Applicant Rebuttal dated February 14, 2025  
8 Exhibit H: Notice of Public Hearing dated April 14, 2025  
9 Exhibit I: Public Comment received during Notice of Public Hearing Dated  
10 April 14, 2025

11 During the hearing Mr. Hopkins presented a PowerPoint presentation, admitted as  
12 Exhibit J.

13 **City's Testimony.** The hearing began with the testimony of Jerrold Hopkins, Associate  
14 Planner and author of the City's Staff Report. Mr. Hopkins' testimony was fairly brief and relied  
15 heavily on his earlier Staff Report as well as the PowerPoint presentation. The Applicants, Marc  
16 Ross and Virginia Decosta, own property at 7124 Interlaaken Drive Southwest. They purchased  
17 the property in 2023. It consists of a 39,000 square foot lot (0.89 acres) that has an existing  
18 residence, dock and detached garage. The detached garage is legally nonconforming as it was  
19 constructed in 1988 in accordance with the Development Regulations then in effect. Earlier  
20 regulations allowed the garage to be located within 5 feet of the property line. Current setback  
21 requirements impose an 8-foot side yard setback, making the garage legally nonconforming.

22 The Applicants seek to construct an Accessory Dwelling Unit (ADU) on top of the  
23 detached garage. The ADU needs to be constructed in a manner consistent with the foundation  
24 to the garage. Thus, if it is constructed on top of the garage, it, too, will be within 5 feet of the  
25 property line, putting the ADU in violation of the 8-foot setback requirement unless a variance is  
granted.

Mr. Hopkins explained that the site is located in the Residential 1 (R1) zoning  
designation. All surrounding properties share the same zoning designation and consist of single-

1 family residences to the north, east and south with Steilacoom Lake located immediately west  
2 and serving as the site's west boundary. The property falls within the City's shoreline jurisdiction  
3 but the proposed ADU is located outside of the 200-foot shoreline area and is therefore exempt  
4 from shoreline permits. ADU's are an allowed use in the R1 zoning designation subject to  
5 compliance with all other Development Regulations.

6 Again, the Applicants seek to construct an ADU directly above the existing detached  
7 garage, utilizing the garage's footprint. The Applicants have advised the City that the ADU  
8 would be used to provide housing to elderly family members. There is no other location on the  
9 site that would serve as a reasonable alternative location for the ADU. The existing garage  
10 provides a simple, convenient and inexpensive location for the ADU, while any attempt to place  
11 it elsewhere on the site would be prohibitively expensive.

12 The existing garage is located a few feet from the north boundary of the adjoining  
13 neighbors, Eugene and Marsha Zuniga. The Zuniga's have an existing, three-story detached  
14 garage located within roughly one foot of the common boundary line, placing their garage within  
15 a few feet of the Applicants garage and proposed ADU. Recognizing that the proposed ADU  
16 could impact the neighbor's privacy, the Applicants propose that the ADU will have no doors or  
17 windows on the side facing their neighbor's residence (the south side).

18 Mr. Hopkins then analyzed the project in relation to the City's Comprehensive Plan.  
19 Staff believes that the project is consistent with the Comprehensive Plan, especially Policy HO-  
20 4.4, which supports ADU's to provide affordable housing options, and Goal HO-5.10 which  
21 encourages ADU's as an option for supporting living and aging in place.

22 Mr. Hopkins noted that, had the existing garage been located one foot further away from  
23 the property line (that is, 6 feet from the line instead of 5 feet) the needed variance would have  
24 been within 25% of the required setback and thus eligible for administrative review of the  
25

1 requested setback rather than by the Hearing Examiner's review. In that instance, the City Staff  
2 would have approved the requested variance for the same reasons that it recommends the  
3 Hearing Examiner's approval of the current application.

4 Mr. Hopkins concluded his testimony by noting that the adjoining neighbors, Mr. and  
5 Mrs. Zuniga, have responded both for and against the application: (1) the Zuniga's initial  
6 response dated January 18, 2025 (Exhibit F) expressed opposition on the basis that the neighbors  
7 believed the proposed ADU would be unsightly and would be too close to their existing garage;  
8 (2) on February 17, 2025, the neighbor's rescinded their earlier opposition and expressed support  
9 for the application. These comments were made after the Zuniga's learned that the ADU would  
10 be designed without doors or windows on its south side, and (3) on April 14, 2025, the Zuniga's  
11 again responded to the application in opposition (Exhibit I). This renewed opposition appears to  
12 be in response to threatened litigation by the Applicants over the parties' common boundary line  
13 and again expressed concern that the proposed ADU was simply too close to the Zuniga's  
14 existing garage.

15 Mr. Hopkins concluded his testimony by stating that City Staff recommends approval of  
16 the requested variance. Staff finds that the circumstances are unusual and not the result of any  
17 action taken by the Applicants; that the proposed ADU otherwise satisfies all of the City's  
18 Development Regulations; and that the proposed use is consistent with the City's Comprehensive  
19 Plan. City Staff therefore believes that all requirements for a variance as set forth in LMC  
20 18A.30.880.1-6 have been met.

21 **Applicants' Testimony.** At the conclusion of the City's presentation the Applicant was  
22 provided the opportunity to testify. Mr. Ross appeared on his own behalf but announced that he  
23 had nothing to add beyond the information already found in his application.



1           4.       The project site has a zoning designation of Residential 1 (R1). Surrounding  
2 properties to the north, east and south have the same zoning designation and contain single-  
3 family residences. To the west is Steilacoom Lake.

4           5.       The existing detached garage is believed to be constructed in 1988 and predates  
5 current Development Regulations. Importantly, the current 8-foot interior lot setback did not  
6 exist at the time the garage was constructed. The garage is therefore legally nonconforming.

7           6.       Other site improvements include an existing residence and a dock on Steilacoom  
8 Lake. The lot is long and narrow, with a moderate slope from the east to Steilacoom Lake on its  
9 west boundary.

10          7.       Existing site improvements, together with the site's narrow width and slope,  
11 would make it difficult to construct an ADU at any location on the site other than above the  
12 existing garage.

13          8.       The property immediately south of the project site belongs to Eugene and Marsha  
14 Zuniga. Its site improvements include a house and, like the subject property, a detached garage.  
15 The detached garage is three stories in height and was constructed within one foot of the  
16 common boundary with the subject property. Similar to the Applicants' detached garage, the  
17 Zuniga's detached garage is legally nonconforming.

18          9.       Site maps of the project site and the adjoining Zuniga property can be found in  
19 Exhibit D. The Applicants' detached garage is located east (landward) of the Applicants'  
20 residence and due north of the Zuniga's detached garage. The Zuniga's garage partially screens  
21 the Applicants' garage from the Zuniga residence. It is further screened from the Zuniga's  
22 residence by a tall row of shrubs. A site photo (Exhibit 7) within Exhibit G demonstrates that the  
23 Applicants' garage is currently shielded from the neighbor's view by the shrubs and their own  
24 garage.

1           10.     The Applicants' propose to construct an ADU having the same dimensions as the  
2 garage and to be located directly above it. The new floor would contain 986 square feet along  
3 with a 432 square foot deck to the west. The building's new roof would have a height of 22 feet.  
4 The building would provide a garage for ADU parking, with one additional parking space  
5 proposed onsite.

6           11.     City Staff confirms that the project, as conditioned, complies with all  
7 development standards including those for minimum and maximum density, minimum lot size,  
8 minimum lot width and depth, maximum building height, maximum impervious surface  
9 coverage, and maximum lot coverage, all as set forth on page 4 of the Staff Report.

10          12.     If approved, the building width ADU will be in compliance with all development  
11 regulations except for the 8-foot interior lot line setback from which the Applicants seek a  
12 variance.

13          13.     To minimize impacts to the adjoining neighbor, the Applicants have designed the  
14 project without door or windows on its south elevation, thereby preventing the ADU occupants  
15 from having any view of the neighbor's residence.

16          14.     The Applicants acquired the property in 2023. All current site improvements  
17 existed at the time of the Applicant's purchase and the Applicants are not responsible for any of  
18 the site conditions.

19           Findings Relating to Public Notice.

20          15.     Notice of Application was issued on January 17, 2025, with a 15-day comment  
21 period. Two comments were received, both made by the Applicants neighbors, Mr. and Mrs.  
22 Zuniga. The first comment expressed opposition to the project due to a belief that it might lessen  
23 property values, intrude on views and light and reduce privacy. The second public comment  
24 from the Zuniga's rescinded the first comment and expressed support for the project in  
25

1 recognition of the Applicants' willingness to not have any windows or doors on the side of the  
2 ADU closest to the neighbors.

3 16. Notice of Public Hearing was issued on April 4, 2025, in accordance with LMC  
4 18A.20.340. One additional public comment was received, again from Mr. and Mrs. Zuniga, and  
5 expressing opposition to the project in light of litigation that had recently commenced between  
6 the parties over their common boundary.

7 17. No other public comments have been received. Ms. Zuniga appeared at the public  
8 hearing but did not provide any additional testimony.

9 18. City Staff has determined that the application is categorically exempt from the  
10 provisions of SEPA. WAC 197-11-800(6)(e).

11 Miscellaneous Findings.

12 19. City Staff deemed the application complete on December 20, 2024. As a result,  
13 the application vests to the development standards in effect at that time rather than new  
14 development standard which went into effect on January 1, 2025.

15 20. Accessory Dwelling Units are an allowed use in the R1 zone. ADU's do not  
16 count toward parcel density. LMC 18A.40.110.B.1.a.

17 21. ADU's shall be limited tot 1,000 square feet of livable space. As noted earlier, the  
18 proposed ADU will contain 996 square feet and therefore complies with this requirement. LMC  
19 18A.40.110.B.1.d.

20 22. Detached Accessory Dwelling units are limited to a height of 24 feet. LMC  
21 18A.40.110.B.1.k. As noted earlier, the proposed height of the new building is 22 feet and  
22 therefore complies with the height limitation.

23 23. An ADU shall have a minimum one off-street parking space per LMC  
24 18A.40.110.B.h. As noted previously, the project proposes a garage in the building together with  
25 one additional parking space on the parcel.

1           24.     The property is located adjacent to Steilacoom Lake. The Steilacoom Lake  
2 shoreline is regulated by the City's Shoreline Master Program (SMP) but the proposed work is  
3 located outside of the 200-foot shoreline jurisdiction. It is also outside of any other known  
4 critical area.

5           25.     The site has no known geological hazards.

6           26.     Mapping resources provided by DNR and WDFW do not identify any existing  
7 stream typology, priority species, and biodiversity or riparian corridor within or immediately  
8 adjacent to the proposed site.

9           27.     The project site is within a Aquifer Recharge Area but will be connected to sewer,  
10 with no onsite septic system planned.

11          28.     City Staff has determined that the project has adequate road access; fire safety;  
12 solid waste management; and water and sewer utilities.

13           Findings Relating to Compliance with LMC 18A.30.880 - Variances.

14          29.     Variances are regulated by LMC 18A.30.880.1-6. The Applicants has the burden  
15 of proving that each of these elements has been satisfied.

16          30.     The Applicant must demonstrate that the proposed variance will not amount to a  
17 rezone or constitute a change in the district boundaries shown on the official zoning map. City  
18 Staff finds that project does not require a rezone and that the proposal is not seeking to change  
19 the district boundaries. The requirements of LMC 18A.30.880.1 has been satisfied.

20          31.     The Applicant must demonstrate that because of special circumstances relating  
21 to the size, shape, topography, location or surroundings of the subject property, the variance is  
22 necessary to provide it with use, rights and privileges permitted to other properties in the vicinity  
23 and in the zone in which the subject property is located.

24          32.     Staff notes that the proposed ADU is planned to be constructed on top of a legally  
25 nonconforming garage currently located 5 feet from the southern property line, or 3 feet less than

1 the required 8-foot setback required by LMC 18A.60.030. Staff finds that denial of the requested  
2 variance would prevent the use of this existing, structurally sound foundation and instead require  
3 costly reconstruction of the garage and its foundation. This would result in significant and  
4 unnecessary financial hardship and render the desired ADU financially unfeasible. Staff further  
5 notes that the ADU is intended to provide long term housing for the Applicants aging family  
6 members and serves as an alternative affordable housing option supporting independent living  
7 and multi-generational care.

8 33. The Hearing Examiner concurs and finds that the requested variance is supported  
9 by special circumstances relating to the size, shape, topography, location or surroundings of the  
10 subject property and is necessary to provide the Applicants with use, rights and privileges  
11 permitted to other properties in the area. The Hearing Examiner therefore finds that the project  
12 satisfies the requirements of LMC 18A.30.880.2.

13 34. The Applicant must demonstrate that the special conditions and circumstances do  
14 not result from the actions of the Applicant.

15 35. Staff finds that the requested variance is not the result of the Applicants prior  
16 actions. The existing garage was constructed long before the Applicants' acquired possession  
17 and is legally nonconforming. The Applicants are not responsible for any of the current site  
18 conditions.

19 36. The Hearing Examiner concurs and finds that the special conditions and  
20 circumstances are not resulting from the actions of the Applicant.

21 37 The Applicant must demonstrate that granting the variance will not constitute a  
22 grant of special privilege inconsistent with the limitation upon uses of other properties in the  
23 vicinity and zone in which the property is located.

1           38.     Staff finds that the requested variance does not confer any special privilege on the  
2 Applicants. Instead, the variance will allow the Applicants to construct an ADU in a manner  
3 consistent with what neighbors are allowed and also in a manner consistent with the City's  
4 Development Regulations and Comprehensive Plan. Further, the revised garage building will be  
5 similar in height and size to the neighbor's existing, nonconforming garage located a few feet  
6 away, thus providing the Applicants with a use similar to that currently afforded the adjoining  
7 landowner.

8           39.     The Hearing Examiner concurs and finds that the project, as conditioned, does not  
9 constitute a grant of special privilege inconsistent with the limitations upon uses of other  
10 properties in the vicinity.

11           40.     The Applicant must demonstrate that granting the variance will not be materially  
12 detrimental to the public welfare or injurious to the property or improvements in the vicinity in  
13 the zone in which the property is situated

14           41.     Staff finds that the variance, as conditioned, will not be materially detrimental to  
15 the adjoining neighbors or the community. The proposed ADU will be constructed on top off the  
16 legally nonconforming structure and will comply with all other applicable building, fire and  
17 safety codes. The building will also be constructed without windows or doors on its south facing  
18 well, which will also be constructed as a fire rated wall. An existing 8-foot tall Laurel hedge will  
19 be maintained as a visual buffer, while the neighbor's existing three story garage provides further  
20 screening and minimizes any potential impacts.

21           42.     The Hearing Examiner concurs with these Findings and finds that granting the  
22 variance will not be materially detrimental to the public welfare or injurious to the property or  
23 improvements in the vicinity.

24           43.     The Applicant must demonstrate that the variance is the minimum variance  
25 necessary to provide the rights and privileges described above.

*Findings of Fact,  
Conclusions of Law  
and Decision - 11*

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1           44.     Staff finds that requiring the Applicants to rebuild the existing garage would  
2 render the proposed ADU financially unfeasible. This result runs counter to the intent of the  
3 City's Comprehensive Plan which supports ADU's in order to provide affordable housing options  
4 and also encourages ADU's as an option for supportive living and aging in place. Goals HO-4.4  
5 and HO-5.10. Staff finds that the Applicants seeks the minimum necessary to achieve the goal of  
6 constructing an ADU atop the existing garage's footprint.

7           45.     The Hearing Examiner concurs with Staff and finds that the required variance is  
8 the minimum variance necessary.

9           46.     City Staff recommends that the Variance be approved subject to the conditions et  
10 forth on page 11 of the Staff Report. The Applicants do not object to these conditions.

11           Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

12                               **CONCLUSIONS OF LAW**

13           1.     The Hearing Examiner has jurisdiction over the parties and the subject matter.

14           2.     Any Conclusions of Law contained in the foregoing Public Hearing Section or  
15 Findings of Fact Section are hereby incorporated herein by reference and adopted by the Hearing  
16 Examiner as his Conclusions of Law.

17           3.     All public notice requirements for this application have been met.

18           4.     The Applicant has the burden of proving that all requirements of LMC  
19 18A.30.880.1-6 have been satisfied.

20           5.     The Applicants have met their burden of proving that all requirements for their  
21 requested variance have been met and that all requirements of LMC 18A.30.880 have been  
22 satisfied.

23           6.     The requested variance should be approved subject to the conditions set forth in  
24 the Staff Report.  
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*Findings of Fact,  
Conclusions of Law  
and Decision - 12*

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1 Now, therefore, the Applicant's request for a variance is **approved** subject to the  
2 following:

3 **DECISION**

4 **a. Planning/Zoning**

- 5 • LMC 18A.20.090(A) Except for variances related to LMC  
6 18A.60.050 and 18A.60.060(F), unless exercised, a variance shall  
7 expire one (1) year from the date a final decision is issued. If timely  
8 exercised, a variance shall be valid indefinitely.
- 9 • LMC 18A.20.085- Major modification to an approved permit or  
10 decision, the application shall be reviewed under the vested  
11 rules of the associated development regulations and original  
12 project permit application. Any amendment is subject to all  
13 procedural review requirements and may require additional fees  
14 or supporting information as necessary for consistent and  
15 informed review.
- 16 • LMC 18A.20.105.C- The Planning and Public Works Director  
17 is authorized and empowered to revoke any permit issued by  
18 the Department in error or based on false or misleading  
19 information or upon failure of the permit holder thereof to  
20 comply with any provision or condition of this title.
- 21 • The applicant shall be required to obtain necessary building  
22 permits prior to commencing construction.

23 **b. Development Engineering/Stormwater**

24 Public works will review the building plans for compliance with  
25 LMC Title 12 and adopted codes at the time of building permit  
submittal.

**c. Fire Safety**

The proposal shall require approved and issued building permits  
prior to any construction occurring. The applicant shall abide by  
regulations set forth LMC Title 15, International Fire Code when  
preparing their plan set and associated building permit.

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DATED this 30 day of April, 2025.

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