

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

SUMMARY

Applicant: Gregory Smith
15642 Point Monroe Drive
Bainbridge Island, WA 98110

File No: SVAR15304

Request: Shoreline Variance

Location: Lots 122 and 37, Point Monroe Drive, within Section 35, T26N, R2E, W.M.

Shoreline Environment: Semi-Rural

Summary of Proposal: To reduce the shoreline native vegetation zone on Lot 122 and on Lot 37. The reduction would accommodate construction of a single family residence of lot 122 and the development of a reserve drain field on Lot 37. The depth of the native vegetation zone would be reduced from 25' to 0' on Lot 122 and from 50' to 34' on Lot 37.

Public Hearing: The Hearing Examiner conducted a public hearing after due notice on January 29, 2010.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Gregory Smith seeks a shoreline variance to reduce the shoreline native vegetation zone on two lots in order to build a single family residence and install a reserve drainfield
2. The variance locales are Lots 37 and 122 on the Point Monroe sand spit, north of Fay Bainbridge State Park. The lots are part of the Madison Beach Tracts platted in 1931. Lot 37 is on the west side of Point Monroe Drive and Lot 122 is on the east side. The properties are situated within a portion of Section 35, T26N, R2E, W.M. The shoreline environment designation for the lots is Semi-Rural -- a designation that accommodates low to medium density residential development.
3. The two lots are presently covered with gravel, except for a small shed on Lot 37. There are existing bulkheads on both lots. Lot 121 directly north of Lot 122 has an existing single family residence that is owned by the applicant's mother.
4. The proposed new residence is to be on Lot 122. The request is to reduce the depth of the native vegetation zone from 25 feet to 0 feet on that lot. Part of the reserve drainfield will be installed across the street on Lot 37, where the request is to reduce the depth of the native vegetation zone from 50 feet to 34 feet. For purposes of the vegetation zone requirement, the Lot 37 reserve drainfield is regarded as a structure.
5. The plan is to plant new native vegetation on open portions of the lots in an amount that will more than offset the potential vegetation area lost by placement of the structures.
6. A total of 1250 square feet of native vegetation is required on Lot 122. The applicant plans to provide 1100 square of native vegetation on that lot and to attribute 168 square feet of native vegetation on Lot 37 to Lot 122. The total of native vegetation provided for Lot 122 will thus be 1268 square feet -- 18 square feet more than required. The reserve drainfield will use 135 square feet of the vegetation zone on Lot 37. This will be replaced by adding 196 square feet of vegetation elsewhere on that lot -- meaning 61 square feet more will be provided than is required.
7. Lots 37 and 122 are two of the last lots on the sand spit that have received Health District approval for the construction of a drainfield within 50 feet of the Ordinary High Water Mark (OHWM). There is one other such lot. Current Health District regulations require that drainfields be located a minimum of 100 feet from the OHWM. Because the spit is so narrow, there are no known lots that can meet the current setback requirement. Therefore, the subject lots are among the last on the spit that can be developed with on-site sewage treatment systems.
8. Because of the small size of the lots, the reserve applicant's reserve drainfield is being split between Lots 122 and 37.
9. Surrounding uses along Point Monroe Drive are single-family residences. The proposed new residence on Lot 122 will meet the zoning front and side setbacks, the shoreline structure setback and the 30% shoreline sideyard setbacks.

10. The proposed residence, including garage, has a footprint of 1,305 square feet. This is smaller than the average residential footprint on the sand spit of 1,774 square feet. In meeting the 30% sideyard setback, the project will protect the view corridor and conform to neighborhood character.

11. To meet the old Health District drainfield setback requirement, the residence on Lot 122 must be located toward the shore, leaving only the 18 feet nearest the road to be used in partial fulfillment of drainfield needs. The necessity for placing the house within the native vegetation setback along the shore is the reason for the requested variance.

12. The native vegetation zone is a required buffer covering all uplands above the OHWM to the dimension specified for the particular shoreline environment. Its purpose is to protect and enhance habitat and natural character along the shoreline.

13. Past practice which has been to require the amount of native vegetation that is lost to be compensated for by a substitute area. The substituted area must contain vegetation of comparable or better quality than the area being deleted. The design of the subject project creates a surplus of area in native vegetation beyond that required for the vegetation zones. On the two lots, vegetation will be substituted for areas that currently have no vegetation at all.

14. The applicant initially submitted an application for a Shoreline Variance on September 18, 2008, but more information was required. The initial application was completed on February 5, 2009. A Notice of Application was published on March 13, 2009. During the comment period five written comments were received, all in support. A revised application was completed on September 17, 2009. A revised Notice of Application was published on October 9, 2009. No public comments were received during the second comment period.

15. The application, as amended, is subject to the Point Monroe Comprehensive Plan Amendment of November 2008. The amendment was adopted in expectation of the imminent construction of a sewer system for the Point Monroe area, with treatment to occur at a package plant located at Fay Bainbridge State Park. Subsequent funding problems appear to have delayed this project for five years or longer.

16. Of the 101 legal lots on Point Monroe, 59 have been developed with single family residences. Without sewer service, the unbuilt lots grandfathered for septic system development under the old Health District regulations include the two covered by this application and one other. No other development will be possible until the sewer is built.

17. With the construction of the sewer, only 7 of the 42 vacant lots remaining can be developed with a single family residence without a variance to the native vegetation zone. If variances are given, 27 lots can be developed. In anticipation of the sewer, the Comprehensive Plan Amendment was sensitive to the potential of cumulative impacts from numerous individual variances. Comprehensive Plan Policy AQ 1.3 states: "Reductions in vegetated buffers shall be allowed only in areas where such reductions, if consistently applied, would not result in significant cumulative impacts to aquatic resources and fish and wildlife habitat."

This policy is implemented through the regulatory provisions of BIMC 16.12.380(B.4)

18. The subject proposal does not contribute to the cumulative impact of variances that might be given in the uncertain future when and if a sewer is constructed. As nearly the last of the residences that can be built with a septic system, the home contemplated does not set a precedent for like development in the future.

19. The Staff Report concludes:

"As the subject sites are graveled, free of vegetation and are already developed with a bulkhead, the cumulative impact of development is considered a net gain to the environment as native vegetation will be replacing gravel whereas, without the granting of the variance, these lots will continue to not provide any native vegetation."

20. A Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) was issued on January 1, 2010. The MDNS was not appealed. The conditions of the MDNS are set forth below under "SEPA conditions."

21. The Staff, in analyzing this application has recommended numerous non-SEPA conditions that insure compliance with the policies and regulations of the Shoreline Master Program (SMP). The Staff Report is by this reference incorporated herein, as though fully set forth. The Examiner adopts the Staff's analysis and accepts the recommended conditions. He finds that, with the approval of the variances, the proposal as conditioned will meet the relevant SMP requirements.

22. At the hearing testimony was heard from Heather Beckmann, Associate Planner; Gregory Smith, Applicant; and J.Mack Pearl, Project Architect. There was no public testimony. One letter of comment, received the day before the hearing, addressed concerns that are not relevant to the approval of the subject variance.

23. The SMP criteria for Shoreline variances landward of the OHWM are as follows (BIMC 16.12.380(B.2)):

- a) The strict requirements of the bulk, dimensional, or performance standards set forth in the master program preclude or significantly interfere with a reasonable economic use of the property not otherwise prohibited by the master program.
- b) The hardship described above is specifically related to the property and is the result of unique conditions, such as irregular lot shape, size, natural features, and the application of the master program, and is not, for example, from deed restrictions or the applicant's own actions.
- c) The design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.

d) The shoreline variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the area and will be the minimum necessary to grant relief.

e) The public interest will suffer no substantial detrimental effect.

24. Without the requested variance development on Lot 122 would be limited to a dwelling much smaller than, and out of character with, the surrounding residential development. In context, such constraint would significantly interfere with a reasonable economic use of the property. The need for the variance is dictated by the smallness of the lot and the existence of multiple setbacks. It is not the result of the applicant's actions. The design is compatible in dimension and appearance with adjacent development and will not adversely affect neighbors. Historically many residences on Point Monroe have been constructed in the native vegetation zone. No special privilege will be granted here. The variance is the minimum needed to accommodate the planned development. Shoreline values, if not actually enhanced, will be minimally impacted by this development. Accordingly there will be no detriment to the public interest.

25. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the subject matter of this appeal.
2. The requirements of SEPA have been met.
3. The requested variance, as conditioned, is consistent with the variance criteria of the local Master Program (BIMC 16.12.380(B.2)).
4. The proposal will not result in significant adverse cumulative impacts to the shoreline environment. See BIMC 16.12.380(B.4).
4. Any finding herein which may deemed a conclusion is hereby adopted as such.

CONDITIONS

SEPA Conditions

1. No fertilizers, pesticides, or herbicides shall be used in the native vegetation zone. The use of these products elsewhere on the site is discouraged, but if necessary they shall be used consistent with Integrated Pest Management (IPM) strategies.
2. Upon completion of construction, all cleared areas and areas designated to be replanted on the site plan date stamped August 27, 2009, shall be landscaped with native vegetation within the first planting season. A planting plan shall be reviewed and approved by the City prior to planting. Once planted, removal of any native plants within this zone is

prohibited. Removal of invasive/non-native species may be permitted with a City approved replanting plan indicating the type of vegetation being removed and the type and quantity of replacement native plants being provided.

Non-SEPA Conditions:

3. The applicant shall obtain an approved building permit from the Department of Planning and Community Development prior to construction of the proposed residence and attached garage.

4. The footprint of the residence and garage shall be in substantial conformance with the drawing date-stamped January 13, 2010, and shall not exceed 1,306 square feet.

5. A geotechnical report shall be required for the foundation design and shall be submitted with the building permit application. A geotechnical engineer shall fill out the City's standard geotechnical forms during the building permit process.

6. Prior to issuance of a building permit, an indemnification agreement for all activities and structures on the sites shall be duly executed in a form approved by the City Attorney, pursuant to BIMC 16.20.150(D)(1)(a).

7. Prior to applying for a building permit, a flood elevation certificate is required to be filled out by a licensed surveyor. The site plans submitted for the building permit shall show the top of the lowest floor one (1) foot above base flood level (13'). The design of the residence shall employ measures to minimize flood damage and will be reviewed for such during building permit submittal.

8. An approved BSA from the Health District is required at the time of building permit submittal.

9. Civil and mechanical drawings for sewer and storm water systems are required at the time of building permit submittal. Best Management Practices for erosion control shall be reviewed and approved by the City at the time of building permit issuance.

10. Extreme care shall be taken to prevent petroleum products, chemicals, or other toxic or deleterious materials from entering the water and degrading water quality. If a spill does occur, or if oil sheen or any distressed or dying fish are observed in the project vicinity, work shall cease immediately and Washington Department of Ecology shall be notified of such conditions. Contact Northwest Regional Spill Response Section at (206) 649-7000.

11. Equipment for the transportation, storage, handling, or application of such materials shall be maintained in a safe and leak-proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

12. Prior to building permit issuance, a right-of-way use license agreement approved by the City Council is required for all structures constructed within the platted right-of-way.

13. Prior to submittal of the building permit, an easement for the proposed drainfield is required from the owner of parcel no. 4155-000-036-0201 and a copy of said easement shall be submitted to the City.

14. The residence and garage must meet the shoreline height restriction of 30 feet, as measured from average existing grade to the top of the roof.

15. The native vegetation zone shall be replanted with native shrubs and grasses within the first planting season. A restoration/planting plan shall be submitted and approved by the Department prior to issuance of a building permit. The plantings shall be installed and inspected prior to final inspection of the proposed residence.

16. To mitigate potential off-site glare, lights shall be hooded and shielded so that the light or glare does not extend beyond the property boundary in accordance with the standards listed in BIMC Chapter 15.34.

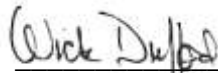
17. A professional archaeologist shall conduct a cultural resources assessment on Lot 37 prior to construction activities. For all lots where work is performed, the applicant is required to stop work and immediately notify the Department of Planning and Community Development and the Washington State Office of Archaeology and Historic Preservation if any historical or archaeological artifacts are uncovered during excavation or construction. This provision shall appear as a note on construction drawings submitted as part of the building permit application.

18. A copy of these Conditions of Approval shall be attached to the building permit application for the residence and the garage.

DECISION

The requested Shoreline Variance (SVAR 15304) is approved, subject to the conditions set forth above.

DONE this 11th day of February, 2010.



Wick Dufford, Hearing Examiner Pro Tempore