

**DECISION OF THE HEARING EXAMINER
CITY OF BAINBRIDGE ISLAND**

In the Matter of the Application of

Robert Wyman

SCUP 14110

For a Shoreline Conditional Use Permit

Introduction

Robert Wyman applied for a Shoreline Conditional Use Permit to construct a staircase and landing system for beach access at 10701 Manitou Park Boulevard.

An open record public hearing was held May 22, 2008. Kelly Tayara, Planner, represented the Department of Planning and Community Development. Robert and Patricia Wyman, applicants, represented themselves.

All section numbers in the decision refer to the Bainbridge Island Municipal Code, unless otherwise indicated.

After due consideration of all the evidence in the record consisting of the testimony at the hearing and the exhibits listed at the end of this decision, the following shall constitute the findings, conclusions, and decision of the Hearing Examiner in this matter.

Findings

1. Robert D. Wyman applied for a Shoreline Conditional Use Permit to construct a staircase to the bulkhead at 10707 Manitou Park Boulevard NE, Bainbridge Island. The prior viewing deck and ramps to the beach were removed along with existing cribbing and creosote-treated timbers on the bank at the time the bulkhead was reconstructed within the past two years.
2. The subject property is a .35-acre site developed with a single-family residence. The site overlooks Manitou Cove and the Puget Sound. A bluff descends approximately 30 ft. from the crest to the backfill area behind the rock bulkhead.
3. The Bainbridge Island Comprehensive Plan designates the property as Open Space Residential, two residences per acre, and it is zoned R-2. The site is in the Semi-Rural shoreline environment pursuant to the Shoreline Master Program ("SMP"). The surrounding uses are all single-family residential. [Exhibit 24]

4. The proposed staircase would run 60 linear feet and be 230 square feet in area. Forms were incorporated in the backfill area behind the bulkhead when the bulkhead was reconstructed to accommodate installation of the stairway, so no cut or fill is expected to be needed. [Exhibit 24, p.4]

5. The bluff is a geologically hazardous critical area. A slope evaluation was conducted by a geotechnical engineer to determine whether the proposed stairs would increase the risk of slope failure. No recent landslide activity was observed however there was some indication of soil creep in the mantle of relatively loose soils covered by sparse vegetation. The exposed soils are subject to erosion. Two madrona trees near the slope crest were removed recently. The area has very dense gravely silty sand soils that can maintain near-vertical orientations for extended periods of time, however there is a risk of future landslide activity. The geotechnical engineer concluded that the proposal “will not introduce a significant increased risk to the steep slope” and made number of recommendations to help reduce risk. [Exhibit 9]

6. The Environmental element of the Comprehensive Plan includes a goal to protect geologically hazardous areas from impacts of use and development. The regulations include GH1.1 that requires that development be designed to prevent hazard; GH1.3 requiring that analysis by geotechnical engineers be conducted when development is proposed; and GH1.6 directing that any alteration to the area not decrease slope stability.

7. The City’s Responsible Official issued a Mitigated Determination of Nonsignificance (MDNS) pursuant to SEPA on April 10. [Exhibit 17] The MDNS contained four conditions requiring the applicant to follow the recommendations of a geotechnical engineer, to follow best management practices to prevent soil erosion, to take extreme care to prevent petroleum products, chemicals or other toxic materials from entering the water, and to stop work and notify the City and State Office of Archaeology and Historic Preservation of any historical or archaeological artifacts uncovered during site work. The MDNS was not appealed.

8. A Notice of Application was mailed and published on January 30, 2008, and republished and posted on March 1, 2008. The Notice of Public Hearing was mailed May 2, 2008, published May 3rd and posted May 7th.

9. Bainbridge Island’s SMP, which is an element of the Comprehensive Plan, contains regulations applicable to this proposal. Section 16.12.050, Archaeological and Historic Resources, requires that work be stopped and permission be obtained to proceed if such resources are discovered. Though no cut or fill is proposed, a condition, No. 4, was included in the MDNS to address this regulation. Section 16.12.060, Clearing and Grading, addresses retention or replacement of vegetation. A condition of the MDNS, No. 1, requires adhering to the recommendation of a geotechnical engineer and a condition is recommended, No. 6, for a vegetation management plan that also limits future clearing, trimming and view maintenance. Section 16.12.070, Environmental Impacts, provides limitations and requirements to protect the environment. MDNS Condition No. 1 and recommended conditions 5, 6, and 8 would address these concerns. Because the stairway construction will be on the area behind the bulkhead and not on the beach and construction access will be from a neighboring property, the beach should not

be affected. However, the conditions would require review of the on-site drainage, prohibit work waterward of the ordinary high water line, and the vegetation management plan mentioned above. Section 16.12.080, Environmentally Sensitive Areas, applies because of the geologically hazardous critical area, largely regulated through Ch. 16.20. The MDNS conditions and others recommended would assure compliance with these provisions. Section 16.12.090, Native Vegetation Zone, requires a native vegetation buffer for 50 ft. in this environment upland of the ordinary high water mark, but allows a staircase. The geotechnical engineer made recommendations and MDNS conditions were imposed and conditions were recommended for a 10-20 ft. wide zone of deep-rooted native vegetation paralleling the slope crest, and especially plantings around the recently cut madrona trees. [Condition 6]

10. The applicant asked that recommended Condition No. 6 be modified to clarify that the vegetation zone may vary in width and contain interruptions such as for pathways. The Planner agreed with the proposed clarification.

11. The Semi-rural Environment of the Shorelines is intended to serve as a transitional area between the urban and rural environments and to protect natural resources such as vegetation on steep banks, indigenous trees, beaches, banks and bluffs while allowing development. The stairway accessory to a single-family residence is consistent with the intent for this environment. Conditions of the MDNS and those recommended will provide protections for the natural resources. [Conditions 1-3, 5, 6, and 8]

12. Section 16.12.260 considers stairways to the beach normal appurtenances to single-family residences but requires conditional use permits if more than 120 sq. ft. in area. Provisions are to be made for erosion control, drainage systems and wildlife habitat. Structures are to blend in to the site, preserve views from the shoreline and of the shoreline and minimize impact on the environment. Conditions imposed pursuant to SEPA and recommended, 1-3 and 5-8, address these concerns.

13. The Director recommended approval of the Shoreline Conditional Use subject to imposition of the conditions of the MDNS and additional conditions discussed above. [Exhibit 24]

14. Section 16.12.380C(1) provides:

Uses classified as conditional uses may be authorized; provided, that the applicant can demonstrate all of the following:

- a. The proposed use will be consistent with the policies of RCW 90.58.020 or its successor and the policies of the master program.
- b. The proposed use will not interfere with the normal public use of the public shorelines.
- c. The proposed use of the site and design of the project will be compatible with other permitted uses within the area.
- d. The proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is located.

- e. The public interest suffers no substantial detrimental effect. (WAC 173-14-140(1) or its successor.)
- f. The proposed use is consistent with the provisions of the zoning ordinance (BIMC Title 18) and the comprehensive plan (Ordinance No. 94-21).

15. Section 16.12.350 provides that:

1. The city of Bainbridge Island hearing examiner is vested with authority to:

a. Approve, approve with conditions, or deny shoreline variance and shoreline conditional use permit applications after a public hearing and after considering the findings and recommendations of the director, which shall be given substantial weight; provided, that decisions may be appealed in accordance with BIMC 16.12.370.B.

16. The policies of the Shoreline Management Act set out in RCW 90.58.020 include protecting against adverse impacts to the land, to its vegetation, and to wildlife and the waters of the state. The list of priority uses includes single-family residences. The proposal, with recommended conditions, would be consistent with these policies.

17. Because the proposed stairway is behind the bulkhead on the property and replaces an existing access system, it would cause no interference with or alteration of the public's access to the water. Recommended Condition No. 7 will assure that any visual impact from the water will be minimal.

18. The proposed stairway, as an accessory to the single-family residence on the site, will be compatible with the other single-family residences in the area.

19. The proposed stairway, built pursuant to the proposed conditions, will cause minimal if any adverse effect on the shoreline environment in which it is located.

20. The public interest will not suffer a substantial detrimental effect from the proposed stairway.

21. The proposed stairway would be consistent with Title 18, the Zoning Ordinance, in that single-family residences are permitted in the zone and the stairway is accessory to that use. With the recommended conditions, the proposed stairway would be consistent with the SMP, and therefore consistent with the Comprehensive Plan.

Conclusions

1. The Hearing Examiner has jurisdiction to hear and decide this matter.
2. Notice and public hearing requirements of the Code were met.
3. As the findings show that all of the criteria for approval of conditional use are or will, with appropriate conditions, be met, the application should be approved.

Decision

The Shoreline Conditional Use Permit is granted subject to the following MDNS and additional conditions recommended by the Department, as modified by the Hearing Examiner:

SEPA Conditions

1. To reduce adverse impacts to the existing slope condition, construction activities, including drainage, erosion control and vegetation measures, shall follow the recommendations of a professional engineer licensed in the State of Washington and qualified in geotechnical engineering.
2. To prevent adverse environmental impacts to existing water quality, best management practices for all shoreline construction activities shall be followed at all times, such that soil erosion is prevented from degrading water quality on a temporary and permanent basis.
3. 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.
4. 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.

Non-SEPA Conditions

5. A building permit shall be secured for the staircase system. The applicant shall provide building plans approved by a professional engineer licensed in the State of Washington and qualified in geotechnical engineering.
6. The applicant shall submit a vegetation management plan concurrent with building permit application. Approval shall be to the satisfaction of the Department of Planning and Community Development. The approved plan shall be implemented. The planting plan shall provide for plantings within the native vegetation zone and include, at a minimum:
 - A. Restoration of any areas disturbed by construction and supplemental plantings within existing areas of sparse vegetation.
 - B. A zone of deep-rooted plantings parallel to the slope crest, generally 20 ft. in width, provided that the width may be varied to accommodate

pathways, etc., but in no case narrower than 10 ft. The planting plan shall include deep-rooted trees.

- C. A maintenance schedule to ensure ongoing health of vegetation across the bluff face. The maintenance schedule may allow minor trimming of vegetation to prevent interference of the use of the staircase and to preserve views as long as the trimming does not threaten the health of the vegetation.
7. The staircase feature and all attendant features shall not be colored or painted other than with neutral flat greens, browns or tans, so as to blend into the native bluff soils and vegetation and be non-reflective.
8. Work waterward of the ordinary high water line shall not be permitted. No construction activities shall occur on the beach.
9. Prior to building permit issuance, an indemnification/hold harmless agreement for the staircase on the shoreline bluff shall be duly executed in a form approved by the City Attorney, pursuant to BIMC Section 16.20.150(D)(1)(a) and notice on title shall be filed pursuant to BIMC Section 16.20.190.

Entered this 28th day of May 2008.

Margaret Klockars
City of Bainbridge Island
Hearing Examiner *pro tem*

Concerning Further Review

NOTE: It is the responsibility of a person seeking review of a Hearing Examiner decision to consult applicable Code sections and other appropriate sources, including State law, to determine his/her rights and responsibilities relative to appeal.

The decision of the Hearing Examiner is the final decision of the City in this matter. Appeal of this decision is to the Washington State Shorelines Hearings Board as provided by RCW 90.58.180 (or its successor) and Chapter 461-08 WAC (or its successor). To be timely, petition for review must be filed within the 21-day appeal period following the decision by the Department of Ecology. [see BIMC 16.12.370].