

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

In the Matter of the Application of

Gerry and William Sperling

SCUP12155

For a Shoreline Substantial Development/
Conditional Use Permit

Introduction

Gerry and William Sperling applied for a Shoreline Conditional Use Permit to construct a staircase for beach access at 6550 Monte Vista Drive.

An open record public hearing was held August 22, 2008. Joshua Machen, Senior Planner, represented the Department of Planning and Community Development. Gerry Sperling represented the applicants.

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 and exhibits admitted at the hearing, the following shall constitute the findings, conclusions, and decision of the Hearing Examiner in this matter.

Findings

1. Gerry and William Sperling applied for a Shoreline Substantial Development Permit/ Conditional Use Permit to construct a residential shoreline access staircase to a landing at the base of the slope on top of a bulkhead at 6550 Monte Vista Drive, Bainbridge Island. The site is at the north end of Manzanita Bay. The proposed staircase would be approximately 95 ft. long and 3 ft. wide.
2. The subject property is lot of approximately .5 acres developed with a single-family residence, a garage, a detached deck and the rockery bulkhead.
3. The Bainbridge Island Comprehensive Plan designates the subject property as Open Space Residential, two residences per acre. The property is zoned Residential 2 Units Per Acre (R-2), and the City's Shoreline Master Program ("SMP") designates it and adjacent parcels as a Semi-Rural environment. 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,

SCUP12155

Page 1 of 6

AUG 27 PM 1:56

indigenous trees, beaches, banks and bluffs while allowing development. It accommodates low to medium density residential development. Comprehensive Plan ("CP") Section IV C. Section 16.12.260B(16) recognizes stairways to the beach normal appurtenances to single-family residences so the stairway would be consistent with the intent for this environment and with Section 16.12.140E.

4. The site is located within a landslide hazard area, which is a geologically hazardous area as defined by the Critical Areas Ordinance. Though no construction is allowed within 50 ft. of a geologically hazardous area, Section 16.12.260 allows stairways to the beach within the Semi-Rural environment. Stairways larger than 120 square feet in area require a shoreline conditional use permit. Section 16.12.260B(16).

5. The staircase is proposed for access down a bluff ranging from 60-80 ft. high with slopes exceeding 40 percent. The bluff is not safely traversable by foot. At present, the only means of access to the water from the applicant's property is by use of a trail on neighbors' property.

6. A geotechnical slope and staircase reconnaissance was performed and report provided. (Exhibit 8) The report indicated the type of soils the topography suggested, found few distinct natural surface water drainage features or concentrated seepage, and observed evidence of surficial and colluvial failures elsewhere on the slopes that compose the bluff. There was no evidence of deep-seated rotational landslides on the site itself. The report concluded that the steep slope possesses a moderate risk of surficial debris landslides but low risk of deep rotational landslide and that a properly constructed stairway will not increase the rate of bluff retreat, decrease the stability of the bluff, or have adverse impacts to adjacent properties. The report offered recommendations for water and soil management, siting, design and construction.

7. The bank has been properly maintained and has a significant amount of natural vegetation, largely blackberries, salal and sword fern with a few small alders.

8. Bainbridge Island's SMP, which is an element of the Comprehensive Plan, contains policies and regulations, incorporated into the Municipal Code, applicable to this proposal. CP Section III A, Archaeological and Historic Resources, and Section 16.12.050, require that work be stopped and permission be obtained to proceed if such resources are discovered. A condition of the MDNS assures compliance with this policy and the regulation.

9. CP Section III B, Clearing and Grading, and Section 16.12.060, address retention or replacement of vegetation. A condition of the MDNS addresses restoration of disturbed areas within the native vegetation zone, maintenance of the vegetation and maintenance assurance, and conditions are recommended that a geotechnical report be prepared and plans be approved by a professional engineer.

10. CP Section III C, Environmental Impacts, and Section 16.12.070 are intended to minimize the impacts that the proposal would have on the environment. The impacts are anticipated to be minor because the stairway would not interfere with shoreline processes and would follow the vegetation management plan. A geotechnical engineer's approval of the plans indicating that the stairway would not cause undue risk to the slope

or other properties that is proposed as a condition should provide further protection of the environment.

11. CP Section III D, Environmentally Sensitive Areas, and Section 16.12.080, apply because of the geologically hazardous critical area, largely regulated through Ch. 16.20. The MDNS condition and others recommended would assure compliance with these provisions by requiring siting and constructing the staircase to avoid the trees and larger shrubs on the slope and following the geotechnical report's recommendations.

12. CP Section III E, Native Vegetation Zone, and Section 16.12.090 requires a native vegetation buffer upland of the ordinary high water mark, but Section 16.12.260B allows a stairway to encroach. The condition addressing vegetation protection and replacement would minimize impact of the incursion into the buffer.

13. With the recommended condition to assure that the stairway blends with its environment, it would be consistent with CP Section V K, Residential Development.

14. The Director recommended approval of the Shoreline Conditional Use subject to imposition of the conditions of the MDNS and additional conditions discussed above. The Director concluded, and the hearing examiner agrees, that the cumulative effect of the proposed stairway, given the fairly dense, well maintained vegetation where it would be located and the way it would meander down the slope, with past and future requests that reasonably may be made, would not cause any substantial effects on the shoreline environment and resource.

15. Section 16.12.380C(1) provides:

1. 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).

* * *

16. Section 16.12.350B 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.

* * *

17. 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.

18. Because the proposed stairway ends at the landing above the existing bulkhead on the property it would cause no interference with or alteration of the public's access to the water. Recommended Condition No. 3 will assure that any visual impact from the water will be minimal.

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

20. The proposed stairway, built as proposed and pursuant to the proposed conditions, including being elevated off the slope so that vegetation can grow under it, will cause minimal if any adverse effect on the shoreline environment in which it is located.

21. Construction of the staircase as proposed and subject to the proposed conditions on a relatively stable slope is not expected to endanger any other properties and with conditions to assure that it is aesthetically acceptable, the public interest will not suffer a substantial detrimental effect from the proposed stairway.

22. 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.

23. The City's Responsible Official issued a Mitigated Determination of Nonsignificance (MDNS) pursuant to SEPA on July 24, 2008. [Exhibit 18] The MDNS was not appealed. It required a vegetation management plan and any construction activity to stop work if any historical or archaeologically artifacts were uncovered as conditions.

24. A Notice of Application was mailed and published on April 12, 2008. The Notice of Public Hearing was mailed and posted on July 31, 2008, and published August 6, 2008.

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 single family residences are a priority use under RCW 90.58.020 and stairways accessory to single family residences are explicitly contemplated by the SMP, here where there would not be any safe access to the beach, a joint use staircase has not been contemplated, and the stairway can be provided without destabilizing the slope or removal of vegetation and can be made to blend in to the slope and its vegetation, to deny the conditional use for the stairway would thwart state policy.
4. 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 conditions and those conditions recommended by the Department:

SEPA Conditions

1. To mitigate the aesthetic impact of the stairway on the shoreline bluff and to ensure future stability, water quality, and wildlife habitat, a vegetation management plan shall be submitted, prior to the issuance of a building permit, which includes, at a minimum, the following items:
 - i. A typical planting schematic for the restoration of any disturbed areas within the 50-ft. native vegetation zone.
 - ii. Detail showing how the proposed stairway is avoiding removal of trees and large shrubs.
 - iii. Maintenance schedule, to ensure on-going health of vegetation across the bluff face and the native vegetation zone. Minor trimming of vegetation may occur to prevent interference with the use of the staircase and to preserve views, as long as the trimming does not threaten the health of the vegetation.
 - iv. A three-year maintenance assurance shall be provided to ensure the establishment and health of the landscaping in accordance with BIMC 18.85.090(D).
2. 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

3. 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. The intent is to obscure the installment from surrounding view.

4. A building permit shall be secured for the staircase system. A professional engineer licensed in the State of Washington with expertise in such features shall stamp the plans of the proposed staircase.
5. 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).

Entered this 27th day of August 2008.

/s/ Margaret Klockars
Margaret Klockars
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. The State Department of Ecology will approve, approve with conditions or deny the conditional use within the 30 days of the date it receives the permit from the City. Appeal of the Department of Ecology's 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 16.12.380].