

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

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

SUMMARY

Appellants: Bill Reddy and Janet See Jim and Mary Colegrove
8380 NE Beck Road 8362 NE Beck Road
Bainbridge Island, WA 98110 Bainbridge Island, WA 98110

Applicant: Teris Sinclair
7425 Skyline Boulevard
Oakland, CA 94600

Nature of Action: Appeal of administrative decision granting land use variances.
(1) Variance to exceed 15% allowable lot coverage to coverage of 22%.
(2) Variance to reduce 25-foot combined side yard variance to 14.5 feet.
Condition #2 allows alternative further reducing setback and lot coverage.

Location: 8368 Beck Road, Tax Parcel # 032402-2-009-2000, within the SE1/4
NW1/4 Sec. 3, T24N, R2E, W.M.

Zoning: R-1 District -- 1 unit per acre

Summary of Issues: (1) Lack of perfected access easement/interference with prescriptive easement.
(2) Lack of safety in necessary backing into Beck Road.
(3) Lack of safety in blocking road during construction.
(4) Interference with See/Reddy garage access during construction.
(5) Permanent congestion in gravel area following construction.
(6) Bulk/lot coverage and nearness to See/Reddy household.

Public Hearing: The Hearing Examiner conducted a public hearing after due notice on August 19, 2011.

Decision: The variances are approved, as conditioned. The appeal is denied.

FINDINGS OF FACT

Site Characteristics

1. The site is an approximately 0.17 acre (7,500 square feet) lot located in a Single-Family Residential zone (R-1). The lot is undersized for the zone.
2. The lot is occupied by a small, 1920's era residence, containing just 948 square feet of living space. The property is served by public water and an on-site septic system.
3. The address of applicant Sinclair's property is 8368 NE Beck Road, but the lot does not border Beck Road and is accessible only via a gravel driveway proceeding north from Beck Road. The Colegrove home (8362 NE Beck Road) lies to the south between Beck Road and the applicant's lot and house. The Reddy/See home (8380 NE Beck Road) is on the opposite side of the driveway.
4. At the north end of the driveway is a sizeable gravel area on applicant Sinclair's property that has been used for years as a turn-around and maneuvering area by the residents of all three households. The existing Reddy/See garage opens onto this area.
5. Sinclair now proposes a garage that will occupy a portion of this turn-around and maneuvering area.
6. The proposed garage will have a footprint of 483 square feet. The structure is termed a 1½ car garage. Above the garage will be a guest room with a bathroom but no kitchen.
7. From Beck Road the driveway lies over the east edge of the Colegrove property up to the Sinclair property. On the Sinclair property, there is a written easement in favor of the Reddy/See household to use a small portion of the gravel area adjacent to their garage for ingress and egress. The overall gravel turn-around and maneuvering area is considerably larger than the area covered by this written easement. Both the driveway and the easement are bordered on the east by a sliver of unopened City right-of-way. The Reddy/See garage appears to encroach slightly on this right-of-way.
8. On Sinclair's lot, to the south of the proposed garage site and also north of the end of the easement, are areas that could be used for parking a vehicle. The proposed garage site is presently used by residents of the Sinclair house for parking.
9. The result of the requested variance would be to reduce the combined side yard setback to 14.5 feet (13.5 feet from the southern property line) and to increase the lot coverage to 22%. The standard combined setback is 25 feet and the standard lot coverage is 15%.
10. Beck Road is a narrow paved street with a 25 mile per hour speed limit. Traffic on Beck Road is not normally heavy. Mattson Place NE runs north/south to the west of the Colegrove and Sinclair properties.

Procedure

11. The variance application was received on December 22, 2010. Consulted departments had no comments. After requesting and receiving a revised site plan, the City deemed the application complete and made Notice of Application on February 25, 2011.

12. A timely letter of objection to the project was received from Reddy/See and the Colegroves on March 11, 2011.

13. The Staff recommended approval of the variance, with conditions, on June 8, 2011. Eight conditions were recommended. They are paraphrased as follows:

- (1) Obtain a building permit, conforming to the site plan of February 15, 2011.
- (2) Provide two off-street parking spaces outside of the access easement -- (a) the garage plus a gravel area either south of the garage or north of the easement, or (b) construct a two-car garage. (The latter option would require an adjustment in the variance dimensions.)
- (3) Delineate the southern and eastern property lines (as well as the garage foundation) by staking and maintain property line staking through construction.
- (4) Eaves of garage shall not intrude more than 24 inches into any zoning setback.
- (5) Construction vehicles shall use the access easement only for pickup and drop-off of materials. Construction vehicles shall not park in the easement.
- (6) Stormwater runoff from the new building shall be conveyed to the existing storm drain.
- (7) Construction activities shall follow the timing restrictions in BIMC 16.16.025.
- (8) Stop work and notify authorities if any historical or archaeological artifacts are uncovered.

14. The Administrator conditionally approved the variance application on June 8, 2011, adopting the conditions recommended by Staff.

15. On June 22, 2011, the appellants (Reddy/See and Colegroves) filed an appeal of the Staff's recommendation.

16. The Hearing Examiner hearing on the appeal was held at Bainbridge Island City Hall on August 19, 2011. Bill Reddy acted as spokesperson for the appellants. Jennifer Sutton represented the City. Teris Sinclair, the applicant, was present.

Issue-Related Findings

17. The applicant provided the City with a copy of the easement which provides ingress and egress for the Reddy/See household. The City accepted this document for purposes of the subject application. This "ingress/egress easement" occupies a 26' x 30' rectangle in front of the Reddy/See garage. As planned, the proposed garage does not occupy any part of this written easement.

18. The driveway on the Colegrove property is not the subject of a formal easement document. However, owners of the Reddy/See property and of the Sinclair property have used this driveway for approximately 30 years to get to their property. The Colegroves use a portion of it for parking their vehicles. The facts do not support a finding that the Sinclair garage, once complete, will cause any increased use of this driveway.

19. The appellants assert that they have prescriptive easements for use of the turn-around/maneuvering area on the Sinclair property by virtue of the many years of use. The new garage, they say, will permanently interfere with their use of these prescriptive easements. They also argue that the construction phase will cause significant, albeit temporary, interference with their easements in the turn/around maneuvering area.

20. Although it may be that a prescriptive easement in the gravel turn-around and maneuvering area exists in favor of the appellants, no decree confirms its existence and, in fact, no legal action has been commenced to assert its existence. The Examiner has no authority to rule on the validity of the appellants' prescriptive easement claims.

21. The Reddy/See appellants believe they will be unable to get into and out of their garage while construction is in progress because of blockages of their "ingress/egress" easement.

22. The City has imposed a condition that prevents construction vehicles from using the "ingress/egress easement" for anything other than pickup and drop-off of materials. This condition apparently rests on the City's conclusion that the area described in the written easement is sufficient for entering and exiting the Reddy/See garage. The condition is intended to reduce interference with the easement to no more than an occasional temporary occurrence.

23. The Examiner finds that maneuvering in and out of the Reddy/See garage will be rendered more difficult by the construction of the proposed garage, but, he agrees with the City that ingress and egress is possible through use of the area described in the existing written easement.

24. The record does not disclose any rights of the Colegroves under the written easement and, thus, shows no entitlement in them to be free from interference with the easement. However, the Examiner assumes that the City intended that no construction vehicles be allowed to park on the driveway on the Colegroves' property, and has added a condition to that effect.

25. The results of interference with the customary use of the driveway and turn-around area will, appellants assert, result in forcing the Colegroves to back out onto Beck Road in order to exit, causing a public safety issue.

26. The City points out that the site of the proposed garage is now used for parking by the residents of the Sinclair property, suggesting that the difference the garage will make in available maneuvering area will not be large. The City believes that most vehicles will still be able to turn around in the area provided by the written easement. However, it is conceded that some larger vehicles may not be able to turn around in the space left open. In regard to vehicles

that might have to back out onto Beck Road, the Staff Report notes that the City does not prohibit vehicles from backing out onto City roads. The Staff Report underscores that the Fire Marshal had "no comment" on this variance application.

27. The appellants' safety concerns stem from an analysis of sight distance along Beck Road. The road crests near the point where the access driveway enters and cars on the road coming from the west have a very short distance in which to see a car backing out of the driveway. The appellants do not identify a particular safety concern for cars entering Beck Road frontwards. If the Colegroves (or visitors) have a vehicle which is too large to turn around in the easement area, no reason is given for why they could not simply back into the driveway to park, allowing them subsequently to emerge going forward.

28. The appellants contend that contractors' vehicles and equipment will be forced to park on Beck Road partially blocking the street. While it is true that Beck Road is narrow, the proof falls short of demonstrating that parking along the road would create a significant safety hazard. Nonetheless, the applicant should make every effort to secure off-street parking for equipment and vehicles related to the construction project.

29. The appellants claim that the proposed garage building violates the Land Use Code or Comprehensive Plan because of its bulk. They see it as the insertion of an "urban" element into a semi-rural setting. They also urge that the new garage will put the Reddy/See garage in shadow causing frost or ice in winter to not thaw, thus increasing the need for maintenance on buildings and cars.

30. The Staff finds no violation of the Comprehensive Plan or the Code in allowing a garage to serve the Sinclair house, a historic structure in an area where many lots are undersized and many existing buildings are nonconforming to the standard zoning setbacks. Approving the variance allows the applicant to have a garage, a normal appurtenance to a single-family residence, while allowing the historic residence to remain.

31. The variance requested does not reduce the setback toward the Reddy/See property. The garage is a standard size and will be well under the 30 foot height limit of the zone -- measuring 17.5 feet to the midpoint of the highest gable. The structure will not be out of scale with other development in the vicinity.

Variance Criteria

32. Criteria for the approval of variances are set forth at Bainbridge Island Municipal Code (BIMC) 18.111.040. Findings related to each criterion follow:

(1) The variance will not constitute a grant of special privilege inconsistent with the limitations upon uses of other property in the vicinity and zone in which the property is located.

Owing to the existence of nonconforming substandard lots, many of the homes and other structures in the vicinity have substandard setbacks.

(2) The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is located.

Construction of the garage will cause some inconvenience to the immediate neighbors, but such inconvenience can be minimized by conditions of approval. On a permanent basis, no established legal rights of the neighbors will be interfered with.

(3) The variance is requested because of special circumstances related to the size, shape, topography, location or surroundings of the subject property and will provide an applicant with use rights and privileges permitted to other properties in the vicinity and zone in which the property is located.

Because of the small size of the property, together with drainfield limitations, the setback and lot coverage setbacks are needed in order to accommodate a garage which is a normal appurtenance to a single-family dwelling.

(4) The need for a variance has not arisen from action taken or proposed by the applicant.

The house was built in 1920 and the lot was platted prior to incorporation of the City of Bainbridge Island. No action of the applicant has created the need for this variance.

(5) The variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, but which is denied to the property in question because of the special circumstances on the property in question.

The variance will permit the construction of a garage, a normal appurtenance, commonly enjoyed within the City.

(6) The variance is the minimum necessary to fulfill the needs of the applicant.

The applicant must provide two parking spaces to meet the Code's single-family parking requirement. The proposal will provide covered parking while meeting this minimum.

(7) The variance is consistent with all other provisions of this Code and is in accord with the Comprehensive Plan.

With the granting of the variance, the project has not been shown to be inconsistent with the Code or Comprehensive Plan.

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

CONCLUSIONS OF LAW

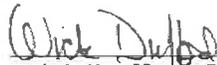
1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding.
2. Any question regarding Sinclair's use of the driveway on the Colegroves' property is irrelevant to the approval of dimensional variances for a garage on the Sinclair property. The record discloses no applicant-proposed changes in the use of the driveway over the Colegroves' land.
3. The appellants have shown that the building of the garage will probably cause some inconvenience to them, but have failed to demonstrate that it will interfere with any established legal right they possess.
4. The Examiner finds the conditions imposed by the City to be reasonable. He has added a clarification. The Examiner must assume that the conditions will be honored.
5. As required, the Examiner has given substantial weight to the decision of the administrator. The appellants have failed to carry their burden to show that the variance, as conditioned, does not meet the Code criteria.
6. Clearly this proposal has resulted in straining relations among neighbors. Perhaps regrettably, the right to a dimensional variance does not rest on maintaining a tradition of cooperation. Where the variance criteria are met, the Examiner is in no position to mandate flexibility or compromise. Nonetheless, in the interests of civility, he strongly urges the applicant to make every effort to control the construction process in order to make it as painless as possible for the appellants in this case.
7. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The appeal is **DENIED**. The variances are **AFFIRMED**, with the following addition to Condition 5:

"5. Construction vehicles shall only utilize the area of the ingress/egress easement for pickup and drop-off of materials only. Construction vehicles shall not park in the ingress/egress easement, nor in the driveway leading to it."

SO ORDERED, this 15th day of September, 2011.



Wick Dufford, Hearing Examiner Pro Tempore

APPEAL

The Hearing Examiner's decision shall be final, unless within 21 days of issuance, it is appealed in accordance with Chapter 36.70C RCW.