

August 14, 2013

**CITY OF BAINBRIDGE ISLAND, WASHINGTON
HEARING EXAMINER**

REPORT AND DECISION

Project: Bunting Shoreline Conditional Use Permit
File number: SCUP18351
Applicants: Robert and Maria Bunting
Request: Construct new wooden staircase downslope to the beach within an approximately 330 square foot footprint.
Location: 10058 NE Lafayette Avenue
Bainbridge Island, WA 98110

**Environmental
Review:**

The project is subject to State Environmental Policy Act (SEPA) review as provided in Washington Administrative Code (WAC 197-11-310). Utilizing the optional DNS process of WAC 197-11-355, the City of Bainbridge Island published a combined Notice of Application / SEPA comment period on March 1, 2013. The 30-day comment period ended on April 1, 2013. A Mitigated Determination of Non-significance (MDNS) was issued on July 3, 2013, with an appeal period ending on July 17, 2013. No appeal was received.

FINDINGS OF FACT

A. Site Characteristics

- I. AREA AND DIMENSIONS:
- a. Tax Lot Number 4155-000-005-0000
 - b. Assessor's Record Information
 - Owners of record Robert and Maria Bunting
 - Site size 0.67 acres
 - Land use Single-family residential

2. TERRAIN:

The residential building site is located on a relatively level area sitting above an approximately 60 foot high shoreline bluff overlooking the Monroe Sand Spit. Bluff elevation rises from 5 feet at the top of the bulkhead to 65 feet at the top of the slope where the stairway is proposed to begin. The bluff slopes at about a 55 percent gradient then levels off near the top. There is a stream on the immediately adjacent property to the west. The stairway is proposed to be constructed more than 50 feet from the stream channel.

3. SOILS:

Soils vary along the slope. On the mid to upper portions of the bluff they consist of sand with variable amounts of silt and gravel. Soils on the lower portion of the bluff display imbedded silt and clay with variable amounts of sand and gravel and traces of organic matter.

4. SITE DEVELOPMENT:

The site is located on the north shore of Bainbridge Island overlooking the Monroe Sand Spit. The site is developed with a two-story house and a detached garage.

5. ACCESS:

Vehicular access to the site is from Lafayette Avenue south of the subject property.

6. PUBLIC UTILITIES:

- a. Water – North Kitsap PUD Water Service.
- b. Sewer – Septic drainfield.
- c. Drainage – Roof drains are routed to an underground drainage system that discharges to a stream and a pipe to the lagoon.

7. PUBLIC SERVICES:

- a. Police - Bainbridge Island Police Department.
- b. Fire - Bainbridge Island Fire District No. 23.
- c. Schools - Bainbridge Island School District.

8. EXISTING USE:

Single-family residential.

9. SURROUNDING USES:

North: Point Monroe Sand Spit.
East: Single Family Residential.
South: Lafayette Avenue and Single Family Residential.
West: Single Family Residential and a non-fish bearing stream.

10. EXISTING ZONING/SHORELINE MASTER PROGRAM DESIGNATION:

The site is zoned Residential 2 Units Per Acre (R-2). The City Shoreline Master Program designates the site a Semi-Rural environment.

11. SURROUNDING ZONING/SHORELINE MASTER PROGRAM DESIGNATION:

The surrounding vicinity is zoned R-2. The City Shoreline Master Program designates the surrounding waterfront parcels as Semi-Rural environment.

12. EXISTING COMPREHENSIVE PLAN DESIGNATION:

The City Comprehensive Plan Land Use Map designates the site as Open Space Residential 2 residences per acre (OSR-2).

13. SURROUNDING COMPREHENSIVE PLAN DESIGNATION:

The City Comprehensive Plan Land Use Map designates the surrounding area as OSR-2.

B. Procedural Background

14. A pre-application conference was held on December 11, 2012. The shoreline application was submitted on December 17, 2012 (Exhibits # 1, 2, 3 & 4). The project was deemed complete on January 17, 2013. A public hearing was held on the shoreline application on July 24, 2013.

15. A Notice of Application and SEPA comment period was sent to all adjoining property owners and appropriate agencies and published in the paper of record March 1, 2013, with the comment period ending on April 1, 2013 (Exhibits # 5 & 8). No public comments were received. Comments from the Suquamish Tribe were received on February 26, 2013 (Exhibit # 7) and from the City's Development Engineer on January 16, 2013 (Exhibit # 6). A Mitigated Determination of Non-significance (MDNS) was issued and sent to all appropriate agencies on July 3, 2013 (Exhibit # 11). A citizen comment was submitted to the City in response to the SEPA determination on July 8, 2013 (Exhibit # 9).

16. Pursuant to BIMC 16.12.260 a stairway to the beach is allowed as an accessory structure within the regulatory shoreline native vegetation zone if it conforms to all city and state requirements, including the Master Program. A stairway to the beach with a footprint of less than 120 square feet is permitted outright in the Rural, Semi-rural, and Urban shoreline environments as a normal appurtenance to residential development. Stairways exceeding 120 square feet in footprint and all stairways in the Natural and Conservancy environments require issuance of a Shoreline Conditional Use Permit (SCUP).

C. Shoreline Conditional Use Permit

17. Following the format provided at WAC 173-27-160, BIMC 16.12.380.C(1) states the criteria for issuance of a shoreline conditional use permit:

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.* Discussion of the applicable Shoreline Master Program policies can be found in the Planning Department's staff report, which is incorporated herein by reference. BIMC 16.12.050, dealing with archaeological and historic resources, requires an applicant to immediately stop work and notify the City if any phenomena of possible archaeological interest are uncovered during excavation. Only minor excavation will occur as part of this project but, as requested, the Suquamish Tribe will be notified at least 48 hours prior to stair construction so it may monitor the hand excavation of the post holes at the top of the bluff. The application of policies and regulations dealing with environmental factors is discussed in subparagraph (d) below.

b. *The proposed use will not interfere with the normal public use of the public shorelines.* As designed and constructed, the public use of the shoreline will not be affected. The stairway should have minimal visual impact on the shoreline. Removal of native vegetation is to be minimized, with replacement required as needed (conditions # 9-12, 14 -16).

c. *The proposed use of the site and design of the project will be compatible with other permitted uses within the area.* The site comprises a single family residential accessory use in a residential zone. The proposed stairway is compatible with surrounding single-family development. Due to the steepness and length of the slope to be traversed, the footprint of the stairway will need to exceed 120 square feet.

d. *The proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is located.* As conditioned and mitigated, no significant adverse environmental impacts have been identified as resulting from this proposal. As elaborated in the staff report, the proposal will be implemented consistent with the environmental policies of the Shoreline Master Program as well as the applicable shoreline regulations of BIMC Chapter 16.12 and the critical areas provisions of Chapter 16.20.

The stairway, as proposed and conditioned, is designed and will be constructed in a manner that will have minimal environmental impacts. Areas of bare soil be covered with straw matting and then be revegetated with native low growing, woody-root structure plants (Condition # 14). While the development of a stairway for a single-family residence that terminates on the shoreline could have an impact on the nearshore, to minimize any such impact the proposal includes a hand winch to keep the stairs off the shoreline when not in use. The applicant should also construct the 4' x 12' landing on the beach and the stairs to the beach from grated metal. The project is conditioned to require that the stairs only be lowered for access, then immediately lifted from the beach when not in use (Conditions # 6 & 7).

The only impact on the upland environment will be the removal of vegetation for the stair placement. On the shoreline impacts will result when the pilings are installed to anchor the stairs on the beach. The staircase will be regulated by the City on the basis of its lying within a native vegetation zone (NVZ), where staircases are a permitted use, traversing a geologically hazardous area and terminating on a beach with fish use.

The bluff on the subject property is regulated under BIMC 16.20.150 as a geologically

hazardous area. The geotechnical report stated that the slope appeared largely intact, with variations in slope geometry shaped by ongoing erosion and loose weathered surficial soils observed on the slope. It was recommended that a deep, pier-style foundation for the structural elements of the stairs be installed. A wood beam encased in concrete and embedded a minimum of 4 feet below the surface of the slope will be employed. As recommended by the City's Development Engineer, a Step 3 form will be required to ensure the work is completed as specified by the geotechnical engineer (Condition # 17). Some native vegetation will be removed for the installation of the stairs. The geotechnical engineer recommended that all disturbed areas be replanted with native, low growing, woody-root structure plants.

The site lies within a Semi-rural shoreline designation which requires a native vegetation zone of 50 feet. Existing vegetation varies from the top of the slope to the bottom. The upland portion comprises grass lawn and landscaping. The first five feet at the top of the slope features scattered mature fir trees and dense native plant groundcover. Vegetation downslope consists of moderately dense stands of young alder and maple trees with a dense understory of native shrubs, including Oregon grape, salal and berry bushes. Vegetation removal will be limited to the stairway footprint, and no trees will be removed. Replanting will be required for any area disturbed by construction pursuant to a replanting plan to be submitted and approved by the City (Condition #11) prior to building permit issuance. The replanted vegetation is to be reestablished within three years and properly maintained (Conditions # 10, 11 & 12).

The neighboring property to the west has a non-fish bearing stream, which requires a 50 foot buffer with a 15 foot building setback. A site visit by staff on April 17, 2013, confirmed the distance of the stream to the Bunting property line to be about 50 feet. Since the stairs are proposed to be set back another 15 feet from the western property line, the stairs should fall outside the regulated stream buffer. The stream buffer will be staked for verification prior to the commencement of the stair construction (Condition # 8).

e. *The public interest suffers no substantial detrimental effect. [WAC 173-14-140(1) or its successor].* The public interest will not incur a substantial detrimental effect from the construction and use of this residential stairway. The appearance of the shoreline bank will be slightly altered, but as conditioned, retention of native vegetation, along with revegetation where disturbance occurs, will help maintain the natural character of the shoreline (Conditions # 9-12, 14-16).

f. *The proposed use is consistent with the provisions of the Zoning Ordinance (BIMC Title 18) and the Comprehensive Plan (Ordinance 94-21).* The proposed stairway is a residential accessory structure on site zoned for a single-family residential development. Neither the zoning code nor the comprehensive plan impose general or specific restrictions against locating a stairway on the subject site, and its construction will be conditioned to meet applicable code requirements.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction over this shoreline permit application proceeding. Applicable notice and SEPA requirements have been met.

2. The proposed use is consistent with the policies of RCW 90.58.020 and the City's Shorelines Master Program. As conditioned, the proposal meets the requirements of BIMC 16.12.380 and WAC Chapter 173-27 for issuance of a shoreline conditional use permit.

3. The proposed use will not interfere with normal public use of the shorelines and will be compatible with other permitted uses in the areas. It will cause no long-term or significant adverse effects to the shoreline environment nor impose a detrimental effect on the public interest. The proposal is consistent with the City's zoning ordinance and Comprehensive Plan.

DECISION

The Shoreline Conditional Use Permit application of Robert and Maria Bunting (file no. SCUP18351) is APPROVED, subject to the following conditions:

SEPA Conditions

1. In order to protect potential archeological artifacts, at least 48 hours prior to stair construction, the Suquamish Tribe shall be contacted to monitor the hand excavation of the post holes on the top of the bluff.
2. Applicant is required to stop work and immediately notify the Department of Planning and Community Development and the Department of Archaeology and Historic Preservation if any historical or archaeological artifacts are uncovered during excavation or construction.
3. In order to mitigate the visual impact of the stairs, the staircase 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.
4. In order to mitigate any impact on the tidelands, the posts/piles on the beach shall be made of galvanized steel, non-chemically treated wood, or some other chemical-free alternative.
5. To mitigate the potential impact on the fish rearing population, any portion of the stairs or landing beyond ordinary high water shall be 100% grated.
6. The stair landing shall have a minimum vertical clearance of one foot above extreme high water to decrease weathering from the tide and the potential of the stairs being washed away during high tide events.
7. To reduce any potential impact on the tidelands, when not in use, the stairs shall be lifted and kept off the tidelands.
8. To protect the neighboring stream on the abutting property to the west, the stair location shall be staked and reviewed by staff in addition to the stream buffer to ensure that the stairs are outside of the stream setback.
9. To limit the impact on the steep slope, clearing shall be limited to the placement of the stairs. The area shall be staked and the applicant shall submit a plan with the building permit

that indicates the amount and type of plants proposed for removal.

10. To protect the slope, any exposed, cleared areas shall be covered with straw matting and revegetated within the first applicable planting season.
11. To mitigate the impact on the slope from clearing for the stairs, a replanting plan designating the type and location of plants shall be submitted and approved by staff prior to the issuance of the building permit.
12. To ensure the long term survivability of the replanting and to continue to protect the slope, the replanted area shall be established within three years and maintained with a landscape maintenance bond.

Permit Conditions

13. The recommendations of the geotechnical engineer shall be met and demonstrated in the building permit application, including but not limited to:
 - a. A 6 X 6 inch diameter, wood beam encased in concrete and embedded a minimum of 4 feet below the surface of the slope.
 - b. Routine, long-term monitoring of the stair structure foundation and slope.
14. Any areas of bare soil shall be covered with straw matting and then be revegetated with native, low growing, woody root structure plants within the first applicable planting season.
15. Permanent protection of the replanted area shall occur through a notice to title for future property owners.
16. Any future proposed clearing in the replacement area, and any portion of the steep slope and native vegetation zone shall first be reviewed by the City through a clearing permit with a replacement plan.
17. A building permit along with the appropriate geotechnical forms shall be secured for the staircase. A professional engineer licensed in the State of Washington with expertise in such features shall stamp the plans of the proposed staircase. A Step 3 form is required prior to final inspection.
18. An indemnification/hold harmless agreement for the staircase on the shoreline bluff shall be duly executed in a form approved by the City Attorney.
19. Activities to be undertaken as part of this exemption may require approvals or permits from the Washington Department of Fish and Wildlife and the Army Corps of Engineers. Evidence of required approvals or permission shall be submitted to the City prior to the commencement of any construction activities.

ORDERED August 14, 2013.



Stafford L. Smith, Hearing Examiner
City of Bainbridge Island

The decision of the City issued by the Hearing Examiner may be appealed to the Shorelines Hearings Board in accordance with the provisions of BIMC 16.12.380(C)(7).

(Please note: Washington Department of Ecology has final decision authority for a Shoreline Conditional Use application. Within eight days of the City's decision on the application, the application packet is forwarded to the Department of Ecology. The Department of Ecology shall approve, approve with conditions, or deny the application within 30 days.)

The exhibit list prepared by the Clerk of the Hearing Examiner's Office is attached.

EXHIBIT LIST

Bunting SCUP 18351

Applicants/Owners: Maria and Robert Bunting

Staff Contact:
Heather Beckmann
Associate Planner

Public Hearing: 07/26/2013 at 9:00 am

Location: City of Bainbridge Island
City Hall Council Chamber

Hearing Examiner: Stafford Smith

EXHIBIT NO.	DOCUMENT DESCRIPTION	DATE	NO. OF PAGES
1	Application	12/17/2012 Received	7
2	Site Plan	12/17/2012 Received	1
3	Vicinity Map	12/17/2012 Received	3
4	Coastal Solutions Geologic Slope Reconnaissance	12/17/2012 Received	10
5	Environmental (SEPA) Checklist (with applicant and staff response)	12/17/2012 Received	16
6	PCD Engineer Review	01/16/2013	1
7	Email from Suquamish Tribe	02/26/2013 Received	2
8	Notice of Application/SEPA Comment Period (with Affidavit of Mailing and Posting)	03/01/13 Published	12
9	Citizen Comment (Charles Schmid)	0708/13	1
10	Notice of Public Hearing and Certification of Distribution and Posting	07/05/2013 Published	5
11	Notice of SEPA Decision	07/03/2013 SEPA agencies	2
12	Staff Report to HE	07/02/2013	12
13	Aerial View of Steps (1)	07/26/2013 (admitted)	1
14	Aerial View of Steps (2)	07/26/2013 (admitted)	1