

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

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

SUMMARY

Applicant: Thad Van Winkle
9555 NE Torvanger Road
Bainbridge Island, WA 98110

File No: VAR18493

Request: Major variance to reduce one of two required front yard setbacks.
Increased lot coverage is also sought.

Location: Port Madison at 15198 Washington Street;
Tax parcel #4167-000-098-0004

Comprehensive Plan/Zoning: Comprehensive Plan: Open Space Residential (OSR) - 2
Zoning: R-2 (two units per acre)

Summary of Proposal: Reduce front yard setback on State Street from 25 feet to 5 feet and increase lot coverage to 26%.

Public Hearing: After reviewing the report of Planning and Community Development, the Hearing Examiner Pro Tem conducted a public hearing on September 27, 2013.
The Staff and the applicants testified in favor of the proposal. Eleven residents of the neighborhood testified in opposition. The Hearing Examiner visited the site on October 3, 2013.

Decision: The variances are denied.

FINDINGS OF FACT

1. Thad Van Winkle (applicant) seeks setback and lot coverage variances. The setback variance was designated as a major variance pursuant to the Bainbridge Island Municipal Code (BIMC).

2. The site is located at the corner of Washington Street and State Street within historic Port Madison. The address is 15198 Washington Street. The property is Lot 98 of the Port Madison plat filed in 1906.

3. The lot is 7,840 square feet (0.18 acre) in size. It is located within an R-2 zone (two units per acre). The Comprehensive Plan designation is OSR-2. The lot is undersized for the R-2 district.

4. Many lots in the original plat were similar in size to the subject lot. The Comprehensive Plan encourages aggregation of such lots. According to the Staff Report, a number of owners of multiple contiguous lots in Port Madison have aggregated their ownerships voluntarily to conform to the R-2 minimum lot size of 20,000 square feet.

5. The applicants are owners of a single small lot abutting other ownerships. Aggregation is not available to them.

6. The property was previously developed with an approximately 1,000 square foot single family residence which burned down. The applicants seek to erect a new residence with a built-in two-car garage and covered porch -- the total creating a footprint of 2,007 square feet (house 1,241 square feet, garage 588 square feet, covered porch 178 square feet). The proposed uses are allowed within the district.

7. The file contains only CAD drawings of the proposed house, so it is difficult to analyze what it will look like in comparison with the homes around it. It will be two-stories high, within the applicable 30-foot height limit. It will have features found on other single family homes in the area, such as shutters, covered porches, dormer windows, and clapboard siding. The applicant's wife testified that their intention is to build a house in a style that fits in with the existing housing in Port Madison.

8. In addition to the house and garage, the application shows an onsite septic system including both a primary and a reserve drainfield, as well as an infiltration pit.

9. The lot coverage standard for the zone is 20%. The proposed structure would cover 26% of the lot. A variance is sought to allow this.

10. As a corner lot, the property is subject to two front setbacks -- 25 feet from each street. The proposed new house would meet the front setback from Washington Street, but would be only five feet from State Street. A major variance is sought to allow the proposed structure to intrude 20 feet into the setback from State Street.

11. Washington Street is a paved public street which serves as one of the principal thoroughfares through the neighborhood. State Street is quite different. It is a short privately maintained public right-of-way bordered by two lots and ending at a third. The two bordering lots are also served by Washington Street. The third lot is a large heavily forested parcel owned by the Port Madison Water Company (Tract D). It is the site of the community's water reservoir, standpipe, and booster pump. The water system's outfall line and main feeder supply trunk are buried beneath State Street. The system supplies water to around 100 homes.

12. State Street is a stub -- what's left of an originally platted street, the rest of which was long ago vacated. The site plan submitted with the application identifies it as a gravel driveway. The Water Company gravels and grades it for normal and emergency access to the system's facilities, a use that occurs about once per week. Additional periodic use is for access to a system of trails within Tract D.

13. The Staff Report points out that the current use of State Street is similar to that of a private access from which the setback would be only five feet. However, it is within the definition of "street" under BIMC 18.36.020, because Tract D is capable of subdivision. Therefore the 20-foot front setback applies.

14. The subject lot itself, aside from the foundation of the former home, is given over to brush, small trees, and a thicket of evergreen shrubbery. However, next to Washington Street near the southwest and northwest corners of the property are two large and beautiful old trees: one a locust and the other a big leaf maple. They are the dominant features of the setting, largely defining its present visual character. These significant trees are located on the public right-of-way (or perhaps partially on adjacent land), but their branches overhang the applicant's property.

15. Substantial opposition to this proposal was registered in writing and in testimony at the hearing by members of the Port Madison community. Their criticism focused on five general subject areas: (1) stormwater, (2) water system access, (3) historic preservation, (4) preservation of significant trees, and (5) size and placement of the proposed structure.

16. Stormwater. There have been drainage problems in the past adjacent to this site, but the project will be required to infiltrate stormwater runoff pursuant to current code requirements. The Staff Report states that, with an on-site engineered infiltration system, the runoff will be significantly less than from homes built prior to existing regulations. There is no evidence to the contrary.

17. Water System Access. The underground pipes for the water system are contained within the 40-foot right-of-way of State Street. The proposal with five feet of setback does not encroach upon this right-of-way. However, the precise location of the pipes within the right-of-way is not clear and the Water Company fears that future repair and maintenance of its system might damage the applicant's property. The Company asked that at least a 10 foot setback be maintained.

18. Historic Preservation. The house immediately north of the subject property (across State Street) was built in 1856. Still occupied, it is the oldest house on the island and one of the oldest in the state. The owner has carefully preserved this old residence and there is a likelihood that it will at some point be included in the National Register of Historic Places. Several persons expressed a concern that building a large house next door to this historic dwelling would have an adverse effect on its historic value. The Historic Preservation Commission asked that scale and massing of the applicant's proposed house be reduced, that the structure be moved more toward the center of the lot and that architectural details more closely resembling 19th century structures be incorporated into the design.

19. The Staff noted that Port Madison is not designated as a historic district and that there are no design guidelines or standards that address historic structures or sites, though this is suggested in the Comprehensive Plan.

20. Preservation of Significant Trees. The record contains compelling photographic evidence of the extraordinary qualities of the large locust and big leaf maple trees. One witness, an eminent plant pathologist and arborist, testified that the two trees are the largest of their kind on the island. He said that if the applicant's project were carried forward as proposed, the chance of losing these trees would be very high. Unquestionably, the scene would be irreparably changed were the overhanging branches to be cut off. He strongly urged finding a way to save the trees.

21. Again, no City ordinance specifically protects significant trees.

22. Size and Placement of the Proposed Structure. The majority of opposing comments centered on the size and placement of the proposed structure. The Staff conducted two separate analyses regarding the size of the proposed residence and concluded that it is consistent with the size of residences in the vicinity. The opponents did their own analyses focusing on percentage of lot coverage.

a) The Staff's first comparison considered 10 lots within the Port Madison Plat considered to have a lot area comparable to the subject site and found that median structure square footage and lot coverage were similar to the proposal. The second analysis looked at lots within 500 feet of the subject property and, again using median structure size, found lot coverage in square feet to be similar to that proposed.

b) The opponents looked at 8 similarly sized lots within the plat (eliminating as dissimilar two lots considered by the Staff) and determined that the average lot coverage is 20% with a median of 21%. Within 500 feet of the subject property, which they termed the "historic heart of Port Madison", the opponents found average lot coverage to be 11% with a median at 14%.

23. The Examiner is persuaded by the percentage of lot coverage approach taken by the opponents. It was not shown that the 20% coverage standard presents a hardship that precludes the applicant from building and occupying a residence on this property.

24. Additionally, there was no showing that a residence within the lot coverage standard could not be placed at a distance from State Street greater than five feet.

25. The application states that the "variance requested is the minimum necessary to build a house consistent with the upscale homes in the neighborhood." It is not clear what this was intended to mean. The homes in the neighborhood are a mixture of old and relatively new. The setting is full of picturesque variety. But no generally "upscale" characteristics were shown that would necessitate building a house of the size sought at the position sought on the lot in question. As the testimony showed, there are many homes in the area smaller than the one proposed.

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

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this proceeding.
2. The proposal is categorically exempt from the procedural requirements of the State Environmental Policy Act. WAC 197-11-800(6)(b).
3. The criteria for granting a variance are set forth at BIMC 2.16.120(E)(1):
 - a. The variance is consistent with all other provisions of this code, except those provisions that are subject to the variance, and is in accord with the comprehensive plan.
 - b. The need for the variance has not arisen from previous actions taken or proposed by the applicant.
 - c. 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 that is denied to the property in question because of special circumstances on the property in question, and will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity in which the property is located.
 - d. 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; and
 - e. The variance is requested because of special circumstances related to the size, shape, topography, trees, groundcover, location or surroundings of the subject property, or factors necessary for the successful installation of a solar energy system such as a particular orientation of a building for the purposes of providing solar access.

4. The subject variances are denied for failure to demonstrate that criteria (c) and (d) above have been met. The special circumstance involved here is lot size. No substantial property right to build a home of the size proposed in the context of the Port Madison locality was shown. Nor was a right to locate such a home within five feet of State Street shown. In addition, material detriment to the public welfare from irreparable damage to the two significant trees near the property's boundary was not demonstrated to be unlikely.

5. The opponents in this matter suggested that a more modest proposal with attention to architectural compatibility and care for the significant trees next to the site would be welcome. There might, indeed, be some level of variation from the dimensional standards of the Code which would be appropriate on this small lot. Negotiation among all concerned might produce an acceptable project.

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

DECISION

The requested variance is **DENIED**.

DATED, this 15th, day of October, 2013.



Wick Dufford, Hearing Examiner Pro Tempore

RECONSIDERATION/APPEAL

A Request for Reconsideration may be filed within 10 days of this decision. The decision may be appealed to the Superior Court pursuant to Chapter 36. 70 RCW within 21 days of the date of decision or decision on reconsideration, if applicable.