

July 25, 2014

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

REPORT AND DECISION

Project: Schultz Shoreline Conditional Use Permit

File number: SCUP18981

Applicants: Paul and Linda Schultz
12145 Arrow Point Loop
Bainbridge Island, WA 98110

Request: Construction of a staircase of approximately 300 square feet down the slope to the beach.

Location: 12145 Arrow Point Loop. Tax Parcel Number 4478-000-013-0000.

Environmental Review: A Mitigated Determination of Non-significance (MDNS) under the State Environmental Policy Act (SEPA) was issued on June 18, 2014.

FINDINGS OF FACT

A. Site Characteristics

1. AREA AND DIMENSIONS:

Assessor's Record Information

Owners of record:	Paul & Linda Schultz
Site size:	.67 acres
Land use:	Single-family residential

2. TERRAIN:

The southeastern portion of the Site is relatively flat to gently sloping. Approximately 35 to 50 feet northwest of the single family residence is the top of a steep, northwest-facing waterfront slope. The steep slope is approximately 45 feet tall with inclinations ranging from 100 percent to near-vertical.

3. SOILS:

The Preliminary Geological Map of Bainbridge Island indicates that the site is primarily underlain by Qpv unit, Pre-Vashon deposits. The Qpv unit is generally described as sand, gravel, and silt of fluvial lacustrine and glacial origin, resulting in typically dense and stiff soils.

4. SITE DEVELOPMENT:

The site is developed on the relatively flat area with an access driveway, two-story single-family residence, attached garage, septic drain field and surrounding landscaped yard. At the toe of the slope is a rockery bulkhead approximately six feet tall.

5. ACCESS:

Vehicular access to the site is from Arrow Point Loop, south of the subject property.

6. PUBLIC UTILITIES:

- a. Water – Well
- b. Sewage disposal – Septic drainfield.
- c. Drainage – Tightline to the beach.

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: Puget Sound
East: Single Family Residential
South: Arrow Point and Single Family Residential
West: Single Family Residential

10. EXISTING ZONING/SHORELINE MASTER PROGRAM DESIGNATION:

The site is zoned Residential-1 Unit Per Acre (R-1). 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-1. The City Shoreline Master Program designates the surrounding waterfront parcels as Semi-Rural environments.

12. EXISTING COMPREHENSIVE PLAN DESIGNATION:

The City Comprehensive Plan Land Use Map designates the site as Open Space Residential 1 residence per acre (OSR-1).

13. SURROUNDING COMPREHENSIVE PLAN DESIGNATION:

The City Comprehensive Plan Land Use Map designates the surrounding area as OSR-1.

B. Procedural Background

14. A pre-application conference was held on December 11, 2012. The shoreline conditional use application was submitted on December 17, 2012, with the project deemed complete on January 17, 2013. A public hearing was held on the shoreline application on July 23, 2014.

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. No public comments were received. A comment from the Suquamish Tribe was received on February 26, 2013. A Mitigated Determination of Non-significance (MDNS) was issued and sent to all appropriate agencies on June 18, 2013.

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. A complete discussion of Shoreline Master Program policies can be found in the Planning Department's staff report, which is incorporated herein by reference. The application, as conditioned, can meet all relevant policies and requirements. Policies and regulations dealing with environmental factors specifically are 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. Other than offshore boating, there are no significant public uses in the vicinity.

c. The proposed use of the site and design of the project will be compatible with other permitted uses within the area. The application contemplates 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. Other similar beach stairway

developments exist throughout the Bainbridge Island shoreline area.

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.

Pursuant to BIMC 16.20.150, the steep bluff on this property is considered to be a geologically hazardous area. This application included a geotechnical report and structural plans that demonstrated that the staircase can be constructed without causing instability to the slope on the subject or neighboring properties and that it will be structurally sound. The geotechnical engineer made the following recommendations for the staircase, which are included in the conditions for approval of this shoreline conditional use permit application (Conditions #7):

1. Perform routine maintenance of the slope.
2. Excavate the foundation below the loose surficial soils into dense natural soils.
3. Install a three-foot minimum embedment for the stair foundation.
4. Locate the stairs a minimum of five feet from the top of the slope.

As proposed, installation of the stairway will have little impact on the slope and water quality. Some minor vegetation clearing will be required to accommodate the stairway. The adjacent shoreline carries a Semi-Rural designation requiring a native vegetation zone (NVZ) width of 50 feet, measured horizontally from the ordinary high water mark. While a staircase is a structure permitted to be located within the native vegetation zone, replanting is a required mitigation for any area disturbed by construction and development.

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. A stairway to the beach is a normal accessory appurtenance to a shoreline residential use.

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 Paul and Linda Schultz (file no. SCUP18981) is APPROVED, subject to the following conditions:

SEPA Conditions

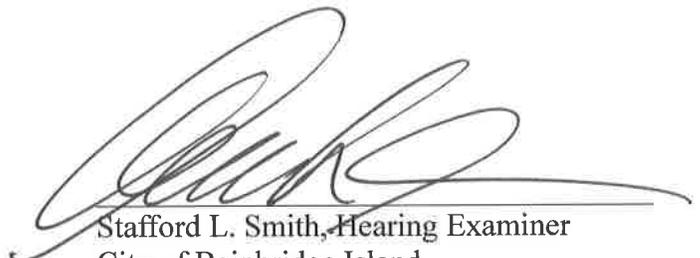
1. Applicant is required to stop work and immediately notify the Department of Planning and Community Development and the Department of Archaeology and Historic Preservation if any historical or archaeological artifacts are uncovered during excavation or construction.
2. In order to mitigate the visual 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.
3. 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.
4. To protect the slope, any exposed, cleared areas shall be covered with straw matting and revegetated within the first applicable planting season.
5. 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.
6. 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 properly maintained with a landscape maintenance bond.

Project Conditions

7. The recommendations of the geotechnical engineer shall be met and demonstrated in the building permit application, including but not limited to:
 - (a) Perform routine maintenance of the slope
 - (b) Excavate the foundation below loose surficial soils into dense natural soils.
 - (c) Install a three-foot minimum embedment for the stair foundation.
 - (d) Locate the stairs a minimum of five feet from the top of the slope.

8. A professional engineer licensed in the State of Washington with expertise in such features shall stamp the plans of the proposed staircase.
9. Permanent protection of the area shall occur through a notice to title of the native vegetation zone, the approved stairway development and any required replanting.
10. 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.
11. A building permit shall be secured for the staircase, which shall issue upon demonstration that the structure will be sited outside the 30% sideyard setback.
12. An indemnification/hold harmless agreement for the staircase on the shoreline bluff shall be duly executed in a form approved by the City Attorney.

ORDERED July 26, 2014.



Stafford L. Smith, Hearing Examiner
City of Bainbridge Island

A final shoreline 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 ultimate decisional 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

**Paul and Lynda Schultz
SCUP18981**

Staff Contact:
Heather Beckmann
Associate Planner

Public Hearing: July 23, 2014
Location: City Hall

Hearing Examiner: Stafford L. Smith

NO.	DOCUMENT DESCRIPTION	DATE
1	Application (including Aspect Geotechnical Slope Report and Site Plan)	11/14/2013 (Received)
2	Kitsap Public Health District Site Plan	11/14/2013 (Received)
3	Environmental (SEPA) Checklist with Staff Response	11/14/2013 (Dated)
4	PCD Engineer Review	12/13/2013 (Dated)
5	Notice of Application/SEPA Comment Period	12/13/2013 (Published)
6	Email from Suquamish Tribe re Potential Excavation	12/17/2013 (Dated)
7	Notice of Mitigated Determination of Nonsignificance (MDNS)	06/18/2014 (Dated)
8	Notice of Public Hearing and Certification of Distribution	07/04/2014 (Published)
9	Staff Project Report	