

June 20, 2016

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

**REPORT AND DECISION
ON SHORELINES AND ZONING VARIANCES**

Project: COBI Manitou Beach Access

File numbers: PLN50398 SVAR, PLN50398 SSDP, PLN50398 VAR

Applicant: City of Bainbridge Island Department of Public Works - Engineering

Request: Reduce the 25-foot front yard zoning setback from Manitou Beach Drive to zero feet, and the 100-foot shoreline setback from ordinary high water mark to 75 feet, to accommodate the construction of a four stall pervious parking area (1,370 square feet) and adjacent bicycle parking and to construct an 'L' shaped boardwalk (283 square feet).

Location: Manitou Beach Drive Open Space parcel, adjacent to 9865 Manitou Beach Drive

Environmental Review: As minor new construction the project was determined to be categorically exempt from SEPA review pursuant to WAC 197-11-800(1)(b) and BIMC 16.04.070(A)(4).

FINDINGS OF FACT

A. Site Characteristics

1. Tax Assessor Information:

- a. Tax Lot Numbers: 142502-3-109-2003 & 142502-3-107-2005
- b. Owners of Record: City of Bainbridge Island
- c. Lot Size: 1.04 acres
- d. Land Use: Park

2. Terrain: Generally flat
3. Soils: Beaches and Norma fine sandy loam
4. Existing Site Development: None, except Little Free Library box located near the road.
5. Access: Manitou Beach Drive
6. Public Services and Utilities: None
7. Zoning/Comprehensive Plan/Shoreline Designations: R-2; OSR-2; Shoreline Residential and Island Conservancy
8. Surrounding Uses: Single-family residential and undeveloped wetlands

B. Procedural Background

9. The two parcels subject to this application are separated by Manitou Beach Drive and were purchased in 2003 with funds from the City's Open Space Bond Initiative. The larger, L-shaped upland parcel is slightly less than an acre in size, with 100 feet of road frontage and a small wetland in its northeast quadrant. The waterfront parcel only contains 0.13 acres but features 200 feet of low bank shore frontage.

10. Immediately following its purchase, the City made few improvements to the property outside of installing signage indicating the boundaries of the public open space. In 2004, the City Council approved \$75,000 to fund feasibility and alternatives studies for the property. In addition to providing public access to the shoreline parcel, attention was focused on possible use of the upland parcel in support of the restoration of a large salt marsh west of the site. The extensive network of wetlands existing in the area has been fragmented and hydrologically altered by filling for residential construction. The salt marsh restoration concept was abandoned when it encountered significant local opposition.

11. The first formal discussions directed toward the creation of public parking were held in 2006 following a recommendation to the City Council from the Open Space Committee to install parking spaces in support of public shore access. A series of public meetings were held and plans drafted but at that time the City did not further pursue construction of parking spaces.

12. In 2011 the City declared the tideland parcel surplus. The transfer of the property to the Bainbridge Island Metro Park and Recreation District (BIMPRD) as a mechanism to preserve public access was considered but the transfer never occurred. On March 10, 2014, the City Council discussion of surplussing was resumed and staff was directed to return with additional information about the property. On April 21, 2014, staff provided an overview with potential development options. At that meeting Council expressed support for a plan to provide parking on the upland parcel to increase public access opportunities at the site. On December 2, 2014, staff presented to the City Council further information on existing site conditions, permitting and environmental considerations, and plans illustrating potential layouts for a parking area. The City Council continued to express support for the project concept and directed staff to gather input from the community and return with a recommendation.

13. A community meeting was held on March 25, 2015, to discuss the Manitou Beach Drive public access design, including parking area size, location and supporting amenities. A number of issues were discussed, and suggestions made by community members to move the parking close to the road, provide a boardwalk to the tidelands parcel, and install native plantings, a bench and bike racks. Other suggestions relating to traffic calming, additional site furnishings and signage are not included in the current proposal. On June 2, 2015, the City Council unanimously approved a final design for the Manitou Beach Drive Parking project, added the project to the 2015 Capital Improvement Plan, and approved a budget amendment in the amount of \$45,000 from the General Fund to increase spending authority for this project.

14. The City on January 4, 2016, submitted applications for a shoreline substantial development permit and shoreline and zoning variances. A 30-day public notice was posted and public comment letters were received. The applications were deemed categorically exempt from SEPA review as proposals for minor new construction. A Notice of Hearing was published on May 20, 2016, for a June 9, 2016, hearing date. BIMC 2.16.170 mandates consolidated project review, including a single public hearing, for a project proposal requiring multiple land use applications.

C. Zoning Variance Review

15. The decisional criteria governing approval of a major zoning variance are stated at BIMC 2.16.120.E:

1. A major variance may be approved or approved with conditions if:

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 a 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 limitations 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.

2. If no reasonable conditions can be imposed that ensure the application meets the decision criteria of the BIMC, then the application shall be denied.

16. The site currently meets the City's zoning definition for a passive recreation park, which is a permitted use in the R-2 district under BIMC 18.09.020. A "passive recreation park" is defined as a facility where the primary uses are hiking, bird watching, picnicking and other low impact activities. The maintenance or expansion of an existing park wherein the proposed activities are exempt from SEPA review are also removed from site plan and design review procedures pursuant to BIMC 2.16.040. A parking proposal for less than 20 spaces is exempt from SEPA review as minor new construction.

17. The R-2 zoning district imposes a 25 foot front yard setback, which is proposed to be reduced to zero through the zoning variance process. Side and rear yard setbacks will be met, as will the landscaping requirements of BIMC 18.15.010. To protect the surrounding neighbors and the wetland, the project will be conditioned to provide landscaping along the western, eastern and northern borders of the parking lot. Additionally, the City will install signage along the buffer of the wetland to mark the extent of the buffer and the existence of the wetland. Compliance with the City's Comprehensive Plan will be effected through meeting the policies and standards of its Shoreline Master Program as discussed below.

18. Specific regulatory issues were raised at the public hearing by neighborhood residents Linda Solberg and Richard Weaver. Ms Solberg questioned whether the fill used to create the proposed parking area would remove the proposal from the SEPA-exempt category and trigger full environmental review and also whether the parking area itself intrudes into the protective buffer for the large open-water wetland located offsite directly east of the upland site. This wetland is bordered on the west by a private gravel driveway but at its closest point only lies about 60 feet from the edge of the proposed parking area, well within the regulatory buffer. During frequently occurring flood events water flows over the intervening driveway.

19. BIMC 16.20.040.C(8) deems the following to be exempt from critical areas regulation:

Activities within a portion of a wetland buffer or fish and wildlife habitat area buffer located landward of an existing, substantially developed area, such as a paved area, or permanent structure, which eliminates or greatly reduces the impact of the proposed activities on the wetland or fish and wildlife habitat area. The director shall review the proposal to determine the likelihood of associated impacts.

20. Staff has determined that the driveway intervening between the offsite wetland to the east and the proposed parking area qualifies as "an existing, substantially developed area...which eliminates or greatly reduces the impact of the proposed activities on the wetland" and therefore that the wetland buffer has been interrupted by the driveway and effectively terminated. This conclusion is supported by the aerial photography and mapping which shows the driveway to be elevated sufficiently to provide a straight-line impermeable wetland boundary. The fact of occasional neighborhood flooding would not affect this regulatory outcome unless it resulted in an actual expansion of the wetland west of the driveway.

21. The proposal should not adversely impact other critical areas in the neighborhood. The onsite wetland will be fully protected with a regulatory buffer. The small parking area proposed adjacent to the road will be distant from both the salt marsh to the northwest and Manitou Creek near the site's western boundary. Future restoration projects for either – if such ever should actually come to fruition – will not be impeded or adversely affected by this remote minor development. Murden Cove itself

suffers from chronic water quality issues but supports a valuable offshore eelgrass resource. Nearshore salmonid use appears unlikely to increase absent a restoration project for the salt marsh. The proposed boardwalk could reduce haphazard disturbance of shore vegetation by creating a single beach access.

22. Placement of fill for the parking area will require issuance of a grading permit. Filling activity is categorically exempt from SEPA review when it involves the placement of less than 100 cubic yards of material. Mark Epstein, the City's project engineer, roughly estimated that the parking area would require about 92 cubic yards of fill, a number close enough to the threshold to encompass the possibility of it being exceeded at the time of actual construction. But 100 cubic yards is not an inflexible threshold; if the underlying project is itself exempt, WAC 197-11-800(1)(b)(v) allows the 100 cubic yard cap to be exceeded. Since the parking area proposal is itself exempt from SEPA review, this exemption extends to include the associated filling.

23. The comments of Richard Weaver were also focused on the consequences of area flooding, noting that the project area is designated (as one would expect) on FEMA insurance maps as lying within the 100-year floodplain. His enquiry whether applicable flood regulations have been met was addressed by James Weaver, the City's building official. Frequently-flooded areas include properties lying within the 100-year FEMA floodplain and are regulated by the City as critical areas pursuant to BIMC 16.20.140. The basic standard to be met in the floodplain is that "*[d]evelopment shall not reduce the effective base flood storage volume.*" While there are theoretically many ways to achieve this outcome, in reality it usually means that fill placed in one part of the floodplain will be offset by an equivalent volume of excavation someplace nearby. This is also a matter to be reviewed and mitigated as part of the grading permit process, at which time the actual volumes can be accurately assessed. Finally, as described by Mr. Epstein, the parking area will be designed with a semi-permeable surface and rock underlayer that will allow through-passage of floodwaters; the new facility thus should be more stable and less hydrologically disruptive than most existing impermeable development in the neighborhood.

24. The need for the variance essentially arises from the lack of unconstrained buildable land between the onsite wetland buffer edge and both the front yard and the shore setbacks (which nearly overlap). The area on the upland parcel unconstrained by setbacks and buffers lying east of an existing gravel driveway used to access parcels to the north is about 15 to 18 feet in width and, as such, is inadequate to accommodate a reasonable parking area. Parking is a standard and necessary accessory use to a park. Roadside parking along Manitou Beach Drive is not a safe and practical option due to the absence of shoulders. The alternative to reducing the front yard setback from the road is to place the parking area within the wetland buffer, a location more subject to adverse impacts than the front yard setback due to its ecological sensitivity.

25. Thus without some sort of variance the shoreline open space amenity could not be accessed by the broader public, including those with disabilities. Neither the wetland nor the present shoreline configuration were created by the City nor resulted from any action taken by the City, and the narrow Manitou Beach Drive roadway predates the City's existence. The locations of the wetland, shoreline and road and their attendant buffers and setbacks combine to create special circumstances applicable to the property that constrain reasonable development and use of the applicant property and support the need for a variance from front yard setback requirements.

26. The question of whether the City's proposal will be materially detrimental to the public welfare or injurious to property or improvements in the vicinity dominated the public comment process. Prior to the hearing, four comments in opposition were received from adjacent or nearby landowners,

including a petition from Manitou residents, plus one statement of support. At the hearing itself the division between supporters and opponents was more balanced, with four members of the City's original Open Space Commission speaking to urge approval of the applications as providing much-needed public shore access consistent with the intent of the bond program's purposes.

27. Fears have been voiced that with parking facilities the space will turn into an unregulated off-leash dog park and a raucous drinking party spot and that visitors will stray from the public beach and trespass onto neighboring properties. Some commenters were also concerned about wildlife impacts, the safety of people crossing the road to get from the parking to the beach, traffic conflicts created by parking maneuvers, and the need for trash receptacles to be installed. One letter expressed concern that the purchase of the property was specifically intended for the protection of wildlife habitat and the proposal would increase environmental stress on the nearby freshwater marsh and adjacent salt water beach habitat.

28. Comments primarily centered on increased traffic along Manitou Beach Drive emphasized the potential for accidents involving vehicles entering and exiting the parking. The posted speed limit on Manitou Beach Drive is 25 miles per hour. The Public Works Department has reviewed the location of the parking against the standards for clear sight access. The proposal was found to meet sight distance standards for posted speed limits. More critically, the proposed parking area will be deep enough that cars will be able to enter and exit without having to back into the driving lanes.

29. The construction of parking, including a handicapped space, bicycle racks and an elevated boardwalk will allow this open space amenity to be more effectively used by the public. The project will be conditioned to mitigate potential development impacts through the use of pervious pavement for the parking, an elevated pervious boardwalk, vegetation enhancement around the boardwalk and parking areas, and signage along the wetland buffer. The number of existing low-bank locations offering public shore access on Bainbridge Island are extremely limited and increasing their quantity has long been a civic priority. On the eastern side of the Island the Manitou Beach open space facility will provide the only public shore access facility between Fay Bainbridge State Park at the northern end and Hawley Cove Park on Eagle Harbor, a distance of more than six road miles.

30. Whether upgrading the two now-undeveloped open space parcels as proposed will increase or decrease the level of anti-social behavior in the neighborhood above current levels is ultimately a matter of speculation. The optimistic view is that providing a visible public presence will actually diminish potential abuse of the site, which now may attract misbehavior due to its appearance of abandonment. The staff-proposed conditions will be augmented by requirements for trash receptacles and pickup, additional signage and a site management plan.

D. Shoreline Review

31. BIMC 2.16.165.F(3)(b) states the criteria for issuance of a shoreline substantial development permit:

i. In making the decision, the administrator shall grant a substantial development permit only when the development proposed is consistent with the following:

(A) The applicable policies, guidelines, and regulations of the Shoreline Management Act of 1971; Chapter 90.58 RCW, as amended; and Chapters 173-26 and 173-27 WAC or their successors;

(B) The goals, policies, objectives and regulations of the city of Bainbridge Island shoreline master program;

(C) The city of Bainbridge Island comprehensive plan and municipal code; all other applicable law; and any related documents and approvals.

ii. The administrator shall also consider whether the cumulative impact of additional past and future requests that reasonably may be made in accordance with the comprehensive plan, or similar planning document, for like actions in the area will result in substantial adverse effects on the shoreline environment and shoreline resources.

32. The Goal of the Public Access Section (4.2.4.4) of the Shoreline Master Plan is to provide, maintain and enhance a safe, convenient and balanced system of visual and physical public access to the shoreline which includes a diversity of opportunities for the public to enjoy the shorelines of the state. Outside of Winslow, there are very few no-bank public road ends with water access and parking, as documented within the staff report. This means that present opportunities for public access for certain activities like launching small non-motorized water craft and access for handicapped users are very restricted. The City is proposing to enhance the public's access to shoreline recreational opportunities by providing a boardwalk and continuing to protect the upland open space by only proposing limited parking.

33. The Recreational Development Section (5.8.3) of the Shoreline Master Plan seeks to provide substantial recreational opportunities for the public along the shoreline and to manage the development of recreational uses to assure that shoreline ecological functions and ecosystem-wide processes are not adversely impacted. The limited improvements proposed for this open space will facilitate provision of passive and low-key recreational opportunities to the Bainbridge Island community while assuring that the critical ecological functions of the wetland and shoreline are protected.

34. The waterfront parcel has an Island Conservancy designation. The proposal is consistent with the purpose and management policies of the designation in that it provides access to publicly owned open space while protecting, conserving and restoring shoreline ecological functions. Since its purchase, the land has been informally available for use as a passive recreation park. Passive Recreation is a permitted use in the Island Conservancy shoreline designation (Table 4-1). Passive recreational development implies creation of at least a minimum of facilities to support low impact activities. Parking and a boardwalk are accessory to and supportive of a passive recreation use.

35. Under Table 4-2, parking shall be setback 100 feet from the Ordinary High Water in a Passive Recreation Park. The parking is proposed to be setback approximately 75 feet from OHWM and is the subject of the shoreline variance request. The subject property has a shoreline buffer requirement of 150' from the OHWM pursuant to Table 4-3. As determined by the City's Shoreline Administrator, buffers do not extend beyond an existing public paved street or an area which is determined to be functionally isolated from the shoreline or critical area.

36. In addition, BIMC Table 16.12.030-2, the regulations dealing with "Primary Appurtenant Structures That Either Support Public Access or Are Necessary to Support a Water-Dependent Recreational Use" for public parks, establishes a 75-foot setback from OHWM that arguably applies to the proposed parking area. If so, the actual further need for a shoreline variance for the parking area may be debatable. Either way, the intervening public road clearly vitiates the shore buffer function, and

common sense supports the need for the parking area to be reasonably convenient to the primary shoreline amenity.

37. Compliance with the applicable provisions of Shoreline Master Plan Section 4.1.2 (Environmental Impacts) includes regulatory requirements for impact analysis and meeting the no net loss standard, revegetation requirements, mitigation standards and sequencing, surety, and monitoring and maintenance. All shoreline development, uses and activities are required to demonstrate no net loss of the ecological functions and processes necessary to sustain shoreline resources. In order to show compliance, an applicant is required to submit both a site-specific impact analysis and mitigation plan. No net loss can be specifically established at the permit process level by applying mitigation sequencing on a case-by-case basis during project review. The applicant has demonstrated the feasibility of meeting the no net loss standard within a "Manitou Beach Public Access Improvements Site Specific Impact Analysis and Mitigation Plan" dated December 17, 2015, summarized in the staff report. Monitoring will be accomplished under a 5-year program to evaluate mitigation measures against established performance standards. Mitigation sequencing actions, including compensatory mitigation measures, will result in an overall no net loss of ecological function on the subject property, and possibly a net gain.

38. The project proposes a total of 1,370 square feet of new, pervious paving to be used for parking and a 6 by 36-foot (216 square feet) 30-inch high L-shaped boardwalk. The elevated, slatted boardwalk will have pre-cast concrete decking and ACZA-treated lumber support structures placed on helical piles. Anticipated project-related impacts include temporary vegetation disturbance, vegetation removal, increased light and noise from human activity, and potential water quality impacts from parked motor vehicles. Beneficial impacts anticipated to occur as a result of this project include increasing the native plant species quantity and diversity for the site and minimizing shoreline vegetation trampling by focusing beach access foot traffic onto the boardwalk.

39. The shoreline and wetland buffer currently provide low ecological functions due to the lack of vegetation species diversity and the presence of invasive and ornamental species. While the parking lot is proposed to be located outside the wetland buffer, the mitigation for parking lot impacts will occur within the wetland buffer itself. The mitigation area will total 1.5 times the area of the new parking plus any areas of temporary construction disturbance, including any construction access points. A scaled planting plan will be provided at building permit submittal.

40. Pursuant to SMP Section 4.1.3 (Vegetation Management), development within shoreline jurisdiction must be located and designed to protect and to mitigate impacts to existing native vegetation. The standard regulatory shoreline buffer on the subject property is 150 feet but, due to the intervening road, the functional shoreline buffer is roughly 30 feet, the width of vegetation between the water and the road.

41. SMP Section 4.1.3.10 provides a number of vegetation alteration standards for public park development. Primary appurtenant structures to a public park and its recreational uses that either facilitate public access or are necessary to support a water-dependent recreational use are permitted within the shoreline buffer when a need for the shoreline location is demonstrated. Only water-related recreational structures are allowed within 30 feet of the shore, including boardwalks. The total area of all structures must not exceed 6,000 square feet or 10% of the shoreline buffer (3,000 square feet X 10% = 300 square feet), whichever is less. As proposed at 283 square feet, the boardwalk meets the allowable area of buffer encroachment for non-habitable structures.

42. Some vegetation disturbance will occur as a result of the construction of the new boardwalk. Permanent vegetation removal will occur only where the boardwalk pilings are installed, as the boardwalk will be elevated and slatted. Existing vegetation within the footprint and immediate area around the boardwalk will be excavated in a manner to preserve the root systems. The overall long-term impacts to shoreline vegetation are expected to decrease as a result of the project since the boardwalk will direct now-scattered foot traffic onto a designated route.

43. As noted, a small Category III freshwater wetland located at the northeast corner was identified and its southern edge delineated on the project site. Consistent with SMP Section 4.1.5 (Critical Areas), using Ecology's conversion guidance and positing a moderate land use impact for the proposed activity (parking for public access), the onsite wetland will be protected by a 60-foot buffer and 15-foot building setback. No project activities are proposed within the wetland or its buffer. Signage identifying the wetland will be installed along the buffer to inform the public of its existence.

44. Compliance with SMP Section 4.1.6 (Water Quality and Stormwater Management) requires all shoreline development to minimize the impacts of increased surface runoff through control, treatment and release of surface water such that the receiving water quality and adjacent shore properties and features are not adversely affected. Low impact development (LID) strategies are to be implemented unless the site is unsuitable for such techniques. LID techniques depicted on the site plan include permeable paving and rock substrate for the proposed parking lot that will be designed and installed consistent with the 2012 Stormwater Management Manual for Washington, BMP T5.15. In addition, a maintenance plan for the pervious pavement will be initiated upon installation of the surfacing. Complementary requirements that appear in SMP Section 4.2.3 (Parking) will also be fully met.

45. A public pedestrian access walkway is required by SMP Section 4.2.4 (Public Access – Visual and Physical) for shoreline open space, including provisions for handicapped and physically impaired persons where feasible. Public amenities shall be appropriate to the level of expected use. Due to the sensitive nature of the wetland and buffer and in consideration of the site's residential location, the City Council decided after lengthy review that four parking spaces, including one handicapped, is a sufficient amount of parking to meet the public need consistent with the property's limitations. These considerations also informed the applicant's response to SMP Section 5.8 (Recreational Development – Design and Location).

46. BIMC 2.16.165.G(4)(a) provides the applicable decisional criteria for review of the shoreline variance request:

Shoreline variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), and/or landward of any wetland, as defined in Chapter 16.12 BIMC, may be authorized, provided the applicant can demonstrate all of the following:

- i. The strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;*
- ii. The hardship described in subsection G.4.a.i of this section is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;*
- iii. The design of the project is compatible with other authorized uses within the area*

and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;

iv. The variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;

v. The variance requested is the minimum necessary to afford relief; and

vi. The public interest will suffer no substantial detrimental effect.

In addition, BIMC 2.16.165.G(4)(c) imposes the following further standard:

In the granting of all shoreline variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if shoreline variances were granted to other developments in the area where similar circumstances exist, the total of the shoreline variances should also remain consistent with the policies of Chapter 90.58 RCW or its successor and should not produce substantial adverse effects to the shoreline environment.

47. There is not sufficient unencumbered space to accommodate a parking area without impinging on the shoreline and zoning setbacks and the wetland buffer. The City proposes to locate the parking approximately 75 feet landward of the OHWM and adjacent to Manitou Beach Drive's upland frontage. Without this variance, the City would need to place the parking in the wetland buffer. Rather than disturb the wetland and the buffer, the City is seeking relief at a location where the function of the shore buffer has already been interrupted by the existing public road. Effective and reasonable public use of this attractive shoreline open space property requires at least the minimal parking and access facilities proposed.

48. The unique conditions affecting the property are primarily its bisection by a public road and the very limited unregulated, waterfront-accessible development area lying outside the shoreline, zoning and wetland buffers – a strip of upland about 15 feet wide that is near but lacks direct access to Manitou Beach Drive. Without the shoreline variance requested, a waterfront-accessible parking area would have to be located in the wetland buffer, and even if that design were proposed, a shore variance likely would still be required to construct an access driveway to Manitou Beach Drive. The applicant has not taken any action to create this hardship, as the property was purchased in its current condition in 2002 and Manitou Beach Drive was constructed long before either the City's incorporation or enactment of the Shoreline Management Act.

49. The proposal is consistent with the underlying shoreline designations, Island Conservancy and Shoreline Residential Conservancy. The purpose of the Island Conservancy designation is to accommodate a variety of private and public recreational uses that possess a higher potential level of impact than would be allowed by the Natural designation. The limited public access proposed preserves the natural character of the area, minimally conflicts with neighborhood residential uses, and is a preferred principal use in the Island Conservancy designation specifically and under the Shoreline Management Act generally.

50. Impacts to the shoreline environment will be minimal because the proposed parking area will lie in the upland area across the road from the shoreline. Thus, adverse impacts to the shoreline environment will be avoided, and the site will be enhanced with native plantings in the wetland buffer and around the boardwalk, with non-native invasive species to be removed from disturbed areas.

51. The questions of special privilege and cumulative impacts are primarily applicable to private development proposals and do not really pertain to this small public access project. This is the only City owned low-bank open space in the vicinity. The variance requested is the minimum necessary to afford adequate relief and avoids detrimental effects because providing fewer than four parking spaces and two bicycle racks to serve a shore public access facility would probably result in on-street parking along a road with inadequate shoulders. If this property ceases to be used as a passive public park and is instead sold for private development, it likely would be constructed with a single family residence consistent with the upland zoning. Most residentially zoned properties in the vicinity are already built with single family homes and are not anticipated to seek similar relief.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction over this zoning and 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 2.16.165, Chapter 16.12 and WAC Chapter 173-27 for issuance of a shoreline variance permit. It also complies with the standards stated at BIMC 2.16.120.E for issuance of a zoning variance.
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 substantial development, shoreline variance and zoning variance permit applications of the City of Bainbridge Island Department of Public Works - Engineering (file nos. PLN50398 SVAR, PLN50398 SSDP and PLN50398 VAR) are APPROVED, subject to the following conditions:

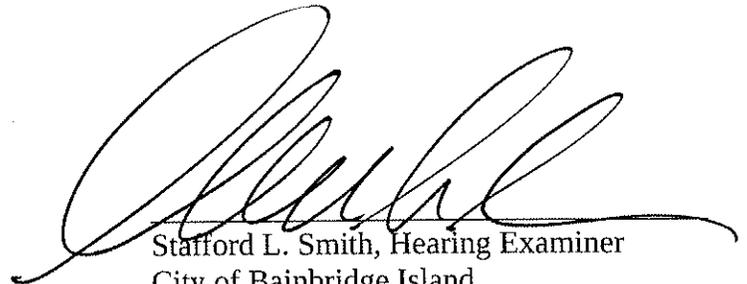
1. Work shall be completed in substantial compliance with the approved plans and reports as submitted on January 4, 2016, except as modified to comply with these conditions.
2. An erosion control plan for construction work shall be developed and implemented with the commencement of construction. The implementation of the erosion control plan shall be subjected to inspection by the City at all phases of work.
3. The work shall adhere to the City's seasonal work limitations between October 1 and April 30 of any year. During this period no soils shall remain exposed and unworked for more than two days. From May 1 to September 30, no soils shall remain exposed and unworked for more than 7 days.

4. Permeable pavement shall be designed and installed according to the 2012 Stormwater Management Manual for Western Washington, BMP T5.15.
5. Maintenance of the pervious pavement is required. A maintenance plan for the pervious pavement must be developed and initiated upon installation of the surfacing.
6. Required mitigation measures include:
 - a. Best Management Practices during construction of the boardwalk as recommended in the Site Specific Analysis including:
 - i. All access is to occur from the uplands. No machinery other than an auger for pile driving is permitted to work on the beach or in the water.
 - ii. All material removed shall be loaded on the uplands and taken to an approved upland disposal site.
 - iii. The City shall monitor excavation at the beach for the boardwalk pilings to assure the contractor follow the BMP for vegetation removal and replacement. In excavation areas, the contractor shall carefully remove the top one-foot substrate to preserve the root systems of any native intertidal vegetation. This material shall be carefully set aside to be replaced atop the remaining backfill upon completion of boardwalk installation.
 - iv. Clearing limits fencing shall be installed prior to work.
 - v. Mulch wattle or other appropriate materials shall be used during construction to minimize erosion as needed.
 - vi. Staging areas and construction access points shall be located away from wetlands, wetland buffer and the shoreline to the greatest extent possible.
 - vii. Excavated material shall be used for backfill once the boardwalk installation is complete. Any excess materials shall be evenly spread on the beach, in the vicinity of the boardwalk.
 - b. Total mitigation area shall be 1.5 times the area of the new parking plus any areas of temporary construction disturbance, including any construction access points. A scaled planting plan with species name, vegetation type, spacing and quantity shall be provided at building permit submittal
 - c. Infill area of bare ground adjacent to board walk with native plant species
 - d. Removal of native plant species from the disturbed portions of the site and infill bare areas with a mix of diverse, native shrubs.
7. A landscape plan shall be submitted with the building permit application that incorporates the mitigation requirements and the parking lot landscaping requirements (one native tree is required for the proposed four parking stalls and evergreen shrubs a minimum of 18-inches in height at the time of planting spaced no more than three feet on center along the perimeter of the parking stalls).

8. The City shall establish and record a notice on title preventing future development within the mitigation area.
9. The conceptual location of the mitigation areas shall be staked in the field prior to installation.
10. The City Public Work's Department shall submit mitigation performance standards for the following: percent cover, plant survival rate (actual numbers, species and percentage) and canopy coverage for the five years monitoring is required. Mitigation performance standards shall be submitted to and approved by the City Planning Department prior to start of mitigation installation.
11. The City Public Work's Department shall notify the City Planning Department upon completion of mitigation measures and provide an as-built plan within 60 days of the completion of mitigation installation prior to final building permit inspection. If the as-built plan is not in substantial compliance with the proposed and conditioned, the City Public Work's Department must provide the Planning Department with their proposal detailing actions proposed and an implementation schedule for said actions, planned to achieve substantial conformance with the proposed mitigation.
12. Monitoring of the mitigation measures shall be conducted in accordance with the proposed and required mitigation and performance criteria submitted for a period of five years. The monitoring period shall begin once the as-built plan is reviewed by the Planning Department and found to be in substantial conformance with the proposed mitigation measures. Monitoring reports documenting and evaluating the performance of the mitigation measures are required at the end of years 1-5. Monitoring reports should show that minimum performance standards are being met and/or provide recommendations for contingency actions. These reports shall be received by the Planning Department no later than December 31 of each monitoring year.
13. Should the performance standards submitted in accordance with Condition 11 not be met at any time during the five-year monitoring period, the Public Work's Department must provide the Planning Department with their proposal detailing corrective actions and/or maintenance actions proposed and an implementation schedule for said actions, planned to meet the standards. Upon review and approval/modification of said corrective measures by the Planning Department, the Public Work's shall implement the necessary corrective measures. Upon completion of said action, a written summary of the work shall be supplied to the Planning Department. The Planning Department may require additional remedial actions if actions by the applicant do not result in satisfaction of performance standards during the next subsequent growing season.
14. Any new mitigation and landscape plantings shall avoid or minimize the need for chemical fertilizers, pesticides, herbicides, and fungicides that could contaminate surface or ground water or cause adverse effects of shoreline ecological functions and ecosystem-wide processes.

15. The direct runoff of fertilizer chemicals into adjacent water bodies is prohibited.
16. Application of fertilizer shall utilize BMPs outlined in the City's adopted Stormwater Management Manual.
17. The City shall install signage along the buffer of the wetland to inform the public of its existence.
18. The City shall follow applicable procedures if, during construction, the subject property is found to contact, or have a significant probability of containing cultural resources.
19. Construction pursuant to this permit shall not begin and is not authorized until 21 days from the date of filing with the Department of Ecology as provided in WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of such filing have been terminated as provided in RCW 90.58.140.
20. The authorization granted by this SSDP shall expire within two years unless substantial progress towards completion is undertaken, unless an extension is granted as provided in BIMC 16.12.370 D.1.b.
21. The authorization granted by this SSDP shall terminate five years after the date the permit is approved by the city unless an extension is granted as provided in BIMC 16.12.370.D.2.d.
22. A copy of all public agency approvals and approved drawings shall be given to all contractors performing work at the site prior to beginning any construction work.
23. The parking lot shall be provided with trash and recycling receptacles and regular pickup services. Signage shall be installed describing the permitted scope of recreational activities and hours of public usage.
24. An overall long-term site management plan shall be submitted to and approved by the Planning Department. The plan shall list all ongoing site maintenance and monitoring activities for the site and specify which City agencies will be responsible for each.

ORDERED June 20, 2016.



Stafford L. Smith, Hearing Examiner
City of Bainbridge Island

This shoreline decision issued by the City's Hearing Examiner may be appealed to the Shorelines Hearings Board in the manner described at BIMC 2.16.165.I.

(Please note: Washington Department of Ecology has final decisional authority for a shoreline variance 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 is to 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

COBI Manitou Beach Access PLN50398VAR & SSDP/SVAR

Staff Contact:
Heather Beckmann Wright
Senior Planner

Public Hearing: June 9, 2016
Location: City Hall

Hearing Examiner: Stafford L. Smith

NO.	DOCUMENT DESCRIPTION	DATE
1	Application PLN50398 VAR (Variance) – with the following attachments: A. Geotechnical Engineering Evaluation by Aspect Consulting, PLLC dated 11/10/2015	01/04/2016 (Received)
2	Application PLN50398 SSDP/SVAR (Shoreline Development) – with the following attachments: A. Site Specific Impact Analysis and Mitigation Plan dated 12/10/2015 B. Site Plans C. Geotechnical Engineering Evaluation by Aspect Consulting, PLLC dated 11/10/2015	01/04/2016 (Received)
3	Notice of Application	03/11/2016 (Published)
4	Notice of Public Hearing and Certification of Distribution and Posting	05/18/2016 (Dated)
5	Public Comments	03/18/2016 thru 04/18/2016 (Dated)
6	Development Engineer Project Review - COBI	05/04/2016 (Dated)
7	Public Works Memorandum – COBI Re: Manitou Beach Parking Project -Design Recommendations	06/02/2015 (Dated)
8	Public Works Memorandum – COBI Re: Purpose and Need – Manitou Beach Parking	02/10/2015 (Dated)
9	News Release – COBI Re: New Design for Parking at Manitou Beach Drive Incorporates Community Input	05/25/2015 (Dated)
10	City Council Study Session Minutes A. Public Works Memorandum – COBI Re: Manitou Beach Parking Project dated 11/25/2014	12/02/2014 (Dated)
11	City Council Study Session Minutes A. Manitou Beach Tidelands – Background Information B. Memorandum – COBI – dated 04/21/2014 Re: Update on Surplus City Property: Manitou Beach Tidelands and Lovgreen Road Pit C. Memorandum – COBI Real Property Review Committee – dated 07/01/2009 Re: Recommendations to Surplus Property	04/21/2014 (Dated)

EXHIBIT LIST

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Staff Contact:
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12	City Council Agenda Bill A. Finance and Personnel Committee Agenda dated 03/14/2006 B. Memorandum – COBI Finance Committee Re: Recommendations of 2006 Expenditures on Open Space Property Improvements C. Finance and Personnel Committee Meeting Notes (Approved 04/04/2006)	03/22/2006 (Dated)
13	Public Works & Transportation Committee (PWTC) Meeting Notes - Draft	04/03/2006 (Dated)
14	Department of Planning and Community Development – COBI Re: Manitou Beach Open Space Property Information	04/06/2006 (Dated)
15	Comments from Presentation Workshop on April 1, 2004 – Pre-Application Project Presentation Workshop	04/01/2004 (Dated)
16	Open Space Commission Recommendations Re: Kane Property	03/05/2003 (Dated)
17	Staff Report	06/03/2016 (Dated)
18	Citizen Comments (4)	06/09/2016 (Admitted)
19	Open Space Commission Acquisitions Map – 2002-2007	06/09/2016 (Admitted)
20	FEMA 2010 Map	06/09/2016 (Admitted)
21	Three Photos of Manitou Beach Marsh	06/09/2016 (Admitted)
22	PowerPoint Presentation by Senior Planner Wright	06/09/2016 (Admitted)