

June 30, 2016

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

REPORT AND DECISION

Project: Sinclair Variance

File number: VAR16763B

Applicant: Teris Sinclair
8368 NE Beck Road
Bainbridge Island, WA 98110

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

Jim and Mary Colegrove
8362 NE Beck Road
Bainbridge Island, WA 98110

Location: 8368 Beck Road, Tax Parcel No. 032402-2-009-2000, SE Quarter of NW Quarter, Section 3, Township 24N, Range 02E, W.M.

Request: To exceed 15% lot coverage limit to achieve 22.1% lot coverage, and reduce the combined side yard setback from twenty-five to 11 ½ feet to allow for construction of a 2 car garage with finished space above.

\SEPA Review: Determined categorically exempt from review under the State Environmental Policy Act (SEPA) pursuant to WAC 197-11-800(6)(b).

FINDINGS OF FACT

A. Site Characteristics

1. TAX ASSESSOR INFORMATION
 - a. Tax Lot Number: 032402-2-009-2000
 - b. Owner of record: Teris Sinclair

- c. Lot size: Approximately 0.17 acres (7,500 square feet)
- d. Land use: Single-Family Residential

2. TERRAIN:

The property slopes gently from north to south.

3. SOILS:

According to the USDA Soil Survey of Kitsap County Area (1977), the property is mapped as having Cathcart silt loam, 15 to 30 percent slope.

4. ACCESS:

The property is accessed from a shared driveway running north from Beck Road. The driveway is on the Colegrove property and appears to lie just west of an unopened segment of Beck Road right-of-way.

5. PUBLIC UTILITIES

- a. Water: South Bainbridge Water Co.
- b. Sewer: On-site septic
- c. Storm drainage: Closed-conveyance

6. PUBLIC SERVICES

- a. Police: Bainbridge Island Police Department
- b. Fire: Bainbridge Island Fire District
- c. Schools: Bainbridge Island School District

7. EXISTING USE:

The property is currently developed with 948 square foot single-family residence.

8. SURROUNDING USES:

The property is surrounded by single-family residences.

9. EXISTING ZONING: R-1, 1 Unit per Acre Zone.

10. EXISTING COMPREHENSIVE PLAN DESIGNATION: Open Space Residential-1 (OSR-1).

11. SURROUNDING ZONING/ COMPREHENSIVE PLAN DESIGNATION: R-1/OSR-1

B. Procedural History

12. Variance requests nearly identical to those subject to the current proceeding were submitted, approved, appealed by the neighbors and subsequently upheld by the Hearing Examiner in 2011 (file no. PLN 16763 VAR). But this previously issued variance approval expired due to inactivity 3 years after the date of its issuance. On October 15, 2015, the City received a second application from Ms

Sinclair to grant the same variances for the garage construction project that had previously been approved, supported by a site plan and building elevations. A Letter of Complete Application was issued, with a Notice of Application published on October 30, 2015. Soon thereafter the Bainbridge Island Fire Department and the Kitsap County Health District submitted their approvals for the project.

13. On November 6, 2015, the City received a comment letter from the neighbors residing east of the Sinclair property, Ms. Janet See and Mr. Bill Reddy, opposing the granting of the variance. The City Planning Director again approved the minor variance requests within an administrative decision issued February 23, 2016. And the Reddy/See and Colegrove households again filed a timely appeal of this decision to the Hearing Examiner. A public hearing on the second variance appeal was held on June 15, 2016.

14. Two days prior to the hearing the City Attorney filed a brief arguing that the second appeal by Reddy/See and Colegrove should be deemed barred by *res judicata*, a judicial doctrine precluding repeated litigation by the same parties of claims previously decided. The Examiner declined to consider applying *res judicata* in this instance, first because the issue was not raised in a timely manner and second because the brief was not accompanied by a dispositive motion. The purpose of the doctrine is to achieve judicial economy by avoiding unnecessary litigation; in order for that to occur, it needs to be asserted at a time and in a form that would allow the proceeding to be dismissed without unfairly burdening the parties. A last-minute brief merely arguing *res judicata* cannot achieve this purpose.

C. Variance Review

15. The decisional criteria governing issuance of a minor zoning variance are stated at BIMC 2.16.060.D(1):

a. 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

b. 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; and

c. The need for a variance has not arisen from previous actions taken or proposed by the applicant; and

d. 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; and

e. 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.

16. It needs to be emphasized at the outset that the City's variance review lacks the legal authority to resolve many of the issues outstanding among the parties to this appeal. Reddy/See, the Colegroves

and Ms Sinclair all share a driveway arrangement based on usage patterns that mostly have never been formally incorporated into legal documents. Both the existing Reddy/See garage and Ms Sinclair's proposed new garage site lie more than 100 feet north of Beck Road and are accessed over the Colegroves' gravel driveway. The Colegroves' garage is also located near the north end of their driveway, and in order to exit in a forward direction, their vehicles have historically backed into a gravel turnaround area that extends from their driveway onto the Sinclair lot. The Reddy/See garage also opens into this turnaround area. Finally, there appears to be a section of unopened and as yet unvacated City road right-of-way lying adjacent to the eastern edge of the Colgrove driveway, and part of the Reddy/See garage may intrude into this right-of-way; but this intrusion has no bearing on the variance issues.

17. Only a 26 by 30-foot section of the turnaround area located at the southeast corner of the Sinclair lot adjacent to the Reddy/See garage is actually covered by a written easement. This was created in 1994 by a prior owner of the Sinclair parcel in favor of a prior owner of the Reddy/See property as "an easement for ingress". It contains a restriction on the grantor to "make no use of the land occupied by said easement except for that which will not interfere with grantee's ingress and egress". All other usages described in finding no. 16 above are supported by claims to prescriptive easements; these are matters that this administrative proceeding has no jurisdiction to adjudicate or, by extension, to recognize. This proceeding also lacks the authority to interpret the 1994 written easement in the manner required to make a finding that Ms Sinclair's proposed construction activities would interfere with Reddy/See's right of ingress and egress and thus violate the easement.

18. This appeal is strictly focused on the consequences of the variances requested. It cannot support a general, wide-ranging evaluation of all aspects of the proposal. As a variance proceeding it narrowly targets certain dimensional standards and therefore does not take into account alleged broader development impacts that are not a consequence of the lot coverage and setback variances requested. For example, the proposed garage will also accommodate an upstairs sleeping room, and the appellants have objected to the height and resultant bulk of the proposed two-story structure. But the proposed height of the structure is permitted outright in the zone, and no relevant regulations govern its bulk. Because the granting of the setback and coverage variances are not necessary to authorize the structure's proposed height or bulk, any alleged view impacts resulting from second story construction will not be the result of the variances and thus are unrelated to this variance review.

19. Similarly, even though the Health Department review registered no objections to the variances requested, questions were raised at the hearing about the possibility that the new garage's foundation excavation may intercept the applicant's existing septic drainfield. While with older septic systems the documentation of facility locations may be sketchy or inadequate, and septic issues may be unexpectedly encountered during foundation excavation and need to be addressed, these are matters of compliance with Health Department regulations that will exist with respect to any construction proposal independent of variance issues.

20. Single-family residences and accessory buildings are listed as permitted uses in the R-1 zone at a density of 1 unit per 40,000 square feet. Thus at 0.17 acres (7,500 square feet) the subject property is an existing nonconforming lot. The maximum lot coverage for the R-1 zone is 15%, which translates to approximately 1,125 square feet for the subject property. The existing single family residence and porch occupy a 1,044 square foot footprint, resulting in an existing lot coverage of 14%. The variance application requests to exceed the 15% lot coverage limit to construct a garage (with finished space above) and a covered roof over the existing walkway linking the garage to the residence. The application shows the garage footprint at 552 square feet, yielding after construction a total lot

coverage of 21.3%.

21. Under BIMC Section 18.12.050 the applicant's property is subject to two front yard setbacks of 25 feet each. Lying directly to the west is the Mattson Place right-of-way, and to the east is the narrow 10-foot wide unopened right-of-way extending north from Beck Road. As stated in BIMC 18.12.020-2, the minimum side yard setback for the R-1 zone is 10 feet, with a combined side yard (north and south together) setback requirement of 25 feet. Because the subject property has two front setbacks, it does not also have a rear setback. The standard rear yard setback would be 15 feet.

22. The existing home intrudes into the required Mattson Place front yard setback. It is also located one foot from the north side property line and as such both fails to meet the 10-foot side yard minimum and requires 24 feet of the combined total to be located along the south line. The existing home meets the front yard setback from the eastern right-of-way and is 40 feet from the southern side property line, thus currently complying with the 25 feet combined side setback requirement. The variance application requests a 14 ½ foot reduction in the combined 25 foot combined side setback requirement to construct a garage 10 ½ feet from the south side property line. The proposed garage would therefore still meet the minimum 10 foot side setback of the R-1 zone. The proposed garage also would meet both required front setbacks to the east and west.

23. By way of context, a 7500 square foot lot would normally be found in the R-5 zone, which allows 25% lot coverage and imposes a minimum 5-foot side yard setback and 15-foot combined side setback. If the Sinclair garage proposal were located in the R-5 zone it would meet lot coverage requirements but still fall 3.5 feet short of meeting the combined side setback total of 15 feet. Thus a small side yard setback variance would still be necessitated for the project.

24. Two vehicle use issues have been raised by the appellants with regard to the easement serving the Reddy/See garage and its adjacent areas. One involves potential changes to historic parking patterns, and the second is focused on short-term conflicts arising out of the garage construction process. Currently, Ms. Sinclair parks in a graveled area adjacent to the ingress/egress easement, which parking area is now slated for garage construction. Functioning as the existing parking area for the Sinclair property, the footprint to be occupied by the planned garage does not encroach on the Reddy/See easement but will perhaps eliminate a convenient maneuvering option that may be available when no cars are present in the parking area. But Ms Sinclair is under no present obligation to provide vehicle maneuvering space outside the formal easement; to merit recognition in this proceeding, any prescriptive claim for such use would need first to either be formally acknowledged by her in a recorded document or adjudicated in Superior Court.

25. Larger vehicles may indeed experience difficulty turning around within the Reddy/See easement, leading them to back down the long Colegrove driveway to Beck Road. But the City does not prohibit vehicles backing out onto public roads, and the portion of Beck Road flanking the driveway entrance, although narrow, is straight and lightly traveled. If vegetation growth is currently impairing visibility for vehicles exiting the driveway at Beck Road, the appellants perhaps should just cut it back themselves since such vegetation is likely located on one or both their properties. A 2011 memo from a City engineer evaluated the ability of vehicles to turn around in the ingress/egress easement during the original variance review and concluded that the dimensions of the easement, while not optimal, were adequate. The City's present Development Engineer, Janelle Hitch, concurred with this assessment in her review of the current application.

26. It seems undisputed that the actual erection of the garage will need to be managed with some sensitivity in order to reasonably accommodate the temporary addition of construction equipment and deliveries to the site without unduly inconveniencing the appellants' vehicle access and use. The Colegrove driveway appears in the aerial photos to be of variable effective width but probably averages about 15 feet. The photos show Colegrove vehicles parked along its west side with enough room remaining for other vehicles to pass. The formal easement area needs to be kept free of extended use by construction vehicles. But, construction traffic concerns at this location are not the result of the variances, *per se*, but are endemic neighborhood conditions. Any development activity on the Sinclair site would create construction traffic management issues, with or without a variance request.

27. The project will be conditioned to ensure that construction only takes place during the times allowed by BIMC Section 16.16.025, in order to mitigate noise impacts. Within residential zones, construction activities may take place between 7 a.m. and 7 p.m., Monday through Friday (except legal holidays); between 9 a.m. and 6 p.m. on Saturdays; and prohibited on Sundays and legal holidays, except that work on the inside of an enclosed structure may occur between 10 a.m. and 4 p.m.

28. The special circumstances applicable to the Sinclair property are the product of its development history plus the fact that it is a small nonconforming lot subject to regulations formulated with much larger parcels in mind. The locations of structures, septic drainfields and the Reddy/See easement largely preclude building a garage in any other spot. The 15% lot coverage provision of the R-1 zone is geared to a 40,000 square foot parcel and generates a 6000 square foot building envelope on a standard lot within the zone. On the much smaller Sinclair lot, 15% coverage only authorizes an envelope of slightly more than 1100 square feet. The Sinclair actual parcel size is comparable to an R-5 lot where 25% coverage is allowed, and the Sinclair proposal would comfortably meet the R-5 coverage standard.

29. The applicable R-1 zone lot line setbacks additionally comprise a special circumstance. They are also designed for larger lots, and when combined with historic construction of the older house near the north lot line, impose an impractically large 24-foot side yard setback along the property's south boundary under the combined setback standard. Since this is the only unconstrained portion remaining on the lot, strict enforcement of the 24-foot setback would essentially prevent any additional development on this site. The 10-foot minimum side yard setback will not be exceeded. In the context of the lot's overall development configuration, a secondary setback special circumstance also results from having two R-1 25-foot front yard setbacks imposed, one by an unopened right-of-way where the setback regulatory function is actually irrelevant.

30. These special circumstances individually and collectively reflect historical development patterns that long preceded the applicant's ownership and therefore cannot be ascribed to her own actions. Garages are normal appurtenances to single-family development commonly enjoyed by other properties in the vicinity and zone. As documented in the staff report, the project proposal is consistent with all applicable regulations and plan policies other than the setback and lot coverage provisions covered by the variance requests.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction over this variance appeal proceeding. Applicable notice requirements have been met. The variance proposal is categorically exempt from SEPA review.
2. The Sinclair garage proposal meets the criteria for issuance of a minor zoning variance stated at BIMC 2.16.060.D(1). The appellants have failed to meet their burden of proof to demonstrate noncompliance with these criteria.
3. Zoning variances are granted under authority of this decision to exceed the 15% lot coverage limit of the R-1 zone in order to achieve a 22.1% lot coverage, and to reduce the combined side yard setback from twenty-five to 11 ½ feet to allow for construction of a two car garage.

DECISION

The variance appeals of Bill Reddy and Janet See and Jim and Mary Colegrove are DENIED. The lot coverage and setback variances requested by Teris Sinclair for property located at 8368 NE Beck Road (file no. VAR16763B) are GRANTED, subject to the following conditions:

1. The applicant shall obtain an approved building permit from the Department of Planning and Community Development prior to construction. The building permit shall conform to all applicable requirements outlined in BIMC Title 18, except for the side-yard setback intrusion and lot coverage increase allowed through this variance. The building permit site plan and elevations shall be in substantial conformance with the site plan date-stamped October 15, 2015, except as modified by these conditions.
2. The applicant shall provide for 2 off-street parking spaces outside of the ingress/egress easement at the southeastern corner of the property to satisfy the requirements of BIMC 15.15.020-1. This will be accomplished by constructing the 24-foot wide two car garage, as proposed.
3. The applicant shall clearly delineate the southern and eastern property lines/edge of right-of-way by staking those property lines and the location of the proposed foundation. The property line and staking shall be inspected prior to setback inspection. A setback inspection must be completed by a planner prior to the foundation footing inspection.
4. Eaves of the new garage shall not intrude more than 24 inches into any zoning setback, including the varied side setback to the south.
5. Construction vehicles shall utilize the area of the Reddy/See ingress/egress easement only for pickup and drop-off of materials. Construction vehicles shall not park in the ingress/egress easement. During construction, building materials and supplies shall not be stored within the area of the ingress/egress easement.
6. Stormwater runoff from the new building shall be directly conveyed to the existing storm drain.
7. The garage/guest quarters structure that is the subject of this variance shall not be converted at any point to an Accessory Dwelling Unit.

8. To control noise impacts, construction hours shall be restricted to the days and times authorized in BIMC Section 16.16.025.
9. The applicant is required to stop work and immediately notify the Department of Planning and Community Development and the Washington State Office of Archeology and Historic Preservation if any historical or archaeological artifacts are uncovered during excavation or construction. This provision shall appear as a note on the construction drawings submitted as part of the building permit application.

ORDERED June 30, 2016.



Stafford L. Smith, Hearing Examiner
City of Bainbridge Island

The Hearing Examiner is authorized to make the City of Bainbridge Island's final decision on a minor variance appeal. A party with standing may seek judicial review of this decision by filing a timely suit in Kitsap County Superior Court under the Land Use Petition Act.

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

EXHIBIT LIST

Appeal of Administrative Decision (PLN16763BVAR)

Staff Contact:
Nate Schildmeyer
Planner

Public Hearing: 06/15/2016
Location: City of Bainbridge Island
City Hall Council Chambers

Hearing Examiner:
Stafford Smith

EXHIBIT NO.	DOCUMENT DESCRIPTION	DATED
1	Citizen Comments (including Cousins ltr and Colgrove ltr submitted at hrg).	11/06/2015 to 06/13/2016
2	Staff Report with the Following Attachments: A. Variance application received October 15, 2015 B. Site plan date stamped October 15, 2015, and building elevations/floor Plans date stamped October 15, 2015 C. Preapplication Waiver Form from original application (PLN 16763 VAR) D. Kitsap County Health District review E. Bainbridge Island Fire Department review F. Notice of Application G. Written public comment with copy of ingress/egress easement, Auditor's File No. 9407280023 H. Letter of Complete Application sent to applicant	02/12/2016
3	Notice of Administrative Decision	02/23/2016 (Issued)
4	Appeal by Reddy/See and Colegrove	03/04/2016 (Received)
5	Notice of Public Hearing	05/27/2016 (Published)
6	Certification of Distribution and Posting	05/25/2016 (Dated)
7	Appellant's Photograph	05/25/2016 (Dated)