

**DECISION OF THE HEARING EXAMINER
CITY OF BAINBRIDGE ISLAND**

In the Matter of the Application of

Joe and Mona Rochelle

RUE12892B

For a Reasonable Use Exception

Introduction

Joe and Mona Rochelle applied for a Reasonable Use Exception to construct a single-family residence on property at 4441 Point White Drive.

An open record public hearing was held April 15, 2011. Kelly Dickson, Special Projects Planner, represented the Director, Department of Planning and Community Development. The applicants were represented by Joe Rochelle and Peter Brachvogel, BC&J Architecture.

All section numbers in the decision refer to the Bainbridge Island Municipal Code, unless otherwise indicated.

After due consideration of all the evidence in the record consisting of the testimony and exhibits admitted at the hearing, the following shall constitute the findings, conclusions, and decision of the Hearing Examiner in this matter.

Findings

1. Joe and Mona Rochelle (hereafter “Applicants”) applied for a Reasonable Use Exception (“RUE”) to allow them to construct a single-family residence and accessory structure on property at 4441 Point White Drive NE.
2. The approximately 23,522 square foot lot is across Point White Drive NE from Rich Passage and is west of Baker Road. To the east of Baker Road is the Schel-Chelb Estuary. The estuary connects to Rich Passage so is within the shoreline jurisdiction which extends 200 feet from the edge of the estuary, extending across the right-of-way onto the subject site. The lot to the west of the subject site is developed with a residence. There is an existing gravel roadway through Baker Road that leads to that adjacent residence.
3. The Bainbridge Island Comprehensive Plan designates the subject property as OSR-2, Open Space Residential, two residences per acre. The property is zoned Residential 2 Units Per Acre (R-2), and the City’s Shoreline Master Program (“SMP”) designates it as a Semi-Rural

environment. The Semi-Rural environment of the shorelines accommodates low to medium density residential development.

4. The site is described as forested with an emergent wetland community at the south end and an upland confined to a narrow tongue between the eastern and western extents of the wetland. Exhibit 6. The wetland was categorized Category III Depressional Wetland by the wetland scientist who prepared the Wetland Analysis Report and delineated the wetland. An 80 ft. water quality buffer is required by Section 16.20.160 from the edge of a Category III wetland that scores less than 20 points for habitat functions when a high impact land use is proposed, which a single family residence on less than one acre constitutes. In addition, the Code requires a 15 ft. building setback from the edge of the buffer. This buffer and setback encumber most of the remainder of the lot. Though the wetland on-site is rated low-moderate for biological support, its actual value as habitat is less than might be expected because of the surrounding roadways and homes. Exhibit 6.

5. A 50 ft. native vegetation zone required by Section 16.12.150 extends west from OHWM of the estuary, encompassing the Baker Road right of way and extending to the east property line of the subject property. As utilities are anticipated to be located in that area, the Director proposes a condition that they be located within or as close to the existing disturbed area roadway area as possible and on the nature and amount of replacement.

6. Because of the relation of the lot to the estuary and shoreline and the applicable regulatory restrictions, Applicants would have no reasonable use of the property without the requested exception.

7. The shoreline regulations also require that side yards within 200 feet of the OHWM total at least 30 percent of the lot width and remain free of structures and impervious surfaces. Section 16.12.260B.8. The proposal meets the setback requirement and a condition is recommended that the driveway that would be within the area be constructed of pervious materials.

8. The subject property is within a Liquefaction Hazard area, Section 16.20.150D.3.b, so Applicants are required to file a geotechnical report at the time of building permit application to address engineering of the structure's foundation. The property also is partially within a frequently flooded area, Section 16.20.140, with the requirements and limitations of that designation including elevation of the structure's base at least one foot above the base flood elevation.

9. The site is within an Eagle Management Area. Exhibit 14. The Director recommends a condition that requires filing of an Eagle Management Plan prior to issuance of a building permit.

10. The Director issued a Notice of Mitigated Determination of Nonsignificance (MDNS) for the proposal on March 17, 2011 pursuant to SEPA. Conditions of the MDNS included restriction on the application of chemicals and type of roofing materials, fencing and signage along the edge of the restoration area, use of pervious material for the driveway, and presence of an archaeologist during excavation.

11. Applicants have worked with Department staff on acceptable development. The Director, Department of Planning and Community Development ("Director"), recommended approval of the RUE subject to imposition of the conditions of the MDNS and additional conditions discussed below.

12. Applicants propose a two-three story single-family residence with one accessory building, with total lot coverage of 1,200 square feet. The Director recommends a condition limiting coverage to that amount. The existing roadway in the Baker Road right-of-way would be used to access the lot at its north end. The driveway and house would be located as far from the wetland as possible, at the extreme north end of the property, and observe at least the required 25 ft. front yard setbacks from Baker Road and Point White Drive NE and at least 5 ft. setbacks from the north and west property lines with a total of at least 15 ft. Section 18.30.060. The Director recommends a condition requiring that development be no closer than 7 ft. from the wetland.

13. The proposed development would provide the two parking spaces required. Section 18.81.030.

14. Only minor long-term impacts are likely from the proposed development. Surface water generated on the impervious surfaces would be infiltrated and a condition is proposed to require non-leaching roofing materials to avoid water contamination. Applicants propose to use pervious materials for the driveway. Because there is no discharge of groundwater from the site, the location of a house on the site would not impact groundwater functions and any impact on recharge of water would be compensated for by the infiltration of roof water. The buffer mitigation proposed would enhance the remaining buffer area.

15. There is sufficient public sewer capacity (Exhibit 8) and the South Bainbridge Water System has sufficient capacity (Exhibit 11) at this time for the proposed development.

16. The Fire Marshall reviewed the proposal and provided comments resulting in the Director's recommended conditions relating to roadway and drive and fire flow requirements. Exhibit 26.

17. The type of foundation proposed minimizes the amount of excavation needed.

18. A single-family residence in a residential zone is the minimum development necessary to allow reasonable use of the property. Applicants have taken no action that created the absence of developable area on the property.

19. Applicants have submitted a wetland buffer mitigation plan providing for replanting disturbed areas to offset the approximate 2,000 square foot area of impact (house, accessory shed, and driveway) with approximately 3,153 square feet of plantings for a ratio of 1: 1.57. Exhibit 19. The Director recommends conditions for seven years of monitoring and performance assurance for the restoration and enhancement proposed.

20. Because other mechanisms such as buffer averaging, a variance, or a habitat management plan are not available to allow development within a water quality buffer, Section 16.20.160D, a RUE for the development is the only feasible alternative.

21. The criteria for approval of an RUE are as follows:

1. The application of this chapter would deny all reasonable use of the property.
2. There is no reasonable alternative to the proposal.
3. The proposed impact to the critical area is the minimum necessary to allow reasonable use of the property.

4. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant, or of the applicant's predecessor, that occurred after February 20, 1991.
5. The proposed total lot coverage does not exceed 1,200 square feet.
6. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the property.
7. Any net loss of critical area functions and values, as determined by a qualified consultant through the application of best available science, will be mitigated on-site to the extent feasible if off-site options are not available. If off-site options, such as a fee-in-lieu or mitigation banking program, are available, the mix of on-site and off-site mitigation should be based on recommendations of the consultant.
8. A habitat management plan has been prepared pursuant to BIMC 16.20.060, unless it is determined through the applicable review process that such a plan is unnecessary.
9. The proposal is consistent with other applicable regulations and standards.

Section 16.20.080G.

22. A Notice of Public Hearing for this application was mailed March 24, 2011, published on March 25, 2011, and posted on March 29, 2011.

Conclusions

1. The Hearing Examiner has jurisdiction to hear and decide this matter.
2. Notice and public hearing requirements of the Code were met.
3. Applicants have demonstrated by clear and convincing evidence, as required by Section 16.20.080H, that with the imposition of the MDNS conditions and those recommended by the Director, the criteria for approval of the requested RUE are met. The findings show that without the RUE all reasonable use of the property would be denied; that because of the extent of the wetland and buffer encumbrances, there is no reasonable alternative to the proposal; that the impacts of the proposed structures and driveway are the minimum necessary to allow reasonable use of the property; that Applicants have not taken any action that resulted in the restrictions on the property; that the proposed lot coverage does not exceed the 1,200 sq. ft. maximum; that the public health, safety or welfare is not threatened by the proposal with the conditions recommended; that the recommended and proposed mitigation eliminates any net loss of critical area functions and values; that the Director has determined that the wetland buffer mitigation plan is appropriate for this water quality buffer; and that the proposed development is consistent with, or with the recommended conditions of approval will be consistent with, all other regulations. Therefore, the ERU should be approved subject to the recommended conditions.

Decision

The Reasonable Use Exception is granted subject to the following MDNS conditions and the conditions recommended by the Director:

SEPA Conditions

1. Application of fertilizers, pesticides, herbicides, insecticides or fungicides shall use Integrated Pest Management (IPM). Strategies are defined in the *Puget Sound Pest Management Guidelines, A Guide for Protection of Our Water Quality* [Menzies, G. and B. Peterson. Puget Sound Pest Management Guidelines, A Guide for Protecting Our Water Quality. Bellingham, Washington: WSU Cooperative Extension, 1993].
2. In order to protect the ground water and the wetland flora and fauna, the roofing material is to be of a non-leaching material that is not harmful to wetlands. Examples of non-leaching materials are, but not limited to, metal and tile roofs. Asphalt composition and cedar roofing is not acceptable.
3. A split-rail type fence shall be installed along the edge of the proposed restoration area (Wetland Buffer Mitigation Plan, February 3, 2011). The fence may contain gates to access the restoration area, and shall provide a clear distinction between native vegetation buffer area and any future landscaped area. The rails shall be high enough to allow small mammals and wildlife to pass through. The fence shall be in place prior to final inspection of the building permit.
4. Two signs indicating the presence of a protected wetland buffer shall be placed on the fence.
5. In order to decrease runoff and increase infiltration, the driveway shall be constructed of pervious material.
6. Due to a possibility of archaeological resources in the area, an archaeologist must be on-site to monitor excavation. All work will stop immediately and notification shall be promptly given to the City and State Office of Archaeology and Historic Preservation. The applicant shall receive permission from the State Office of Archaeology and Historic Preservation prior to further disturbance of the site (RCW 27.53.070 or its successor).

Non-SEPA Conditions:

7. Prior to any construction, the applicant shall submit a building permit for the proposed residence. The building permit application shall be in substantial conformance with the plans date stamped February 2, 2011.
8. An Eagle Management Plan shall be submitted prior to issuance of a building permit.
9. The total lot coverage shall not exceed 1200 square feet.

10. The proposed single-family residence shall be located at least 7 feet from the edge of the wetland as delineated per the Wetland Analysis Report, dated December 9, 2010 by Wiltermood Associates, Inc.
11. The limits of clearing and grading shall be fenced with silt fencing in the field and inspected by the Department of Planning and Community Development prior to construction.
12. A notice to title in accordance with BIMC16.20.190 shall be recorded prior to building permit issuance. The notice shall include all of the conditions of this Reasonable Use Exception.
13. Mitigation pursuant to the “Wetland Buffer Mitigation Plan” (Wiltermood Associates, Inc., February 3, 2011) shall be planted or a performance bond pursuant to BIMC 16.20.180 must be submitted and accepted prior to final inspection of the building permit. An as-built site plan shall be submitted within 30 days of planting completion.
14. The mitigation plan shall include provisions for a monitoring program. A monitoring report shall be submitted annually, for a period of at least seven years. A restoration maintenance assurance device shall be submitted and accepted prior to the release of the performance assurance device at the completion of the restoration and shall be held during the 7-year monitoring period, pursuant to BIMC 16.20.180 (*Performance and Maintenance Surety*).
15. Water and sewer utilities must be constructed within the existing Baker Hill right-of-way, as close to the existing roadway as possible. Any removal of native vegetation within the native vegetation zone, measured as 50 feet from the edge of the Schel-Chelb estuary, must be replaced at a 1:1 ratio. Replacement plantings shall be native plant species, or other approved species, similar in diversity, type, density, wildlife habitat value, and water quality characteristics. Replacement shall occur prior to final inspection of the building permit, or a performance bond pursuant to BIMC 16.20.180 shall be submitted prior to final inspection of the building permit.
16. The proposed single-family residence must conform to the 30-foot height limit, measured from average grade to peak of roof; this shall be measured at the midpoint on each side of the building.
17. The following fire district comments shall be satisfied prior to final building permit issuance:
 - a. Access to the lot shall conform with the following (including the length of the existing gravel drive from Point White Drive to the proposed residence):
 - i. Width. Roadway shall be constructed in accordance with Public Works Department standards but in no case shall be less than 12 feet in drivable width.
 - ii. Surface. Roadway surface is required to be an approved, all-weather surface.

- iii. Angle of Approach and Departure. Maximum angle of approach is 15.5 degrees. Maximum angle of departure is 10.5 degrees.
 - iv. Turnaround. An approved fire apparatus turnaround will be required within 150 feet of the end of the roadway.
- b. Fire flow shall be provided in accordance with the adopted Fire Code (BIMC 20.04). Please note that the nearest fire hydrant is over 900 feet away – almost triple the distance allowed by Code. The following options exist (please specify which option will be used at the time of building permit application):
- i. If water is available for fire fighting within 600 feet of the property line of the property line and is >1000 GPM, the water line shall be extended with hydrants consistent with Chapters 13.10 and 13.18 of the BIMC. If water is available for fire fighting within 1000 feet of the property line and is 500-999 GPM then the water line must be extended with hydrants consistent with Chapters 13.10 and 13.18 of the BIMC; or a fire sprinkler system must be installed in new dwellings. If water is not available for fire fighting within 1000 feet of the property line and/or is <500 GPM then a sprinkler system must be installed in new dwellings.
- c. The Fire Department highly recommends that all new residences be equipped with residential fire sprinkler systems.

Entered this 21st day of April 2011.

/s/ Margaret Klockars
Margaret Klockars
Hearing Examiner *pro tem*

Concerning Further Review

NOTE: It is the responsibility of a person seeking review of a Hearing Examiner decision to consult applicable Code sections and other appropriate sources, including State law, to determine his/her rights and responsibilities relative to appeal.

The decision of the Hearing Examiner is the final decision of the City in this matter. A person with standing may make appeal of this decision to the Kitsap County Superior Court. To be timely, a petition for review must be filed within the 21-day appeal period [see RCW Ch. 36.70].