



Shoreline Master Program

Administrative Interpretations and Regulatory Guidance Memorandums

Last Updated
2/23/2021

Index

Applicability to adopted SMP versions are indicated with a checkmark as follows:

- 2014 SMP (Ord 2014-04) – Effective on 7/30/2014
- 2021 SMP (Ord 2020-17) – Effective on 4/5/2021

Page	Topic	SMP Section References	Dated	2014 SMP	2021 SMP
2	RGM 15-02: Zone 2 Buffer Encroachment	SMP 4.1.3.6.4; SMP 4.1.3.11.2	10/2/2015	✓	✓
5	RGM 15-04: Encumbered Lots	SMP 4.2.1.7 (2014) SMP 4.2.1.7.8 (2021)	6/15/2015	✓	✓
7	RGM 15-06: Demonstrating No Net Loss Standard	SMP 4.1.2.4	6/18/2015	✓	✓
10	RGM 15-07: Applicability of Shoreline Structure View Setback to Decks	SMP 4.1.3.11	10/2/2015	✓	✓
12	Joint-use Stairs for Shoreline Access	SMP Table 4-2; SMP 4.1.3.7(3); SMP 5.9.5(8)	4/9/2018	✓	✓
16	RGM 15-01: Enlargement of SFR Primary Structures	SMP 4.2.1.6.3(2)(a)	7/7/2015	✓	
18	RGM 15-03: Redevelopment vs Alteration	SMP 4.2.1.7; SMP Appendix B(B-9)(E)(2)(b)	8/4/2015	✓	
20	RGM 15-05: Applicability of General Exemptions to Critical Areas Regulations	SMP Appendix B(B-2)(C)(4) and (D)(2)	8/4/2015	✓	

Applicable to:

2014 SMP (Ord 2014-04)

2021 SMP (Ord 2020-17)



CITY OF BAINBRIDGE ISLAND
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

SMP Regulatory Guidance Memo

Title: Zone 2 Buffer Encroachment for Single-Family Residence

Number: 15-02

Date: October 2, 2015

SMP Citation: 4.1.3.6.4 and 4.1.3.11.2

Background

The shoreline structure setback view requirements allow reduction of the shoreline buffer to allow a new primary residential structure in Zone 2 and are also referenced in zone specific planting regulations found elsewhere in the code.

Regulatory Language

SMP 4.1.3.11.2 states, in part:

The Shoreline Buffer on the subject property may be reduced below the depth requirements identified in Table 4-3 to allow a new primary residential structure to be located within Zone 2.

SMP 4.1.3.6.4 states, in part (staff emphasis):

The following zone specific planting regulations apply to the Shoreline Buffer:

- b. In Zone 2, one-third (1/3) of the area may be planted in a combination of grass lawns and approved structures provided:
 - i. Significant native trees are not removed to establish such use, or
 - ii. The buffer has been reduced through view provisions of Section 4.1.3.11.

Need for Regulatory Clarification

Clarification is needed to provide guidance and consistency regarding: (1) whether encroachment into Zone 2 of the shoreline buffer is limited to a maximum of one-third (1/3) of the area, (2) what is intended

SMP Regulatory Guidance Memo 15-02
 June 10, 2015

by “a combination of grass lawns and approved structures,” and (3) the vegetation requirements for the remaining two-thirds (2/3) of the shoreline buffer.

Analysis

Marine riparian shoreline vegetation is an important component of nearshore habitat throughout the Puget Sound region and includes both upland forested plant communities occurring on the shoreline as well as unique vegetation found only in the marine nearshore. The establishment of significant protection for marine riparian areas is an important management strategy for protecting marine habitat conservation areas.

Required shoreline buffers are specific to each shoreline use designation and geomorphic class and are composed of two zones: Zone 1, an inner protective buffer area located immediately abutting the ordinary high water mark (OHWM); and Zone 2, the remaining portion of the prescriptive width located immediately abutting Zone 1. Zone 1 is a subset of a dual-zone system, intended to preserve existing native trees and shrubs, and restore them when possible, to increase their presence adjacent to the shoreline and protect important shoreline functions. The establishment of Zone 1 as a component of a regulated buffer allows the City to effectively stem the loss of shoreline resources due to loss of native shoreline vegetation and, in conjunction with regulations addressing activities allowed in the remainder of the shoreline buffer, assist the City with meeting its goal of no net loss of shoreline ecological functions. The remainder of the shoreline buffer (Zone 2) required for each shoreline designation augments the protection for ecological functions provided by Zone 1, and therefore provides added conservation strategies for protecting marine riparian functions and critical saltwater habitats.

This dual-zone management system works together to increase the functions typically provided by a single standard marine shoreline buffer. While permitted development is less restrictive in Zone 2, the regulation limiting encroachment into Zone 2 of the shoreline buffer to a maximum of one-third (1/3) of the area and retention of native vegetation within the remaining two-thirds (2/3) support the dual-zone system and the importance of the entire shoreline buffer for meeting the goal of no net loss of shoreline ecological functions.

Conclusion

1. The zone specific planting regulations of SMP §4.1.3.6.4 **limit encroachment into Zone 2 of the shoreline buffer to a maximum of one-third (1/3) of the area** when the buffer has been reduced to allow a primary structure to be located within Zone 2 through view provisions of SMP §4.1.3.11 or significant native trees are not removed to establish the encroachment.
2. Encroachment must constitute **a combination** of grass lawns and approved structures. Structures cannot constitute 100 percent of the area of encroachment. Approved structures include only new or enlarged single-family residential **primary** structures.
3. When Zone 2 is reduced up to one-third (1/3), the remaining two-thirds (2/3) of Zone 2 shall be maintained in a native vegetative state. All native vegetation shall be retained and the entire remaining two-thirds (2/3) of Zone 2 shall be planted with native vegetation. One (1) hand installed pervious trail is permitted to provide shoreline access in accordance with SMP §4.1.3.8.1.

Approved by:

Katharine Cook

10-05-15

Katharine Cook, Director
Department of Planning and Community Development

Date



CITY OF BAINBRIDGE ISLAND
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

SMP Regulatory Guidance Memo

Title: Encumbered Lots

Number: 15-04

Date: June 15, 2015

Note: Per Ordinance 2020-17, SMP 4.2.1.7 was renumbered as 4.2.1.7.8

SMP Citation: SMP 4.2.1.7

Background

All shoreline properties are encumbered by a shoreline buffer. In addition, many shoreline properties are encumbered by critical area buffers. The code includes specific provisions for properties significantly encumbered by shoreline or critical area buffers.

Regulatory Language

SMP §4.2.1.7 states, in part:

1. Single-family development and redevelopment, except in the Point Monroe District, that is proposed on a legal nonconforming lot located in the shoreline jurisdiction or proposed for a shoreline property that is significantly encumbered by shoreline or critical area buffers, may be allowed without a shoreline variance when the following criteria are met:
 - a. A lot contains a building area of 2,500 square feet or more available for a single-family residence and normal appurtenances and unrestricted by buffers from shorelines or critical areas shall comply with the provisions of this Program. The building area means the entire area that will be disturbed to construct the home, normal appurtenances (except drainfields), and landscaping;

Need for Regulatory Clarification

Clarification is needed because the SMP does not clarify whether a lot is considered encumbered before or after available buffer reductions are applied.

Analysis

As indicated in the regulatory language above, lots are considered to be encumbered and subject to strict building areas and footprint limitations if the lot does not have 2,500 square feet of building area outside of shoreline buffers and critical areas and their buffers. This regulatory guidance memo is intended to clarify that this regulation only applies to property after available reductions are made to shoreline and critical area buffers.

A number of buffer reductions are provided throughout the code, including shoreline buffer reductions for view provisions; shoreline alterations for minor development; buffer reductions for landslide hazard areas and prescriptive buffer variations for wetlands and streams.

If properties were considered encumbered prior to available buffer reductions, most shoreline properties would be considered encumbered thereby severely limiting their development potential and undermining provisions of the master program intended to allow alterations to existing development.

Conclusion

A property is not considered encumbered if - after available reductions to the shoreline buffer and any critical area buffer - there is at least 2,500 square feet of building area.

Approved by:

Katharine Cook
Katharine Cook, Director
Department of Planning and Community Development

07-02-15
Date



CITY OF BAINBRIDGE ISLAND
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

SMP Regulatory Guidance Memo

Title: Demonstrating No Net Loss Standard

Number: 15-06

Date: June 18, 2015

SMP Citation: SMP 4.1.2.4

Background

All shoreline development, use and activities must result in no net loss of ecological functions and processes necessary to sustain shoreline resources. Staff must receive sufficient documentation to determine whether a proposed development use, or activity achieves the no net loss standard.

Regulatory Language

SMP 4.1.2.4 states, in part:

All proposed shoreline development, uses and activities shall:

- g. Result in no net loss of ecological functions and processes necessary to sustain shoreline resources.

SMP 4.1.2.4.3 and 4 state:

3. To assure that development activities contribute to meeting the no net loss provisions pursuant to subsection 1 and 2 above, an applicant is required to submit a site-specific analysis of potential impacts and a mitigation plan that includes compensatory mitigation measures when determined necessary as a result of the analysis. The site-specific analysis shall be prepared in accordance with Section 4.1.2.9, Submittal Requirements – Site-Specific Impact Analysis and Mitigation Plan.
4. To mitigate anticipated impacts and meet the no net loss standards in subsection 1 and 2 above, an applicant for a single family residential development or accessory structures may choose to use the Standard Residential Mitigation Manual in Appendix D in lieu of a site-specific impact analysis and mitigation plan. If an applicant uses the Single Family Residential Mitigation Manual,

compensatory mitigation requirements provided in the manual shall be included in the project submittal.

Need for Regulatory Clarification

Clarification is needed because (a) Section 4.1.2.9, Submittal Requirements – Site-Specific Impact Analysis and Mitigation Plan does not exist and (b) the SMP does not explicitly state that if you cannot use the Standard Single Family Residential Mitigation Manual (for example, because your site is not suitable for a rain garden) you must submit a site-specific analysis, (c) a site-specific impact analysis may be needed even if vegetation replanting is not required and (d) to underscore that an applicant must submit either the mitigation checklist from the standard manual or a site-specific impact analysis – all projects require submittal of one or the other unless they receive a waiver from the shoreline substantial development (SSDE) application.

Analysis

All shoreline development, use and activity is required to meet the no net loss standard. As such, staff must have sufficient information and analysis to determine whether a proposal meets the standard. The code language clearly states that “to assure that development activities contribute to meeting the no net loss provisions ... an applicant is required to submit a site-specific analysis...” (SMP 4.1.2.4.3) and that “an applicant for a single family residential development or accessory structures may choose to use the Standard Residential Mitigation Manual in Appendix D in lieu of a site-specific impact analysis” to meet the no net loss standards (SMP 4.1.2.4.4). Page 1 of the standard manual states, “To give homeowners a low cost alternative for meeting the no net loss standard, this manual was developed and provides mitigation for common types of SFR development as an alternative to submitting a site-specific analysis.” It makes sense that all proposals require either use of the manual or a site-specific analysis.

The standard manual includes mitigation measures for when new impervious surface is created, including:

- Remove existing impervious surface of equal area within your shoreline buffer and replant with native vegetation; or
- Install a rain garden that is sized to be at least 20 percent of the area of your new impervious surface.

There are many shoreline properties that are not suitable for rain gardens due to a variety of factors (e.g.; steep slopes, size constraints). The standard manual states, “The use of a rain garden for mitigating impervious surface is based on the understanding that rain gardens can help provide the water collection, retention, and infiltration capacity that are lost when vegetated areas are made impervious” and that rain gardens work by “collecting, absorbing, and filtering stormwater runoff from rooftops, driveways, patios, and other areas that don’t allow water to soak in.” If there is a net gain in impervious surface area and no rain garden is proposed the proposal does not provide sufficient information and analysis to determine whether the no net loss standard is achieved. When a proposal cannot implement the prescribed mitigation measures for one or more identified impacts as specified in the standard manual, the applicant must submit a site-specific analysis to demonstrate that the no net loss standard is achieved.

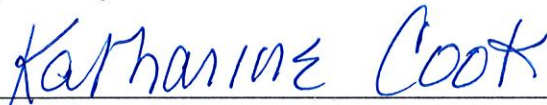
Draft guidance for the site-specific impact analysis and mitigation plan is attached and will be included in the next update to the Administrative Manual.

Conclusion

All proposals must meet the no net loss standard by either submitting a site-specific impact analysis or use of the Standard Residential Mitigation Manual. An applicant must submit either the mitigation checklist from the standard manual or a site-specific impact analysis – all projects require submittal of one or the other unless they receive a waiver from the shoreline substantial development (SSDE) application. Applicants must use the draft guidance for the site-specific impact analysis and mitigation plan that will be included in the next update to the Administrative Manual.

If any part of a proposal cannot implement the prescribed mitigation requirements for one or more of the identified impacts in the Standard Residential Mitigation Manual, an applicant cannot use the standard manual and must submit a site-specific impact analysis.

Approved by:



Katharine Cook, Director
Department of Planning and Community Development



Date



CITY OF BAINBRIDGE ISLAND
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

SMP Regulatory Guidance Memo

Title: Applicability of Shoreline Structure View Setback to Decks

Number: 15-07

Date: October 2, 2015

SMP Citation: SMP 4.1.3.11

Background

Shoreline structure view setback requirements allow encroachment of new or expanded single-family structures into Zone 2 of the shoreline buffer. Should decks be allowed into the shoreline structure view setback?

Regulatory Language

Several sections of SMP 4.1.2.11 state, in part:

“...the shoreline setback line is determined by drawing a line from the most waterward point of the adjoining primary structure...”

Need for Regulatory Clarification

It is not clear whether or not decks are allowed to encroach into the shoreline structure view setback.

Analysis

A deck is considered a part of the primary structure if it is attached to the primary structure and is greater than 30 inches in height. Attached decks less than 30 inches high are not considered part of the primary structure nor are detached decks of any height. This reading of the code is consistent with the definition of “shoreline structure setback” provided in the previous SMP (1996) which read, “excluding structures less than 30 inches in height that are attached to the principal building.” There is no definition of “shoreline structure setback” provided in the 2014 SMP. Staff has no compelling reason to not use the same definition as was provided in the 1996 SMP. This reading of the code is supported by limitations on deck height within the shoreline buffer: “Decks and/or patios shall be permeable and shall not exceed 30 inches

in height above existing grade” (SMP 4.1.3.8.3.e.iii) as well as the requirement that decks over 30 inches high require a handrail, which would further impeded shoreline views.

Conclusion

A deck attached to the primary structure and greater than 30 inches high is not allowed to encroach into the shoreline structure view setback. The shoreline structure view setback line would be determined by the most waterward point of a deck if it is attached to the primary structure and greater than 30 inches high.

Approved by:

Katharine Cook

10-05-15

Katharine Cook, Director
Department of Planning and Community Development

Date



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

Memorandum

DATE: April 9, 2018
TO: Gary R. Christensen, AICP, Director of Planning & Community Development
FROM: Annie Hillier, Planner
SUBJECT: Administrative Code Interpretation

Pursuant to BIMC 2.16.165.B.2.c, the duties and responsibilities of the administrator include making administrative decisions and interpretations of the policies and regulations of this program [the local Shoreline Master Program] and the Shoreline Management Act. Pursuant to BIMC 16.12.030, the policies listed in the master program shall provide broad guidance and direction and shall be used by the director in interpreting the regulations. An Administrative Code Interpretation of the City of Bainbridge Island Shoreline Master Program (SMP) is provided for the following:

SUBJECT: This interpretation applies to joint-use stairways for shoreline access, proposed within shoreline and zoning setbacks. The SMP Table 4-2 Dimensional Standards provides that residential stairways are subject to the 30% side setback and zoning requirements. Consequently, a proposal for a joint-use stairway located on or within close proximity to a shared lot line would require a shoreline variance, to locate the stairway within the 30% side yard setback, and a zoning variance, to locate the stairway within the zoning side yard setback.

ANALYSIS: The SMP provides specific regulations for other joint-use structures, with respect to side lot lines. Specifically, SMP Section 6.3.7.6.3.a states, “docks, piers and floats shall be set back a minimum of 10 feet from side property lines, except that community piers, docks, and floats may be located adjacent to or upon a side property line when mutually agreed to by covenant with the owners of the adjacent property. A copy of the covenant must be recorded with the county auditor and filed with the application of the permit.” Joint-use overwater structures are preferred over single-use structures – and are therefore given relief from setback requirements.

Unlike for docks, the SMP does not give relief from the setback requirements for joint-use stairways. However, the following goals and policies support allowing joint use stairways for shoreline access within setbacks:

1. SMP Section 4.1.2.2, Goal: Minimize impacts of shoreline development, uses and activities on the environment during all phases of development (e.g. design, construction, and management).
 - a. A single, joint-use stairway represents less disturbance during construction and over time, as a result of use and maintenance, to the shoreline environment than two, individual stairways.



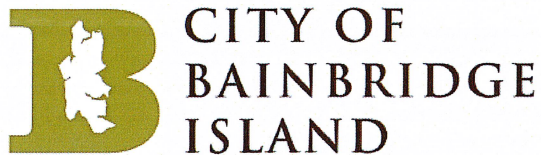
2. SMP Section 5.9.3, Policies, #4: Restrict the development of side yards in order to preserve vegetation between developments, mitigate the effect of a “wall” of structures along the shoreline, and enhance public and private view potential.
 - a. A “wall” of structures along the shoreline is understood as structures located close together or attached, across lot lines or within setbacks, and approximately parallel to the shoreline. Stairways for shoreline access are generally constructed on a slope, leading down to the beach. Joint-use stairways located on or within close proximity to a shared lot line would not contribute to a perceived “wall” of structures, provided they serve to access the shoreline and not adjoining development.
 - b. All development within shoreline jurisdiction is required to protect existing vegetation to the fullest extent possible, to mitigate impacts to existing vegetation, and to meet the standard of no net loss of ecological functions and processes (SMP Section 4.1.3.5, Regulations - General). Provided the proposal demonstrates compliance these requirements, vegetation within side yards would be preserved to the fullest extent practicable.
 - c. Stairways generally follow the contour of the slope and are not designed to screen views or to achieve a certain height other than that necessary for safety. Stairways that incorporate features such as neutral colors, open landings, low post heights, and that are built close to grade are unlikely to impact public or private views.

FINDING: Joint-use stairways for shoreline access, proposed on or within close proximity to a shared lot line, are consistent with the environmental goals and policies of the SMP and the purpose of shoreline side yards. A shoreline variance shall not be required for such structures, provided the structure is compliant with other applicable dimensional standards, including those listed below.

Further, the permitted setback encroachments set forth in BIMC 18.12.040 may be modified by applicable provisions of the SMP. As described herein, Table 18.12.040: Permitted Setback/Height Modifications, is modified to allow joint-use stairways for shoreline access within zoning setbacks without a variance.

The following SMP regulations are relevant to the application of this interpretation for joint-use stairways and will be applied to future proposals:

1. SMP Section 4.1.3.7.3: Stairways to the shoreline shall not exceed 300 square feet for private use. Larger stairways serving a single-family residence may only be allowed through approval of a shoreline variance.
 - a. Response: For joint-use stairways, a maximum of 300 square feet shall be allowed on each lot. More than 300 square feet on an individual lot may only be allowed through approval of a shoreline variance.
2. The Single-Family Residence Shoreline Mitigation Manual may be used for stairs that are up to 300 square feet in size.



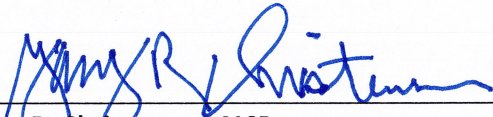
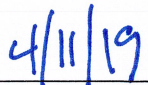
- a. Response: A joint-use stairway that exceeds 300 square feet on either lot is required to submit a Site-Specific Impact Analysis in compliance with the requirements of SMP Section 4.1.2; otherwise the Single-Family Residential Mitigation Manual is appropriate.

The City may also consider applying this interpretation to joint-use trams for shoreline access, proposed on or within close proximity to a shared lot line.

CODE CHANGES: The following sections of the SMP will be amended to reflect this interpretation:

- 1. Table 4-2 Dimensional Standards Table, to include a footnote that specifies that residential joint-use stairways are allowed within 30% shoreline and zoning setbacks.
- 2. SMP Section 4.1.3.7.3, to include the maximum square footage allowed on each lot (300 square feet) for joint-use structures.
- 3. SMP Section 5.9.5.8, to include an allowance for joint-use stairways within side setbacks, provided a covenant, similar to that required for joint-use or community docks, is recorded.

APPEAL: Any decision of the director may be appealed to the hearing examiner in accordance with the procedures of BIMC 2.16.020.R.

 
Gary R. Christensen, AICP Date
Director of Planning & Community Development

Applicable to:

2014 SMP (Ord 2014-04) Only



CITY OF BAINBRIDGE ISLAND
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

SMP Regulatory Guidance Memo

Title: Enlargement/Expansion of Existing Single-Family Residential Primary Structures

Number: 15-01

Date: July 7, 2015

SMP Citation: 4.2.1.6.3.2.a

Background

Alteration or expansion of an existing primary structure is a common activity for shoreline substantial development (SSDE) applications. The code provision for this activity is confusing largely due to its use of terms that do not have definitions included in the SMP. Further, the sentence structure makes it difficult to determine the location of the permitted alteration or expansion.

Regulatory Language

SMP 4.2.1.6.3.2.a states, in part: “Enlargement or expansion of the building configuration, including any new impervious surfaces located within the Shoreline Buffer shall be located landward of the existing or original building footprint...”

Need for Regulatory Clarification

Clarification is needed because neither the SMP nor BIMC provide a definition for “building configuration” making the location of approved enlargement/expansion unclear. Further, there was initial confusion as to whether this provision applied to primary structures only within the shoreline buffer or anywhere within the shoreline jurisdiction.

Analysis

First, staff reads the code to apply to primary structures only within the shoreline buffer and notes that a comma between the word “surfaces” and “located” would help to clarify. Further, a subsequent section of the code (SMP 4.2.1.6.3.4) states specifically, “Increases in structure footprint outside of the shoreline buffer shall be allowed, even if all or a portion of the existing footprint is within the shoreline buffer.” This section would not be needed if the prior section applied to areas outside the shoreline buffer.

Second, “building” is defined in the SMP (and BIMC, Zoning) as “any structure having a roof, designated for shelter of persons, animals or property.” Staff reads this definition to include covered outdoor space such as decks (above and below) and porches attached to a primary residential structure since they are structures with a roof designated for shelter. The “building footprint,” then, is the footprint (the structural perimeter) of the covered space (or the space with a roof). The “building configuration” is read to mean the arrangement of elements considered buildings.

“Landward” is defined in the SMP as “in a direction toward shoreland areas.” Staff reads this to mean *not waterward, or not further toward the water*. This reading of “landward” allows for (1) vertical expansion (which is allowed in SMP 4.2.1.6.3.2.b – “any vertical expansion must meet height requirements of this Program) and (2) any enlargement/expansion that does not result in a structure further waterward whether it be enclosure of existing covered outdoor space or an addition to an existing primary structure.

Conclusion

Enlargement/expansion of an existing primary structure is allowed to occur under and/or over a covered porch or deck to the extent of the structural perimeter. This does not include the area under the eaves.

Staff finds that this reading of the code would meet the goals and policies of the SMP and the “no net loss” standard since it would not result in vegetation disturbance or creation of new impervious surface area. Additional provisions of this code section protect existing views of the water from other residences and require that the remodel or expansion not cause adverse impacts to shoreline ecological functions and/or processes.

Enlargement/expansion of an existing primary structure includes the addition to an existing structure as long as the addition is not further waterward of the existing building footprint. Any vegetation disturbance and/or new impervious surface area would require mitigation pursuant to SMP 4.1.2.

Approved by:

Katharine Cook

Katharine Cook, Director
Department of Planning and Community Development

07-07-15

Date



CITY OF BAINBRIDGE ISLAND
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

SMP Regulatory Guidance Memo

Title: Redevelopment vs. Alteration

Number: 15-03

Date: August 4, 2015

SMP Citation: SMP 4.2.1.7 and SMP Appendix B-9 (E)2.b

Background

Various types of development activity, including “redevelopment” and “alteration,” have different regulatory requirements.

Regulatory Language

SMP §4.2.1.7 states, in part:

1. Single-family development and redevelopment, except in the Point Monroe District, that is proposed on a legal nonconforming lot located in the shoreline jurisdiction or proposed for a shoreline property that is significantly encumbered by shoreline or critical area buffers, may be allowed without a shoreline variance when the following criteria are met:

SMP Appendix B-9 (E)2.b states in part:

2. Redevelopment of existing structures
 - a. If an existing structure is damaged or is intentionally demolished the new structure must meet all the provisions of a new structure.
 - b. Structural alteration to an existing legally constructed structure that does not increase the structural footprint and are determined by the City Engineer as having a minimal potential for increasing landslide hazard and meets the minimum buffer dimensions in B-9(E)(3)(i);

Need for Regulatory Clarification

Clarification is needed because the SMP does not provide a definition for “redevelopment” or “alteration” making it difficult for staff to apply the regulations for development activity specifically within nonconforming lots and within geologically hazardous areas. The meaning of the terms is also unclear in other sections of the SMP.

Analysis

The term “redevelopment” is used in the two sections, above, of the Shoreline Master Program (SMP) along with other sections of the SMP. The term, “redevelopment” is not defined by the SMP; however, when this term is read in context with the SMP and other associated regulations in the zoning section of the BIMC, it is clear that the intent of the regulations is to require compliance with current regulations when there is a substantial destruction/demolition of a residence or structure and when reconstruction is necessary.

Accordingly, “redevelopment” shall be interpreted to mean more than 50 percent demolition or destruction of square footage of a building or structure. Defining redevelopment in this manner protects property owners from the stringent redevelopment requirement when performing minor alterations, remodels or additions as allowed by the SMP. This reading of the term redevelopment is consistent with BIMC 18.30.030.C which states, “If a building is harmed or destroyed by more than 50 percent of its square footage, the building must be reconstructed in compliance with the requirements for the zone in which it is located.”

Since “alteration” is also used in the SMP, it is important to clarify the limitations under which development can be considered an alteration. With a clear definition of the term “redevelopment,” “alteration” is interpreted as being any change to an existing structure that does not include the demolition or destruction of more than 50 percent of the square footage of the building or structure.

Conclusion

“Redevelopment” is interpreted to mean more than 50 percent demolition or destruction of square footage of a building or structure. “Alteration” is interpreted to mean any change to an existing structure that does not include the demolition or destruction of more than 50 percent of the square footage of the building or structure.

Approved by:

Katharine Cook

Katharine Cook, Director
Department of Planning and Community Development

08-04-15

Date



CITY OF BAINBRIDGE ISLAND
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

SMP Regulatory Guidance Memo

Title: Applicability of General Exemptions to Critical Areas Regulations

Number: 15-05

Date: August 4, 2015

SMP Citation: SMP Appendix B-2 (C)4 and (D)2

Background

The SMP includes both general and type-specific exemptions to the critical areas regulations that are more or less restrictive and/or inconsistent.

Regulatory Language

SMP Appendix B-2 (C)4 states, in part:

Exemptions. The following activities are exempt from the requirements of this chapter:

4. Structural alterations to buildings that do not increase the structural footprint or introduce new adverse impacts to an adjacent critical area, except for structures located on geologically hazardous areas which are not exempt.

SMP Appendix B-2 (D)2 states, in part:

2. Existing structures, not located in a geologically hazardous area, that were legally built or vested prior to the effective date of Ordinance No. 2012-4 may be altered if:

- a. There is no change in the footprint of the building;
- b. The remodel is entirely inside the existing building;
- c. There is no further encroachment into the buffers required pursuant to this chapter unless a Variance is first approved

Need for Regulatory Clarification

Clarification is needed because the SMP provides general exemptions to the entire critical areas section as well as specific, more restrictive exemptions for geologically hazardous areas or their buffers. It is not clear which exemption should be used for geologically hazardous areas or their buffers.

Analysis

These two sections were originally drafted and adopted into the City's Critical Areas Ordinance (CAO) and subsequently incorporated into the Shoreline Master Program ("SMP"). When the CAO was originally adopted by the City Council, a geologically hazardous area was defined as including both the hazardous area and its associated buffer. A later amendment to the CAO removed the buffers from the definition of geologically hazardous areas. However, the later amendment did not change the language, above, to reflect that these exemptions were not intended for geologically hazardous areas or their buffers. This inadvertent omission is accordingly also reflected in the SMP. The SMP contains more specific provisions that apply to homes and structures located within geologically hazardous areas or their buffers, and the provisions are inconsistent with SMP Appendix B-2 (C)4 and SMP Appendix B-2 (D)2. Ordinances should be given a sensible construction that avoids absurd results.

Conclusion

SMP Appendix B-2 (C)4 and SMP Appendix B-2 (D)2 do not apply to geologically hazardous areas or their buffers.

Approved by:

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Date