

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF LANGLEY**

In the Matter of the Application of)	No. SDP-21-001
)	
Alan Armstrong, Strongwork Architecture,)	
on behalf of Rebecca McLemore)	
)	
For a Shoreline Substantial Development Permit,)	
Shoreline Conditional Use Permit, and)	FINDINGS, CONCLUSIONS,
<u>Shoreline Variance</u>)	AND DECISION

SUMMARY OF DECISIONS

The request for a Shoreline Substantial Development Permit, a Shoreline Conditional Use Permit, and a Shoreline Variance to construct a 2,700 square foot, two-story, single-family residence, and an 865 square foot garage with an accessory dwelling unit on the upper level, on a 0.54-acre property located at 325 Wharf Street, is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the requests on June 21, 2021, using remote access technology.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

- Brigid Reynolds, City Director of Community Planning
- Alan Armstrong, Applicant Representative
- Danny Ochoa
- Scott Spooner
- Charles Pancerzewski
- Duane Den Adel
- Rebecca McLemore, Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Master Planning Permit Application, undated, with Cover Letter, dated January 29, 2021, and Executive Summary, dated January 29, 2021
2. Plan Set, dated January 29, 2021:
 - a. Cover Sheet (Sheet A0.0.A)
 - b. Site Plan (Sheet A0.2.A)

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- c. Elevations – Main House (East and West Elevations) (Sheet A2.0.A)
- d. Elevations – Main House (South and North Elevations) (Sheet A2.1.A)
- e. Sections – Main House (Sheet A3.0.A)
- f. Site Plan (Sheet A0.2.B)
- g. Elevations – Detached Garage/Studio (Sheet A2.0.B)
- h. Sections – Detached Garage/Studio (Sheet A3.0.B)
3. Notice of Application, issued April 12, 2021
4. Notice of Public Hearing, with attachment:
 - a. Classified Proof – *South Whidbey Record*, published June 12, 2021
5. Civil Drawings:
 - a. Cover Sheet (Sheet C01), dated January 27, 2021
 - b. Notes (Sheet C02), dated January 27, 2021
 - c. Existing Conditions & TESC Plan (Sheet C03), dated January 27, 2021
 - d. Draining and Grading Plan (Sheet C04), dated January 27, 2021
 - e. Details (Sheet C05), dated January 27, 2021
 - f. Details (Sheet C06), dated January 27, 2021
 - g. General Notes (Sheet S1), dated January 29, 2021
6. Drainage Report, Davido Consulting Group, dated January 2021
7. FEMA FIRM map
8. FEMA Floodplain Habitat Assessment, Wetlands & Wildlife, Inc., dated January 29, 2021
9. Flood Hazard Storage Calculation Report, Davido Consulting Group, dated January 2021
10. Geotechnical Report, Palmer Geotechnical Consultants, Inc., dated January 26, 2021
11. Draining and Grading Plan (Sheet C04), dated January 27, 2021, with Annotations
12. Critical Areas and Shoreline Report, Wetlands & Wildlife, Inc., dated January 29, 2021
13. Arborist Reports, South Whidbey Tree Service, dated November 25, 2019, including:
 - a. Slope Vegetation Assessment
 - b. Assessment of one Big Leaf Maple for Current Health and Risk Post-Construction
14. Staff Report

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Alan Armstrong, Strongwork Architecture, on behalf of Rebecca McLemore (Applicant), requests a Shoreline Substantial Development Permit (SSDP), a Shoreline Conditional Use Permit (SCUP), and a Shoreline Variance (SVAR) to construct a 2,700 square foot, two-story, single-family residence, and an 865 square foot garage with an accessory dwelling unit (ADU) on the upper level, on a 0.54-acre property located within the shoreline jurisdiction. An existing 728 square foot single-family residence and associated carport and shed on the property would be removed as part of the project, and the proposed new single-family residence would be sited in approximately the same building

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footprint as the existing residence, with some expansion. An SSDP is necessary because a portion of the project, specifically the proposed ADU, does not fall within any of the exemptions delineated under Washington Administrative Code (WAC) 173-27-040. A SCUP is required because the City Shoreline Master Program (City SMP) does not specifically list an ADU as a permitted or prohibited use. Finally, an SVAR is required to allow the proposed residence and associated garage/ADU to be constructed within the buffer associated with an on-site steep slope. The property is located at 325 Wharf Street.¹ *Exhibit 1; Exhibit 2; Exhibit 5; Exhibit 11; Exhibit 14, Staff Report, pages 1, 2, 5, and 17 through 19.*

2. The City of Langley (City) determined that the application was complete on April 12, 2021. The same day, the City mailed notice of the application to property owners within 500 feet of the subject property, with a comment deadline of April 26, 2021. On or about June 9, 2021, the City provided notice of the public hearing associated with the application by mailing notice to property owners within 500 feet of the property and by posting notice on-site and at designated City locations. The City published notice of the hearing in the *South Whidbey Record* on June 12, 2021. The City received one comment from a neighboring property owner, Duane Den Adel, who expressed concerns about potential damage from construction vehicles to a driveway easement providing access to the site through his property. The Applicant is working with the neighboring property owner to secure an agreement ensuring that impacts to the driveway from temporary construction activity would be adequately addressed. The Applicant would provide the City with a copy of the agreement prior to issuance of a building permit. *Exhibit 3; Exhibit 4; Exhibit 14, Staff Report, pages 2, 4, and 5.*

State Environmental Policy Act

3. The City determined that the proposal is categorically exempt from environmental review under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW), in accord with WAC 197-11-800. Specifically, the proposal is exempt from SEPA environmental review because it involves the construction of a detached single-family residence and an accessory structure. *WAC 197-11-800(1)(a)(i) and (2)(e). Exhibit 14, Staff Report, page 2; Exhibit 15.*

Comprehensive Plan and Zoning

4. The property is designated “Commercial” under the City Comprehensive Plan. *See City Comprehensive Plan, Figure LU-10.* The Commercial designation “includes land zoned for retail and wholesale trade, offices, hotels, motels, restaurants, services outlets, and related services,” with “denser development of professional offices, retail stores, and mixed residential and commercial uses” occurring in the downtown business district. *City Comprehensive Plan – Land Use Element at 8.* The property is located within 200

¹ The property is identified by the Tax Parcel No. S8250-00-00025-0. *Exhibit 14, Staff Report, page 1.*

feet of the ordinary high water mark of Puget Sound, and is therefore within the shoreline jurisdiction of the State Shoreline Management Act (SMA) and the City SMP. *RCW 90.58.030(2)(f); City SMP, Sec. 1.7*. The City SMP map identifies the property as being within the “Urban” shoreline environment. *City SMP at 21 (Figure 2)*. City staff, however, in consultation with the Washington State Department of Ecology (DOE), determined that the property does not meet the criteria for an Urban shoreline designation under the City SMP and, therefore, determined that the appropriate designation for the property is “Shoreline Residential.”² “The purpose of the Shoreline Residential Designation is to accommodate residential development and associated structures that are consistent with the [City SMA] and the protection and restoration of ecological functions. An additional purpose is to provide appropriate public access and recreational uses.” *City SMP, Sec. 3.3.2.A*. Detached single-family residences are permitted outright in the Shoreline Residential environment. *City SMP at 45 (Table 1)*. ADUs, however, are not listed as a permitted or prohibited use in the Shoreline Residential environment and, therefore, constitute an unclassified use that may be authorized with a SCUP. *City SMP, Sec. 4.10. Exhibit 14, Staff Report, page 5*.

5. The property is zoned Central Business (CB). Single-family dwellings are listed as a prohibited use within the CB zone. *Langley Municipal Code (LMC) 18.09.010*. LMC 18.31.010 provides, however, that regulations under the City SMP take precedence when there is a conflict with the zoning code. As noted above, detached single-family residences are permitted outright in the Shoreline Residential environment, and ADUs are allowed with a SCUP. The property is also within the “Wharf Street Overlay District.” The purpose of the Wharf Street overlay is to “establish context-sensitive regulations that are intended to compliment those regulations already in place in the underlying zoning districts.” *LMC 18.11.010*. These context-sensitive regulations focus on mixed use and multi-family developments and do not provide clear guidance for the proposed single-family residential development. Accordingly, the development standards applicable to the underlying CB zone govern the proposal except where the standards conflict with the City SMP. *Exhibit 14, Staff Report, page 2*.
6. Chapter 18.16 LMC provides zoning regulations applicable to the CB zoning district. Specifically, as applicable to the proposal, the CB zoning district regulations provide that: there are no minimum lot size or maximum lot coverage requirements; the maximum building height is 30 feet; and there are no setback requirements for property not abutting a residentially zoned property. The proposed single-family residence would be 29 feet in height, and the proposed accessory garage/ADU would be 24 feet 6 inches in height, in accord with the zoning regulations. Adjacent properties to the north and south are zoned

² WAC 173-26-211(2)(b) provides in relevant part that a local jurisdiction’s shoreline master program should “make it clear that in the event of a mapping error, the jurisdiction will rely upon common boundary descriptions and the criteria contained in RCW 90.58.030(2) and chapter 173-22 WAC pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map.”

CB. The property is bordered by Cascade Avenue to the west and by Puget Sound to the east. *Exhibits 1 through 3; Exhibit 5; Exhibit 14, Staff Report, pages 2, 5, and 6.*

Existing Conditions and Critical Areas

7. The 0.54-acre property takes access from a 10-foot-wide driveway access easement that connects to the southern terminus of Wharf Street. As noted above, the Applicant would enter into an agreement with the neighboring property owner to the north to ensure that impacts to the driveway from temporary construction activity would be adequately addressed, which the Applicant would provide to the City prior to issuance of a building permit. The property currently contains an existing single-family residence, carport, and shed/cellar that would be removed as part of the proposed development. The property is currently served by public sewer and water. The proposed development would require that a new six-inch side sewer line be installed to the south, and both the proposed new residence and the accessory garage/ADU structures would require lateral line connections to the new six-inch side sewer line. In addition, the project would be required to install a new water meter on the City right-of-way north of the adjacent property to the north and to install a new water service line. The Applicant would be required to obtain utility easements necessary for these utility improvements prior to issuance of a building permit. *Exhibits 1 through 3; Exhibit 5; Exhibit 14, Staff Report, pages 2, 4, and 20.*

8. The eastern portion of the property is mapped as being within a regulated FEMA Flood Hazard Area, and the entire property is located within a riparian habitat zone that extends 250 feet from the ordinary high water mark of Puget Sound. Chapter 15.24 LMC provides regulations applicable to development within flood hazard areas, including regulations requiring that a habitat assessment demonstrate that the proposed development would not adversely affect Endangered Species Act (ESA)-listed fish and wildlife species or critical habitat and that new residential structures be elevated one foot or more above the Base Flood Elevation (BFE). *LMC 15.24.060; LMC 15.24.110.* The Applicant's project plans demonstrate that the new single-family residence would be elevated more than two feet above the BFE and that the ADU would be located more than 24 feet above the BFE. Wetlands and Wildlife, Inc., prepared a FEMA Floodplain Habitat Assessment for the Applicant, dated January 29, 2021, to address the project's potential impacts to fish and wildlife habitat within the floodplain. The assessment determined that the project would not result in any adverse ecological impacts to ESA-listed species or critical habitat. The assessment also determined that the project would provide an increase in available floodwater storage, as compared to existing conditions, by elevating the new residential structure above the BFE. Davido Consulting Group prepared a Flood Storage Calculation Report for the Applicant, dated January 2021, which confirms that the proposal would result in a net increase of available floodwater storage of approximately 45.8 cubic yards through the removal of existing structures lacking flood vents and the elevation of new structures above the BFE. *Exhibit 2; Exhibit 3; Exhibits 7 through 9; Exhibit 14, Staff Report, pages 6 through 9.*

9. The Applicant proposes to site the proposed single-family residence and associated garage/ADU at the toe (bottom) of a steep slope bluff, Cascade Bluff. The municipal code and the City SMP contain conflicting provisions regarding development in this location. For example, the context-sensitive regulations for the Wharf Street Overlay District provide that the required setback from Cascade Bluff is the toe of the slope or, where a retaining wall concept is implemented, 20 feet from the toe of the retaining wall, as an exception to the 50-foot steep slope buffer and additional 15-foot building setback generally required under the City’s critical areas regulations, specifically LMC 16.20.045. *LMC 18.11.040*. In contrast, the City SMP adopts by reference the steep slope buffer and setback requirements of LMC 16.20.045. *City SMP, Sec. 4.3.2.A.1.f*. The City SMP clarifies that any conflict between the development standards of the City SMP and the municipal code shall be resolved in favor of the standard that provides greater protection of shoreline resources. *City SMP, Sec. 4.3.2.A.3*. Accordingly, the minimum 50-foot buffer and additional 15-foot building setback from the toe of Cascade Bluff required under the City’s critical areas ordinance, as adopted in the City SMP, applies to the project proposal. As explained in more detail below, the Applicant seeks an SVAR to allow development within the required bluff buffer. *Exhibits 1 through 3; Exhibit 5; Exhibit 10; Exhibit 14, pages 9 through 12*.
10. The City SMP provides in relevant part that residential structures may be located in geologically hazardous areas only if a geotechnical evaluation has been prepared and deemed acceptable by the Shoreline Administrator. *City SMP, Sec. 6.8.2.6*. In accordance with this requirement, Palmer Geotechnical Consultants, Inc., prepared a Geotechnical Report for the Applicant, dated January 26, 2021. The report determined that a proposed retaining wall along the southwest side of the proposed residence and associated garage/ADU would be sufficient to provide protection for the structures and that, therefore, the proposed location of the new structures, on pin pile foundation elements at the toe of Cascade Bluff, would be appropriate. The report provides recommendations for site development and foundation design to which the Applicant would adhere. *Exhibits 1 through 3; Exhibit 5; Exhibit 10; Exhibit 14, pages 9 through 12*.

Shoreline Substantial Development Permit

11. The State Shoreline Management Act (SMA) and the City SMP govern work within 200 feet of the ordinary high water mark of Puget Sound. *City SMP, Sec. 3.1; RCW 90.58.030(2)(f)*. Any “substantial development” within the shoreline jurisdiction requires approval of an SSDP. *Substantial development* is any development in which the total cost or fair market value exceeds \$7,047, or any development that materially interferes with the normal public use of the water or shorelines of the state. *RCW 90.58.030(3)(e)*. Development of a single-family residence does not normally require an SSDP. *WAC 173-27-040(2)(g)*. Under *WAC 173-27-040(1)(d)*, however, an SSDP is required for the entire project because the proposed ADU is not eligible for exemption. *Exhibit 14, Staff Report, page 5*.

12. The City SMP is intended to carry out the responsibilities imposed by the SMA; guide future development of shoreline in the city in a positive, effective, and equitable manner consistent with the SMA; promote the public health, safety, and general welfare by providing long range, comprehensive policies and effective, reasonable regulations for development and use of the City's shorelines; promote uses and development of the shoreline consistent with the Comprehensive Plan while protecting and restoring environmental resources; and ensure, at minimum, no net loss of shoreline ecological processes and plan for restoring shoreline that have been impaired or degraded. *City SMP, Sec. 1.3*. As noted above, City staff determined the subject property is within the Shoreline Residential environment, which is intended to accommodate residential development and associated structures that are consistent with the City SMA while protecting and restoring shoreline ecological functions. *City SMP, Sec. 3.3.2.A. Exhibit 14, Staff Report, page 5*.

Shoreline Vegetation Management

13. The City SMP contains policies and regulations intended to preserve native shoreline vegetation to ensure no net loss of shoreline ecological functions from shoreline development. *City SMP, Secs. 4.3 and 4.8*. The Applicant does not propose any development within the 25-foot shoreline buffer associated with Puget Sound. Under the City SMP, however, the Applicant would be required to enhance the shoreline buffer area in an amount equal to the percentage increase in impervious lot coverage that would occur on the property outside of the shoreline setback. *City SMP, Sec. 4.3.2.C.6*. Wetlands and Wildlife, Inc., prepared a Critical Areas and Shoreline Report for the Applicant, dated January 29, 2021. The report determined that the proposed development would result in a net 7.7 percent increase in impervious lot coverage, requiring 292 square feet of the shoreline buffer to be enhanced. The Applicant proposes to enhance 1,065 square feet of the shoreline buffer by removing invasive vegetation and planting native species. South Whidbey Tree Services provided Arborist Reports for the Applicant, dated November 25, 2019, which identified and recommended removal of a hazardous Big Leaf Maple tree on the property. The Applicant proposes to reduce the height of the tree to approximately 10 to 15 feet so that the remaining standing snags would provide future bird habitat. As mitigation for the loss of ecological functions provided by the tree, the Applicant would plant three replacement trees on the property, northeast of the existing hazard tree. The Applicant's Critical Areas and Shoreline Report determined that the proposed development and vegetation management measures would exceed ecological industry standards and would result in no net loss of shoreline ecological functions. *Exhibit 12; Exhibit 13; Exhibit 14, pages 15 through 17*.

Stormwater Management

14. The City SMP requires new residential development proposals to provide a drainage plan demonstrating compliance with the requirements of the 2019 Stormwater Management Manual for Western Washington. *City SMP, Sec. 6.8.2.4; see also LMC 15.01.025.B.15*.

David Consulting Group prepared a Drainage Report for the Applicant, dated January 2021. All stormwater from impervious surfaces would fully infiltrate on-site. Stormwater runoff from roof areas would be tightlined through roof downspouts into three separate DOE-approved downspout infiltration drywell systems. Runoff from the driveway would sheet flow toward the beach in a manner mimicking the existing conditions of the site. The Drainage Report also provides details of the Stormwater Pollution Prevention Plan for the project and notes that the temporary erosion and sediment control measures for the project would comply with the requirements of the 2019 Stormwater Management Manual for Western Washington. *Exhibit 6.*

Shoreline Stabilization

15. The City SMP contains policies and regulations encouraging new development activities to be located and designed to prevent or minimize the need for shoreline stabilization measures. *City SMP, Sec. 5.1.* A low-profile wooden bulkhead overgrown with vegetation currently runs roughly along the edge of the shoreline buffer. The Applicant's geotechnical engineer determined that additional shoreline stabilization measures would not be necessary for the proposal because the existing condition of the shoreline is a depositional environment, the prevailing winds are from the northwest, the marina breakwater provides protection, and the existing natural shoreline of logs built up with native grasses has established a preferred soft shore condition. *Exhibit 14, Staff Report, pages 12 and 13.*

Shoreline Conditional Use Permit

16. As noted above, a SCUP is required for the project because it includes an ADU, which is an unclassified use in the Shoreline Residential environment. *City SMP at 45 (Table 1); City SMP, Sec. 4.10.* The purpose of a SCUP is to provide greater flexibility in varying the application of the use regulations of the City SMP, particularly where denial of the application would thwart the policies of the SMA. *City SMP, Sec. 7.6.5.1.* The criteria for approval of a SCUP are provided in City SMP, Section 7.6.5.3. City staff reviewed the application and determined that it would satisfy these criteria, noting:
 - The proposed development is for a new single-family dwelling and detached garage with an ADU. The single-family dwelling is permitted in the Shoreline Residential environment, and the garage is allowed as an appurtenance to the single-family dwelling. ADUs, however, are an unclassified use allowed only with approval of a SCUP.
 - RCW 90.58.020 provides, "Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures."
 - The size of the proposed single-family dwelling is generally consistent with the size of the single-family residence located further north on Sunrise Lane.
 - The proposal would not affect the public use and interest. The lot is at the end of a private drive, and there is no public access to the property.

- As detailed in the technical reports submitted with the application, the proposed use would not cause significant adverse impacts to the shoreline environment.
- The subject property is one of a few remaining underdeveloped low bluff properties. The existing cottage is nearly uninhabitable and cannot be remodeled due to its state of disrepair. The proposed new dwelling unit would generally be sited within the existing cottage footprint, with some minor expansion. The footprint of the garage structure is 400 square feet. The garage portion of the structure does not require a SCUP, only the proposed ADU above the garage.

Exhibit 14, Staff Report, pages 18 and 19.

Shoreline Variance

17. As noted above, an SVAR is required for the project due to the proposed location of the new structures within the buffer and building setback area associated with the steep slope of Cascade Bluff. The purpose of a shoreline variance is to provide relief from specific bulk or dimensional requirements of the City SMP when there are extraordinary or unique circumstances relating to the property such that strict implementation of the City SMP would impose unnecessary hardships on the Applicant or would thwart the policies of the City SMP or the SMA. *City SMP, Sec. 7.6.4.1*. The criteria for approval of a shoreline variance are provided in City SMP, Section 7.6.4.3. City staff reviewed the application and determined that the project would meet these criteria, noting:
- The developable area of the property is less than 200 square feet due to the steep slope and related buffers on the west side of the property, as well as the shoreline and its buffer on the east side of the property. The hardship is created by the constraints of the topography and the shoreline.
 - The proposed dwelling unit would be in the same location as the existing dwelling unit but with a 620 square foot larger footprint. The proposed dwelling unit would follow the same frontage place as the existing dwelling, but the stairs for the proposed dwelling would extend further waterward.
 - The proposed garage/ADU could be moved further east to provide less encroachment into the slope, but this would result in the garage/ADU and driveway being located closer to the shoreline buffer, which could negatively impact the buffer and cause unsafe access conditions by eliminating vehicular turnaround space. Under this alternative, vehicles would have to back out of the property, as well as the adjacent property to the north, and then turn around on the Wharf Street right-of-way and marina parking lot.
 - The design of the proposed single-family dwelling and accessory building is compatible with many of the single-family residences located further north on Sunrise Lane. The Wharf Street overlay envisions a multi-family development in this general location.
 - As detailed in the technical reports submitted with the application, the proposal would not cause adverse effects to the shoreline environment. The addition of retaining walls at the rear elevations with additional catchment height would

provide improved slope stability and would protect the development. The retaining walls would be installed with drainage systems. The native soils of the bluff would not be excavated.

- The proposal would not affect the public use and public interest. The lot is at the end of a private drive, and there is no public access to the property.

Exhibit 14, Staff Report, pages 17 and 18.

Testimony

18. City Director of Community Planning Brigid Reynolds testified generally about the application and how, with conditions, it would satisfy the criteria for approval of an SSDP, a SCUP, and an SVAR. She noted that the project would include the removal of an existing 728 square foot cottage and the construction of a 2,700 square foot, two-story, single-family residence and an 865 square foot garage that would have an ADU on the second floor. Ms. Reynolds stated that the property is accessed via a driveway easement through a neighboring property to the north, which connects to the southern terminus of Wharf Street. She explained that the developable area of the property is limited due to the location of a bluff and associated steep slope buffer area on the western portion of the site and a shoreline buffer associated with Puget Sound on the eastern portion of the site. Ms. Reynolds stated that the Applicant requests a shoreline variance to allow the proposed residence and garage/ADU to be located entirely within the steep slope buffer associated with the bluff. She explained that the Applicant's geotechnical assessment determined that the site is suitable for the proposed development. Ms. Reynolds stated that the proposed residence and associated garage/ADU would be elevated in accord with FEMA floodplain requirements and that the proposal would result in improved floodwater storage capabilities and improved shoreline buffer ecological functions. She explained that the proposal would be required to comply with the 2019 Stormwater Management Manual for Western Washington. *Testimony of Ms. Reynolds.*
19. Applicant Rebecca McLemore testified that she purchased the property approximately two years ago and that she appreciates City staff's assistance in guiding her through the process. *Testimony of Ms. McLemore.*
20. Applicant Representative Alan Armstrong testified that, in addition to meeting requirements under the City SMP, the proposed development would meet all other requirements under the municipal code. He stressed that the project has been designed to minimize disturbance to the site. *Testimony of Mr. Armstrong.*
21. Civil Engineer Danny Ochoa of Davido Consulting Group testified about how the project would manage stormwater in compliance with the requirements of the 2019 Stormwater Manual for Western Washington. He explained that stormwater runoff from roof areas and non-pollution generating surfaces would be collected and directed to DOE-approved dry wells before being infiltrated on-site and that runoff from the driveway would sheet

flow toward the beach in manner mimicking the existing conditions of the site.
Testimony of Mr. Ochoa.

22. Scott Spooner of Wetlands and Wildlife, Inc., testified that all components of the project would be located outside of the 25-foot shoreline setback from the ordinary high water mark of Puget Sound. He noted that invasive vegetation would be removed from the shoreline setback and replaced with native species in accord with City SMP requirements. Mr. Spooner also noted that a hazardous Big Leaf Maple tree would be cut to a height that would alleviate the tree's hazardous conditions while maintaining some level of ecological functions. He explained that the Applicant proposes to plant three replacement trees as mitigation for the loss of some ecological functions provided by the Big Leaf Maple. *Testimony of Mr. Spooner.*
23. Charles Pancierzewski testified that he has concerns about the parking and traffic impacts of the proposal in light of the proposed ADU. He noted that the ADU could generate greater traffic impacts and require additional on-site parking space if it were to be utilized as a rental unit. *Testimony of Mr. Pancierzewski.*
24. Duane Den Adel testified that he owns property immediately to the north of the site and has concerns about the temporary impacts from construction vehicles utilizing the driveway easement through his property to access the site. He also expressed concerns about potential traffic impacts from visitors using the easement to access the site, particularly if the ADU were to be utilized as a rental unit. Mr. Den Adel stated that he has been working on an agreement with the Applicant to address the temporary construction impacts and would like to have a written surety bond in place to ensure that any damage to the driveway would be repaired. He noted that he does not have any other issues with the proposed development. *Testimony of Mr. Den Adel.*
25. Ms. McLemore testified in response to Mr. Pancierzewski's and Mr. Den Adel's concerns, noting that the ADU would be used to accommodate visiting family members and that she does not have any current plans to use the ADU as a rental unit. Ms. McLemore also noted that there would be sufficient space on the property to accommodate visitor parking. She stated she will continue to discuss issues related to the easement with Mr. Del Adel to assure him that the driveway access easement will be in as good or better condition following construction. *Testimony of Ms. McLemore.*
26. Ms. Reynolds explained that the municipal code requires two parking stalls for a single-family residence and that the code does not regulate who occupies an ADU. She noted, however, that if a property owner wants to convert an ADU to a short-term rental unit, the property owner must go through an application process and must meet certain standards to have the application approved. *Testimony of Ms. Reynolds.*

Staff Recommendation

27. Ms. Reynolds testified that City staff determined that, with conditions, the proposed project would be consistent with the City SMP and the specific criteria for approval of an SSDP, a SCUP, and a shoreline variance and recommends approval of the request. The Applicant testified that she would adhere to the conditions of approval. *Exhibit 14, Staff Report, page 20; Testimony of Ms. Reynolds; Testimony of Ms. McLemore.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is authorized to hear and decide requests for Shoreline Substantial Development Permit, Shoreline Conditional Use Permits, and Shoreline Variances. *Langley Municipal Code (LMC) 18.37.070.A.5.*

Criteria for Review

Shoreline Management Act

The Shoreline Management Act is codified at RCW 90.58.020. Applicable policies of RCW 90.58.020 include those to foster “all reasonable and appropriate uses”; protect against adverse effects to the public health, the land, and vegetation and wildlife; and give priority to single-family residences and appurtenant structures in authorizing alternations to the natural condition of the shoreline. Nonetheless, “private property rights are ‘secondary to the SMA’s primary purpose, which is to protect the state shorelines as fully as possible.’” *Samson v. City of Bainbridge Island*, 149 Wn. App. 33, 49, 202 P.3d 334 (2009) (internal quotation marks omitted) (quoting *Lund v. Dep’t of Ecology*, 93 Wn. App. 329, 336-37, 969 P.2d 1072 (1998)). Permitted shoreline uses must be designed to “minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” *RCW 90.58.020. See also Buechel v. Dep’t of Ecology*, 125 Wn.2d 196, 203, 884 P.2d 910 (1994).

In promulgating the Shoreline Management Act of 1971, the legislature recognized that “ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development” of the state’s shorelines. *RCW 90.58.020.* The legislature also determined that “unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest.” *RCW 90.58.020.* Accordingly, the Shoreline Management Act requires local governments to develop a master program to regulate shoreline uses consistent with its guidelines. *RCW 90.58.080(1).*

Shoreline Management Act Regulations

The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 WAC sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the Applicant’s permit request. Chapter 173-27 WAC sets forth permitting procedures and permit criteria. The Hearing Examiner reviews the application under the following criteria:

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- (1) A substantial development permit shall be granted only when the development proposed is consistent with:
 - (a) The policies and procedures of the act;
 - (b) The provisions of this regulation; and
 - (c) The applicable master program adopted or approved for the area.
Provided, that where no master program has been approved for an area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.

- (2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

WAC 173-27-150.

Thus, the Hearing Examiner must review the relevant City of Langley shoreline master program (City SMP) goals and policies.

Langley Shoreline Master Program

The City SMP is intended to:

1. Guide the future development of shorelines in the city of Langley in a positive, effective, and equitable manner consistent with the Shoreline Management Act;
2. Promote the public health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development use of Langley's shorelines;
3. Promote uses and development of the of Langley shoreline consistent with the Langley Comprehensive Plan while protecting and restoring environmental resources; and
4. Ensure, at minimum, no net loss of shoreline ecological functions and processes and to plan for restoring shorelines that have been impaired or degraded by adopting and fostering the Shoreline Management Act policy described in RCW 90.58.020.

City SMP, Sec. 1.3.

The City SMP designates five shoreline environments that are consistent with, and implement, the SMA and SMA guidelines and the City's Comprehensive Plan. These environmental designations have been assigned consistent with the corresponding criteria provided for each environment. In delineating environment designations, the City aims to ensure that existing shoreline ecological functions are protected with the proposed pattern and intensity of development. Such designations are also intended to be consistent with policies for restoration of degraded shorelines. The three shoreline environments and three aquatic subareas are: (1)

Shoreline Residential, (2) Urban, and (3) Aquatic Subareas: (a) Aquatic Conservancy, (b) Aquatic–Urban, and (c) Aquatic–Boat Harbor. *City SMP, Sec. 3.3.*

The City SMP establishes shoreline goals for economic development; shoreline use; public access; recreation; circulation; conservation; restoration; archeological, historical, and cultural preservation; and flood hazard management. *See City SMP (2013), Sec.2.2, pages 8 to 13.* The City SMP also contains shoreline policies and regulations related to shoreline vegetation management, stormwater management, and shoreline stabilization, which are addressed in the above findings. *Findings 11 – 15.*

Shoreline Conditional Use Permit

The City SMP requires that conditional use permits shall be authorized only when they are consistent with all of the following criteria:

1. The proposed use is consistent with the policies of RCW 90.58.020, WAC 173-27-160, and all provisions of the City SMP.
2. The use would not interfere with public use of public shorelines.
3. The use and design of the project would be compatible with other authorized uses in the area and with uses planned for the area under the Comprehensive Plan and the City SMP.
4. The proposal would not cause significant adverse effects on the shoreline environment in which it is located.
5. The public interest would suffer no substantial detrimental effect.

City SMP, Sec. 7.6.5.3.

In addition, consideration must be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses must remain consistent with the policies of RCW 90.58.020 and must not produce substantial adverse impacts to the shoreline environment. *City SMP, Sec. 7.6.5.4.* The Hearing Examiner has authority to impose conditions and standards to ensure that a proposed shoreline conditional use would satisfy these criteria. *City SMP, Sec. 7.6.5.6.*

Shoreline Variance

The City SMP requires that shoreline variances shall be authorized only when the Applicant can demonstrate all of the following:

1. That the strict application of the bulk, dimensional, or performance standards set forth in the City SMP precludes, or significantly interferes with, reasonable use of the property;
2. That the hardship 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 City SMP, and not, for example, from deed restrictions or the Applicant's own actions;

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3. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the City's Comprehensive Plan and the City SMP and will not cause adverse impacts to the shoreline environment;
4. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
5. That the variance requested is the minimum necessary to afford relief; and
6. That the public interest will suffer no substantial detrimental effect.

City SMP, Sec. 7.6.4.3

In addition, consideration must be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted for other developments in the area where similar circumstances exist, the total of the variances must remain consistent with the policies of RCW 90.58.020 and must not produce substantial adverse impacts to the shoreline environment. *City SMP, Sec. 7.6.4.5.*

The criteria for review adopted by the Langley City Council are designed to comply with the requirement of Chapter 36.70B RCW to implement the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed developments to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

Shoreline Substantial Development Permit

1. **With conditions, the proposal would be consistent with the policies of the Shoreline Management Act.** Applicable policies of the Shoreline Management Act (SMA) include those to foster "all reasonable and appropriate uses;" protect against adverse effects to the public health, the land, and vegetation and wildlife; and give priority to single-family residences and appurtenant structures in authorizing alterations to the natural condition of the shoreline. Permitted shoreline uses must be designed to "minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water." *RCW 90.58.020.*

The proposal is to construct a 2,700 square foot, two-story, single-family residence and an 865 square foot garage with an accessory dwelling unit on the upper level on a 0.54-acre lot within the Shoreline Residential environment. The proposed new single-family residence and accessory structure would replace an existing 728 square foot single-family residence on the property, which is uninhabitable in its current degraded condition and is incapable of being remodeled. The new residence would be constructed in roughly the same building footprint as the existing residence but would have a 620 square foot larger footprint. The City provided reasonable notice and opportunity to comment on the proposal. The City received one comment from a neighboring property owner to the north, which raised concerns about potential damage from construction vehicles to a driveway easement providing access to the site through his property. The Applicant and

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the neighboring property owner are working on an agreement to address these concerns, which the Applicant would provide to the City prior to issuance of a building permit. In addition, a member of the public testified at the hearing that he has concerns about the parking and traffic impacts of the project in light of the proposed ADU, which he noted could generate additional traffic and parking demands if utilized as a rental unit. In addition to the two-car garage that would be developed on the property, the site would contain additional space sufficient for visitors to park their vehicles. As explained by City Director of Community Planning Brigid Reynolds, the City does not regulate who occupies an ADU and has additional requirements for conversion of an ADU to short term rental unit. Any additional traffic impacts from an ADU on the property would be minimal.

The proposal to construct a new single-family residence and accessory garage/ADU structure to replace an existing, degraded single-family residence on the property is a reasonable and appropriate use within the Shoreline Residential environment and, as conditioned, would result in no net loss of shoreline ecological function or value. The proposal would not infringe on the public's right to use and enjoy Puget Sound because the subject property is located at the end of a private drive, with no public access to the site.

Conditions, as detailed below, are necessary to ensure that the Applicant: submits and obtains approval of a utility plan for water and sewer prior to building permit issuance; prepares a utility easement for both sewer and water prior to building permit issuance; submits a right-of-way permit application for utility work within the City right-of-way prior to issuance of a grading permit; provides the City with a copy of the construction impact agreement with the neighboring property owner prior to building permit issuance; follows the recommendations and mitigation requirements detailed in the technical reports submitted with the application; and enters into an agreement that runs with the land and holds the City harmless against any claims that would result from the development. *Findings 1, 2, 4 – 27.*

2. **With conditions, the proposal would be consistent with applicable shoreline regulations.** The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 WAC sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the Applicant's permit request. Chapter 173-27 WAC sets forth permitting procedures and permit criteria. This proposal is being reviewed under the criteria set forth in WAC 173-27-150. These criteria are intended to implement the policies of the SMA, which requires that all shoreline projects be consistent with an approved local Shoreline Master Program. With the conditions noted above in Conclusion 1, the proposal would be consistent with the City SMP, as described in more detail below. *Findings 1 – 27.*

3. **With conditions, the proposal would be consistent with the City of Langley Shoreline Master Program (City SMP) and applicable shoreline regulations.** The proposed development of a single-family residence and associated garage is an allowed use in the Shoreline Residential environment, and the proposed ADU is allowed with a shoreline conditional use permit (SCUP). As discussed in more detail below, the Applicant's request for a SCUP to allow the ADU satisfies the applicable SCUP criteria. The City determined that the proposal is categorically exempt from SEPA environmental review, in accord with WAC 197-11-800 because it involves the construction of a detached single-family residence and an accessory structure. The proposal would comply with the CB zoning district standards for minimum lot size, maximum lot coverage, maximum building height, and minimum setbacks. The Applicant does not propose any development within the 25-foot shoreline setback from the ordinary high water mark of Puget Sound, and the proposal would comply with City SMP development standards for shoreline vegetation management, stormwater management, and shoreline stabilization. The technical reports submitted with the application demonstrate that the project would result in no net loss of shoreline ecological functions. As noted in Conclusion 1, conditions are necessary to ensure the proposal fully complies with the City SMP and meets all requirements for an SSDP. *Findings 1 – 27.*

Shoreline Conditional Use Permit.

4. **With conditions, the proposal would satisfy the criteria for a Shoreline Conditional Use Permit under the City of Langley Shoreline Master Program.** The proposed ADU is a reasonable and appropriate use in the Shoreline Residential environment. Although the City SMP does not specifically address ADUs, it provides that unclassified uses may be allowed in the shoreline jurisdiction with a SCUP. Here, the proposed ADU would be located above the proposed garage, which is allowed in the Shoreline Residential environment as an appurtenance to the proposed single-family dwelling. The proposed ADU would be on a lot at the end of a private drive and, therefore, would not interfere with the public use of the public shorelines. The proposed ADU would be compatible with other residential development in the vicinity, particularly when considering the multi-family development standards and design guidelines generally applicable to residential property within the Wharf Street Overlay District. As discussed in the above conclusions and detailed in the Applicant's technical reports, the proposal would result in no net loss of shoreline ecological functions. The proposal is exempt from SEPA environmental review. Concerns raised by members of the public regarding the proposal's potential access easement, traffic, and parking impacts have been adequately addressed by the Applicant, and the Hearing Examiner concludes that the public interest would suffer no substantial detrimental effect from the proposed ADU use. There are no additional requests for similar actions in the area. The subject property is one of only a few remaining underdeveloped low bluff properties in the area. Conditions, as detailed below, are necessary to ensure that the proposal complies with the City SMP and meets all requirements for a SCUP. *Findings 1, 16 – 27.*

Shoreline Variance

5. **With conditions, the proposal would satisfy the criteria for a Shoreline Variance under the City of Langley Shoreline Master Program.** The Applicant requests a shoreline variance to allow the proposed new single-family dwelling and associated garage/ADU to be located within the buffer and building setback area associated with the steep slope of Cascade Bluff. The variance is necessary because of unique conditions of the property that were not the result of any actions by the Applicant. Specifically, the western portion of the property contains the steep slope area of Cascade Bluff and associated 50-foot buffer and the eastern portion of the property contains the Puget Sound shoreline and associated 25-foot shoreline buffer. Strict application of the buffer requirements of the City SMP would result in a developable area of the property amounting to less than 200 square feet and would therefore preclude the property owner from reasonable and appropriate residential use of the property. The Applicant provided a geotechnical report with the application, which determined that a proposed retaining wall along the southwest side of the proposed residence and associated garage/ADU would be sufficient to provide protection for the structures and that, therefore, the proposed location of the new structures at the toe of Cascade Bluff would be feasible from a geotechnical perspective. The Applicant would be required to adhere to the recommendations provided in the geotechnical report, including recommendations related to site development and foundation design. The variance would allow the Applicant to develop the property with a new single-family residence compatible with other single-family residences in the vicinity and would not constitute a grant of special privilege not enjoyed by other properties in the area. The project is exempt from SEPA environmental review. The City provided reasonable notice and opportunity to comment on the requested variance and did not receive any comments raising concerns with the proposed variance. *Findings 1, 7 – 27.*

DECISION

Based on the preceding findings and conclusions, the request for a Shoreline Substantial Development Permit, a Shoreline Conditional Use Permit, and a Shoreline Variance to construct a 2,700 square foot, two-story, single-family residence; an 865 square foot garage, with an accessory dwelling unit on the upper level; and associated site improvements on a 0.54-acre property located at 325 Wharf Street is **APPROVED**, with the following conditions:³

1. A final utility plan for water and sewer must be provided and approved prior to the issuance of a building permit.
2. The Applicant shall prepare a utility easement for both sewer and water for review prior to issuance of a building permit.

³ A Shoreline Conditional Use Permit and Shoreline Variance is approved only if the Washington State Department of Ecology approves the requests following its review, as required by the Shoreline Management Act. *See RCW 90.58.140; City SMP, Sec. 7.7.*

3. The Applicant shall submit a right-of-way permit application for utility work in the City's right-of-way prior to issuance of a grading permit.
4. The Applicant shall provide the City with a copy of the construction impact agreement between the proponent and the neighboring property owner to the north prior to issuance of a building permit.
5. The Applicant shall undertake development of the site consistent with the recommendations and mitigation requirements detailed in the technical reports prepared for this application.
6. The Applicant shall enter into an agreement that runs with the land and indemnifies and holds the City harmless against any claims that could result due to this development.

Decided this 6th day of July 2021.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center