

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: **2015100154**
Shoreline Substantial Development Permit

APPLICANTS: James and Carolyn Harmon
6108-88th Avenue N.E.
Olympia, WA 98516

PLANNER: Tony Kantas, Associate Planner

SUMMARY OF REQUEST:

Approval of a Shoreline Substantial Development Permit (SSDP) to construct a stair tower from the top of a 48 foot marine bluff to the beach. The property is located within the Conservancy Shoreline Environment associated with the Puget Sound.

SUMMARY OF DECISION: Request granted, subject to conditions.

DATE OF DECISION: August 27, 2015

PUBLIC HEARING:

After reviewing the Planning and Land Services Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on August 17, 2015, at 10:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

EXHIBIT "1" - Resource Stewardship Department Staff Report with Attachments

TONY KANTAS appeared, presented the Resource Stewardship Department Staff Report, and testified that the applicant requests an after-the-fact shoreline substantial development

permit to allow construction of a 48 foot high tower on a marine bluff. The tower measures 36 inches in width and has five landings. The site is located within the Conservancy Environment of the Shoreline Master Program. The abutting parcel to the north also utilizes a stair tower for beach access that was constructed prior to adoption of the SMA and SMP. A portion of the stairway is below the shoreline, as DOE established the ordinary high watermark. The applicant has agreed to remove that portion of the stairway. Staff reviewed the proposal in accordance with the Critical Areas Ordinance and the SMP and recommends approval subject to conditions. The project will have a total height of 45 feet and will provide access up and down a 48 foot high bluff.

JAMES HARMON, applicant, appeared and testified that he purchased the property in 1989 and at that time a rough trail provided access to the beach. When he built his home in 1991 he indicated on the application that he wanted to build stairs to the beach. However, subsequent thereto his neighbor allowed them to use his tower and he constructed a trail thereto. Now his wife has health problems and can no longer access the beach. He built the present stairs to allow her to have access. He contracted with Ward Fletcher who designed and built a very acceptable set of stairs. They were not aware of the necessity for a shoreline permit, but did notify the Assessor's Office of the improvement. He did not retain an engineer as he felt an engineer would recommend a monstrous structure. They will now go through the permit process. The location of the ordinary high watermark was always an issue. The final flight evidently ends below the OHWM so they will terminate the stairs on top of a tree root. They will then hinge the last flight of stairs so that they can lower it onto the beach when in use and raise it when not in use. Such also provides greater security for their house.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 10:15 a.m.

NOTE: A complete record of this hearing is available in the office of the Pierce County Planning and Land Services.

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. Because the applicant has agreed to remove the portion of the stairway constructed below the ordinary high waterline (OHWL), the project is exempt from review pursuant to the State Environmental Policy Act (SEPA).
3. Written notice of the public hearing was sent to all property owners within 500 feet of the site and notice was published in The Olympian on August 7, 2015 at least ten

(10) days prior to the hearing. The site was posted on August 7, 2015.

4. The applicants, James and Carolyn Harmon, have a possessory ownership interest in a rectangular, .91 acre parcel of waterfront property located at 6108-88th Avenue N.E., Olympia, in unincorporated Thurston County. The parcel extends from the 88th Avenue N.E. right-of-way to the OHWL of Puget Sound. The applicants also have a possessory ownership interest in a second parcel that extends waterward from the upland parcel and covers the tidelands.
5. Improvements on the parcel include a single-family residential home and driveway as well as a partially constructed stair tower that extends from the top of a 48 foot high shoreline bluff to the beach. The applicants constructed the stair tower without the benefit of either a shoreline substantial development permit (SSDP) or a building permit. The applicants have now applied for an after-the-fact SSDP, and conditions of approval require acquisition of a building permit from the Thurston County Resource Stewardship Department. To obtain a building permit the applicants will need to provide engineered plans for the stair tower. Acquisition of both permits will bring the stairs into compliance with all State and County regulations.
6. The applicants' parcel is located within the Rural Residential/Resource One Dwelling Unit per Five Acres (RRR-1/5) zone classification of the Thurston County Code (TCC). Said classification authorizes single-family residential homes and accessory uses as outright permitted on minimum five acre lot sizes. The applicants' parcel was created prior to the effective date of the RRR-1/5 classification and therefore is a legal nonconforming lot. The parcel is also located within the Conservancy Shoreline Environment of the Shoreline Master Program for the Thurston Region (SMPTR). Said environment authorizes stair towers subject to acquisition of a SSDP and building permit.
7. The Residential Development chapter of the SMPTR authorizes stair towers within the Conservancy Shoreline Environment subject to meeting all applicable policies and general regulations therefor. Section Three.XVI.C.11 requires that licensed civil engineers design stair towers 24 feet in height or greater. The applicants' tower measures 45 feet in height and therefore requires an engineered design.
8. Section Three.XVI.C.12 SMPTR prohibits a stair tower from obstructing views enjoyed from adjoining residences. Because the stairway is located below the top of the bank, adjoining residents will not view the tower except from the beach. Even then the tower is built into the side of the bank such that it will not be completely visible. Section 173-27-140(2) of the Washington Administrative Code (WAC) prohibits structures greater than 35 feet above average grade level on shorelines of the state that will obstruct the view from a substantial number of residences. Here, the tower extends higher than 35 feet, but does not obstruct any views and therefore satisfies said criteria.

9. Title 24 TCC sets forth the Thurston County Critical Areas Ordinance, and TCC 24.15.160 allows a stair tower within a Fish and Wildlife Habitat Conservation Area. The TCC considers the shoreline of Puget Sound such an area. Section 24.15.160(B) TCC requires applicants to design and construct stair towers in a manner that avoids adverse impacts to existing slope conditions. Staff's site visit and photographs in the record confirm that during construction the applicants avoided vegetation removal as much as possible. Furthermore, compliance with conditions of approval imposed hereinafter will ensure no further vegetation removal. Limiting the amount of vegetation removal mitigates adverse impacts to existing slope conditions and thereby complies with TCC 24.15.160(B).
10. Section 24.25.310 TCC sets forth the SMPTR criteria for stair towers. Findings on each criteria are hereby made as follows:
 - A. The applicants have agreed to revise the tower plans to prohibit the stairs from grounding below the OHWL. Such will assure no impacts on serf smelt, Pacific sand lance, herring spawning beds, or eelgrass. Such will also eliminate all impacts on fish and wildlife habitat.
 - B. The building permit process will assure compliance with the second criteria that prohibits use of treated wood within 100 feet of the OHWL unless approved by the County. If the applicants used treated wood in construction of the staircase, they will need to show that said wood poses a negligible risk to water quality.
 - C. The applicants do not propose riprap or other armoring on the beach as the final flight of stairs will be retractable and will not need such protection.
 - D. The stair tower will have no footprint on the beach other than the bottom rung of the ladder and only when in use.
11. The project also satisfies all criteria for a SSDP set forth in WAC 173-27-150. The stair tower is consistent with the policies and procedures of the State Shoreline Management Act (SMA) that allow alterations of the shoreline for residential purposes, encourage access to the beach, and encourage marine recreation. The tower will provide the applicants, their family, and guests access to the beach and the opportunity for marine oriented recreation. The applicants have shown that subject to compliance with conditions of approval, the project complies with all provisions of WAC 173-27, the SMPTR, and the Critical Areas Ordinance.

CONCLUSIONS:

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
2. The applicant has shown that the request for a shoreline substantial development permit to allow construction of an approximately 48 foot tall, stair tower to allow access to the beach from their existing single-family residential dwelling satisfies all criteria for a shoreline substantial development permit and therefore should be granted subject to the following conditions:
 1. Prior to or in conjunction with the issuance of any building permit, all regulations and requirements of the Thurston County Environmental Health Department, Thurston County Public Works Department, and the Thurston County Resource Stewardship Department shall be met.
 2. The applicant shall remove all stairway improvements that have been constructed below the ordinary high water line of the Puget Sound and restore the beach to its natural condition.
 3. The proposed project must be consistent with all applicable policies and other provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region.
 4. The applicant must obtain a building permit from the Thurston County Resource Stewardship Department for the stair tower structure. Engineered plans must be submitted with the building permit application.
 5. Even though a stormwater plan and a stormwater permit is not required, the proposed development shall still incorporate best management practices for the treatment of stormwater as per the Drainage Design and Erosion Control Manual for Thurston County, as implemented by Thurston County Public Works Department.
 6. No discharge of sediments into Puget Sound shall be permitted at any time.
 7. There shall be no additional vegetation removal on the marine bluff face, toe of marine bluff, or top of bluff.
 8. Construction must commence within two years and all construction must be complete within five years of the effective date of this permit. The effective date is the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed.

9. All development shall be in substantial compliance with the drawings and site plan submitted and made part of this staff report. Any expansion or alteration of this use will require approval of a new or amended Shoreline Substantial Development Permit. The Resource Stewardship Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
10. This approval does not relieve the applicant from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the applicant.
11. Construction pursuant to this permit shall not begin and is not authorized until 21 days from the date of filing of the Hearing Examiner's decision with the Department of Ecology as required in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of filing have been terminated, except as provided in RCW 90.58.140(5)(a) and (b).
12. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.
13. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

DECISION:

The request for a shoreline substantial development permit to allow construction of an approximately 48 foot tall, three foot wide, stair tower at a site located at 6108-88th Avenue N.E., Olympia, is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 27th day of August, 2015.

STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 27th day of August, 2015, to the following:

APPLICANTS: James and Carolyn Harmon
6108-88th Avenue N.E.
Olympia, WA 98516

OTHERS:

Joan Johnson
6101-88th N.E.
Olympia, WA 98516

W. Fletcher
8301 Woodbourne Drive
Lakewood, WA 98499

THURSTON COUNTY