

BIMC 2.16.165 Variances

G. Shoreline Variance, Minor or Major. This subsection applies to all applications for shoreline variances.

1. Purpose. The purposes of a shoreline variance permit is strictly limited to granting relief to specific bulk, dimensional, or performance standards set forth in the master program, where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the master program would impose unnecessary hardships on the applicant or thwart the Shoreline Management Act policies as stated in RCW [90.58.020](#) or its successor.

The history of the site includes the replacement of a small section of the old wood/concrete bulkhead section that was failing +/-10'. This replacement was done in 2012 and was designed to follow the contour of the bank as it had been reestablished. The replacement wood bulkhead created a concave indentation into the bank line and was considered a temporary fix until the remaining bulkhead work could be designed and permitted for replacement. The project was permitted through a shoreline exemption from COBI and a HPA from WDFW. With the recent authorized emergency replacement of the remaining bulkhead on the subject property, WDFW assisted with the bulkhead alignment with benchmarks that were determined prior to the work commencing. There was adequate and safe distance behind the existing rock bulkhead to replace it landward from the existing line and restore 1-2' along the +/-104'. This area restored a total estimated 217.5 square feet of beach. The project also included replacing the small wood section previously completed with rock as well. This decision was made for habitat reasons, to remove the treated wood from the shoreline, and to reduce the sharp transitions from the rock bulkhead to this wood section and then to the neighboring rock bulkhead. WDFW felt that the habitat along the shoreline would benefit if there was less of a sharp angle here that would continue to deflect energy and scour the beach. With the design including the landward movement of the rest of the bulkhead, this short section was moved waterward, +/-3' for a total increased footprint of +/-30 square feet. The overall result was a net gain of upper intertidal habitat in total of 187.5 square feet.

2. Applicability.

a. The minor variance process may be used for minor deviations from zoning standards in BIMC Title [18](#) and Chapter [16.12](#) BIMC as determined by the director. Minor projects should be limited to: (i) projects that are exempt from review under the State Environmental Policy Act (SEPA), or (ii) proposals for less than a 25 percent encroachment in required yards, or (iii) proposals of less than a 25 percent increase in lot coverage. All other variances shall be considered a major variance and processed as described in subsection G.2.b of this section.

The entire linear distance along the shoreline is +/-114', as shown on the plans. The 10' wooden section that was replaced waterward is 8% of this total footage and thus qualifies as a minor project variance. The estimated footage restored along the remaining 104' of rockery section replaced is approximately 217.5 square feet (placing the bulkhead approximately 1-2' landward in this entire area). The replaced wood section encroached waterward a total of +/- 30 square feet. Thus, the overall restoration is +/- 187.5 square feet of beach. The yardage comparison is as follows: Total cubic yards of area moved landward: 104' long x 6' deep x 8' total height (with footing) = +/-185 cy. The wooden bulkhead area encroached waterward a total of: 10' long x 6' deep x 8' total height = +/- 18 cy. This concludes that the encroachment waterward is less than 10% of an encroachment given the restored areas.

b. This process may also be used for minor variation(s) from the engineering requirements of the adopted city of Bainbridge Island engineering and development standards if the requested variation will further the purposes of the BIMC and is approved by the department director, after recommendation by the city engineer and/or the fire marshal.

N/A

c. This procedure is not available to obtain variances from subdivision standards in BIMC Title [17](#) or to obtain variances from BIMC Title [18](#) zoning standards cross-referenced in BIMC Title [17](#) as part of a short subdivision, long subdivision, or large lot subdivision approval or amendment process, except for those engineering standards covered by subsection B.2 of this section.

N/A

d. This procedure is not available to allow the siting for an accessory dwelling unit where it would not otherwise be permitted.

N/A

e. A variance shall not be granted solely because of the presence of nonconformities in the vicinity of the subject site.

N/A

f. The project involves only one project.

The project includes only one project.

g. The project has not generated a significant public input.

N/A

3. Procedure.

a. Minor Shoreline Variance. The administrator shall review a minor shoreline variance application following procedures in subsection F.2 of this section.

SEPA has been submitted as part of the Shoreline Exemption application.

b. Major Shoreline Variance. Applications for shoreline variances that are more intensive than the minor shoreline variance as determined by the administrator shall be decided by the hearing examiner following the procedures in BIMC [2.16.100](#), or its successor, supplemented by the following provisions:

i. The decision of the hearing examiner shall be the final city decision, and may be appealed in accordance with subsection I of this section.

N/A

d. Notice of Application and Comment Period. In addition to the notice of application content established in BIMC [2.16.020](#).M, notice of application for shoreline variance permits must also contain the information required under WAC [173-27-110](#).

e. Notice of Hearing. When a public hearing is required, the procedures of BIMC [2.16.020](#).M.6 shall apply.

f. The administrator shall mail the final city decision to the applicant, the State Department of Ecology, and the State Attorney General. The permit must be received by Ecology within eight days of the date of the decision. Within eight days of the date of the decision, the administrator shall also mail the decision to any person who requested notice of the decision.

g. The State Department of Ecology shall approve, approve with conditions, or deny all shoreline variances approved by the city. Ecology's decision must be made within 30 days of the date the permit and other information required by WAC [173-14-090](#) or its successor are received by Ecology and the Washington State Attorney General. Ecology will send a letter to the applicant and the city informing them of the decision. Upon receipt of the Ecology decision, the administrator shall notify those interested persons who requested notification.

4. Decision Criteria. Pursuant to WAC [173-27-170](#) and [173-27-210](#) or their successors, the criteria below constitute the minimum criteria for review and approval of a shoreline variance permit:

a. Shoreline variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), and/or landward of any wetland, as defined in Chapter [16.12](#) BIMC, may be authorized, provided the applicant can demonstrate all of the following:

N/A

i. The strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;

ii. The hardship described in subsection G.4.a.i of this section 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 master program, and not, for example, from deed restrictions or the applicant's own actions;

iii. The design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;

iv. The variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;

N/A

v. The variance requested is the minimum necessary to afford relief; and

vi. The public interest will suffer no substantial detrimental effect.

N/A

b. Shoreline variance permits, where the development will be located either waterward of the ordinary high water mark (OHWM) or within or within any wetland, defined in Chapter [16.12](#) BIMC, may be approved or approved with conditions or modifications subject to approval by Ecology, if the decision maker finds the applicant has demonstrated compliance with all of the following criteria:

i. The strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;

The unique conditions along the shoreline of the property allowed for the +/-104' of the rock bulkhead to be safely moved landward and result in a net gain of upper intertidal habitat. The 10' wooden section that remained was moved landward to reduce the angle and scour along the shoreline that was created when this section was built to follow the OHW at the time. This updated design allows for the wave energy to be more uniformly dissipated along the shoreline and thus reduces the negative impacts of the habitat. Improved functions and values of this design along the shoreline were able to be accomplished based on the ability to move the bulkhead along the remaining 104' landward.

The design allows for the bulkheads to be connected with a net gain of upper intertidal habitat and an increase in the functions and values along the shoreline. This will benefit the subject property and the shore drift of material along the shoreline.

The design resulted in a net gain of upper intertidal habitat and reduced the scouring of the shoreline from sharp angled transitions from bulkhead sections.

ii. The proposal is consistent with the criteria established under subsections G.4.a.ii through vi of this section; and

iii. The public rights of navigation and use of the shorelines will not be adversely affected.

Use of the shoreline by the private property owners will not be adversely affected. They will have more overall beach area available to utilize for recreation.

c. In the granting of all shoreline variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if shoreline variances were granted to other developments in the area where similar circumstances exist, the total of the shoreline variances should also remain consistent with the policies of Chapter [90.58](#) RCW or its successor and should not produce substantial adverse effects to the shoreline environment.

Other neighboring properties have also had bulkhead replacements completed and also resulted in either full net gain of habitat with moving the bulkheads landward or a negotiated net gain of habitat similar to the subject project where areas that were safe to move landward were and those that could

not be moved landward or were proposed to move waterward were done in an effort for overall increase in the functions and values of the shoreline and net drift cell.

5. Time Frame. Construction and activities authorized by a shoreline variance are subject to the time limitations in subsection F.5 of this section (WAC [173-27-090](#) or its successor).

Work was authorized as an emergency from WDFW and COBI.

6. Adjustments to Approved Shoreline Variance.

N/A

a. A permit revision is required whenever an applicant proposes substantive changes to the design, terms or conditions of a project from that approved as a shoreline variance. The applicant shall submit detailed plans and text describing the proposed changes in the permit and demonstrating compliance with the following minimum standards pursuant to Chapter [173-27](#) WAC.

b. If the proposed changes are determined by the administrator to be within the scope and intent of the original permit, and are consistent with the Act (Chapter [90.58](#) RCW), the shoreline guidelines (Chapter [173-26](#) WAC), and the shoreline master program, the revisions may be approved as a minor adjustment.

c. A minor adjustment entails a revision that is within the scope and intent of the original permit, which means all of the following:

i. No additional over-water construction is involved except that a pier, dock or floating structure may be increased by 10 percent or 500 square feet, whichever is less, over that approved under the original approval;

ii. Ground area coverage and/or height may be increased a maximum of 10 percent over that approved under the original approval; provided, that the revised approval does not authorize development to exceed the height, impervious surface, setback or any other requirements of this program except as authorized under a variance granted for the original development;

iii. Additional or revised landscaping is consistent with any conditions attached to the original approval and with this program;

iv. The use authorized pursuant to the original approval is not changed; and

v. The revision will not cause adverse environmental impacts.

d. Revisions to shoreline permits and statements of exemption may be authorized after the original authorization has expired. Revisions made after the expiration of the original approval shall be limited to changes that are consistent with this program and that would not require a permit under this program. If the proposed change is a substantial development as defined by this program, then a new permit is required. The provisions of this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits or scope of the original approval.

e. A new permit shall be required if the proposed revision and any previously approved revisions in combination would constitute development beyond the scope and intent of the original approval.

f. Upon approval of a revision, the decision maker shall file a copy of the revised site plan and a detailed description of the authorized changes to the original permit with the Department of Ecology together with a final ruling and findings supporting the decision based on the requirements of this section. In addition, the decision maker shall notify parties of record of the action.

g. If the proposed revision is to a development for which a shoreline variance was issued, the decision maker shall submit the revision to the Department of Ecology for approval with conditions or denial, and shall indicate that the revision is being submitted under the requirements of this subsection. Under the requirements of WAC [173-27-110](#)(6), the Department shall render and transmit to the decision maker and the applicant/proponent its final decision within 15 days of the date of the Department's receipt of the submittal from the decision maker. The decision maker shall notify parties on record of the Department's final decision.

7. Appeal of Decision on Shoreline Variance. The decision of the hearing examiner may be appealed to the following the procedures of subsection I of this section.