



BEFORE THE HEARING EXAMINER  
OF THE CITY OF BREMERTON

In the Matter of the Application of	)	NO. BP04-00330
	)	
<b>Douglas and Debra George</b>	)	FINDINGS, CONCLUSIONS
	)	AND DECISION
For Approval of a Special Use Permit	)	
	)	
_____	)	

**SUMMARY OF DECISION**

The request for a non-administrative Special Use Permit to exceed height standards and build a 6-foot tall fence in the front yard setback area is **GRANTED**, subject to conditions.

**SUMMARY OF RECORD**

Request

Douglas and Debra George (Applicants) request approval of non-administrative Special Use Permit (SUP) to exceed height standards and erect a 6-foot tall fence in the front yard setback area of a residentially-zoned property at 602 Upper Shore Drive, Bremerton, Washington.<sup>12</sup>

Hearing Date

An open record public hearing was held on the request before the Hearing Examiner on August 17, 2004.

Testimony

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

1. Robert Grumbach
2. Debra George, Applicant
3. Bruce Frederick

Exhibits

The following exhibits were admitted to the official record at the hearing:

Exhibit 1:	Staff Report dated August 17, 2004
Attachment a:	SUP Application with Site Plan and Sketches
Attachment b:	Comprehensive Plan Designation and Shoreline Designation Maps
Attachment c:	Ordinance 4906

<sup>1</sup> The parcel's legal description is "Lots 8 and 9, Block 19 of the Plat of Decatur as recorded in Volume 1 of Plats, Page 67, Records of Kitsap County, Washington." The Tax Assessor's Parcel Number is 3913-019-008-0002.

<sup>2</sup> The fence was constructed prior to review.

Attachment d:	Photographs of the Subject Property and Fence
Attachment e:	Staff Comments
Attachment f:	Public Notices
Exhibit 2:	Letter from Kaari Brach received August 12, 2004
Exhibit 3:	Letter from John and Jennifer Didio received August 16, 2004
Exhibit 4:	Power Point Hard Copy

Based upon the evidence and testimony admitted at the open record hearing, the Hearing Examiner enters the following Findings of Fact and Conclusions of Law:

#### FINDINGS

1. The Applicants request approval of non-administrative SUP to exceed height standards and build a 6-foot tall fence in the front yard setback area of a residentially-zoned property at 602 Upper Shore Drive, Bremerton, Washington. *Exhibit 1, Staff Report, page 1.*
2. The subject property is a .16-acre lot within a "Residential Low Density" (SF3) zone. The property is flat, with an ingress/egress to Ironsides Avenue, which is west of the property. Upper Shore Drive is to the south, an alley is to the east and a single-family residence is to the north. All surrounding properties are zoned SF3. The Port Washington Narrows are to the south of the property. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 1, Attachment a, Application; Exhibit 1, Attachment b, Comprehensive Plan Designation and Shoreline Designation Maps; Exhibit 4, Power Point Hard Copy.*
3. In the SUP Application, the Applicants cited the enhanced safety and security of their 4 young children and 2 dogs as reasons necessitating the 6-foot tall fence. *Exhibit 1, Attachment a, Application.*
4. Ordinance 4906 was recently passed by the Bremerton City Council to amend Bremerton Municipal Code (BMC) 21.02.230 and became effective on August 15, 2004. The ordinance allows a maximum fence height in residential properties of 6 feet in rear and side yards, and 3 feet in front yards. The front yard fence height can be increased to 6 feet for mesh cyclone type fences. A corner lot is permitted to erect a fence of up to 6 feet on its secondary frontage. For corner lots, the primary frontage is treated as a front yard subject to the 3-foot fence height maximum and the secondary frontage is treated as a side yard with a maximum allowable fence height of 6 feet. This special exception for corner lot secondary frontages only applies if (1) the high fence will not block views that share the principal frontage to the same street, (2) the high fence will not be closer to the residence's front property line on the street of principal orientation than the closest part of the front façade of the residence, and (3) the high fence will not encroach into the front yard of the primary frontage where the maximum height limit takes precedence. Another exception exists for residential properties that border non-residential properties. When a residential property directly adjoins a non-residential property and the proposed fence would have a "finished" look, fences of up to 8 feet tall are permitted. *Exhibit 1, Staff Report, page 3; Exhibit 1, Attachment c, Ordinance 4906; Exhibit 4, Power Point Hard Copy.*

5. The SUP application was made on July 1, 2004, before Ordinance 4906 came into effect. As a result, the application vested under the fence regulations in effect at that time. Under BMC 21.02.230(b), in effect when the application was made, a Special Use Permit to erect a fence in excess of 3 feet was available if a need for security and residential privacy were demonstrated, or if the proposed high fence would benefit all affected parties. Those criteria govern the Applicants' request. *Exhibit 1, Staff Report, page 4.*
6. The subject property is within 200 feet of the Port Washington Narrows and within the shoreline jurisdiction. However, the proposed project is exempt from State Environmental Policy Act (SEPA) regulations and from having to obtain a Shoreline Substantial Development Permit (SSDP) because the project would be "minor new construction" pursuant to WAC 197-11-800(2) and the fair market value of the project would be less than \$2,500. The proposed project would have no impact on the view corridor because the only potentially affected property, the adjoining property to the north, is elevated. No other properties would be affected by the project and no critical areas have been identified on-site. *Exhibit 1, Staff Report, pages 1, 3 and 4; Exhibit 1, Attachment d, Photographs; Exhibit 4, Power Point Hard Copy; Testimony of Mr. Grumbach.*
7. In a letter received on August 16, 2004, John and Jennifer Didio submitted their opposition to the SUP. They submitted that the height restrictions set forth in the City ordinance are adequate for safety and that approval of the SUP would create a precedent in the neighborhood for higher fences. In a letter received on August 12, 2004, Kaari Brach also submitted that approval of the SUP would lead to inconsistent application of the BMC and create a precedent for higher fences.<sup>3</sup> *Exhibit 2, Letter from Kaari Brach; Exhibit 3, Letter from John and Jennifer Didio.*
8. A Notice of Application and Notice of Public Hearing were mailed to property owners within 300 feet of the subject property on July 28, 2004. The hearing date was printed incorrectly on the notices and corrected notices were mailed on July 30, 2004. A Notice of Public Hearing was published in The Sun and posted on the subject property on July 30, 2004. *Exhibit 1, Staff Report, pages 4 and 6; Exhibit 1, Attachment f, Public Notices.*

## CONCLUSIONS

### Jurisdiction

The Hearing Examiner is granted authority to hear and decide applications for Special Use Permits pursuant to Section 21.02.850 of the Bremerton Municipal Code. The decision may be to approve, approve with conditions, or deny the application.

### Criteria for Review

To approve a Special Use Permit, the Hearing Examiner must find that the application satisfies the applicable criteria for review; is consistent with the Comprehensive Plan and other adopted plans; and conforms to all applicable City development regulations, minimum standards, and

---

<sup>3</sup> A SUP is decided based on criteria set forth in the Bremerton Municipal Code. Precedence is not one of the criteria and is irrelevant to this decision.

design guidelines. *BMC 21.02.885*. *BMC 21.02.905(d)* provides that a Special Use Permit may be approved if all of the following questions can be answered "yes":

1. Is the proposal consistent with the City's Comprehensive Plan and either designated "SUP" in the Zoning Ordinance, or is being processed as an "Unlisted Use"?
2. Will the proposal comply with all applicable development standards and requirements, including the availability of all needed utilities and services?
3. Will the proposal, along with any mitigation measures or other conditions of approval, avoid significant adverse environmental consequences?
4. Will the proposal be compatible with adjacent uses and surrounding neighborhood?
5. Does the proposal comply with all other criteria or design guidelines that are applicable to the specific use or type of development?

The Hearing Examiner has authority to impose such conditions as site orientation, fencing, buffering, parking location, lighting, access, hours of operation or others as conditions of SUP approval if needed to prevent adverse impacts and/or ensure compatibility with the surrounding area. *BMC 21.02.905(e)*.

#### Conclusions Based on Findings

1. **With conditions, the proposal satisfies the criteria for approval of a Special Use Permit and is consistent with the Bremerton Comprehensive Plan and all other applicable City regulations.**
  - a. The project complies with the Bremerton Comprehensive Plan. It will allow a fence that exceeds height standards for residential properties in order to enhance the residence's safety and security, but the character of the neighborhood will not be compromised. The high fence will not impact view corridors and will not have a detrimental effect on the environment. *Findings of Fact Nos. 1, 3, and 6.*
  - b. With approval of the SUP, the project will comply with all applicable standards. This application vested before the effective date of Ordinance 4906 and the applicable standards allow for fence height adjustments with approval of a SUP. The availability of utilities and services is not applicable. *Findings of Fact Nos. 3, 4, and 5.*
  - c. The project will not create adverse environmental impacts. Though the subject property is within 200' of the Port Washington Narrows ordinary high water mark and subject to shoreline jurisdiction, no critical areas have been identified on-site. The project is SEPA and SSDP exempt because the project is considered "minor new construction" having a fair market value of less than \$2,500. View corridors will not be impacted. *Findings of Fact No. 6.*
  - d. The project is compatible with surrounding uses and the neighborhood. The subject property and all properties nearby are zoned SF3 for residential uses. Fences are permitted within residential zones and, under the applicable standards, a 6-foot tall fence is permitted in the front yard of a residential property with approval of a SUP.

No adjacent property will be impacted by the tall fence. *Findings of Fact Nos. 2, 5, and 6.*

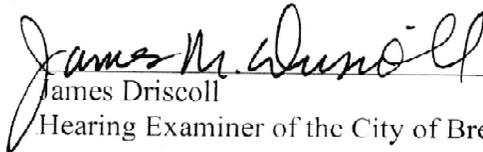
- e. The proposal complies with all applicable criteria. *Findings of Fact Nos. 5 and 6.*

#### DECISION

The request for a non-administrative Special Use Permit to exceed height standards and build a 6-foot tall fence in the front yard setback area is **GRANTED**<sup>4</sup>, subject to the following conditions:

1. No part of the fence shall exceed six (6) feet in height.
2. Pursuant to Ordinance 4906, a building permit shall be secured for future fences.
3. The Special Use Permit to allow a 6-foot tall fence on the east (adjacent to the alley) and southeast (along Upper Shore Drive from the single-family residence toward the alley) portions of the property shall run with the land.

Decided this 2 day of September 2004.

  
James Driscoll  
Hearing Examiner of the City of Bremerton

---

<sup>4</sup> The application vested under the former BMC regulations that permitted fences in excess of the height requirements with approval of a SUP in cases where there was a need for security or residential privacy. The granting of this SUP will allow the 6-foot tall fence to remain, but because it was granted under the former BMC regulations, it will not set a precedent. The 6-foot tall fence would not be permissible under the new BMC regulations set forth in Ordinance 4906.

