



# MEDINA, WASHINGTON

## HEARING EXAMINER

A Remote Public Hearing

Wednesday, August 21, 2024 – 12:00 PM

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### AGENDA

#### Virtual Meeting Participation

The scheduled hearing will be held using remote meeting technology. Please either log in or call in a few minutes prior to the start of the meeting to participate. Written comments may still be submitted prior to the hearing by emailing Jonathan Kesler, AICP, Planning Manager, at [jkesler@medina-wa.gov](mailto:jkesler@medina-wa.gov). Written comments are given the same weight as oral public testimony.

Join Zoom Meeting

<https://medina-wa.zoom.us/j/81914784992?pwd=CyWR9Euh6AnBXr2BaQHREaAdBnyaxs.1>

Meeting ID: 819 1478 4992

Passcode: 365480

One tap mobile

+12532050468,,81914784992#,,,,\*365480# US

+12532158782,,81914784992#,,,,\*365480# US (Tacoma)

#### Public Hearings:

***NOTE:** The Hearing Examiner has the discretion to limit testimony to relevant non-repetitive comments and to set time limits to ensure an equal opportunity is available for all people to testify.*

#### PRE-DECISION HEARING:

**File No.:** P-24-007 Non-Administrative Variance

#### **Applicant or**

**Agent:** Davis Hammer & Dana Warren, Agent, for John Stephanus, property owner

**Proposal:** A Non-Administrative Variance to increase the height allowed for a deck protruding into the shoreline setback. The proposed deck is located on the north side of the property.

**Location:** 2841 Evergreen Point Rd., Medina, WA 98039, Parcel # 242504-9241

**Legal Info:** PORTION GOVT LOT 7 STR 24-25-04 & SHORELANDS ADJOINING LYING WLY OF FOLG DESC LINE: COMMENCING AT PT ON EAST LINE SD GOVT LOT FROM WHICH PT CENTER SD SECTION BEARS N 0-01-10 W 865.85 FT TH N 89-49-09 W 30 FT TO NE CORNER OF TRACT OF LAND CONVEYED TO HENDERSON BY DEED REC NO 4601186 TH CONTG N 89-49-09 W ALONG NORTH LINE SD HENDERSON TRACT 450.75 FT TO TPOB TH S 8-38-39 W 149.07 FT TO SOUTH LINE SD HENDERSON TRACT & TERMINUS DESC LINE

Stephanus Non-Administrative Variance, P-24-007

Staff Analysis and Recommendation

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Page 1 of 8

**Prepared by:** Thomas Carter, Assoc. Planner, LDC, Inc.; Planning Consultant for the City of Medina

**PART 1 – GENERAL INFORMATION**

**ZONING:** R-20, Single Family Residential

**COMPREHENSIVE PLAN DESIGNATION:** Single-Family Residential

**SHORELINE ENVIRONMENT DESIGNATION:** Shoreline Residential

**CRITICAL AREAS:** Shoreline, as regulated below

**ENVIRONMENTAL (SEPA) REVIEW:** See # 4, below.

**EXHIBITS:**

1. Staff Report
2. Non-Administrative Variance Application, received January 29, 2024
3. Site Plan, received January 29, 2024
4. Agency Declaration, received January 29, 2024
5. Statutory Warranty Deed, received January 29, 2024
6. Mailing Labels received January 29, 2024
7. Criteria for Approval Attachment dated January 29, 2024
8. Legal Notices
  - a. Notice of Application dated, March 12, 2024
  - b. Determination of Complete Application dated March 6, 2024
  - c. Notice of Hearing dated August 05, 2024
9. Review Comment Letter #1 dated March 27, 2024
10. Comment Response Letter #1 dated April 2, 2024
11. Review Comment Letter #2 dated April 19, 2024
12. Comment Response Letter #2 dated April 29, 2024

**PART 2 – SITE CHARACTERISTICS**

**EXISTING CONDITIONS:** The subject property is developed with a single-family residence, a dock, and related site improvements.

**SURROUNDING ZONING:**

Direction	Zoning	Present Use
North	R-20 District	Residential
South	R-20 District	Residential
East	R-20 District	Residential
West	Lake Washington	N/A, Water Body

**ACCESS:** From Evergreen Point Road.

### **PART 3 – COMPREHENSIVE PLAN**

The residential nature of the City’s shoreline makes preservation of its character, while encouraging good stewardship and enjoyment of the shoreline, including protecting and preserving shoreline ecological functions, the primary vision of the shoreline master program. The following comprehensive plan goals and policies apply to the proposed project:

SM-P4.4 At a minimum, development should achieve no net loss of ecological functions, even for exempt development.

SM-P8.2 The city should take steps to assure that shoreline modifications individually and cumulatively do not result in a net loss of ecological function. This is to be achieved by preventing unnecessary shoreline modifications, by giving preference to those types of shoreline modifications that have a lesser impact on ecological functions, and by requiring mitigation of identified impacts resulting from shoreline modifications.

SM-P9.4 Moorage facilities should be constructed of materials that will not adversely affect water quality or aquatic plants and animals in the long term, and have been approved by applicable state agencies.

### **PART 4 – AGENCY REVIEW/PUBLIC COMMENT**

#### **NOTICES (Exhibit 9):**

Application received:	January 29, 2024
Determination of Completeness:	March 06, 2024
Notice of Application:	March 12, 2024
Notice of Hearing:	August 5th, 2024

The application was received on January 29, 2024, and was determined complete on March 06, 2024, pursuant to MMC 16.80.100. A Notice of Application was issued on March 12, 2024, by mailing to property owners pursuant to MMC 16.80.140(B)(2); posting on-site; and posting at other public notices locations (City Hall, Medina Post Office, Park Board, and City of Medina website). A 14-day comment period was used pursuant to MMC 16.80.110(B)(7). A second Notice of Hearing was issued on August 05, 2024. The notice was mailed to property owners pursuant to MMC 16.80.140(B)(2), published in *The Seattle Times* newspaper, and posted on the site and other public notice locations (City Hall, Medina Post Office, Medina Park Posting Board, and City of Medina website).

**GENERAL PUBLIC COMMENTS:** As of the date of this staff report, the City has not received any public comment regarding the proposed project.

**AGENCY COMMENTS:** No agency comments were received.

## **PART 5 – STAFF ANALYSIS**

### **GENERAL:**

1. John Stephanus is the owner and taxpayer of record of the property identified as 2841 Evergreen Point Rd, tax parcel no. 2425049241, according to the Statutory Warranty Deed (Exhibit 5). The property owner has authorized Dana Warren of Suyama Peterson Deguchi to act as the agent on behalf of the owner under the Owner's Declaration of Agency Application (Exhibit 4).
2. The property is zoned R-20 and is approximately 44,789 square feet (0.97 acres) in size. The lot is rectangular in shape with a width of approximately 151 feet. The lot is developed with a single-family dwelling and related site improvements, including driveway, a dock, and landscaping. The standard side yard setback for this lot under MMC Table 16.22.030 is 10 feet or 15% of the lot width up to 20 feet. Therefore, the side yard setback for this property is 20 feet.
3. The applicant has requested to construct a deck within the side-yard setback. To achieve this, the applicant is applying for a variance from MMC 16.22.040 "Protrusions into setback areas", which states in pertinent part:

The following structures may be located within a setback area, except setbacks from Lake Washington, which are subject to Chapter 16.63 MMC:

...

C. Uncovered decks and patios, provided:

1. No part of the structure exceeds 30 inches in height above the existing or finished grade, whichever grade is lower; and
2. The following setbacks are maintained:
  - a. A minimum 15-foot setback is maintained from the front property line;
  - b. A minimum 10-foot setback is maintained from the rear property line;and
  - c. A minimum side-yard setback equal to one-half the required distribution pursuant to Table 16.22.030.

The deck will also be located within the steep slope located on the northern portion of the site.

### **ENVIRONMENTAL (SEPA) REVIEW:**

4. The proposal is exempt from environmental (SEPA) review pursuant to WAC 197-11-800(2)(e), Minor New Construction and 197-11-800(6)(e), Land Use Decisions, Granting of a Variance.

### **ANALYSIS OF THE NON-ADMINISTRATIVE VARIANCE DEVELOPMENT APPLICATION:**

5. The MMC 16.72.100(D) requires a non-administrative variance for circumstances where relief from a dimensional standard would result in an unusual or unreasonable hardship due to the physical characteristics of the site. The Stephanus Residence project is proposing a variance to seek relief from dimensional standards outlined in MMC 16.22.040(C)(1).

Therefore, a non-administrative variance application is required to authorize the proposed project.

6. The land use table is codified in MMC16.21.030 and sets forth that Detached, single-family dwellings and structures appurtenant to this use are permitted within the R-20 zone.
7. The MCC 16.22.040 establishes the design standards for structures that are located within a setback area. The applicable section of this code is MMC 16.65.040(C)(1), which allows uncovered decks provided that no part of the structure exceeds 30 inches in height above the existing or finished grade (whichever is lower) and if the minimum side yard setback is equal to one-half the required distance pursuant to Table 16.22.030 for lots greater than 20,000 sq. ft.

The proposed deck is located within the side yard setback of 20 feet, located on the northern portion of the site. The proposed deck will maintain a setback of 12'-3" from the property line, which exceeds the required one-half of the setback length allowed for protruding structures within the side-yard setback.

A majority of the proposed deck is 30 inches or lower from the finished grade of the site. There is a portion of the proposed deck that exceeds the height requirement of 30 inches from the finished grade. This portion of the deck conflicts with the existence of a Giant Sequoia on the project site. In order to protect the roots of the Giant Sequoia located on the site the applicant is proposed to exceed the maximum 30-inch height required for structures that protrude within the setback.

8. Pursuant to MMC 16.72.100(F), a non-administrative variance may only be approved if the following criteria are met:

***a) The variance does not constitute a granting of special privilege inconsistent with the limitations upon uses of other properties in the vicinity and zone in which the subject property is located.***

APPLICANT RESPONSE: The building permit for the house included a deck in the same location as is being requested in this variance application. During construction the roots on the adjacent trees we discovered to be higher than anticipated. On the advice of our arborist the elevation of the deck was raised to avoid impacting the Giant Sequoia on the north edge of the property. Once the deck was raised only the eastern portion of the deck was within the allowable height in the setback, because of the sloping site the western portion of the deck would rise above the allowable height. This request is being made to allow for an increased height allowance for a deck within the north property setback. This is necessary to steeply sloping side and the large trees that are being preserved on the property. If the lot topography was less steep, and there weren't large trees the height variance would not be required. Granting this variance would not provide special privileges.

STAFF ANALYSIS: The property is located within the R-20 zone Single-Family Residence, and a detached single-family dwelling and related appurtenances (such as a deck) are permitted pursuant to MMC 16.21.030. The granting of the variance would not alter this use. The proposal is, therefore, consistent with the limitations on uses of other properties in the vicinity and within the R-20 zone.

- b. The variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located.***

APPLICANT RESPONSE: The property is steep, relatively narrow and includes a prominent tree (oldest tree in Medina) located in the middle. These factors necessitated locating the house at the lower portion of the site. To build a usable deck on grade with the finished floor and avoid damaging the roots of another large tree in the setback (Giant Sequoia), the proposed deck ranges from 10" (which is required to protect the tree roots), to 60" above existing grade (due to the slope of the site). The total allowable size of a flat deck surface that avoids the tree roots and complies with the 30" maximum height is 12'-6" x 13'-0", which is not large enough to accommodate a dining table of a reasonable size to suit the intended use as an outdoor dining area while still serving as a walkway to access the adjacent outdoor spaces. The deck cannot go down further in elevation without removing the Giant Sequoia, increasing exposure to the neighbor on the north property line. This special topographic circumstance limits the "rights and privileges permitted by other properties in the vicinity and zone" that enjoy a flatter lot and fewer significant trees.

STAFF ANALYSIS: MMC 16.22.040 allows for uncovered decks to be constructed within the side yard setback of the property. We believe that due to the topography, shape and location of natural features on the site, it makes the development of a deck within the setback difficult to achieve. The applicant has made efforts to protect a prominent tree on the site and took measurable steps to site the proposed house on the lower portion of the parcel. MMC 16.22.040(C)(1) which states "... No part of the structure exceeds 30 inches in height above the existing or finished grade, whichever grade is lower..." Due to the efforts of the applicant to protect the trees on site, it has limited the available areas to construct a deck that would meet these requirements.

- c. The variance is necessary to relieve a material hardship that cannot be relieved by any other means such that the material hardship must relate to the land itself and not to problems personal to the applicant.***

APPLICANT RESPONSE: Due to the steepness of the site and the elevation of the tree roots, it is not possible to locate a deck large enough for practical use that does not exceed the height limitation of 30" inside the setback.

STAFF ANALYSIS: For an uncovered deck to be constructed within the setback it must not exceed 30 inches above the existing or finished grade, whichever is lower per MMC 16.22.040(C)(1). The proposed location of the deck would require a variance to exceed the 30-inch requirement due to the tree roots located within the setback. We believe that due to the site topography, natural features and shape (See Staff Analysis 8b) that variance is necessary to relieve the material hardship created by the site.

- d. The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.***

APPLICANT RESPONSE: The proposed deck is located at the very bottom of the steep slope and will be almost completely hidden by vegetation, a fence along the property line and existing trees, negating any obstruction of view or impact to adjacent neighbors.

STAFF ANALYSIS: The variance request is for the applicant to exceed the maximum 30 inches above existing or finished grade requirement to construct a leveled deck. The proposal will not be detrimental to the public welfare or injurious to the property or improvements within the vicinity and zone in which the subject property is located.

***e. The variance is the minimum necessary to provide reasonable relief.***

APPLICANT RESPONSE: The deck complies with the 30” maximum height requirement for the eastern 50% of the deck. Due to the sloping topography the deck exceeds 30” for the western 50%. The intended use of the proposed deck is for outside dining and entertainment. If the deck was stepped to follow the sloping grade it would not be usable for the intended use.

STAFF ANALYSIS: The variance request is for the applicant to exceed the maximum 30 inches above existing or finished grade requirement to construct a leveled deck. Without the variance, a deck could still be constructed, but would limit the amount of useable space desired by the applicant.

**PART 6 – CONCLUSIONS**

1. Pursuant to MMC 16.72.030(C) and MMC 16.80.050(C), the Hearing Examiner has the authority to hold a public hearing and decide Non-administrative Variance applications. The applicant has requested the Non-administrative Variance application to provide relief from the dimensional requirements outlined in MCC 16.22.040 “Protrusions into the Setback”.
2. Proper notice for this public hearing has been provided. Notice was posted on the property and mailed to surrounding property owners within 300 feet and published in the Seattle Times newspaper on August 05, 2024 - more than 15 days before the date of the hearing (Exhibit 8e).
3. Pursuant to MMC 16.72.030(F), a non-administrative variance application may only be approved if the following criteria are met:
  - a. The variance does not constitute a granting of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the subject property is located.

Conclusion: See Staff Analysis 8a.

- b. The variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located.

Conclusion: See Staff Analysis 8b.

- c. The variance is necessary to relieve a material hardship that cannot be relieved by any other means such that the material hardship must relate to the land itself and not to problems personal to the applicant

Conclusion: See Staff Analysis 8c.

- d. The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

Conclusion: See Staff Analysis 8d.

- e. The variance is the minimum necessary to provide reasonable relief.

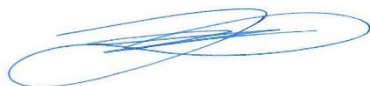
Conclusion: See Staff Analysis 8e.

## **PART 7 – STAFF RECOMMENDATION**

Staff recommends the Hearing Examiner **approve** the Stephanus Non-Administrative Variance (file no. P-24-007) as the project has demonstrated consistency with the Medina Municipal Code, Medina Shoreline Master Program, the State Shoreline Management Act of 1971, and the State Shoreline Management Permit and Enforcement Procedures. Staff recommends the following **conditions of approval** be included:

1. Relief from the maximum height of an uncovered deck located within the setback is limited to 60” from the existing or finished grade, whichever is lower.
2. That the intrusion shall not exceed 7 feet, 9 inches, leaving a setback of no less than 12 feet, 3 inches at the closest point.
3. Pertinent construction permits shall be obtained prior to starting construction activity.
4. All other zoning and development regulations applicable to the project shall be followed and confirmed during the building permit review.
5. An approved non-administrative variance shall expire if within one year of the date the decision of the non-administrative variance becomes final unless a complete building permit application is submitted. A six-month extension may be granted pursuant to MMC 16.72.030(H)(3), if the applicant makes such a request in writing prior to the expiration date and can show good cause for granting the extension.

Dated: August 5<sup>th</sup> 2024



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Thomas Carter, Associate Planner, LDC, Inc.  
on behalf of the City of Medina