



City of Seattle
 Gregory J. Nickels, Mayor

Department of Planning and Development
 D. M. Sugimura, Director

**CITY OF SEATTLE
 ANALYSIS AND DECISION OF THE DIRECTOR OF
 THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3003857
Applicant Name: Lisa Kennan-Meyer
Address of Proposal: 5215 Beach Drive SW

SUMMARY OF PROPOSED ACTION

Land Use Application to change the use of a two-unit apartment structure to a single-family residence along with certain additions. Project includes an upper story addition that will extend into the required Shoreline setback.

The following approvals are required:

Shoreline Variance - To allow a new portion of a residential structure on a waterfront lot to be located in the required Shoreline set-back in an Urban Residential (UR) Shoreline zone. Seattle Municipal Code 23.60.198(B)

SEPA DETERMINATION: Exempt DNS MDNS EIS
 DNS with conditions
 DNS involving non-exempt grading or demolition, or involving another agency with jurisdiction.

BACKGROUND DATA

Site Description

The subject property is a waterfront lot fronting Puget Sound in West Seattle. The site is a roughly rectangular shaped lot of approximately 8,515 square feet with approximately 3,734 square feet of dry land area. The dry land portion is approximately 38.8 feet wide by 90 to 95 feet deep. The property is accessed directly from Beach Drive SW.



The dry land portion of the property is below standard size for development within its Single Family 5000 (SF-5000) zone. The subject site, similar to neighboring properties on the west side of Beach Drive SW, is within 200 feet of the Ordinary High Water Mark (OHWM) of Puget Sound. The dry land portion of the site is designated as an Urban Residential Shoreline Environment (UR); the portion of the site water-ward of the OHWM is designated as a Conservancy Recreation Shoreline Environment (CR).

The site is currently developed with a legally existing two-story duplex, including a basement. Parking is located on the street side of the site in an attached one-car carport structure. The site steps approximately 16 feet down from the street to the beach, in the east-west direction. This is accomplished with two existing concrete retaining walls that each provides a step of approximately 8 vertical feet. One wall is on the street side; the other is a shoreline bulkhead. In addition, existing concrete retaining walls on both side property lines create a virtually flat grade across the property in the north-south direction. The existing duplex is located approximately four feet from the north property line, six feet from the south property line, and 18-20 feet from the waterside bulkhead. The current carport is located 13-14 feet from the street-side property line.

The subject lot and structure extends further water-ward (west) than the property and its structure directly to the south (5221 Beach Drive SW). The west façade of the duplex, with its covered porch, aligns with the west façade and covered porch of the house to the north (5211 Beach Drive SW). Because of the location of the subject lot's structure water ward of the structure to the south (5221), the subject lot's structure is non-conforming to the Shoreline setback requirements of SMC 23.60.198.B and as determined by DPD Director's Rule 4-89.

Many other parcels in the immediate area are similarly sized where the dry land area provides less than the required 5,000 square feet of area. These parcels consist predominately of single-family residences, primarily multiple story structures. There is a Metro bus stop directly in front of the property.

Proposal Description

The applicant proposes to renovate and structurally alter the existing duplex residential structure to convert it to a single-family residence. The conversion will result in a change to the entire physical appearance of the structure and include the addition of a partial third story, additional square footage added to the two existing levels on the street facing (east) side of the structure, the removal of the existing car port and its replacement with a 400 square foot two-car garage, the abandonment and filling of the existing basement (per geo-technical and structural engineer recommendations due to consistent flooding), along with the addition of pin pilings for stabilization of the existing foundation. The original proposal included the alteration and expansion of the existing west facing roof line, which is within the shoreline setback. During project review, the applicant withdrew this component from the project.

Duplex residences, a multi-family use, are not allowed in the underlying SF 5000 zone. The UR Shoreline Environment allows both single and multi-family uses but requires that for a use to be allowed it must be permitted in both the designated Shoreline Environment and the underlying land use zone (SMC 23.60.122). The proposed conversion to a single-family residence will bring the parcel use into conformance with both the allowed uses of the underlying Land Use zone as well as the Shoreline Master Program regulations.

The existing structure, whether used as a multi-family or single-family residence, is a non-conforming structure in the UR Shoreline Environment due to its partial location in the shoreline setback. Non-conforming structures may be maintained, renovated, repaired, or structurally altered but are prohibited from expanding or extending in any manner that increases the extent of the nonconformity (SMC 23.60.124). Any physical expansion of a non-conforming structure water-ward of the shoreline setback, as opposed to renovation or repair, is considered an increase in that non-conformity.

The proposed conversion includes the addition of a partial third story beginning approximately 13 feet east of the existing roof edge described above. Approximately 341 square feet of the approximately 1,116 square foot third story addition would be water-ward of the existing setback.

The Shoreline setback for the subject property and structure is determined by the “string-line” method outlined in DPD Director’s Rule 4-89. In this situation it is a line drawn from the nearest shore-side corner of the adjacent residence to the north (5211 Beach Drive) to the shore-side corner, closest to the shoreline, of the structure to the south (5221 Beach Drive). The resultant Shoreline set-back line runs through the existing subject structure approximately 14 feet to the east of its northwest corner and approximately 37 feet to the east of its southwest corner.

The determined setback, affecting approximately one-third of the applicant’s existing structure, is due to the substantial set-back of the structure to the south (5221) from the shoreline. This ranges from a setback of 57 feet to 63 feet from the OHWM and is atypically large compared to the setbacks of other single-family structures to the north and south in the vicinity. In contrast to the applicant’s consequent set-back, the setback at 5221, which would be based on the greater of the string-line setback established by the structures at 5215 (applicant’s) and the structure at 5261 to the south of 5221 and the minimum 25 foot Environmentally Critical Area (ECA) Shoreline Habitat setback, would be 25 feet.

Consequently, the applicants are requesting a variance to allow the use of a string line setback based on this possible eventual location of the house to the south (5221), rather than its current location. The applicants contend that because the structure at 5221 is older and has not been upgraded or expanded in keeping with the surrounding and generally newer development pattern - but that it most likely will, given this surrounding development pattern – that they are being unnecessarily restricted due to the timing of their renovation (theirs before the very likely eventual expansion of 5221) rather than by the valid limits of their eventual and the neighborhood’s currently predominant setback pattern.

The other elements of the applicant’s overall structure renovation will largely maintain the existing house footprint but with a small addition of 191 square feet at the lower floor. This addition is located between the street and the existing structure, and is within the allowed lot coverage and setbacks. The main floor living area, at street level, will increase by approximately 56 feet, again located between the existing home and the street. The existing approximately 325 square foot carport will be removed and replaced with an attached two-car garage of 400 square feet. The garage will be set 5 feet further back from the street than the existing carport, creating an increase in the front yard setback, and off-street parking for a total of 4 cars. The existing main floor water facing covered deck / porch will be rebuilt at the existing size. The subject house will appear to be two-stories from Beach Drive SW, and will appear to be three stories from the water. These elements of the project are in compliance with the underlying SF 5000 zone and UR Shoreline Environment and hence are not a part of this Shoreline Variance.

Public Comment

The project's 30-day public comment period ended June 9, 2006. Three comment letters were received. Two were inquiries about the public notice process and one asked that the project review assure the proposed plans conform to the height limits for this zone and expressed concern that other residences along Beach Drive have been built higher than permitted.

ANALYSIS – SHORELINE VARIANCE

In specific cases the Director, with approval of the Department of Ecology, may authorize variances from certain requirements of the Shoreline Master Program, if the request complies with WAC 173-14-150. Shoreline variance criteria are as follows:

- 1. Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.*

RCW 90.58.020 sets forth preferences for types of uses allowed by local Shoreline Master Programs. Use preferences and development standards in Shoreline Districts contained in local Shoreline Master Programs and approved by the State Department of Ecology are presumed to be consistent with these policies.

Seattle's Shoreline Master Program (SMP) establishes Shoreline Districts, with their accompanying development standards, to direct the nature and extent of development in its shorelines of statewide significance. Seattle's SMP also provides a variance process to allow for flexibility in certain bulk, dimensional or performance standards when extraordinary circumstances relating to the physical character or configuration of a property would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. The subject property is located in an Urban Residential (UR) Shoreline Zone, which allows the development of single-family structures. The proposed development includes the conversion of a non-conforming multi-family use to a single-family use. The variance request to expand this allowed single-family use is based on the extraordinary circumstance of the atypical and very large setback of the neighboring structure (5221), which, due to the allowable and likely expansion, in effect establishes a temporary large setback for the applicant's property. Because this allowed setback for the applicant is based on the timing of their development proposal before or after any allowed expansion on 5221, and that the third story addition, but not the second story roof expansion, would conform to both the SMP setback and ECA Shoreline Habitat if it occurred after a redevelopment of 5221 to its allowed setback, no detrimental effect to the public interest or surrounding neighborhood can be expected, or thwarting of the policies of 90.58.020.

- 2. Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:*

- a) *That 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;*

Seattle's SMP and ECA regulations require the greater of either the shoreline "string-line" determined setback or the Shoreline Habitat setback, which ever is greater. Applicable intentions of this setback standard are to limit the bulk of shoreline structures and protect views from adjacent properties.

The predominant Shoreline setback pattern to the north and south of the subject site is one of most structures being located close to existing protective bulkheads with the OHWM located varying distances from the bulkhead. For the subject property, the OHWM is located less than approximately 2 feet from the bulkhead. In other locations because of a wider but shallower beach the OHWM is further from bulkheads or the sand / building site edge and their respective structures.

The adjacent structure at 5221 is the exception to the development pattern. This residential structure is located 63 feet from the OHWM at its northwest corner and 57 feet from the OHWM at its southwest corner. The setback distance of the 5221 structure from the top of its riprap bulkhead (what would be considered its "yard") is approximately 57 feet at its northwest corner and 45 feet at its southwest corner.

However, the string-line setback for 5221, based on the applicant's structure and the structure at 5261 to the south, would be less than the Shoreline Habitat setback of 25 feet. 5221 could then be redeveloped to the 25-foot setback and the string-line setback for the applicant would then be reduced from its current large distance. The applicant's setback is therefore being determined by timing, not the long-term affect it will have on the shoreline and adjacent shoreline residences. Thus the strict application of what is essentially a temporary setback would prohibit the applicant's ability to build the proposed third story addition now and therefore significantly interferes with reasonable use of the applicant's property.

- b) *That the hardship described in (a) of this subsection 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;*

No deed restrictions or current or previous actions by the applicant have produced this situation. It is the unique condition of the timing of otherwise allowed development on the adjacent property that produces this hardship in conjunction with the application of the SMP setback and ECA Shoreline Habitat setback requirements.

- c) *That 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;*

Other than the shoreline setback issue being considered by this application, the proposed third story addition is compatible with other authorized uses in the area, both existing and allowed. As noted, the properties to the north and south along the shoreline are substantially of the same size and with the same location relative to the beach.

The proposed third story addition will have no impacts on the shoreline environment. It will occur completely on an existing structure; no work is proposed on the ground water-ward of the building's current footprint. The third story addition would occur entirely behind the 25 foot Shoreline Habitat on this property and behind the string-line setback that would be established if 5221 were redeveloped to its maximum allowed 25-foot setback.

Views from adjacent parcels are to the northwest, west, and southwest. The siting of the adjacent structure at 5221 prevents it from having views to the northwest and north across 5215. It does have views to the west and limited views to the south due to the location of the structure at 5261 toward the bulkhead / beach boundary. These view characteristics would continue to be limited if 5215 were to add an additional story in its current location. If 5221 were expanded to its allowed 25 foot setback, the proposed third story on 5215 would not prevent westward or northwestward views, but would continue to limit northward views. This is in keeping with the area's established development pattern and view limitations and is consistent with the view protection intent of the SMP. The proposed third story addition is therefore compatible with other authorized uses.

d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;

A variance for allowing a portion of an upper story addition into the current but temporary setback would not constitute a grant of special privilege. As described above, the proposed third story structure is consistent with the area's development pattern. Very few other properties, if any, have a comparable setback limitation caused by an atypically sited adjacent structure. The adjacent structure (5221) has the opportunity to expand to the 25-foot setback because of the more typical siting of 5215 and 5261. It is not a grant of special privilege to allow the applicants to add a partial third story within its existing foot-print and not have to wait until an indeterminate future point for the redevelopment of the adjacent structure would change their allowed development area.

e) That the variance requested is the minimum necessary to afford relief; and

The third story addition does not propose to extend beyond the future allowed Shoreline string-line setback. In fact, it would be further back than the future allowed setback and can be reasonably considered to be the minimum necessary.

f) That the public interest will suffer no substantial detrimental effect.

For this proposal, the public interest includes the view impacts to neighboring properties, particularly the property and structure at 5221, and impacts on the shoreline (habitat) itself.

As discussed above, the proposed third story addition will have no substantial detrimental affect on adjacent properties. If the older structure to the south, which is atypically sited and dated relative to the surrounding development patterns, were expanded or redeveloped to its allowed Shoreline setback, the applicant would not be required to request a variance for their third story addition, only the second story roof expansion. Existing views from the adjacent properties would not be more than minimally affected; this potential affect is in keeping with anticipated impacts for development allowed under the SMP and other Land Use regulations. Finally, views from upland parcels (to the east across Beach Drive SW) will not be affected by the granting of this variance; any view limitations from the third story would be the same if it were built without the variance (about two-thirds its proposed size) as with the variance.

Finally, this proposal does not propose work outside of the current building footprint and will have no affect on the shoreline's physical environment. The UR Shoreline Environment is specifically tailored to allow this type of single-family development. The SMP also allows the continuation of certain non-conformities with certain restrictions. This proposal includes the continuation of its setback non-conformity within the allowed restrictions. Consequently, the public interest will suffer no substantial detrimental effect.

3. *Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:*

- a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;

Not applicable.

- b) *That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section; and*

Not applicable.

- c) *That the public rights of navigation and use of the shorelines will not be adversely affected.*

The subject site's development proposal is occurring landward of the ordinary high water mark. The public rights of navigation and use of the shorelines will not be adversely affected.

4. *In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.*

