



City of Seattle

Gregory J. Nickels, Mayor

Department of Planning and Development

Diane Sugimura, Director

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

Application Number: 3007870

Applicant Name: Donald Bishop

Address of Proposal: 5905 Seaview Avenue NW

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development and Shoreline Conditional Use Application to allow a three story, two unit residential structure with 796 sq. ft. of office at ground level in an environmentally critical area. Parking for four vehicles will be located at grade. Existing single family structure to be demolished.

The following approvals are required:

Shoreline Substantial Development Permit - to allow development in the US shoreline environment SMC 23.60

Shoreline Conditional Use - to allow multi-family structure in the US shoreline environment – SMC 23.60.604

SEPA- Environmental Determination - SMC 25.05

SEPA DETERMINATION: [] Exempt [X] DNS [] MDNS [] EIS

[] DNS with conditions

[] DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

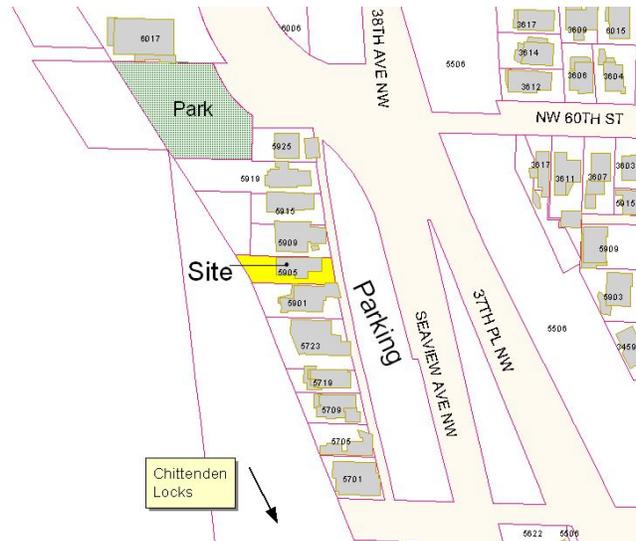
BACKGROUND DATA

Site & Vicinity Description

The 6,382 square foot site is located at 5905 Seaview Avenue NW between NW 57th Street and NW 60th Street. The site is zoned Commercial 1 with a 30 foot height limit (C1-30) and is within the Urban Stable (US) shoreline environment. The site is considered a waterfront lot under the shoreline code and has about 40 feet of water frontage along the Salmon Bay waterway.

The subject block consists of 11 parcels and is primarily non-conforming with respect to the commercial zoning according to King County Assessor records. Six parcels are developed with single family homes, three with multifamily and two duplexes. Two out of the eleven contain commercial space as described by tax assessor data.

Vehicular access to the subject site is unique. Access to the subject parcel and all the parcels on this block, is from a 15 foot wide street (Seaview), but is separated from the primary 60



foot wide thoroughfare also called Seaview Avenue NW. Between the streets is surface parking that is controlled by the city of Seattle. The 15 foot wide street functions like an alley or private easement; however, it is a designated a street. There are no curbs, sidewalks or street trees.

Project Description

The project consists of construction of a 3-story wood frame structure containing two dwelling units and 800 square feet of marine retail sales. The project also provides covered parking for four vehicles. The ground floor will be configured with a residential lobby abutting the street on the east portion of the lot, and the commercial use and entry on the west portion of the lot with parking in between. The residential units will be located on the 2nd and 3rd floors. The existing single family home will be demolished.

Public Comment

No public comments were received during the comment period which ended on December 7 2007.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

Substantial Development Permit Required

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: *A substantial development permit shall be issued only when the development proposed is consistent with:*

- A. *The policies and procedures of Chapter 90.58 RCW;*
- B. *The regulations of this Chapter; and*
- C. *The provisions of Chapter 173-27 WAC.*

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

A. THE POLICIES AND PROCEDURES OF CHAPTER 90.58.RCW

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the State to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy contemplates protecting against effects to public health, the land use and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting public right to navigation and corollary incidental rights. Permitted uses in the shoreline shall be designed and conducted in a manner to minimize, insofar as possible, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a local Shoreline Master Program, codified in the Seattle Municipal Code at Chapter 23.60. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions. As the following analysis will demonstrate, the subject proposal is consistent with the procedures outlined in RCW 90.58.

B. THE REGULATIONS OF CHAPTER 23.60

Shoreline Goals and Policies

Pursuant to SMC 23.60.004, the Shoreline Goals and Policies (part of the Seattle Comprehensive Plan's Land Use Element), and the purpose and locational criteria for each shoreline environment contained in SMC 23.60.220 must be considered in making all discretionary decisions in the shoreline district.

The subject site is a waterfront lot within the Shilshole Area, and is a shoreline of statewide significance as indicated in the Comprehensive Plan. The subject site and surrounding sites are predominantly improved with built environment as compared to natural environment. The immediate area is characterized by single family and multifamily residential structures that do not contain water-dependent uses. The shoreline goals in the Seattle Comprehensive Plan's Land Use Element are to: 1) establish shoreline uses that result in long-term over short-term benefit; 2) plan for and encourage the integration and location of compatible uses within segments of the shoreline; 3) locate all non-water dependent uses upland to optimize shoreline use and access; 4) provide a management system that will plan for and permit all reasonable and appropriate use through a system of priorities; and 5) protect those areas of shoreline that are geologically dangerous or fragile, or biologically fragile.

The specific area objectives for the Shilshole Area are to: 1) retain the strong, water dependent recreational character of the area. Water dependent recreational uses and their supporting services are the preferred uses for this area; 2) Permit non-water dependent commercial uses when providing access to the water, protecting views and not usurping land usable for future water dependent recreational uses; 3) on waterfront lots, new residential uses may be permitted when adjacent to existing residences. Protect the fish migration routes.

The proposed development will not be incompatible with the citywide shoreline goals. The housing on this block was originally constructed over 40 years ago and has been a prevailing land use in this immediate area. The proposed use is required to and will include a marine retail and sales use on the ground floor so that the project will include a water dependent use pursuant to policy. The specific goals for the Shilshole area do recognize the presence of residential uses on the waterfront and indicates they are permitted when adjacent to existing residences. The shoreline is not geologically dangerous or fragile; however the Salmon Bay waterway is a fish migration route. The management, integration and location of the uses will be addressed through the conditional use analysis which follows in this document.

The purpose of the US environment described in SMC 23.60.220, is to (1) Provide opportunities for substantial numbers of people to enjoy the shoreline by encouraging water dependent recreational use and by permitting nonwater dependent commercial uses if they provide substantial public access and other public benefits. (2) Preserve and enhance views of the water from adjacent streets and upland residential areas, (3) Support water dependent uses by providing services such as marine related retail and moorage. The project will include a marine retail and sales use. Views of the water will be preserved in that the new structure will not further impact views from adjacent streets or upland residential areas. The proposal will not enhance views of the water or provide substantial public access or other public benefits.

The locational criteria for the US environment is (1) Areas where the underlying zoning is commercial or industrial (2) Areas with small amounts of dry land between the shoreline and the first parallel street, with steep slopes, limited truck and rail access or other features making the area unsuitable for water-dependent or water related industrial uses. (3) Areas with large amounts of submerged land in relation to dry land and sufficient wave protection for water-dependent recreation. (4) Areas where the predominant land use is water-dependent recreational or nonwater-dependent commercial. The development site does not epitomize a site meeting the locational criteria of the US environment. The site is too small for industrial use. There is not a large amount of submerged land in relation to dry land, no water-dependent recreational and no visible nonwater dependent commercial.

Pursuant to SMC 23.60.064C, in evaluating whether a development which requires a substantial development permit, conditional use permit, variance permit or special use authorization meets the applicable criteria, the Director shall determine that the proposed use: 1) is not prohibited in the shoreline environment and the underlying zone and; 2) meets all applicable development standards of both the shoreline environment and underlying zone and; 3) satisfies the criteria for a shoreline variance, conditional use, and/or special use permits, if required.

Allowed Use

The proposed use is not prohibited in the shoreline environment or the underlying zone. The use is allowed by conditional use analyzed later in this document.

General Development Standards for all Shoreline Environments (SMC 23.60.152)

These general standards apply to all uses in the shoreline environments. They require that all shoreline activity be designed, constructed, and operated in an environmentally sound manner consistent with the Shoreline Master Program and with best management practices for the specific use or activity. All shoreline development and uses must, in part: 1) minimize and control any increase in surface water runoff so that receiving water quality and shoreline properties are not adversely affected; 2) be located, designed, constructed, and managed in a manner that minimizes adverse impact to surrounding land and water uses and is compatible with the affected area; and 3) be located, constructed, and operated so as not to be a hazard to public health and safety.

The proposal is consistent with the general standards for development within the shoreline area. General development standards (SSMP 23.60.152) state that Best Management Practices shall be followed for any development in the shoreline environment. These measures are required to prevent contamination of land and water. The Stormwater, Grading and Drainage Control Code (SMC 22.800) places considerable emphasis on improving water quality.

Development Standards for US Shoreline Environments (SMC 23.60.630)

The development standard limits the height of structures to a maximum height of 30 feet in SMC 23.60.632 with exceptions for pitched roof. The proposal will reach a height of 35 feet at the ridge of a pitched roof. Fifty percent lot coverage is allowed and the proposed coverage is 35%. A 10 foot 11 inch view corridor is proposed on the eastern portion of the site and a 3 foot 11 inch view corridor is proposed on the western portion of the site together constitute a compliant view corridor. Public access to the water is not required for water dependent uses, water-related uses or residential uses of fewer than 5 units. The development standards for the US shoreline environment have been met.

Development Standards for Specific Shoreline Uses (SMC 23.60.179 through SMC 23.60.210)

Standards applicable to the proposed residential use are found in SMC 23.60.198, Residences other than floating homes. The use will be constructed on dry land and will not be further waterward than adjacent residences.

Criteria for a Shoreline Variance, Conditional Use, and/or Special Use Permits

See analysis in this document.

Development Standards for Commercial with 30 foot height limit (C1-30) zone (SMC 23.47A)

The proposal has been reviewed by DPD and meets the applicable development standards of the C1-30 zone.

C. THE PROVISIONS OF CHAPTER 173-27 WAC

Chapter 173-27 of the WAC sets forth permit requirements for development in shoreline environments and gives the authority for administering the permit system to local governments. The State acts in a review capacity. The Seattle Municipal Code Section 23.60 (Shoreline Development) and the RCW 90.58 incorporates the policies of the WAC by reference. These policies have been addressed in the foregoing analysis and have fulfilled the intent of WAC 173-27.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The Shoreline Substantial Development Permit is **GRANTED.**

ANALYSIS – SHORELINE CONDITIONAL USE

The proposed project includes residential uses which are permitted in the US shoreline environment through a Shoreline Conditional Use.

Criteria for Shoreline Conditional Use Approvals

Pursuant to SMC 23.60.034, uses or developments which are identified in this chapter as requiring shoreline conditional use approval, and other uses which, although not expressly mentioned in lists of permitted uses, are permitted in the underlying zones and are not prohibited in the Shoreline District, may be approved, approved with conditions or denied by the Director in specific cases based on the criteria in WAC 173-27-160, as now constituted or hereafter amended, and any additional criteria given in this chapter. Upon transmittal of the Director's approval to the Department of Ecology (DOE), the permit may be approved, approved with conditions or denied by DOE. (Ord. [118793](#) Section 6, 1997; Ord. 113466 Section 2(part), 1987)

Criteria applicable for the review of a shoreline conditional use for the proposed project are:

- A. The provisions of the WAC 173-27-160 as referenced in SMC 23.60.034
- B. The policies and procedures of RCW 90.58.020 as referenced in WAC 173-27-160
- C. The regulations of this chapter- SMC 23.60.604A

A. WAC 173-27-160 Review Criteria for Conditional Use Permits

The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

(a) *That the proposed use is consistent with the policies of RCW [90.58.020](#) and the master program;*

The proposed use is consistent with RCW 90.58.020 and the master program. The use preserves the existing character of the shoreline and does no further damage to the ecology or environment. The ordinary high water mark is 12 to 25 feet away from an existing bulkhead and results in the existence of a beach. The proposed project is not disturbing the bulkhead. No other activity associated with the use will be inconsistent with the state policies or the master program.

(b) *That the proposed use will not interfere with the normal public use of public shorelines;*

The proposed project will conform to development standards, specifically to provide view corridors of the shoreline and will not interfere with the use of the shoreline.

(c) *That the proposed use of the site and 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;*

The proposed uses are envisioned for the Shilshole area under comprehensive plan and shoreline master program policy and regulation. This block and the area south of this block are predominately developed with residential uses so this use is expected to be a compatible use. Additionally, the design of the project is compatible with surrounding development.

(d) *That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and*

No significant adverse effects to the shoreline are expected.

(e) *That the public interest suffers no substantial detrimental effect.*

The public interest will not suffer substantial detrimental effects from the project.

(2) *In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW [90.58.020](#) and shall not produce substantial adverse effects to the shoreline environment.*

The area has been historically developed with residential uses. New multifamily uses are required to provide a water related commercial use on the ground floor so that cumulative impact of additional requests would result in the prevalence of more commercial activity; ideally uses that would be water dependent.

B. THE POLICIES AND PROCEDURES OF CHAPTER 90.58.020 RCW

RCW 90.058.020 enunciates state policy and use preference. The master program is consistent with the policies and use preferences which are the basis of the city's master program. This is discussed in more detail under the foregoing SSDP analysis.

C. THE REGULATIONS OF THIS CHAPTER- SMC 23.60.604A

Pursuant to SMC 23.60.604, the residential use may be authorized on waterfront lots in the US Environment by the Director, with the concurrence of the Department of Ecology, as either principal or accessory uses if the criteria for conditional uses in WAC 173-27-160 are satisfied:

A. Residential uses:

1. New single-family and multifamily dwelling units and artist studio dwellings on the dry land portion of the lot when:

a. Not located near uses which are normally incompatible with residential use because of factors such as noise, air and water pollutants, or aesthetic values protected by this chapter

The uses located near by are primarily residential with some commercial use. There are no uses near by that would be incompatible with this proposal.

b. Located above the ground floor of a structure containing nonresidential uses on the ground floor except that single-family residences along Seaview Avenue Northwest between 34th Avenue Northwest and Northwest 60th Street may be located on the ground floor,

The residential use is proposed to be located above the ground floor of a structure containing a marine retail sales use.

c. Located near other residences on waterfront lots

Yes, other residences are near.

d. Not located on a lot or in an area which would make the lot suitable for use by water-dependent or water-related use by having any of the following characteristics:

(1) Existing piers or other structures suitable for use by a water-dependent use,

The site does not have an existing pier or other structure suitable for use by a water dependent use.

(2) Adequate amounts of submerged and dry lands, or

The site is small, 6,382 square feet, as compared to other commercially zoned parcels along the waterfront within the city of Seattle. The amount of submerged land is 621 square feet. The amount of land available does not seem to be large enough to make a sole commercial water-dependent or water-related use without residential use feasible.

- (3) Adequate water depth and land slope,
a. After considering the nature and condition of nearby structures and uses the Director determines that the immediate environs are not incompatible with residential use,

The Director determines that the immediate environs are not incompatible with residential use.

- b. The residential use will not usurp land better suited to water-dependent, water-related or associated industrial or commercial uses,

The residential use will not usurp land better suited to water-dependent, water-related or commercial uses.

- c. The structural bulk of the floating home development will not adversely affect surrounding development, and
d. When the floating home development is buffered by distance, screening or an existing recreational marina from adjacent nonresidential uses and vacant lots;

Not applicable.

DECISION – SHORELINE CONDITIONAL USE

The Shoreline Conditional Use Permit is **GRANTED**.

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklists submitted by the applicant dated November 2, 2007 and annotated by the Department. The information in the checklist, supplemental information provided by the applicant, project plans, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665) discusses the relationship between the City's code/policies and environmental review. The Overview Policy states, in part, "*Where City regulations have been adopted to address an environmental impact; it shall be presumed that such regulations are adequate to achieve sufficient mitigation subject to some limitation*". The Overview Policy in SMC 23.05.665 D1-7, states that in limited circumstances it may be appropriate to deny or mitigate a project based on adverse environmental impacts.

The policies for specific elements of the environment (SMC 25.05.675) describe the relationship with the Overview Policy and indicate when the Overview Policy is applicable. Not all elements of the environment are subject to the Overview Policy (e.g., Traffic and Transportation, Plants and Animals and Shadows on Open Spaces). A detailed discussion of some of the specific elements of the environment and potential impacts is appropriate.

Short-term Impacts

The following temporary or construction-related impacts are expected; decreased air quality due to suspended particulates from demolition, grading and clearing and hydrocarbon emissions from construction vehicles and equipment; temporary soil erosion; increased dust caused by drying mud tracked onto streets during construction activities; increased traffic and demand for parking from construction equipment and personnel; increased noise; and consumption of renewable and non-renewable resources.

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. The Stormwater, Grading and Drainage Control Code regulates site excavation for foundation purposes, requires that best management practices be used, and requires that soil erosion control techniques be initiated for the duration of construction. The Environmentally Critical Areas (ECA) ordinance and DR 33-2006 and 3-2007 regulate development and construction techniques in designated ECA's with identified geologic hazards. Puget Sound Clean Air Agency (PSCAA) regulations require control of fugitive dust to protect air quality. The Building Code provides for construction measures in general. Finally, the Noise Ordinance regulates the time and amount of construction noise that is permitted in the City.

Most short-term impacts are expected to be minor. Compliance with the above applicable codes and ordinances will reduce or eliminate most adverse short-term impacts to the environment. However, impacts associated with air quality and noise warrant further discussion.

Air Quality

The Puget Sound Clean Air Agency (PSCAA) regulations require control of fugitive dust to protect air quality and will require permits for removal of asbestos (if any) during demolition. The owner and/or responsible party (ies) are required to comply with the PSCAA rules pertaining to demolition of projects with or without asbestos. This will ensure proper handling and disposal of asbestos, as well as demolition of structures without asbestos. No further SEPA conditioning is necessary.

Noise

The project is expected to generate loud noise during demolition, grading and construction. These impacts would be especially adverse in the early morning, in the evening, and on weekends. The Seattle Noise Ordinance permits increases in permissible sound levels associated with construction and equipment between the hours of 7:00 AM and 10:00 PM on weekdays and 9:00 AM and 10:00 PM on weekends. The surrounding properties are developed with housing and will be impacted by construction noise. The limitations stipulated in the Noise Ordinance are not sufficient to mitigate noise impacts; therefore, pursuant to SEPA authority, the applicant shall be required to limit periods of construction activities (including but not limited to grading, deliveries, framing, roofing, and painting) to non-holiday weekdays from 7am to 6pm.

Long-term Impacts

Long-term or use-related impacts are also anticipated as a result of approval of this proposal including: increased height, bulk and scale on the site; increased ambient noise; increased traffic in the area and increased demand for parking; and increased demand for public services and utilities.

Several adopted City codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Stormwater, Grading and Drainage Control Code which requires on site detention of stormwater with provisions for controlled tight line release to an approved outlet and may require additional design elements to prevent isolated flooding; the City Energy Code which will require insulation for outside walls and energy efficient windows; and the Land Use Code which controls site coverage, setbacks, building height and use and contains other development and use regulations to assure compatible development.

The site is within a mapped flood prone area; therefore, development must be compliant with the Floodplain Development regulations in SMC 25.06 and the Environmentally Critical Areas regulations, SMC 23.09.120. The elevation of the lowest floor level must be no less than 2 feet above the 100 year flood elevation pursuant to SMC 23.09.120. No further mitigation is necessary pursuant to SEPA.

Compliance with these applicable codes and ordinances is adequate to achieve sufficient mitigation of long term impacts.

DECISION – SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030 2c.
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030 2C.

CONDITIONS SEPA

During Construction

The following condition(s) to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

1. All construction activities are subject to the limitations of the Noise Ordinance. Construction activities (including but not limited to grading, deliveries, framing, roofing, and painting) shall be limited to non-holiday weekdays¹ from 7am to 6pm. Interior work using equipment within a completely enclosed structure, such as but not limited to

compressors, portable-powered and pneumatic powered equipment may be allowed on Saturdays between 9am and 6pm, provided windows and doors remain closed. Non-noisy activities, such as site security, monitoring, weather protection shall not be limited by this condition.

Construction activities outside the above-stated restrictions may be authorized by the Land Use Planner when necessitated by unforeseen construction, safety, or street-use related situations. Requests for extended construction hours or weekend days must be submitted to the Land Use Planner at least three days in advance of the requested dates in order to allow DPD to evaluate the request.

¹ New Year's Day, Martin Luther King Junior's Birthday, President's Day, Memorial Day, July 4, Labor Day, Veterans' Day, Thanksgiving Day and Christmas Day.

CONDITIONS – SHORELINE CONDITONAL USE, SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

None.

Signature: (signature on file)
Jess Harris, AICP Senior Land Use Planner
Department of Planning and Development

Date: May 5, 2008