



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: 3009867

Applicant Name: Bill Walker, Architect for Gene Casal, Owner

Address of Proposal: 2711 Yale Terrace East (previously addressed as 120 East Hamlin Street)

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit to allow a 3-story 5-unit apartment building in an Environmentally Critical Area. Surface parking for 6 vehicles to be provided. Existing structure to be demolished.

The following approvals are required:

Shoreline Substantial Development Permit - to allow a 5-unit apartment building in the Urban Stable (US) Shoreline Environment. (Section 23.60.020.A, Seattle Municipal Code)

Variance – to allow development of a lot without street frontage or with a private permanent vehicle access easement to street frontage (SMC 23.40.020 and 23.53.005.A)

BACKGROUND DATA

Site and Area Description

The site is located on the west side of Yale Terrace East (a named alley) between East Edgar and East Hamlin Streets. The site is approximately 5,090 sq. ft. and slopes downward from the alley toward Lake Union to the west.

The subject site and surrounding lots, which are bordered by Fairview Avenue, East Hamlin and Edgar Streets and Yale Terrace, are all zoned Lowrise 3, Residential – Commercial (L3, RC) and consist of a mixture of single and multi-family structures of a variety of ages and sizes. The parcels to the east across Yale Terrace and extending along Eastlake Avenue East are zoned either Neighborhood Commercial 2-40 with a Pedestrian Overlay (NC2-P40) or simply NC2-40). To the

south of East Edgar Street and to the west of Fairview Avenue between East Edgar and East Hamlin Streets the zoning is Lowrise 1 and 2 (L2 and L2).

Proposal Description

The applicant proposes to construct a 5-unit apartment structure with surface parking for six vehicles. The lot, considered a legal building site, does not have either the Code required 10-foot street frontage or, as an alternative, a Code required 5-foot pedestrian access easement to a street. Yale Terrace East, a named alley, provides vehicle, pedestrian and emergency service access to the lot. (Named alleys are not considered streets, but have been named for emergency services and identification purposes. Otherwise, they are still considered an alley.) Because the lot does not have the Code required street access or a pedestrian easement to a street, the proposal includes a Variance from these Land Use Code requirements and proposes a new development that will continue to use the existing access from Yale Terrace East.

Public Comment

Two public comment periods occurred. The first public notice (March 5, 2009) was for a Shoreline Substantial Development review. A second public notice (April 30, 2009) occurred when it was determined that the same proposed project would also require a Variance from the frontage and access requirements. No comments were received during either two-week comment period.

ANALYSIS - VARIANCE

As provided in SMC 23.40.020, variances from the provisions or requirements of Seattle Municipal Code Title 23 shall be authorized only when all of the facts and conditions stated in the numbered paragraphs below are found to exist:

- 1. Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity.***

The site contains a single-family structure built in approximately 1913. This structure was built close to Yale Terrace and by its orientation “fronts” on this right of way. The property on which the structure is located was segregated from the original larger parcel sometime before the City’s platting requirements became effective in 1972, possibly before the construction of the structure or after. Although the original larger parcel had some frontage on the other surrounding streets, this segregation resulted in the only right of way access via the abutting alley. The historic and pre-1972 property segregation that created this existing and unusual condition of alley frontage and no street frontage was not caused by the applicants, who have owned the property since approximately 1985.

Because there is no street frontage the applicants explored obtaining a pedestrian access easement across its abutting parcels with street frontage on either Fairview Avenue East to the west, East Edgar Street to the south, and to East Hamlin Street across three parcels to the north.

An easement across any one parcel cannot be obtained due either to existing topography, which prohibits a functioning walk way, or the state of current development, such as structures too close to property lines to allow the 5-foot width needed, or parking / a drive aisle that would not allow a safe pedestrian route.

There are three other parcels along this section of Yale Terrace also without the required street frontage. There are another four parcels without street frontage on the second block of Yale Terrace, which is to the south and between East Hamlin and East Roanoke Streets. These parcels are developed with residential structures and only have vehicle and pedestrian access from Yale Terrace. A vacant parcel directly to the north and proposed for development, addressed as 2716 Yale Terrace East, was determined to warrant a variance from the same street frontage requirement (DPD MUP # 3006582, unpublished as of this writing).

The physical condition of subject property was not created by the owner / applicant. The applicants have demonstrated that it is not possible to obtain the Code required easement across the surrounding properties. Consequently, denying the proposed residential development on this residentially zoned parcel would deprive the property owners of the rights and privileges of enjoyed by similar parcels in the vicinity and this zone.

- 2. The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located.***

The requested variance is to allow a five unit residential structure, otherwise allowed by the Land Use Code if a pedestrian easement were possible, to occur without the 5-foot pedestrian easement connecting the lot to a street.

The underlying zoning allows a maximum of 6 units on this parcel (provided all other development regulations are met). The proposed 5 units, which meet all other pertinent development regulations, and associated variance, would not allow more development than otherwise permitted on a parcel with street frontage or a pedestrian easement.

The property owner has demonstrated that it is not possible to obtain an easement across adjacent properties to any street right of way.

There are seven other properties along Yale Terrace that only front on this alley and are currently developed.

Based on the above, the requested variance does not go beyond the minimum necessary to afford relief and is not a grant of special privilege inconsistent with the limitations upon other properties in the surrounding vicinity and zone.

- 3. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located;***

The Code provision requiring a pedestrian easement for a lot proposed for residential development was in part enacted to assure a residence's occupants and visitors access to a street, where presumably walking would be safer than along an alley. This assumption is likely based on the expectation of sidewalks and a safe pedestrian environment along the streets that would be accessed.

With or without a pedestrian easement or the minimum street frontage, the proposed 5-unit building would have vehicular access from Yale Terrace, an alley, and not from a street. Because of the nature and character of Yale Terrace, which functions like a street for at least seven other properties along the two block length of Yale Terrace (and in fact is a part of the signed bicycle and pedestrian route around Lake Union) and the "pull" of commercial uses and public transit to the east along Eastlake Avenue East, it could be expected that most future residents when leaving the property would use Yale Terrace and not a pedestrian easement to Fairview Avenue, East Edgar or Hamlin Streets, if one could be obtained.

Also, denying this variance request would preclude the otherwise allowed residential use of this multi-family zoned property, and therefore conflict with City Comprehensive Plan goals of increased housing density within already developed and properly zoned areas. This subject site is within both.

Based on the above, granting the requested variance will have no detrimental affect to either the public welfare or injurious to the surrounding properties in the zone and vicinity.

4. The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause undue hardship or practical difficulties;

The strict applicant of the relevant Land Use Code provision that requires either street frontage, or a pedestrian easement to that frontage if alley vehicle access is possible, would prohibit any development otherwise allowed by the Code. This would clearly be an undue hardship.

5. The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use regulations for the area.

This variance request simply allows the development of the 5-unit residential structure on a parcel, absent it only having frontage on an alley and not a street, to otherwise be developed as proposed. This otherwise allowed development is consistent with the spirit and purpose of the Land Use Code, the Shoreline Regulations, and the adopted Land Use regulations for the vicinity and surrounding zone. Because no deleterious effects can be expected from the proposal, it should therefore be permitted.

DECISION - VARIANCE

Based on the above findings and analysis all of the facts and conditions stated in the numbered criteria of SMC 23.40.020, *Variances*, are found to exist, therefore:

1. A variance to allow residential development of a lot without street frontage and without a pedestrian access easement to a street is **APPROVED**.

CONDITIONS – VARIANCE

None.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT

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 Chapter 23.60; 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 aims to protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, 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 and other jurisdictions with shorelines, adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60 that also incorporates the provisions of Chapter 173.27 WAC. 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

Chapter 23.60 of the Seattle Municipal Code is known as the "Seattle Shoreline Master Program". In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the approval criteria set forth in SMC 23.60.030 (cited above). Development standards of the shoreline environment and underlying zone must be considered, and a determination made as to any special requirements (Shoreline Conditional Use, Shoreline Variance, or Shoreline Special Use Permit) or conditioning that is necessary to protect and enhance the

shorelines area (SMC 23.60.064). In order to obtain a shoreline substantial development permit, the applicant must show that the proposal is consistent with the shoreline policies established in SMC 23.60.004, meets the development standards for all shoreline environments established in SMC 23.60.152 as well as the criteria and development standards for the shoreline environment in which the site is located, any applicable special approval criteria and the development standards for specific uses.

The site is classified as an upland lot (SMC 23.60.924). The shoreline designation for the site is Urban Stable (US) (SMC 23.60.600). Residential structures are a permitted use in this shoreline environment.

SMC 23.60.004 - Shoreline Policies

The Shoreline Goals and Policies which are part of the Seattle Comprehensive Plan's Land Use Element and the purpose and locational criteria for each shoreline environment designation contained in SMC 23.60.220 must be considered in making all discretionary decisions in the shoreline district. The purpose and locational criteria of the US environment is stated in SMC 23.60.220.C.7.

SMC 23.60.064. - Procedures for Obtaining Shoreline Substantial Development Permits

The proposed project is a permitted use in the US environment (SMC 23.60.608.A.2.a (1)) and the underlying Lowrise 3 Residential Commercial (L3, RC) zoning district (SMC 23.45). As designed, the proposal conforms to the general development standards and the requirements of the underlying residential zone and of the US overlay zones.

SMC 23.60.152 - Development Standards for all Environments

These general standards apply to all uses in the shoreline environment. They require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity. All shoreline development and uses must: 1) minimize and control any increases in surface water runoff so that receiving water quality and shore properties are not adversely affected; 2) be located, designed, constructed, and managed in a manner that minimizes adverse impacts 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 proposed residential use is consistent with these general standards for development within the shoreline area, thereby minimizing any adverse impact to the shoreline area, to water quality and will not be a hazard to the public health and safety.

SMC 23.60.600 - Development Standards for the US Environment

The development standard for the US environment pertinent to this proposal concerns structure height and lot coverage. The proposal has been reviewed and found to be consistent with these specific development standards.

C. The Provisions of Chapter 173-27 WAC

WAC 173-27 establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW 90.58. It provides the framework for permits to be administered by local governments, including time requirements of permits, revisions to permits, notice of application, formats for permits, and provisions for review by the state's Department of Ecology (DOE). Since the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of SMC Chapter 23.60 is also consistent with WAC 173-14 and RCW 90.58. As discussed in the foregoing analysis, the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT

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

CONDITIONS – VARIANCE

None.

CONDITIONS – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

None.

Signature: _____ (signature on file) Date: June 25, 2009

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