City of Seattle

Department of Planning and Development
Diane M. Sugimura, Director

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

Application Number: 3010605

Applicant Name: Peter Zuvela for Lisa Mennet

Address of Proposal: 6250 Lake Shore Drive South

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit to install a new 468 square foot grated pier and a freestanding boatlift accessory to a single family residence. Project includes removal of two groins and replacement of a portion of exiting concrete bulkhead with rockery.

The following approval is required:

Shoreline Substantial Development Permit - to allow a pier in an Urban Residential/ Conservancy Recreation (CR) shoreline environments (Section 23.60.540 and Section 23.60.360, Seattle Municipal Code)

SEPA - Environmental Determination (Section 25.05, Seattle Municipal Code)

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

[X] DNS with conditions

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

BACKGROUND DATA

Site Location and Area Description

The proposal site is located along Lake Washington. The lot is roughly rectangular in shape with its lengthwise axis running east/west approximately 800 feet between Lake Shore Drive South and the inner harbor line of Lake Washington. From the water's edge to the property's western most extent, the property slopes upward gradually then more moderately, approximately 24 feet over a distance of 420 feet. The site is zoned Single Family 9600 (SF9600) with the Urban Residential/ Conservancy Recreation (UR/CR) Shoreline Master Program designations. There is an existing single-family residence with detached garage located on the western portion of the lot with direct access from Lake Shore Drive South west of the lot. An existing outside lap swimming pool is located near the shore's edge to the east. The development site has potential panoramic views of the Seward Park and the east bank of Lake Washington. Lake Shore Drive South is a fully improved street with curbs, sidewalks, and gutters. Existing vegetation on the subject property is modestly dense, typical of well manicured landscaping in the surrounding area.

The development site contains a designated Environmental Critical Areas (ECA); Shoreline Habitat Buffer areas.

The immediate vicinity is zoned for residential development in an expansive Single Family zone that includes both SF 9600 and SF 5000 designations. The area is developed primarily with single, two and three-story single family residences in a mix of architectural styles and sizes. This densely populated neighborhood appears to be well established. The area is open to the sky with few trees to provide shade from the afternoon sun.

The general area sits upon a hillside that slopes downward to the east, to Lake Washington. There are a few pockets of steep slope and potential slide; Environmental Critical Areas on the hillside. The area appears to be well developed that could support additional development.

Proposal

The applicant is proposing to construct a new pier accessory to an existing single-family residence. The proposed pier would be attached to a rockery and concrete retaining wall system and would consist of a steel (fully) grated 4 feet wide by 100 feet long walkway supported by eight (6 in.), two (4 in.), and two (2 in.) steel pilings. The molded plastic walkway will widen out to eight feet over the last 20 feet of the pier. Over water coverage will be approximately 480 square feet. The walkway will be approximately 2.5 feet above the water ordinary high water mark at the face of the bulkhead. One freestanding boatlift will be installed at the pier's edge adjacent to widen section. Additionally, the shoreline's edge will be modified to accommodate an aquatic friendly beachfront. Thirty feet of existing concrete bulkheads will be replaced with 2 and 3-man rock bulkhead formation. Two concrete groins from the cove areas will be removed to create a salmon spawning gravel beach area.

Public Comment

Notice of the proposed project was published on October 22, 2009. The public comment period ended on November 20, 2009. No comment letters were received during this period.

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 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 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 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 generally 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 adopted a 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 demonstrates, the subject proposal is consistent with the procedures outline in RCW 90.58.

B. The Regulation 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 SSMP 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 (SSMP 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 SSMP 23.60.004, and meets development standards for all shoreline environment established in SMC 23.60.004 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 a waterfront lot (SMC 23.60.924). The shoreline designations for the site are Urban Residential/Conservancy Residential (UR/CR) (SMC 23.60.540 and 23.60.360). Residential piers are a permitted use in these shoreline environments.

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 location 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 of the UR and CR Environments are stated in SMC 23.60.220C.6 and C.3 respectively. The applicable sections of these regulations to the current proposal are in the Conservancy Recreation Environment maximum effort to preserve, enhance or restore the existing natural ecological, biological or hydrological conditions shall be made in designing, developing,

operating and maintaining recreational facilities and in the Urban Residential Environment residential areas shall be protected in a manner consistent with the Single Family Residential Areas Regulations.

SMC 23.60.064. - Procedures for Obtaining Shoreline Substantial Development Permits

The proposed project is a permitted use in the UR/CR environment (SMC 23.60.540 and 23.60.360) and the underlying Single Family Residential 5000 zoning district (SMC 23.44). As designed, the proposal conforms to the general development standards and the requirements of the underlying residential zone and of the UR/CR 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 as conditioned 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 23.60.540 and SMC 23.60.390 - Development Standards for the UR and CR Environments

The development standard for the UR and CR environments pertinent to this proposal concerns lot coverage of all structures, including piers. The CR environment development standards also contain requirements for natural area protection.

The lot coverage regulations for the shoreline environment require that structures, including piers, not occupy an area greater than thirty-five (35) percent of a waterfront lot. Under the proposal, total lot coverage would be approximately eleven point three (11.3%) percent.

Natural area protection of the CR environment requires that all developments in this environment be located and designed to minimize adverse impacts to natural areas of biological significance and that development in critical natural areas be minimized. Critical areas include fish spawning areas and migration routes. Design elements of the project have minimized the adverse impacts on the shoreline environment including fish spawning areas and fish migration routes. These design elements included the following:

1. Placement of spawning mix along the bulkhead, per plans.
2. Installing a molded plastic grated surface for the pier and installing steel piles, per plans.
3. Placing the top of the pier structure 30 inches above OHW to increase the amount of light that reaches underneath the pier.
4. Removal of concrete bulkhead/groin areas, per plans.
5. Planting of native vegetation along shoreline, per plans.

SMC 23.60.204 – Piers and Floats Accessory to Residential Development.

These standards apply to residential development in the shoreline environment. The standards specify the size and location of piers and floats. This project meets the described standards.

SMC 23.60.362 – Accessory uses permitted outright in the CR Environment.

Piers and floats accessory to residences are permitted outright to residences on adjacent land designated UR. This is the case for this proposal.

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 DOE has approved the Seattle Shoreline Master Program, 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.

Thus, as conditioned below, the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

Conclusion

Development requiring a Shoreline Substantial Development Permit can only be approved if it conforms to the policies and procedures of the WAC, RCW and with the regulations of Chapter 23.60, Seattle Shoreline Master Program.

The project as proposed meets the specific standards for development in the Urban Residential and Conservancy Recreation environments. It also conforms to the general development standards, as well as the requirements of the underlying zone, and therefore should be approved.
Pursuant to the Director's authority under Seattle's Shoreline Master Program, to ensure that development proposals are consistent with the policies and procedures, and conforms to specific development standards of the underlying zone, and having established that the proposed use and development are consistent with the Seattle Shoreline Program, the proposal is hereby approved.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT

The Shoreline Substantial Development permit is **CONDITIONALLY GRANTED** subject to the conditions listed at the end of this report.

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant (dated August 5, 2009) and annotated by the Land Use Planner. The information in the checklist 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 25.05.665D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain

neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. 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 limitations. Under such limitations/circumstances (SMC 25.05.665D1.1) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term adverse impacts are anticipated from the proposal.

Short-term Impacts

The following temporary or construction related impacts are expected: 1) water impacts (disturbance of migrating fish by sedimentation and clouding due to pile driving); 2) noise impacts (also due to pile driving). These impacts are not considered significant because they are temporary (SMC Section 25.05.794). Although not significant, the impacts are adverse and certain mitigation measures are appropriate as specified below.

Water Impacts

Construction impacts to the lake environment will be mitigated by construction company procedures and the Washington Department of Fish and Wildlife's restriction on construction times. Specifically, all construction work will occur from a floating barge, there will be no equipment on the shoreline, and the barge will not be grounded.

Noise Impacts

Noise impacts associated with pile driving would likely affect resident fish on Lake Washington. Due to this disturbance, the limitations of the Noise Ordinance are found to be in adequate to mitigate the potential noise impacts. SEPA Overview Policy (SMC 25.05.675 B) allows further mitigation for habitat disruption caused by construction noise and is warranted.

Compliance with these applicable policies and ordinances will be adequate to achieve sufficient mitigation and further mitigation by imposing specific conditions is not necessary for these impacts. Other city codes and/or ordinances apply to the proposal and will provide mitigation for the environmental health impacts.

Underwater Habitat

Minimum disturbance of the lake sediments is expected since most work will be done above water. There is the potential for construction debris to enter the water during construction, so care will have to be taken to prevent this from occurring. In addition to the requirements set forth by SSMP 23.60.152, the general recommendations from Metro shall also be followed as conditioned below.

Long-term Impacts

Plants and Animals

Chinook salmon and Bull Trout, are species listed as threatened under the Endangered Species Act (ESA) in March 1999, are known to inhabit Lake Washington including the proposed project area. Under the City of Seattle's Environmental Policies and Procedures 25.05.675 N (2) it states in part: *A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals.*

This project is proposed to take place in Lake Washington, which is rearing habitat and is part of the migration corridor of Chinook salmon from the Cedar River and the other water bodies in Water Resource Inventory Area 8.

Clearly identified long-term impacts on juvenile Chinook salmon and the aquatic environment include the continued existence of a bulkhead, an increase in over-water coverage and the presence of piles in the habitat of a threatened species. Over-water coverage and piles impact the quality of natural habitat of juvenile Chinook salmon by creating shading and providing structure for small mouth bass. Additionally, bulkheads tend to create deeper water habitat caused by erosion and water action at the bulkhead. When juvenile Chinook have no shallow water habitat, which provides refuge from predators, during their out-migration they are more susceptible to predation by larger fish; therefore, this decreases their survival.

As provided by SMC 25.05.350 A, when making a threshold determination the lead agency may consider mitigation measures that the agency or applicant will implement. Proposed mitigation measures may allow the lead agency to issue a Determination of Non-Significance (DNS). These mitigation measures can be in the form of clarification of the proposal, changes to the proposal, or the project may be conditioned to include the mitigation measures. The applicant has included mitigation measures in the project to offset the impacts of the proposed work and DPD has imposed conditions on this project. These mitigation measures and conditions are listed below.

1. Place spawning mix along the bulkhead, per plans.
2. Installing a molded plastic grated surface for the pier and installing steel piles, per plans.
3. Placing the top of the pier structure 30 inches above OHW to increase the amount of light that reaches underneath the pier.
4. Removal of concrete bulkhead/groin areas, per plans.
5. Planting of native vegetation along shoreline, per plans.

Each of these mitigation measures and conditions are believed to minimize impacts on juvenile salmon habitat at the site and improve the aquatic habitat for juvenile Chinook salmon and other species. Collectively these measures will eliminate the dark areas that may exist under the dock and eliminate structure in the shallow water habitat, which should in turn allow the juvenile salmon to remain in the shallow water during their migration and reduce the juvenile Chinooks' vulnerability to predation. Locating the bulkhead at or above OHW will minimize impact of the bulkhead caused by wave action. Additionally, terrestrial vegetation adds detritus material to the aquatic environment, which benefits the salmon through the food web. Terrestrial vegetation also directly benefits salmon by providing a food source in the form of terrestrial insects that drop into the water. Therefore, the riparian vegetation planted along the shoreline will increase the allocation of insects and detritus to the aquatic environment providing food for juvenile salmon and nutrients for other aquatic organisms.

Summary

In conclusion, several effects on the environment may result from the proposed development, however by following the proposed mitigation measures; these effects will not be significant. The conditions imposed at the end of this report are intended to mitigate specific impacts identified in the foregoing analysis, to control impacts not adequately regulated by codes or ordinances, per adopted City policies.

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 requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

[X] Determination of Non-Significance with conditions. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2)(C).

SEPA AND SHORELINE CONDITIONS

The following conditions 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.

CONDITIONS – SEPA and SHORELINES

The following conditions(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.

The owner(s) and/or responsible party(s) shall:

Prior to Issuance of a Construction Permit

1. Develop a Best Management Practices (BMP) Plan that indicates how construction will take place to ensure that no debris or deleterious material enters the water through the duration of the proposed work.

   Standard best management practices (BMPs) (such as using secondary receptacle containers when handling toxic material so that any spilled material is contained in the second receptacle rather than entering the water and using toxic material so that none of this material enters the water) shall be used to ensure that no petroleum products, other toxic substances, including household chemicals, herbicides pesticides, chemical fertilizers, miscellaneous debris and/or other deleterious materials are allowed to enter or leach into the water.

Prior to Commencement of Construction

Notify in writing all contractors and sub-contractors of the following general requirements of the Shoreline Master Program (SSMP 23.60.152):

2. The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards, and regulations of water quality management programs and regulatory agencies.

3. Best Management Practices shall be employed during the proposed over-water work as necessary to keep debris and deleterious material out of the water. The contractor shall include on the plans a written description of the BMPS that will be used during the proposed work.

4. An emergency containment plan and procedures shall be developed for all toxic material that will be kept on site. All necessary equipment for containment and clean-up of this toxic material shall be stocked on the site. A sufficient number of personnel that will be on-site during construction shall be trained in the proper implementation of this plan.

5. Equipment for the transportation, storage, handling and application of oil, chemicals, or other hazardous materials shall be maintained in a safe and leak-proof condition to prevent release of this material into the water.

6. Best Management Practices shall be employed during the proposed under-water work as necessary to replace flotation devices and removal existing debris and deleterious material out of the water. The area of work shall include moorage stall number one and continuing south, west and north 12 feet from the moorage float perimeter. The applicant shall provide documentation of what was found underwater prior to commencement of construction and what was removed to the assigned land use planner.

During Construction

7. In order to further mitigate the noise impacts during construction, the owner(s) and/or responsible party(s) shall limit the hours of construction to non-holiday weekdays between 7:00 AM and 6:00 PM and Saturdays between 9:00 AM and 6:00 PM. 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 (3) days in advance of the requested dates in order to allow DPD to evaluate the request.

8. Contact land use planner with information sufficient to verify existing lake bed conditions prior to construction related activities. Remove all debris and deleterious materials out of the water in the immediate surrounding the float perimeter and under the finger pier. Document materials removed with the assigned planner, Bradley Wilburn, 206.615.0508, if unavailable then contact a RIC land use supervisor.

9. The owner(s), builder(s), or responsible party(s) shall follow the Best Management Practices and the Emergency Containment plans developed to prevent debris and other deleterious material from entering the water during construction.

    a. If floating debris enters the water during the proposed work this debris shall be removed immediately and stored until it can be disposed of at an appropriate upland facility.

    b. If heavy (sinking) debris enters the water during the proposed work the location of the debris shall be documented in a log that is kept on site for the duration of the construction work. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during the proposed work.

10. Equipment using oil, gasoline, or diesel used on site shall be checked daily for evidence of leakage, if evidence of leakage is found, further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

11. Work waterward of ordinary high water shall be restricted to work windows established by Washington Department of Fish and Wildlife and US Army Corps of Engineers.

For Life of project

12. Follow DPD approved Monitoring and Maintenance Plan for Mitigation Planting. And follow mitigation monitoring requirements that the Corps of Engineers may require. All monitoring reports required by the Corps shall be made available to Seattle DPD upon request.

13. If treated wood is proposed for other structures, this wood shall be professionally treated and completely cured using the best management practices developed by the Western Wood Preservers Institute (http://www.wwpinstitute.org/) before this wood is used for this project.

14. Maintain the shallow water and near shore area clear of debris during the life of the project.

Signature: (signature on file) Date: May 24, 2010
Bradley Wilburn, Land Use Planner
Department of Planning and Development
Land Use Services

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