



City of Seattle

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: 3014101
Applicant Name: Paul & Barbara Williams
Address of Proposal: 13734 Riviera Place NE

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Application to raise the roof of an existing duplex and change the roof profile of an existing single family dwelling. Project includes narrowing the front entry by enclosing space of an existing duplex in a Single Family zone.

The following approvals are required:

Variance: to allow a single family residence to extend into the required front yard.
(Section 23.44.014.A Seattle Municipal Code)

Variance: to allow single family residence to extend into the required side yard.
(Section 23.44.014.C Seattle Municipal Code)

Variance: to allow a structure containing a nonconforming multifamily use in a Single Family zone extend into the required front yard. (Section 23.44.014.A Seattle Municipal Code)

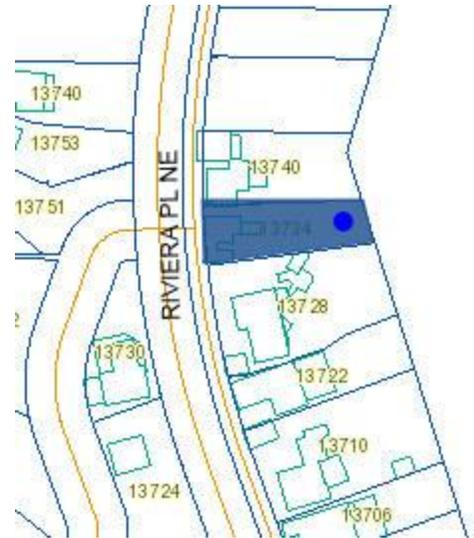
Variance: to allow an expansion of a structure containing a nonconforming use in a Single Family zone. (Section 23.42.106.A Seattle Municipal Code)

Shoreline Substantial Development Permit: to allow expansion of two residential structures in an Urban Residential/Conservancy Recreation (UR/CR) Shoreline Environment. (Section 23.60.020A Seattle Municipal Code)

BACKGROUND DATA

Site Location and Description

The subject property is zoned Single Family 5000 (SF5000) and is located at 13734 Riviera Place Northeast on the Lake Washington shoreline. The site is bounded by Riviera Place NE on the west and Lake Washington on the east. The zoning along the east side of Riviera Pl NE is Single Family 5000 (SF 5000) and changes to Single Family 9600 (SF9600) on the west side of Riviera Place NE. The Burke-Gilman Trail runs parallel to and west of Riviera Place NE. The vicinity is developed predominately with single family residences. The dry land portion of the subject property is located in the Urban Residential (UR) shoreline environment. The submerged portion of this site is located in the Conservancy Recreation (CR) shoreline environment.



Most of the site is relatively flat then slopes up rapidly, approximately eight feet, to the right-of-way. The western portion of the site where the development is located is within a mapped potential slide Environmentally Critical Area (ECA).

The lot is approximately 8,400 square feet in area, with approximately 5,211 square feet being dry land. Two structures built in the 1930's exist on the site. One is a three-story duplex which was established for the record in 1974 and the other, a small one-story single family residence. The duplex structure has approximately 1,880 square feet of living area; the smaller single family residence has approximately 400 square feet of living area.

Description of Proposal

The applicant proposes to: 1) increase the height of the duplex structure by four feet; 2) add approximately 12 square feet of enclosed area to the duplex by constructing a closet space; and 3) remove a storage unit and replace a flat roof with a sloped roof on the single family residence.

The required front yard of the lot is 10' pursuant to SMC 23.44.014.A.1 which states: "The front yard depth shall be either the average of the front yards of the single-family structures on either side or 20 feet, whichever is less." The lot to the north has a 0' front yard and the lot to the south has a 20' front yard. The required side yards are 5'.

Both existing structures are located within the required front yard. The small single family structure is also located within the required side yard along the south property line.

The proposal requires a Shoreline Substantial Development permit due to construction work on the duplex structure.

Public Comment

The public comment period ended March 29, 2012. Public comments were received. The comments were about the substance of the variance request, which is within the scope of review, and parking and traffic which are outside the scope of this review.

I. ANALYSIS – VARIANCE

As provided in SMC 23.40.020, variance from the provisions or requirements of Title 23 shall be authorized only when all the facts and conditions stated in the numbered code section paragraphs below are found to exist. Analysis for the variance requested follows each statement of required facts and conditions.

The applicant has requested two variances from the zoning development standards of SMC 23.44, Residential, Single Family, for the single-family residence:

1. To extend vertically into the required front yard setback. (SMC 23.44.014.A)
2. To extend vertically into the required side yard setback. (SMC 23.44.014.C)

The applicant has requested two variances from the zoning development standards of SMC 23.44, Residential, Single Family, for the nonconforming multifamily structure:

3. To extend vertically into the required front yard setback, (SMC 23.44.014.A) and to enclose space in the required front yard setback. (SMC 23.44.014A)

In addition, a variance is required from SMC 23.42.106.

4. To expand a structure containing a nonconforming use. (SMC 23.42.106.A)

The analysis below includes responses to the four requested variances.

A. Variances from the provisions or requirements of this Land Use Code shall be authorized when all the facts and conditions listed 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; and***

The structures on the subject lot were built in the 1930's (when this property was not part of Seattle), adjacent to the street (front) and south (side) property line. This is similar to many residential structures on waterfront lots in the vicinity of this property along Riveria Place that are also non-conforming with respect to front and side yard setbacks. Many structures in this neighborhood were set back from the shore of Lake Washington, presumably to allow for recreation space at the water's edge.

These conditions were not created by the applicant or the owner and are the same, or similar to, those of other property owners in the vicinity. The strict applications of the Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity.

This criterion is met for all four requested variances.

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; and

The proposed work maintains the existing footprint of the structures and does not enlarge the size of the existing encroachment at ground level.

Variance Nos. 1 & 2

The applicant proposes to remove storage units built on top of the existing one-story single family structure, located within the front and side yard areas. These storage units appear to open onto the street and are nonconforming to development standards. Removal of the units will damage the existing flat roof of the structure. The applicant proposes to replace the flat roof with a pitched roof. Doing so will extend the single-family structure vertically in the front yard and south side yard. The ridge of the proposed roof is shown as being approximately 14' above grade at the east elevation and approximately 5' above grade at the Riviera Pl. NE. elevation. The applicant proposes a fence along the property line at the level of the right-of-way.

Adding four feet of height to the existing structure with the pitched roof without enlarging the building footprint does not go beyond the minimum necessary to afford relief. Structures on neighboring properties also have structures nonconforming to front and side yard requirements. Granting the variance to allow additional height within the required front and side yard would not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in the subject property is located.

The fence needs to be sufficiently open so that it doesn't obstruct views to meet view corridor requirements of the UR Shoreline zone. (See the Shoreline Substantial Development Permit analysis section of this decision.)

Variance No. 3

The applicant proposes to raise the height of the third floor roof of the nonconforming duplex by four feet and enclose approximately 12 sq. ft. of the covered entry area, on the second level. A portion of the work is located within the 10' front yard. The existing footprint of the duplex structure is to be maintained. The proposed height provides an interior height of 8' at the top of plate and 12' at the top of the exterior roof ridge. The height of the structure at the Riviera Pl NE elevation will be approximately 20' from grade to the roof ridge.

Adding four feet of height to the existing structure and enclosing the 12 square feet without enlarging the building footprint does not go beyond the minimum necessary to afford relief. Structures on neighboring properties also have structures nonconforming to front yard requirements. Granting the variance to allow additional height within the required front yard would not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in the subject property is located.

It should be noted that over the years DPD has granted many similar variances to properties located along Riviera Pl. NE.

Variance No. 4

The nonconforming residential duplex use was established for the record in 1974. SMC 23.42.106.B allows for expansion of nonconforming residential uses in single family zones subject to certain criteria. Those criteria require the development standards of the single family zone, such as yards, to be met; therefore SMC23.42.106.B does not apply and a variance to expand the structure is required (SMC 23.42.106.A). As explained above, the proposal doesn't go beyond the minimum necessary to afford relief, nor does approval constitute a special privilege.

This criterion is met for all four requested variances.

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; and

The subject property is located in an urban neighborhood with dwellings constructed in close proximity to one another. The size of the existing and proposed structures are not out of scale with existing structures on the street. There is no evidence that proposed improvement would be detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located. This proposal would not affect the existing space between the two structures on the subject lot.

This criterion is met for all four requested variances.

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 existing structures on this lot are generally smaller in size and scale than many structures to the north and south of the subject property. The construction that determined the location of the structures on this lot happened before annexation of this neighborhood by Seattle. The literal interpretation and strict application of the Land Use Code would cause undue and unnecessary hardship by precluding the current property owner from raising and altering the roofs of the structures.

This criterion is met for all four requested variances.

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

The purpose of the Land Use Code is to protect and promote public health, safety and the general welfare through a set of regulations and procedures for the use of land that conforms to the City's land use policies. It is the responsibility of the City to preserve and protect areas that are currently in predominantly single-family residential use. The proposed expansions of the existing residences are in character with the surrounding development and preserve the existing neighborhood character. No adverse effects on adjacent properties in the area are anticipated and the public interest will not suffer as a result of the proposed yard variances.

Homes along Riviera Pl. NE enjoy waterfront open space due to the adjacency of the lots to Lake Washington. Existing structures were often placed close to the street and within front yards. The additional vertical encroachment into the required front yard and side yard is consistent with the streetscape character along Riviera Pl. NE.

The proposed expansions will not cause adverse impacts to the character of the existing neighborhood. Other nearby properties along the west side of Riviera Pl. NE have structures at or very close to their street lot line. Elimination of the storage units and an open fence will provide views of Lake Washington.

This criterion is met for all four requested variances.

Conclusion

The proposed variances meet all applicable criteria and are granted.

ANALYSIS – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

Substantial Development Permit Required

A Shoreline Substantial Development Permit (SSDP) is required for all non-exempt development in the Shoreline Environment. While SMC 23.60.020.C.6 exempts single family residences in the Shoreline District from the requirement to obtain a SSDP, duplex homes are not eligible for this exemption.

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 PROVISIONS 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 of Washington to provide for the management of all 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 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 acts 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, as well as other local jurisdictions, adopted a local shoreline master program, which for the City, is 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 THIS CHAPTER, SMC 23.60

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.

This proposal does not require a shoreline variance, conditional use or special use permit. Single family and multifamily residences are permitted outright on waterfront lots in the UR Environment (SMC 23.60.540.A.2).

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 proposal does not conflict with the goals or policies relating to residential areas. The purpose of the UR environment described in SMC 23.60.220C6, is to protect residential areas.

Development Standards

The two residential structures and uses are permitted, subject to the development standards of the UR Shoreline development standards in SMC 23.60.570, and the General Development standards in SMC 23.60.152. The current configuration of structures on the lot does not meet the view corridor requirement of SMC23.60.162 for lots with multifamily development in UR zones. The proposed work on the site will not expand the nonconformity so is allowed under SMC 23.60.124 which relates to nonconforming structures.

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 residential structures are 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 Code (SMC 22.800), and Grading and Drainage Control Code (SMC Chapter 22.170) places considerable emphasis on improving water quality.

Development Standards for UR Shoreline Environments (SMC 23.60.570)

The development standards of height, lot coverage and regulated public access have been met. (SMC 23.60.570 through SMC 23.60.578). As one of the structures on the lot is a multifamily duplex, the view corridor requirements of SMC23.60.162 and SMC23.60.576 must be considered. The lot is currently nonconforming to view corridor development standards as high gates, fences and storage units line both sides of the duplex structure.

The 6' high storage units built on top of the single family residence are proposed to be removed. The applicant is proposing to build a fence where these units are currently located. The fence will be required to be sufficiently open so that it doesn't obstruct views, thus reducing the nonconformity of the existing view corridor.

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). As the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of SMC Chapter 23.60 is also consistency with WAC 173-27 and RCW 90.58.

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

Conclusion

Adverse impacts to the shoreline environment are not expected and the proposed expansions will be consistent with the provisions set forth by 90.58 RCW, 173-27 WAC, and Chapter 23.60 SMC, also known as the Seattle Shoreline Master Program (SSMP).

DECISION - VARIANCE

The variance to allow a single family residence to extend into the required front yard is **GRANTED.**

The variance to allow a single family residence to extend into the required side yard is **GRANTED.**

The variance to allow a structure containing a nonconforming multifamily use in a Single Family zone, extend into the required front yard is **GRANTED.**

The variance to allow a structure containing a nonconforming multifamily use in a Single Family zone to expand is **GRANTED.**

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

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

Signature: _____ (signature on file) Date: December 9, 2013
Beth Hartwick, Senior Land Use Planner
Department of Planning and Development

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