



City of Seattle
Edward B. Murray, Mayor

Department of Construction and Inspections
Nathan Torgelson, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS**

Application Number: 3014886
Applicant Name: Brian Malady of E. Cobb Architects
Address of Proposal: 2348 43rd Avenue East

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit to allow a three-story apartment structure with six residential units. Parking for six vehicles to be provided below grade within the structure. Existing detached parking structure to be demolished and the existing single family residence to remain.*

*Note - The project description has been revised from the following original notice of application: Shoreline Substantial Development Permit to allow a 3-story structure with six residential units. Parking for six vehicles to be provided below grade within the structure. Existing garage to be demolished, existing single family residence to remain.

The following approval is required:

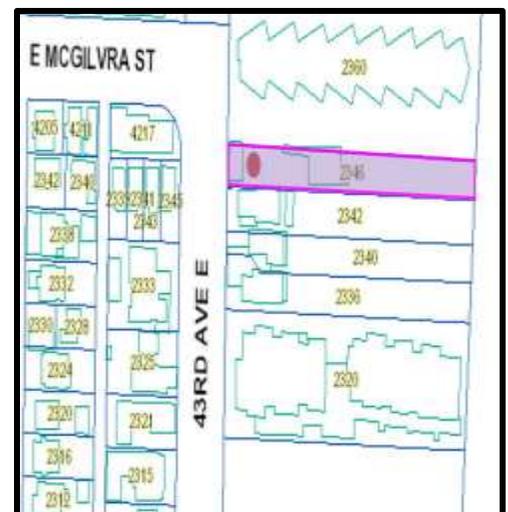
Shoreline Substantial Development Permit - (Seattle Municipal Code Chapter 23.60)

BACKGROUND

Site and Vicinity Description

This approximately 16,053 square foot (sq. ft.) proposal site is a waterfront lot located in the Madison Park neighborhood of Seattle. The property is on the west side of Lake Washington in both the Urban Residential (UR) and Conservancy Recreation (CR) Shoreline Environments. The subject property is zoned Lowrise 3 (LR3) and is bordered by 43rd Avenue East to the west; Lake Washington to east; and residential properties to the south and north.

Existing development on the subject site is a one-story detached carport with tool shed sited on dry land; and a two-story single family residence with ramp and wooden docks built over water together built in 1947.



The development surrounding this site consists entirely of residential uses. The nearby zones and shoreline environments are as follows:

North: LR3, UR and CR
East: LR3, CR and Lake Washington
West: LR3 and UR
South: LR3, UR and CR

The site's topography has a downward sloping condition from west to east resulting in a gradual 6' grade change. A mature tree on the subject site (17" Japanese black pine; *Pinus thumbergii*) has been determined by an arborist (Holly Iosso, Certified Arborist and Qualified Tree Risk Assessor, Tree Solutions, Inc.) as meeting the "Exceptional Tree" designation per Director's Rule (DR) 16-2008.

Proposal

The proposal is to construct a three-story with basement apartment building comprised of six residential units. Parking for six vehicles is proposed to be located within the basement level of the new structure. The existing carport/tool shed structure will be demolished and the existing single family residence/ramp/dock will remain. Per the submitted drawings, the construction activity will be located on dry land and within that portion of the site that is identified as the UR Shoreline Environment. The identified Exceptional Tree (17" Japanese black pine; *Pinus thumbergii*) will remain and be protected during excavation/construction activities. No work is proposed over the water.

Public Comment

The public comment period for this project originally ended January 8, 2014 and was later renoticed as a revised application which resulted in an additional public comment period ending February 7, 2014. During and after the public comment periods, SDCI received comment letters and emails. The written comments are found in the project file.

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 wild life, 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 (DOE) 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**

Pursuant to SMC 23.60.064.C, 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, except where a variance from a specific standard has been applied for and; 3) satisfies the criteria for a shoreline variance, conditional use, and/or special use permits, if required.

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.

A shoreline use goal is to "Encourage shoreline uses that result in long-term over short-term benefit" (Please refer to Shoreline Use Goals, Policy LUG39). The urban shoreline environmental goal is that "The urban shoreline environments are intended to provide for increased development of the shoreline for residential, commercial and industrial uses while protecting ecological functions (Please refer to Urban Shoreline Environment Goal, Policy LUG69). It is further explained that the purpose of the UR Environment is "to provide for residential use in the Shoreline District when it can be developed in a manner that protects shoreline ecological functions (Please

refer to Urban Residential, Policy LUG75). The purpose of the UR Environment as set forth in Section 23.60.220.C.6 is to “protect residential areas”.

The policies support and encourage the establishment of a residential use. The proposed non-water dependent residential use (apartment) to be constructed on dry land is supported by both the purpose of the UR Shoreline Environment and the policies set forth in the Land Use Element of the Seattle Comprehensive Plan.

Development Standards

The proposal to construct a three-story with basement apartment building comprised of six residential units and accessory parking is permitted outright in SMC 23.60.540 governing the UR Shoreline Environment. The proposed action is therefore subject to:

1. *The general development standards for all shoreline environments (SSMP 23.60.152);*
2. *The development standards for uses in the UR environment (SSMP 23.60.570); as well as*
3. *The development standards for Lowrise 3 zones (SMC 23.45).*

1. General Development Standards for all Shoreline Environments (SSMP 23.60.152)

The general standards listed in SMC 23.60.152 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 Master Program (SMP) and with best management practices for the specific use or activity. These general standards of the SMP state, in part, that all shoreline development and uses are subject to the following:

- A. *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 applicable water quality management programs and regulatory agencies. Best management practices such as paving and berming of drum storage areas, fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.*
- B. *Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.*
- C. *Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided at recreational marinas, commercial moorage, vessel repair facilities, marine service stations and any use regularly servicing vessels with petroleum product capacities of ten thousand five hundred (10,500) gallons or more.*
- D. *The release of oil, chemicals or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.*

- E. All shoreline developments and uses shall minimize any increases in surface runoff, and control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Control measures may include, but are not limited to, dikes, catch basins or settling ponds, interceptor drains and planted buffers.*
- F. All shoreline developments and uses shall utilize permeable surfacing where practicable to minimize surface water accumulation and runoff.*
- G. All shoreline developments and uses shall control erosion during project construction and operation.*
- H. All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes.*
- I. All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion.*
- J. All shoreline developments and uses shall 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.*
- K. Land clearing, grading, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for development. Surfaces cleared of vegetation and not to be developed shall be replanted. Surface drainage systems or substantial earth modifications shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.*
- L. All shoreline development shall be located, constructed and operated so as not to be a hazard to public health and safety.*
- M. All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties or substantial site regrades.*
- N. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry by erosion from drainage, high water or other means into any water body.*
- O. Navigation channels shall be kept free of hazardous or obstructing development or uses.*

- P. No pier shall extend beyond the outer harbor or pierhead line except in Lake Union where piers shall not extend beyond the Construction Limit Line as shown in the Official Land Use Map, Chapter 23.32, or except where authorized by this chapter and by the State Department of Natural Resources and the U.S. Army Corps of Engineers.*

The Stormwater Code (SMC 22.800-22.808) places considerable emphasis on protecting water quality. In conjunction with this effort, SDCI developed a Director's Rule 21-2015, to apply best management practices (BMPs) to prevent erosion and sedimentation from leaving construction sites or where construction will impact receiving waters. Due to the extent of proposed work associated with the construction of the new residential structure, the potential exists for impacts to Lake Washington during construction and warrants further discussion.

The proposed project's design to construct a new three-story with basement residential building on the dry land of a waterfront lot is consistent with the requirements of this section. The applicant states that the existing single family residence built wholly over water, will remain and no work to this structure is proposed at part of this application. The applicant's plans illustrate all construction activity to occur on dry land and emergent restoration of the existing sand and gravel beach front abutting the site. As proposed, the short-term construction related activities should have no effects on migratory fish routes and shoreline habitat. No long-term effects are expected in association with the proposed residential use. The project complies with the above shoreline development standards and does not warrant further conditioning.

2. Development Standards for UR Environments (SSMP 23.60.570)

As noted above, the proposed apartment building is permitted outright as a multifamily residential use in the UR Shoreline Environment (SMC 23.60.540). The development standards set forth in the UR Shoreline Environment relate to height, lot coverage, view corridors and regulated public access on waterfront lots. The proposal conforms to all development standards for the UR Environment, with the exception of the view corridor requirement. The Code allows for the Director to waive or modify view corridor requirements per SMC 23.60.162.C which states:

- C. The Director may waive or modify view corridor requirements if it is determined that the intent to preserve views cannot be met by a strict application of the requirements or one (1) of the following conditions applies: (1). There is no available clear view of the water from the street; (2). Existing development or topography effectively blocks any possible view from the street; or (3). The shape of the lot or topography is unusual or irregular.*

SMC 23.60.162.D further states:

- D. In making the determination of whether to modify the requirement, the Director shall consider the following factors: (1) the direction of predominant views to the water; (2). The extent of existing public view corridors, such as parks or street ends in the immediate vicinity; (3). The availability of actual views of the water and the potential of the lot for providing those views from the street; (4). The percent of the lot which would be devoted to view corridor if the requirements were strictly applied; (5). Extreme irregularity in the shape of the lot or the shoreline topography which precludes effective application of the requirements; and (6). The purpose of the shoreline environment in which the development is located, to determine whether the primary objective of the environment is water-dependent uses or public access views.*

The applicant has submitted written analysis and supporting documentation to SDCI. According to the written analysis addressing the factors cited per SMC 23.60.162.D noted above and supporting documentation noted on the MUP plans, there are no available clear views of the water from the street due to the location of the existing development (single family residence) constructed over water which will remain and continue to effectively block any possible view from the street.

SDCI has considered the written analysis and reviewed the supporting documentation. In consideration of the subject site's width (approximately 38') and the siting of the existing overwater residential structure to remain on site whose width inclusive of attachments (roof overhang, dock, ramp, etc.) encompasses most of the site (approximately 36'), SDCI agrees that there will be no clear views to the water from the street-even after the existing parking structure has been removed from the site. Thus, SDCI waives the view corridor requirement for this proposal as allowed per SMC 23.60.162.C. Consequently, the proposal conforms to all the development standards for the UR Environment.

3. General Development Standards for Lowrise 3 Zone Uses (SMC 23.45)

The project proposal must meet the development standards of the underlying Lowrise 3 (LR3) zone. Consequently, the proposal must meet the standards of the underlying L3 zone (use, floor area ratio (FAR), density, height, setback, amenity area, landscaping, structure width, façade length, design standards, light and glare standards, parking) for the proposed residential use. The development proposal has been reviewed by a SDCI Planner who has determined that the project complies with required development standards except for side setback.

The proposal is also being reviewed for Streamlined Design Review (SDR). A Streamlined Design Guidance report was provided on September 17, 2013 as part of the review under application #3014886. This report and MUP plans include a request for an adjustment from side setback development standards. This request for an adjustment to reduced north side setback has been considered and addressed in part with this proposal. The SDR review does not include design review departures, and therefore is a Type I decision per SMC 23.76.004.

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 the SMC Chapter 23.60 is also consistency with WAC 173-27 and RCW 90.58.

Summary

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

The project as proposed meets the specific standards for development in the UR environment. It also conforms to the general development standards, as well as the requirements of the underlying zone, 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 complies with specific development standards of the underlying zones, 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 PERMIT

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

SHORELINE SUBSTANTIAL DEVELOPMENT CONDITIONS

None.

Tami Garrett, Senior Land Use Planner
Seattle Department of Construction and Inspections

Date: June 15, 2017

TG:drm

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IMPORTANT INFORMATION FOR ISSUANCE OF YOUR MASTER USE PERMIT

Master Use Permit Expiration and Issuance

The appealable land use decision on your Master Use Permit (MUP) application has now been published. At the conclusion of the appeal period, your permit will be considered "approved for issuance". (If your decision is appealed, your permit will be considered "approved for issuance" on the fourth day following the City Hearing Examiner's decision.) Projects requiring a Council land use action shall be considered "approved for issuance" following the Council's decision.

The "approved for issuance" date marks the beginning of the **three-year life** of the MUP approval, whether or not there are outstanding corrections to be made or pre-issuance conditions to be met. The permit must be issued by SDCI within that three years or it will expire and be cancelled (SMC 23-76-028). (Projects with a shoreline component have a **two-year life**. Additional information regarding the effective date of shoreline permits may be found at 23.60.074.)

All outstanding corrections must be made, any pre-issuance conditions met and all outstanding fees paid before the permit is issued. You will be notified when your permit has issued.

Questions regarding the issuance and expiration of your permit may be addressed to the Public Resource Center at prc@seattle.gov or to our message line at 206-684-8467.