



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning & Development
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**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 2409641

Applicant Name: Kent Johnson

Address of Proposal: 2420 Westlake Avenue N (Houseboat 4) (KCA #269)

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit future construction of a two (2) story, 1,407 sq. ft. floating home. The existing structure to be removed and the existing float to remain.

The following approvals are required:

Shoreline Substantial Development Permit – for the future remodel of a floating home in an Urban Stable (US) Shoreline Environment - (SMC 23.60.600)

SEPA - Environmental Determination - (SMC 25.05)

SEPA DETERMINATION: Exempt DNS MDNS EIS

DNS with conditions

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

*Early Notice DNS was published on February 3, 2005.

BACKGROUND DATA

Existing Conditions

The subject site is located on the west side of Lake Union in an Urban Stable (US) shoreline environment. The existing float area for the subject floating home measures approximately 40 feet by 32 feet, with a total area of 1,280 square feet. The zoning designation of the site is Commercial Two with a forty foot height limit (C2-40'0 zone. The proposed work would occur on the floating moorage, which is located in Lake Union. The subject floating home moorage is non-conforming with the General Standards set forth for conforming floating home moorages.

The proposal site is part of an existing group of 15 floating home moorages called the Twenty-4-Twenty Condominiums. The subject floating home is the second home located on the south side of the common access road and has direct access to the shoreline. It abuts two other floating homes to the east and to the west. Over-water development surrounding the subject site both to the north and the south of the site consists of floating home moorages. Other development in this area consists of water-related residential and commercial uses. The Western Yacht Sales is located on the next lot south of the proposal site. The landward side (west) of Westlake Avenue North is zoned Lowrise 2 (L-2), and is developed with a mixture of multifamily and single family residential uses.

Proposal

The applicant proposes to construct a 2-story, 1,407 square feet new floating home on an existing floating home moorage. The project includes the demolition and removal of the existing floating home from the site. The height of the proposed structure is 18 feet. The proposed construction will occur entirely on the existing moorage and would consist of two floors. The first floor would contain a bedroom, a bathroom, a study and a lounge for a total of approximately 760 square feet. The second floor would contain a kitchen, a bathroom, a living room, a roof deck and a pantry and a small study for a total of approximately 647 square feet. Neither the existing float, nor the current footprint of the structure will be increased outside the boundary of the existing floating moorage.

Public Comment

No comment letter was received during the public comment period which ended on March 4, 2005.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

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.*

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 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

The regulations of SMC, Section 23.60.064 require that the proposed use (s): 1) conform to all applicable development standards of both the shoreline environment and underlying zoning; 2) be permitted in the shoreline environment and the underlying zoning district and 3) satisfy the criteria of shoreline variance, conditional use, and/or special use permits as may be 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.

The policies support and encourage the establishment of water dependent uses. Floating homes, because of their historic role in Seattle, are designated as a water dependent use, but the increase of floating home moorages or the increase in use of the shoreline or water area by floating homes, however, is not necessarily encouraged. The intent is to recognize the existing floating home community in Lake Union and Portage Bay, while protecting natural areas, preserving public access to the shoreline, and preventing the displacement of water dependent commercial and manufacturing uses by floating homes. Areas with substantial concentrations of existing floating homes shall be given a designation that preserves residential uses.

The subject property is classified as a waterfront lot (SSMP 23.60.924) and is located within an Urban Stable (US) environment, as designated by the Seattle Shoreline Master Program. The purpose of which is to protect residential areas in a manner consistent with the Single family and Multi-family Residential Area Policies. The principal use on this waterfront lot is residential use consisting of 15 floating homes moorages known as Twenty-4-Twenty Condominiums. Therefore, the proposed project would conform to the policies of the comprehensive plan and would be consistent with the purpose of the US designation.

Development Standards

The proposal is to construct a new 2-story 1,407 sq. ft. floating home on an existing floating home moorage to replace the existing floating home (houseboat 262) is permitted outright in SMC 23.60.600 governing the US 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 US environment (SSMP 23.60.630-642);*
3. *the development standards for nonconforming floating homes (SSMP 23.60.196); as well as*
4. *the development standards for Commercial zones (SMC 23.47.004)*

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

These general standards apply to all development and uses in all 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. These measures are required to prevent degradation of land or water. The general development standards state, in part, that all shoreline development and uses must: 1) not release oil, chemicals or other hazardous materials onto or into the water; 2) minimize and control any increase in surface water runoff so that receiving water quality and shoreline properties are not adversely affected, 3) 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 4) be located, constructed, and operated so as not to be a hazard to public health and safety. Construction material such as wood used in the aquatic environment poses a risk of introducing toxins into the environment through the leaching of chemicals used to preserve the material. Common chemicals used to preserve wood are: copper, zinc, and arsenic. In high levels copper can negatively impact aquatic organisms. Additionally, an inherent risk that exists when humans live over the water is the potential for debris and other deleterious material to enter the aquatic environment. Therefore to ensure conformance with these general development standards, no treated wood shall be allowed in decking material, if treated wood is used in other structural elements of the floating home it shall meet or exceed the Western Wood Preservers Standards for use of treated wood in the aquatic environment and best management practices shall be required of the owners living in the new houseboat that prevent debris and other deleterious material from entering the water. A condition is imposed on this permit pursuant to SEPA authority, to ensure that care is taken by the responsible party to prevent debris from entering the water during construction and to remove debris promptly if it does enter the water. Additionally, the applicant and owner shall be required to notify contractors and subcontractors of these requirements. All construction activity will be done to minimize adverse impacts and protect the fish and wildlife habitat areas in the immediate vicinity.

2. Development Standards for US Shoreline Environments (SSMP 23. 60.630-642) and (23.60.196)

All development must conform to the development standards in the US shoreline environment, as well as the underlying Commercial zone. In this case, the structure proposed must meet all the development standards for non-conforming floating home moorages (SMC 23.60.196). The existing floating home and floating home moorage is a permitted use in the shoreline US environment with an underlying C2 zone. The proposed project must meet the standards of the underlying Commercial-2 zone, the development standards for the US shoreline environment (SSMP 23.60.630 -642) and the general development standards for all shoreline environments (SSMP 23.60.152). The Director may attach to the permit or authorize any conditions necessary to carry out the spirit and purpose of, and ensure the compliance with, the Seattle Shoreline Master Program (SSMP 23.60.064).

3. Development Standards for Nonconforming Floating Home Moorages (SSMP 23.60.196)

There are two sets of development standards for floating homes; conforming and nonconforming moorages. The subject moorage is non-conforming. The remodeling, replacement, or rebuilding of a

nonconforming floating home is permitted subject to the provisions set forth in SMC 23.60.196 C. The floating home moorage is located on privately owned premises (SMC 23.60.196 A2). The existing views of the water from other moorage tenants will not be blocked because the proposed floating home is not further waterwards (SMC 23.60.196.A3). This floating home moorage site is considered pre-existing for the purposes of the Seattle Shoreline Master Program because it has an assigned King County Assessor's (KCA) number (KCA #262). The KCA established it as a pre-existing use at the established moorage in Lake Union as of the effective date of Chapter (SMC 23.60.196.A4). A moorage plan was submitted with this application and is on file with the Department of Planning and Development (SMC 23.60.196 A6).

Nonconforming Floating Home Requirements:

	Code Provision	Required	Existing	Proposed
Float Area	23.60.196.C1.a	Float area shall not be increased.	1,279.7 sq. ft	1,279.7 sq. ft
Height	23.60.196.C1.b	18 feet max height from water level	Conforms to height requirement	18 feet maximum height from water level
Setback	23.60.196.C1.c	6 feet min distance between subject home and adjacent walls	8' to the west 6.2' to the East	8' to the W 6.2' to the E
Setback	23.60.196.C1.d	3 feet min distance between subject wall and site line	3 feet to the north 8.6' to the south	3 feet to the north 8.6' to the south
Open Water	23.60.196.C1.e	No part of home may be further extended over water, beyond float edge	No portion of the proposed structure extends beyond float edge.	No portion of the proposed structure extends beyond float edge.
Accessory float	23.60.196.C1.f	None	None	None
View Corridor	23.60.196.C1.g	Cannot increase view corridor nonconformity	Does not increase view corridor nonconforming float	Will not increase view corridor nonconforming float

The proposed new construction will not increase the area of the floating moorage, thereby not increasing the overall coverage for the moorage dock. No additional over water coverage is proposed for this floating home and no part of the floating home will be extended further over water beyond the size of the existing float. The total height of the floating home will continue to be no greater than the maximum 18 feet allowed from the water's surface. All of the proposed setbacks from the adjacent walls and floats satisfy the standards for the nonconforming floating home structures.

The proposed project is consistent with the development standards for nonconforming structures in the US shoreline environment and does not increase the extent of nonconformity. Therefore, the proposed project is consistent with the standard for the US environment.

C. THE PROVISIONS OF CHAPTER 173 -27 WAC

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

Conclusion

DPD can approve development requiring a Shoreline Substantial Development Permit only if the proposed development 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 standards for non-conforming uses and structures in SMC 23.60.122 and 124. It also conforms to the general development standards, as well as the requirements of the underlying zone, and therefore should be approved.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

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 January 20, 2005. The information in the checklist, supplemental information and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) 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 225.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

Short-term Impacts

The following temporary or construction/demolition-related impacts are expected: minor decreased air quality due to suspended particulate from building and demolition activities and hydrocarbon emissions from construction vehicles and equipment; increased traffic and demand for parking from construction equipment and personnel; conflict with normal pedestrian movement adjacent to the site; increased

noise; and consumption of renewable and non-renewable resources. Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. Additionally, these impacts are minor in scope and are not expected to have significant adverse impacts. However, due to the density and close proximity of residential uses, further analysis of construction impacts is warranted.

Noise

Noise associated with construction could adversely affect the surrounding residential uses, thus the limitations of the Noise Ordinance are found to be inadequate. Pursuant to the SEPA Overview Policy (SMC.25.05.665) and the SEPA Construction Impacts Policy (SMC 25.05.675 B), additional mitigation is warranted. Thus, the hours of construction shall be limited to non-holiday weekday hours between 7:30 a.m. and 6:00 p.m. pursuant to SEPA authority to mitigate construction impacts (SMC 25.05.675.B).

Aquatic Habitat

Some short-term impacts to the marine ecosystem are anticipated. Likely short-term impacts associated with construction and demolition could include decreased water quality due to disturbance of sediments and noise associated with construction activities.

No disturbance of the lakebed sediments is expected since all work will be done above water. There is the potential for debris to enter the water during construction and demolition, so care will have to be taken to prevent this from occurring. In addition to the requirements set forth by 23.60.152 SSMC, actions to protect the water quality of Lake Union shall also be followed as conditioned below.

DECISION - SEPA

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

Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030.(2)(C).

Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

CONDITIONS – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The following conditions to be enforced during construction and for the life of the project 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(ies) shall:

Prior to Issuance of a Construction Permit

1. Notify in writing all contractors and sub-contractors of the general requirements of the Shoreline Master Program (SSMP 23.60.152), and shall be 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 water quality management programs and regulatory agencies. Best management practices such as fugitive dust controls and other good housekeeping measures to prevent contamination of water shall be required.
 - b) No treated wood shall be used in any decking material.
 - c) If treated wood is proposed for the structure, 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.
 - d) Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.
 - e) The release of oil, chemicals, or other hazardous materials into the water shall be prohibited. Equipment for the transportation, storage, handling and application of such materials shall be maintained in a safe and leak-proof condition. If there is any evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
 - f) Prior to commencing construction, 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.

CONDITIONS - SEPA

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

During Construction

2. In order to further mitigate the noise impacts during demolition and construction, the owner(s) and/or responsible party(s) shall limit the hours of demolition and construction to non-holiday weekdays between 7:30 a.m. and 6:00 p.m. This condition may be modified by the Department to permit work of an emergency nature or to allow low noise interior work after the shells of the structure are enclosed. This condition may also be modified to permit low noise exterior work after approval from the Land Use Planner.

3. The owner(s), builder(s), or responsible party(s) shall exercise control to prevent debris from entering the water during demolition and construction and to remove debris promptly if it does enter the water. Materials and construction methods shall be used which prevent toxic materials, petrochemicals and other pollutants from entering surface water during and after construction. The least toxic wood preservatives that are appropriate for fresh water shall be used.

Signature: (signature on file) Date: July 18, 2005
Christopher Ndifon, Land Use Planner