

**CITY OF GIG HARBOR
RESOLUTION NO. 442**

WHEREAS, Charles Hunter, representing Harborview Condominium Homeowners Association, has requested approval of a shoreline substantial development permit to allow an expansion of the existing moorage facility at 3219 Harborview Drive; and,

WHEREAS, the Gig Harbor City Council has adopted Ordinance #489 which establishes guidelines for the reviewing of Shoreline Management permits; and,

WHEREAS, the Planning Department for the City of Gig Harbor has recommended approval of the shoreline permit in a staff report dated November 16, 1994; and,

WHEREAS, a public hearing was held on November 16, 1994 with the Hearing examiner to accept public input relating to this request; and,

WHEREAS, a revised site plan was submitted the day of the public hearing, resulting in a two week extension of the Hearing Examiner's deadline for making a decision; and,

WHEREAS, the City of Gig Harbor Hearing Examiner has made specific findings and conclusions based upon the staff report and upon input received at the public hearing and has recommended approval of the application in his report dated December 19, 1994; and,

WHEREAS, a request for reconsideration of the Hearing Examiner's decision was submitted asking that the hearing examiner reconsider a limitation on a moorage slip; and,

WHEREAS, a second request for reconsideration of the Hearing Examiner's decision was submitted based upon allegations that the proposed use did not conform to code regulations for non-conforming development; and,

WHEREAS, the hearing examiner denied the requests for reconsideration based upon findings and conclusions in his reconsideration report dated January 26, 1995; and,

WHEREAS, the City Council held its own de novo public hearing on March 13, 1995; and,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Gig Harbor, Washington, as follows:

Section 1. The Gig Harbor City Council enters the following Findings of Fact relating to the shoreline substantial development permit SDP 94-05 for Charles L. Hunter.

FINDINGS OF FACT

A. The Harborview Condominium Marina is a covered marina which consists of 51 slips. Only one of these slips is greater than 45 feet in length. Under the City's code, 26 parking stalls are required for the Marina, but there are now 31 stalls on site. Two of these parking stalls do not meet the minimum stall size of 9 X 19 feet and the parking lot does not conform to current landscaping requirements under the City's zoning code. The parking lot was constructed prior to the City's adoption of landscaping requirements. Because the Shoreline Master Program now prohibits covered moorage and requires public access and/or view corridors, the Marina is legally non-conforming with respect to the covered moorage and the non-landscaped parking lot which lies in the view corridor.

B. This application involves a substantial development permit application for the addition of three new uncovered boat slips of 19 X 60 feet to the marina, and also a slip on the end of the dock to replace the existing end slip. GHMC Section 17.76.020 requires that 3 parking stalls be provided for these new slips for a total on-site parking requirement of 29 spaces.

C. The information contained in Sections I through VII of the Planning Staff Advisory Report, dated November 16, 1994 is found by the City Council to be supported by the evidence presented during the hearing except that Section V in the Staff Report indicates that there will be a net increase of 2 slips, when there would actually be a net increase of 3 slips if the end slip is included. The Council hereby adopts these portions of this report, attached hereto as Exhibit A, and incorporates it by reference as the Councils' findings of fact for this application, noting that Section V of the staff report does not include the end slip in the stated number of new slips.

D. Testimony was presented at the hearing by the staff that the proposed development meets the general goals and policies for development of the shoreline as stated in Part 2 of the City's Shoreline Master Program, and also the specific goals and policies for marina development stated in Part 3.11 of the Shoreline Master Program, with the exception of the requirement for a pump-out facility. The requirement for a pump-out facility was therefore included in the staff report as a recommended condition of approval.

E. Testimony was presented by John Paglia, attorney for neighboring property owner Adam Ross, that the existing marina structure does not meet setback requirements, visual access requirements and does not comply with the zoning code requirements for non-conforming structures.

F. Testimony was presented by Tom Semon, who claimed that the restrictions on moorage suggested by the Hearing Examiner would take away the rightful use of their leased land. The Hearing Examiner had recommended that no vessels be tied to the end of the dock after construction of the slips unless the applicant could demonstrate that there will be at least 18 feet between the outer harbor line and any portion of the dock (based upon a pending survey of the outer harbor line by the state).

G. Testimony was presented by Bob Frisbie, who submitted a letter to the City Council and Mayor, outlining certain issues to be determined with regard to this application. In particular, Mr. Frisbie's March 13, 1995 letter asked (1) whether the Harborview Condominium is required to landscape their parking area; (2) should the applicant be required to provide water view and/or waterfront access opportunities; (3) should the pump-out facility be required; and (4) does Regulation 7, in Chapter 3.11 of the Shoreline Master Program apply to an existing marina?

H. Carol Morris, assistant city attorney, opined that the SMP nonconforming development provisions apply to this application, not the zoning code nonconforming development provisions. This is because the Council must base its decisions on shoreline permit appeals on the criteria in the SMP (SMP Sec. 4.03(B)(3)). These criteria are contained in SMP 4.03(A)(4) and Sec. 4.08(C)(2), and none reference the City's zoning code. Furthermore, the SMP (Sec.4.14) adopts the same nonconforming development definitions and regulations as contained in WAC 173-14-055, and this WAC requires these regulations to apply where there are no nonconforming standards in a local government's shoreline master program. The logical inference to be made from this language is that the legislature did not intend to allow zoning code nonconforming development standards to apply to shoreline development.

In response to the issue whether the City could permit development before a determination of the exact location of the Harbor Line, Ms. Morris stated that the City's approval of this application would only authorize the construction to proceed, and not ensure that all provisions of applicable codes, regulations, and other laws had been complied with. The duty to ensure compliance rests with individual permit applicants, builders and developers. As a result, the approval of construction plans which are dependent upon accurate surveys, and the City's satisfactory inspections, do not absolve a builder from the legal obligation to comply with applicable laws, such as the SMP and Harbor Line restrictions.

I. Testimony was presented by Richard Williams who introduced himself as the owner of the neighboring Pleasurecraft Marina. He stated he was in favor of the project and doesn't see any problem with the ingress/egress. He added he didn't see the need for any agreements.

J. Testimony was presented by Paul Gustufson who said he knew the history of the marina and said that it had been built closer than the 12 foot set-backs. He added that the way it was built also diminished from the value of the Ross property by not allowing sufficient turning area. He requested the Council's careful consideration of this project to avoid further affects on the surrounding property owners.

CONCLUSIONS

K. Based upon the above findings, the City Council makes the following

conclusions:

1. Parking. Because the Harborview Marina currently has a surplus of 3 conforming parking stalls on site, and the proposed development requires a net increase of 3

parking stalls (with one existing stall being retained for the relocated end moorage slip), no new parking stalls are required under this application.

2. Landscaping.

a. The parking lot was constructed for the Harborview Marina before new parking lot landscaping requirements (GHMC Section 17.78.080) were adopted. There, the parking lot is legally nonconforming with regard to the issue of landscaping. There are no SMP regulations which require a legally nonconforming development to be brought into compliance with the existing SMP when the development is expanded in a manner which does not increase its nonconformity.

b. Although this application requires a net increase of 3 new parking stalls, these stalls currently exist at the Harborview Marina parking lot. No new parking stalls will be constructed.

c. Under GHMC Section 17.78.080, parking lot landscaping and screening requirements are applicable to parking lot areas providing spaces "for more than 10 cars and all nonresidential uses of land and development". (Emphasis added.) Although this application contemplates nonresidential use of land and development, it does not also involve parking for more than 10 cars. No requirement for landscaping is therefore imposed upon this application.

3. Although SMP Sec. 3.05(1)(a) requires a view corridor for all commercial development and restricts parking from being located in required view corridors, there was no requirement for view corridors and restrictions of parking within view corridors at the time the Harborview Marina parking lot was originally approved. The parking within Harborview Marina's view corridor is therefore legally non-conforming.

4. Expansion of Nonconforming Use.

a. The SMP prohibits any additional covered moorage, but this application proposed three new uncovered slips to a legally nonconforming marina.

b. The Council concludes that the SMP provisions relating to nonconforming development apply here, not the zoning code provisions. SMP Sec. 4.14(A) allows nonconforming development to continue "provided that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity". (Emphasis added.)

c. The addition of these three new uncovered slips do not enlarge, intensify, increase or alter the nonconforming development in any way which increases its nonconformity.

5. Harbor Line.

a. SMP Section 3.11(7) and GHMC Section 17.76.020(B) require that any moorage on private property must be at least 12 feet from a side property line unless there is evidence of an agreement among property owners for joint use of common side lot lines.

b. The applicant does not have an agreement with other property owners for joint use of common side lot lines.

c. The applicant's ability to construct two or three slips is also contingent upon the determination of the Harbor Line for Gig Harbor Bay. As a result, the Council concludes that no construction shall take place until the Harbor Line has been finally established, to ensure that such proposed development is in compliance with the determination of the Harbor Commission, and all related state regulations.

d. In addition, the proposed development shall conform to the requirements of SMP 3.311(7) and GHMC Section 17.76.020(B). Any construction of the proposed development must be at least 12 feet from a side property line, notwithstanding that the construction may otherwise be in compliance with the submitted plans, drawings and elevations submitted with the shoreline substantial development application.

6. Pump Out Station. SMP Sec. 3.112(9) requires all new, expanded or renovated existing marinas to have pump out facilities. A pump out facility is therefore required for this permit application because it adds three slips to an existing marina.

DECISION

Based upon these findings and conclusions, review of the exhibits and public testimony, the Gig Harbor City Council hereby approves the shoreline development permit for application No. 94-05, by applicant Charles L. Hunter, subject to the following conditions:

1. Except for the moorage indicated on the submitted site plan, no other moorage is permitted, e.g., no vessels shall be tied to the side of the dock in the required side yard setback and no vessels shall be tied to the end of the dock where any portion of a vessel exists on the outer harbor line.
2. The new slips shall not be covered.
3. Prior to permit issuance, a pump-out facility plan shall be submitted to and approved

by the Gig Harbor Public Works and Planning Departments. The pump-out shall be conveniently accessible to all boats. The pump-out facility shall be installed and operational prior to issuance of an occupancy permit.

4. The project shall comply with all HPA (hydraulics permit) requirements as determined by the Department of Fisheries.
5. The marina fire flow system must be upgraded to provide the protection required under section (6), Appendix II-C, 1991 Uniform Fire Code. Hose stations, fire lines, cross connection control and fire department connections must be provided.
6. A street fire hydrant must be made available within 150 feet of the Marina and fire department connection.
7. A knox box will be required for the gate key if one is not already provided.
8. A complete plan review will be completed upon submittal of plans for a building permit.
9. Signs shall be placed on the northwest side of the expanded moorage facility stating "no moorage allowed".
10. No construction shall take place until the Harbor Line has been finally established.
11. Any construction of the proposed development must be at least 12 feet from a side property line, notwithstanding that the construction may otherwise be in compliance with the submitted plans, drawings and elevations submitted with the shoreline substantial development application.

PASSED by the City Council of the City of Gig Harbor, Washington, and approved by its Mayor at a regular meeting of the Council held on this 27th day of March, 1995.

Gretchen A. Wilbert, Mayor

ATTEST:

Mark E. Hoppen
City Administrator/Clerk