

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE VARIANCE) SHV2009-0001
Application for)
)
Whatcom County) FINDINGS OF FACT,
Parks and Recreation) CONCLUSIONS OF LAW,
) AND DECISION
)

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant requests approval of a Shoreline Variance to expand an existing multi-use dock structure at Silver Lake Park.

Decision: The requested permits are granted, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing.

I.

PRELIMINARY INFORMATION

Applicant: Whatcom County Parks & Recreation Department

Applicant Representative: Mike McAloon

Property Location: Silver Lake Park.
9006 Silver Lake Road – Maple Falls, Washington

Legal Description: Section 07, Township 40 North, Range 06 East, W.M.
Parcel No. 400607-310220

Adjacent Water Body: Silver Lake

Shoreline Designation: Conservancy

Statewide Significance: No

Zoning: Rural Forestry (RF)

Comprehensive Plan: Rural Forestry

Subarea: Foothills Subarea

Authorizing Ordinances: SMP 23.50 Applicability
SMP 23.70 Administration

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.09	Conservancy Shoreline Area
SMP 23.60.03	Variance Permit Criteria
SMP 23.90	General Policies & Regulations
SMP 23.100.09	Moorage: Docks, Piers and Mooring Buoys
SMP 23.110	Definitions

SEPA Review: Mitigated Determination of Non-Significance (MDNS), issued April 27, 2009

Legal Notices: Published – March 25 and May 7, 2009
Posted – May 6, 2009
Mailed – March 24 and April 30, 2009

Hearing Date: May 20, 2009

Parties of Record:

Mike McAloon
Whatcom County Parks & Recreation
9006 Silver Lake Road
Maple Falls, WA 98266

Chad Yunge
Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Supplemental Application
 - 1-2 Warranty Deed
 - 1-3 Letter of Completeness, dated March 23, 2009

- 1-4 Form Letter to Property Owners, dated March 23, 2009
- 1-5 Property Owner labels
- 1-6 Project Narrative
- 1-7 Aerial Photo
- 1-8 Appraisal of the Thompson Property, June 17, 1966

- 2 Staff Report, dated May 18, 2009

- 3 Site Plan

- 4 Float Replacement Project Description

- 5 Hydraulic Project Approval

- 6 Certificate of Mailing, dated April 30, 2009

- 7 Certificate of Posting, dated May 6, 2009

- 8 Legal, dated May 7, 2009

- 9 Certificate of Mailing, dated March 24, 2009, with Notice and Distribution Lists attached

- 10 SEPA, MDNS, dated April 27, 2009

- 11 Letters of Support

II.

The Applicant requests a Shoreline Variance Permit for the proposed expansion of an existing multi-use dock structure at Silver Lake.

III.

The Applicant has indicated that the Staff Report is factually correct. The Applicant stated no objection to the Conditions of Approval recommended by Staff. There was no public comment on this matter at the hearing. The Findings of Fact and Conclusions of Law of the Shoreline Planner of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Staff Report, Exhibit #2, dated May 18, 2009, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

IV.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

The Whatcom County Shoreline Planner has recommended approval of the requested Shoreline Variance Permits in order to expand an existing multi-use dock structure at Silver Lake Park.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit #2, dated May 18, 2009. Subject to the Conditions of Approval recommended by Staff, the Hearing Examiner also concludes that the proposal is consistent with the Goals, Policies, and Purpose of the Shoreline Management Act, RCW 90.58, and with the Goals and Policies of the Whatcom County Shoreline Management Program. The Conclusions of Law adopted by Staff in the Staff Report are incorporated herein as Conclusions of Law.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

A Shoreline Variance Permit is hereby granted to Whatcom County Parks and Recreation to expand an existing multi-use dock structure at Silver Lake Park located on Assessor's Parcel No. 400607 310220, 9006 Silver Lake Road, Maple Falls, Washington. The permit is granted subject to the following conditions:

1. The use, location and size of the improvements on the site as indicated on site plan shall not be modified or changed in any way without further review by the Shoreline Administrator and approval of the Whatcom Hearing Examiner, except as modified by this approval.
2. The Applicant shall obtain a building permit from the Whatcom County Building Services Division prior to any development activity on the subject property.
3. The Applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) and obtain a Hydraulics Project Approval (HPA) or any other approvals as required by WDFW. A copy of the HPA shall be submitted upon application of the required building permit.
4. The proposed ramp shall be constructed of decking designed to allow maximum light penetration.
5. The dock shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Materials used for submerged portions that may come into contact with water shall be approved by applicable state agencies for use in water to avoid

discharge of pollutants from wave splash, rain or runoff. Wood treated with creosote, pentachlorophenol or other similarly toxic materials is prohibited.

6. The dock shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non-reflective.
7. Storage of fuel, oils, and other toxic materials is prohibited on docks and piers except portable containers when provided with secondary containment.
8. The Applicant shall comply with all conditions outlined within the Mitigated Determination of Non-Significance (MDNS) issued April 27, 2009.
9. Construction and/or demolition debris shall be removed from the shoreline area upon completion of the project.
10. The project shall comply with all applicable Federal, State, and local laws and regulations.
11. Construction shall commence within two years of the effective date of the Shoreline Variance as defined by WAC 173-27-090 (3), provided that the Whatcom County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology.

NOTICE

In addition to incurring civil liability under Shoreline Management Program Section 23.80.20 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the act or the Shoreline Management Program or other regulations adopted pursuant thereto shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$25 or more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment; provided that the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000. Any person who willfully violates any court order, regulatory order or injunction issued pursuant to the Shoreline Management Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both.

NOTICE OF ADMINISTRATIVE APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any opponent of record, or any

County department. Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office. After an appeal has been filed and the Council Office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 21st day of May 2009.

Michael Bobbink, Hearing Examiner



May 18, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of Whatcom County Parks & Recreation for a Shoreline Variance Permit		SHV2009-00001 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicant requests approval of a Shoreline Variance Permit to expand an existing multi-use dock structure at Silver Lake Park

Recommendation: Staff recommends approval of the requested Shoreline Variance Permit subject to the conditions of approval.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Whatcom County Parks & Recreation Department

Applicant Representative: Mike McAloon

Property Location: Silver Lake Park.
9006 Silver Lake Road – Maple Falls, Washington

Legal Description: Section 07 Township 40 North, Range 06 East, W.M.
Parcel #: 400607-310220

Adjacent Water Body: Silver Lake

Shoreline Designation: Conservancy

Statewide Significance: No

Zoning: Rural Forestry (RF)

Comprehensive Plan: Rural Forestry

Subarea: Foothills Subarea

B. PROCEDURAL INFORMATION

Authorizing Ordinances: SMP 23.50 Applicability
 SMP 23.70 Administration

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
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SMP 23.60.03	Variance Permit Criteria
SMP 23.90	General Policies & Regulations
SMP 23.100.09	Moorage: Docks, Piers and Mooring Buoys
SMP 23.110	Definitions

SEPA REVIEW: Mitigated Determination of Non-Significance (MDNS) issued April 27, 2009

III. FINDINGS AND CONCLUSIONS

The applicant is requesting approval of a Shoreline Variance Permit to expand and existing multi-use dock located at Silver Lake Park. The existing dock structure is located approximately 40 to 75-feet from the ordinary high water mark (OHWM) of Silver Lake and consists of a six-foot wide by 15-foot long ramp attached to a large deck associated with a lodge structure. A portion of this deck extends waterward of the OHWM of Silver Lake. The ramp rests on an existing float measuring ten-feet in width by six-feet in length. The dock then extends laterally to a distance of 100-feet via a series of five-floats each measuring six-foot wide by 20-feet in length. The proposed expansion consists of replacing the existing ramp and landing float with a single-ramp measuring eight-feet in width by 20-feet in length. In addition, the five floating dock sections will be extended waterward by two-feet and will be extended laterally by two-feet on each end. The proposed expansions will add an additional 250-square feet of total dock area.

The existing dock is located within Silver Lake Park which is owned and operated by the Whatcom County Parks and Recreation Department (WCPR). The existing dock is used primarily for moorage and operation of a fleet of rental canoes and paddleboats by WCPR. According to the applicant, the current design of the dock structure causes damage to the vessels moored thereto due to the exposed pilings along the waterward side of the dock. The proposed expansion will encase the pilings within the dock structure in order to abate this issue. In addition, the increased float and ramp width will make the dock more useable during periods of heavy use and/or by persons with disabilities.

According to 23.100.09.B.8, floats shall not exceed six-feet in width and 20-feet in length in freshwater unless authorized by a variance. In order for a Shoreline Variance to be approved, the proposal must satisfy the criteria of section 23.60.03 of the Shoreline Management Program (SMP). These criteria are set forth and addressed below.

A. That the strict application of the bulk or dimensional criteria in this Program precludes or significantly interferes with a reasonable permitted use of the property.

It is the determination of staff that limiting the float sizes to six-foot by 20-feet does significantly interfere

with a permitted use of the property. As stated previously, the subject property is owned and operated by WCPR as Silver Lake Park. The existing dock structure provides direct access to the shoreline for a substantial number of people through canoe and paddleboat rental operations. According to the applicant, the existing dock structure causes damage to the rental vessels due to the pilings located along the waterward side of the dock and the additional expansion would enclose the pilings within the float structures to eliminate the damage. Replacement with six-foot by 20-foot floats with the pilings located inboard of the structures was also considered; however this would not leave adequate space for the rental operations.

B. That the hardship described in 20.60.181 above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this Program, and not, for example, from deed restrictions or the applicant's own actions.

Staff has determined that the hardship is the result of the strict implementation of the SMP, and not from the applicant's own actions. The limitation on float size does not facilitate the permitted use of the subject property for a water dependent recreational development. As noted previously, locating pilings inboard of a float measuring six-feet by 20-feet does not leave adequate space for safe operation of the boat rental activities at the park.

C. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.

Silver Lake Park is the only public park located on Silver Lake. As such, there is no other permitted development like it in the area. Staff finds the proposal consistent with this criteria.

D. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.

As stated above, Silver Lake Park is the only facility of its kind located on Silver Lake and therefore, granting of the proposed variance would not represent a grant of special privilege according to staff. The expansion of the floats by two-feet waterward of the existing floats represents the minimum necessary to enclose the pilings that cause damage to rental vessels. The additional proposed expansion is minor and will increase usability of the public dock during peak operation and use by persons with disabilities.

E. That the public interest will suffer no substantial detrimental effect.

Silver Lake Park is open to the general public and provides a myriad of recreational activities, including direct access to the water for a substantial number of people. The proposed variance will increase user access and protect recreational vessels available for the use and enjoyment of the general public. As such, staff can see no substantial detrimental effect to the public interest as a result of the proposed expansion.

Section 23.60.185 states that in the granting of all variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of RCW 90.58.020 and should not produce significant adverse effects to the shoreline environment or other users.

Both the existing and proposed expanded public docks are substantial in size in comparison to private recreational docks permitted elsewhere on Silver Lake. Silver Lake Park is the only public park on Silver Lake, and as such additional requests for public docks of this caliber are extremely unlikely on the lake.

V. PUBLIC COMMENTS

No public comment was received during review of this permit application that was in opposition of the proposed dock expansion.

VI. AGENCY COMMENTS

No agency comments were received during the review of this permit application.

VI. RECOMMENDATIONS

Based on the above findings and technical review, Staff recommends approval of the request for a Shoreline Variance, subject to the following conditions of approval:

- 1. The use, location and size of the improvements on the site as indicated on site plan shall not be modified or changed in any way without further review by the Shoreline Administrator and approval of the Whatcom Hearing Examiner, except as modified by this approval.*
- 2. The applicant shall obtain a building permit from the Whatcom County Building Services Division prior to any development activity on the subject property.*
- 3. The applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) and obtain a Hydraulics Project Approval (HPA) or any other approvals as required by WDFW. A copy of the HPA shall be submitted upon application of the required building permit.*
- 4. The proposed ramp shall be constructed of decking designed to allow maximum light penetration.*
- 5. The dock shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Materials used for submerged portions that may come into contact with water shall be approved by applicable state agencies for use in water to avoid discharge of pollutants from wave splash, rain or runoff. Wood treated with creosote, pentachlorophenol or other similarly toxic materials is prohibited.*
- 6. The dock shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non-reflective.*
- 7. Storage of fuel, oils, and other toxic materials is prohibited on docks and piers except portable containers when provided with secondary containment.*
- 8. The applicant shall comply with all conditions outlined within the Mitigated Determination of Non-Significance (MDNS) issued April 27, 2009.*

9. *Construction and/or demolition debris shall be removed from the shoreline area upon completion of the project.*
10. *The project shall comply with all applicable federal, state and local laws and regulations.*
11. *Construction shall commence within two years of the effective date of the Shoreline Variance as defined by WAC 173-27-090 (3), provided that the Whatcom County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology.*

Report prepared by:

Chad J. Yunge

Whatcom County Shorelines Administrator

Planning and Development Services – Land Use & Natural Resource