

**CITY OF GIG HARBOR
RESOLUTION #507**

WHEREAS, Robert Philpott has requested site plan approval, shoreline substantial development permit approval and shoreline conditional use permit approval to construct a fuel dock and develop a parking lot on the upland portion of the site; and,

WHEREAS, Robert Philpott has requested a variance allowing a two foot parking encroachment into the side yard setback; and

WHEREAS, GHMC Section 17.10 (as effective at the date of application) specifies procedures for reviewing variances, site plans and shoreline substantial development permits and shoreline conditional use permits; and,

WHEREAS, the Planning Department for the City of Gig Harbor has recommended denial of the requested variance, and conditional approval of the requested site plan, shoreline substantial development permit and shoreline conditional use permit in a staff report dated February 7, 1996; and

WHEREAS, the following events occurred in processing Mr. Philpott's application:

1. The City of Gig Harbor Hearing Examiner conducted a public hearing on the applications on December 20, 1995 to accept public comment on the site plan, variance, shoreline substantial development permit and shoreline conditional use permit requests; and,
2. The City of Gig Harbor Hearing Examiner conducted another public hearing on the applications on February 7, 1996 because a recorded transcript of the December 20, 1996 meeting was not available due to failure of recording equipment; and,
3. The City of Gig Harbor Hearing Examiner made specific findings and conclusions and denied the requested variance, and recommended conditional approval of said site plan, shoreline substantial development permit and shoreline conditional use permit in his report dated February 21, 1996; and,
4. Adam and Maxine Ross requested in a letter dated May 4, 1996 that the Hearing Examiner reconsider his recommendation on the site plan, shoreline substantial development permit and shoreline conditional use permit; and,
5. The Planning Staff responded to Adam and Maxine Ross' statements in a memo to the Hearing Examiner dated March 18, 1996 which addressed the concerns identified in the Ross letter; and,
6. After reconsideration of the entire record, the Ross letter of May 4, 1996 and the Planning Department memo of March 18, 1996, the Hearing Examiner issued his

decision (dated March 27, 1996), which affirmed his recommendation of February 21, 1996, except for the modification of a condition imposed on the shoreline substantial development permit and shoreline conditional use permit recommendation #D2; and,

7. Notice of the Hearing Examiner's decision on reconsideration was mailed to the Ross' on March 27, 1996, in a letter of the same date; and,
8. A timely appeal of the Examiner's recommendation on the site plan and shoreline/conditional use permit request was filed by Adam and Maxine Ross on April 10, 1996 requesting that the Council deny the application, claiming it as "not being authorized but being contravened by applicable Gig Harbor laws"; and,
9. On May 13, 1996, the City Council considered the appeal by Adam and Maxine Ross of the Hearing Examiner's decision on reconsideration on the Philpott applications; and
10. The City Council remanded the Philpott applications back to the Hearing Examiner, for the Examiner's consideration of: (1) feasibility of ingress and egress of fuel trucks; and (2) the use of the proposed fuel dock for moorage and fueling; and
11. On June 19, 1996, the Hearing Examiner held a public hearing to hear testimony, review evidence and consider these two items as directed by the City Council; and
12. On July 16, 1996, the Hearing Examiner issued his recommendation to the City Council on these two items; and
13. The City received a timely appeal of the Hearing Examiner's recommendation from Robert Philpott, through his attorney Alexandra Smith (letter dated July 30, 1996); and

WHEREAS, Ordinance 711 established review procedures for applications submitted after April 1, 1996; and the application for the proposed development was submitted prior to April 1, 1996; and,

WHEREAS, Section 17.10.160 of the pre-March 1996 Gig Harbor Municipal Code establishes procedures for hearing appeals of the Hearing Examiner's decision, and

WHEREAS, on September 23, 1996, the City Council considered the Philpott applications for a site plan, shoreline substantial development permit, shoreline conditional use permit, the record of the applications and the Philpott appeal of the Hearing Examiners' July 16, 1996 recommendation on reconsideration; and

WHEREAS, on October 14, 1996, the City Council moved to remand back to the Hearing Examiner Mr. Philpott's application to consider Section 5202.11.5.5 of the Uniform Fire Code which prohibits smoking or open flames within 50 feet of fueling operations; and

WHEREAS, the following events occurred in processing Mr. Philpott's application after the City Council's remand back to the Hearing Examiner:

1. A hearing on the remand was held on November 13, 1996. The applicant submitted a statement by B.L. Hansen who was an expert witness in favor of the Philpott application regarding conformance to fire code standards.
2. After considering the input of Mr. Hansen and other parties of record, the Examiner concluded in his report dated December 31, 1996 that the subject section of the fire code should be implemented essentially as written with little deviation from the 50-foot distance requirement.
3. The Examiner's decision was appealed to the City Council by the applicant, which was heard by the Council on February 10, 1997. Included with the appeal was a recommendation from City Attorney Carol Morris to allow the issue of fire code compliance to be determined by the City's Fire Marshal and not the Hearing Examiner or City Council.
4. The City Council deferred taking any further action on the application until after the Fire Marshal had a chance to determine if the proposed project met fire code compliance. The Council therefore remanded the issue stated in the appeal to the Fire Marshal.
5. After reviewing the proposed mitigation for fire code compliance as proposed by Mr. Philpott and as attested by his expert witness, Fire Marshal Steve Bowman found that the proposed methods for fire code compliance, as attested by Mr. Philpott's expert witness, provided satisfactory compliance to UFC Section 5202.11.5.5, as determined in Mr. Bowman's decision dated March 13, 1997.
6. Mr. Bowman's decision was appealed to the Building Code Advisory Board (BCAB) by Adam Ross and Stan Stearns because they indicated that the installation of the fuel dock was in non-conformance with the fire code. The BCAB found in favor of one appellant, which would have given cause for project denial.
7. Mr. Philpott appealed the BCAB's decision to the Pierce County Superior Court which ultimately determined that Mr. Bowman's decision was correct, therefore rendering the project approvable under fire code requirements; and,

WHEREAS, The Shoreline Master Program (SMP) provides an exemption from Regulation No. 1 in Section 3.05 of the SMP. This exemption is contained in Regulation No. 4, Section 3.05 of the SMP, and reads as follows:

An applicant need not provide public access where one or more of the following

conditions apply:

- a. Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;
- b. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
- c. The cost of providing the access, easement or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development;
- d. Unacceptable environmental harm will result from the public access provisions and the proposed use and or adjacent uses would occur and cannot be mitigated.
- e. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated; and,

WHEREAS, The Shoreline Master Program allows an applicant to meet any of the conditions of Regulation No. 4, Section 3.05 of the SMP by demonstrating that all reasonable alternatives have been exhausted, as described in Regulation No. 5, Section 3.05; and

WHEREAS, The Council finds that applicant's fuel dock proposal is incompatible with transient moorage and that all reasonable alternatives have been exhausted, for the following reasons:

- a. The applicant has proposed to operate the fueling station during the hours of 7:00 a.m. and 7:00 p.m. If boaters are allowed to tie up their vessels to the fuel dock when the fueling station is not operated, their activities would be unsupervised. Such unsupervised activities may include smoking next to fuel pumps, overnight stays, use of camp stoves and other ignition devices. These activities are incompatible with close proximity to a fueling station, and would result in a safety hazard to the public.
- b. The hazard presented to the public described above cannot be prevented by any practical means, other than to prohibit all transient moorage at the fueling station.
- c. There are no transient moorage design features the applicant can incorporate into his plans for this use which satisfy security requirements, because vessels will arrive by water.
- d. The cost of providing safe transient moorage at this fuel dock is unreasonably disproportionate to the total long-term cost of the proposed development. In order for the applicant to provide safe transient moorage at this location, the

applicant would be required to hire personnel to supervise all activities at the fuel dock, including the hours of 7:01 p.m. to 6:59 a.m., every day.

- e. Significant undue and unavoidable conflict between the transient moorage and the fueling dock cannot be mitigated. A fire or explosion could occur at the fueling dock as a result of lawful, but careless activities, such as a transient boater's smoking near the dock; and,

WHEREAS, the City Council has determined that the proposed site plan and shoreline/conditional use permit is consistent with City codes and policies regulating the same;

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

The City Council hereby adopts by reference the findings and conclusions of the Hearing Examiner on the Philpott site plan as contained in his recommendation on reconsideration dated February 21, 1996, and as modified in his recommendation on reconsideration dated July 16, 1996; **PROVIDED**, that the Council does not adopt the Hearing Examiner's conclusions in his July 16, 1996 report under Section B, NO. 2 on page 6, and the Hearing Examiner's recommendation under Section C, No. 2 on page 6. The following conditions of approval are hereby imposed on the Philpott site plan, substantial development permit, and Shoreline Conditional Use Permit:

Site Plan Conditions of Approval:

1. Prior to permit issuance, a final landscape and irrigation plan shall be submitted to and approved by the City Planning Staff which is consistent with all zoning code requirements for landscaping. Landscaping shall be installed as approved prior to issuance of the occupancy permit. In lieu of the required landscape improvements, a bond or cash assignment in the amount equal to 110% of a contractor's bid shall be posted with the city. If landscaping is not installed within 18 months from the date of posting of the bond or cash assignment, the city will foreclose on the bond or cash assignment and install the landscaping as per the approved plan.
2. Prior to permit issuance, a master sign plan shall be submitted to and approved by the planning staff which meets the requirements of all sign code requirements including Section 17.80.031(K).
3. Prior to permit issuance, details of the dumpster screen shall be submitted to and approved by the Planning Staff.
4. Prior to permit issuance, a lighting plan must be submitted to and approved by the planning staff which is consistent with GHMC Section 17.48.090(D).

5. The project shall comply with the requirements of the city building code.
6. All off-street parking for the businesses shall be clearly indicated on site and must be striped.
7. Any future tenancy of all of the commercial/office buildings shall meet permitted or conditional use requirements of the zoning code, per section 17.48.020 and .030.
8. The project shall be reviewed by the Planning Department to ensure compliance with all Design Manual standards.

Shoreline Substantial Development and Conditional Use Permit Conditions of Approval:

1. The applicant shall submit to the City a covenant executed between the property owner/applicant and the adjacent property owner (DNR) covering the agreement for the joint use of common lot lines and which establishes by covenant minimum ingress/egress requirements.
2. All fuel deliveries shall be conducted entirely on-site. Fuel trucks must be small enough to use the defined parking spaces for deliveries. All fuel deliveries shall occur between the hours of 7:00 a.m. and 7:00 p.m.
3. The project shall conform to all City of Gig Harbor fire code requirements as approved by the City's Fire Marshal.
4. Only water-dependent, water-oriented or water-enjoyment uses shall be allowed in the existing building over the water.
5. Prior to permit issuance, a lighting plan shall be submitted which is consistent with SMP Section 3.05.
6. All upland fill required to bring the parking lot into compliance with the maximum grade requirements of the city shall be engineered by a licensed professional engineer and shall be retained by suitable retention devices, as per the engineers recommendation. Fill shall not be permitted waterward of the existing bulkhead.
7. All on-site construction shall provide adequate temporary storm water- retention and shall include provisions for temporary erosion and sediment control as per requirements of the City of Gig Harbor Public Works Construction Standards.
8. This development is exempt from the requirement for a view/access opportunity, along with the proposed transient moorage intended to meet said requirement, pursuant to

Section 3.05(4) of the City of Gig Harbor Shoreline Master Program. No transient moorage or public access shall be allowed on the fueling dock.

9. The fueling dock must have fuel spillage containment systems in place prior to operation. Such facilities shall be subject to the authorization and approval of the appropriate state and or federal agency.
10. All fuel sales shall be limited to the hours of 7:00 a.m. to 7:00 p.m.

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 24th day of November, 1997.

Gretchen A. Wilbert, Mayor

NOTE: Mayor refused to sign pursuant to RCW 35(A) 12.130. The Resolution shall be in effect without the Mayor's approval.

ATTEST:

Molly M. Towslee
City Administrator/Clerk

Filed with City Clerk: 11/17/97
Passed by City Council: 11/24/97