

## **RESOLUTION NO. 456**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE FINDINGS, CONCLUSIONS AND DECISION OF THE CITY COUNCIL ON THE APPLICATION FOR CONDITIONAL USE PERMIT 94-06, VARIANCE 95-08 AND SITE PLAN 94-05 FOR MONUMENT CONSTRUCTION COMPANY (ARABELLA'S LANDING).**

**WHEREAS**, the Council is required by law to make findings, conclusions and a final decision on Site Plan application SPR 94-05; and

**WHEREAS**, the City has received three appeals of the Hearing Examiner's decision on the Conditional Use Permit CUP 94-06 and Variance VAR 95-08, and the Council is therefore required to also make findings, conclusions and a decision on these appeals; now, therefore,

### **THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

1. The applicant is Stanley Stearns, Monument Construction, Inc. (Arabella's Landing), and the subject property is located at 8215 Dorotich Street.

2. The applicant requests three approvals: (a) a site plan for the proposed Arabella's Landing commercial/retail and office space under Chapter 17.96 GHMC; (b) a conditional use permit to allow a yacht club on the property under Section 17.48.030 GHMC; and (c) a variance from the parking standards of Sections 17.48.070 and/or 17.72.030(Q) GHMC.

3. The property is located in the Waterfront Millville (WM) zoning district, Chapter 17.48 GHMC. In this zoning district, the maximum building height is 16 feet (Section 17.48.070.) Additional height may be permitted up to 24 feet if two additional waterview/access opportunities are provided and certain criteria are met. (Id.) The applicant proposes to build a structure which will be 24 feet in height above the main plaza level.

4. **Staff Report.** The City Staff prepared a report on the applications, dated August 23, 1995. In this report, the Staff described the proposal to build a structure housing 4,430 square feet of office/retail space, 2625 square feet for yacht club assembly area (less 825 square feet for kitchen and foyer area) and 6,615 square feet for open plaza area. The combined 13,670 square feet requires 30 parking stalls for the yacht club assembly area, 15 parking stalls for the retail/office space, 41 spaces for moorage, 4 parking spaces for the existing duplex on the property and 2 parking spaces for the existing single family residence on the parcel, for a total of 92 required parking spaces. (Staff Report, p. 6.) The applicant proposes to provide 65 parking spaces.

The Staff recommended denial of the variance because it did not meet the minimum variance criteria. (Staff Report, p. 16.) The Staff recommended that the conditional use permit and site plan be approved, subject to certain conditions.

5. **Hearing Examiner.** On August 23, 1995, the City Hearing Examiner held a hearing on the above applications. The Hearing Examiner issued his written decision on September 22, 1995, which included the following conclusions and decisions with regard to each of the applications:

A. Variance. The Hearing Examiner determined that because the proposed development was located in the Waterfront Millville zoning district, the specific parking requirements in the Waterfront Millville district were applicable. (Hearing Examiner decision of September 22, 1995, p. 4-5.) These requirements are:

**17.47.070 Parking and Loading Facilities.** Parking and loading facilities on private property shall be provided in accordance with the requirements of Chapter 17.72 GHMC, except that where there are properties serving multiple uses, parking shall be provided for the combined total of the individual uses.

The applicant argued that Section 17.72.030(Q)(4) applied to this development. Section 17.72.030(Q)(4) reads:

Q. For marinas, moorages, and docks:

... 4. If commercial or residential development is to be combined with a watercraft usage requiring parking, the usage which generates the larger number of spaces shall satisfy the requirements of the other usage.

Because the Hearing Examiner determined that the language in Section 17.48.070 was designed to supersede Section 17.72.030(Q)(4) in the Waterfront Millville district, he determined that the applicant's proposal did not contain the required number of parking spaces, and a variance was necessary. (Id., at p. 4-5.)

With regard to the applicant's compliance with the variance criteria, the Hearing Examiner found:

- 1) Section 17.66.030(B)(2): There were no special circumstances applicable to the property such as topography, size, shape or location which is not applicable to other property in the district. On the contrary, the large size and gentle slope of the applicant's parcel allows more development opportunities than most other waterfront parcels. Other nearby developments cited by the applicant as similar examples either comply with the existing code provisions, met the criteria for an approval of a variance, or were approved in accordance with previous code provisions.

- 2) Section 17.66.030(B)(3): In this case, the applicant has cited the unique nature of his proposed yacht club as a special circumstance. He has argued that the bulk of the yacht club members will arrive by boat, not by car. He contends his proposal should not be held to the same parking requirements as a typical yacht club. Therefore, the applicant is in a sense asking for a use variance, not a typical dimensional variance. While a yacht club is conditionally allowed as a use in the Waterfront Millville zone, it is only allowed if it meets all of the criteria and standards including parking. Here, the applicant has argued that his yacht club should not be held to the same standard as other yacht clubs and that a variance from the parking requirements is warranted.
- 3) Section 17.66.030(B)(4): The granting of the variance will constitute a special privilege inconsistent with limitations upon other properties in the vicinity and zone. As noted above, other properties in the area either comply with existing code provisions, met the criteria for approval of a variance, or were approved in accordance with previous code provisions. None of the nearby developments can be looked to as a basis for approval of this variance request.
- 4) Section 17.66.030(B)(5): The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated if use of the yacht club facility is limited to boat traffic, but will be detrimental to the public welfare if the yacht club is served extensively by automobile traffic. It is believed that conditions of approval which would limit the use of the club to those patrons or members coming by boat would be largely unenforceable and the use of a security gate (as recommended by the applicant) may actually result in exacerbating the parking problem in the area if people without proper security clearance come into the yacht club by automobile.
- 5) Section 17.66.030(B)(6): The variance is not the minimum variance necessary to make a reasonable use of the land. A marina with a marina building, a duplex, a single family house, a boathouse, a shed and two garages already exist on the property. One garage is to be demolished as part of this proposal and could still be demolished to provide space for a more intense use, but something less in intensity than is proposed at this time.

(*Id.*, p. 5-6.) Because not all of the criteria in Section 17.66.030 were met, the Hearing Examiner denied the variance. The Hearing Examiner's decision on a variance is final, unless appealed to the City Council. Section 17.66.030(7).

B. Conditional Use Permit. The Hearing Examiner made the following conclusions with regard to the conditional use permit application's compliance with the following criteria:

- 1) Section 17.64.040(A): A conditional use is a use that has been legislatively determined to be allowed within a given zone if appropriate conditions can be imposed to ensure compatibility with those uses which are permitted as a matter

of right within that zone. A conditional use thus carries a fairly heavy assumption of acceptability within the zone it includes. In consideration of any conditional use permit application, the Examiner is required to consider the degree of compatibility which would exist between the use and its particular surroundings and may impose such conditions as are necessary to ensure compatibility. If compatibility can be ensured, then the permit should be approved.

- 2) Section 17.64.040(A): The proposed yacht club is conditionally permitted within the Waterfront Millville zone provided it is determined to be compatible with the surrounding uses.
- 3) Section 17.64.040(B): The granting of the CUP to allow a yacht club on the subject site will not be detrimental to the public health, safety, comfort, convenience and general welfare, provided that it meets the code requirements for parking, that its hours of operation are limited to minimize adverse impacts on the established character of the surrounding neighborhood, and that its use be limited to yacht club activities only.
- 4) Section 17.64.040(C): The yacht club is proposed to be located on the site in such a manner that the office/retail uses would serve as a buffer between the yacht club and the single family residences on Harborview. Also, the yacht club as proposed can be adequately served by public facilities and street capacities without placing an undue burden on those facilities and streets.
- 5) Section 17.64.040(D): The site, while large for the Waterfront Millville District, is not of adequate size to accommodate code required parking for all of the uses within the structure proposed. The yacht club for which the conditional use permit is required should only be approved if adequate parking is provided. Therefore, the site plan will need to be revised to provide adequate parking for the yacht club.

(*Id.*, p. 6-7.) The Hearing Examiner may only approve a CUP if all of the criteria in Section 17.64.040 are met. The Hearing Examiner approved the CUP subject to five conditions, one of which was the provision of the code required parking. (*Id.* p. 7-8.) His decision on the CUP is final, unless appealed to the City Council. Section 17.10.100(A)(1)(a).

C. Site Plan. The Hearing Examiner made the following conclusions with regard to the application's compliance with the Site Plan criteria:

- 1) Section 17.96.030(B)(1): The proposal is generally consistent with the goals and policies stated in the City's comprehensive plan.
- 2) Section 17.96.030(B)(2): The proposed development is consistent with allowed or conditionally allowed uses in the Waterfront Millville zone.

- 3) Section 17.96.030(B)(3): The proposed site plan provides only 70 percent of the code required parking and is not consistent with the city's zoning ordinance. Therefore, the proposed site plan should not be approved as requested. If the proposal is reduced in intensity with respect to parking, or if parking is provided off-street in accordance with the code, the site plan will be reviewed again by the City.

(*Id.*, p. 7.) The Hearing Examiner recommended denial of the site plan because it did not meet the parking requirements. (*Id.*, p. 8.) His decision on a site plan application is a recommendation, and the City Council makes the final decision. Section 17.10.100(A)(2)(d).

6. On October 5, 1995, the City received an appeal of the Hearing Examiner's decision on the CUP from Robert Frisbee.

7. On October 6, 1995, the City received an appeal of the Hearing Examiner's decision on the CUP from Peter Katich, which appeal was amended on October 9, 1995.

8. On October 10, 1995, the City received an appeal of the Hearing Examiner's decision on the CUP and variance from Stanley Stearns and Gig Harbor Marina, Inc., d/b/a Arabella's Landing.

9. Appeals of the Hearing Examiner's decision must be received by the City within 14 days from the date the final decision of the examiner is received. Section 17.10.160. Notice of the Examiner's decision was sent to the applicant and all parties of record with an appeal deadline of October 7, 1995, but because this was a Saturday, and the following Monday was a holiday, the deadline was extended to October 10, 1995.

10. The City Council considered the appeals and the Hearing Examiner's recommendation on the site plan at their regularly scheduled public meeting on October 23, 1995.

11. The following exhibits were received by the Council at the October 23, 1995 meeting:

A. Memo to Mayor Wilbert and City Council Members from Planning Staff, dated October 23, 1995;

B. Draft City of Gig Harbor Resolution # 456;

C. Hearing Examiner's Findings, Conclusions and Decision/Recommendation on Case No. SPR 94-05, CUP 94-06, VAR 95-08, dated September 22, 1995;

D. Staff Report to Hearing Examiner on SPR 94-05, SUP 94-06, VAR 95-08, dated August 23, 1995;

E. Copy of Site Plan of proposed development, 1 page; Harbor Elevation and Harborview Drive, 1 page; Dorotich St. Elev., 1 page;

- F. Letter to City Councilmembers from Robert G. Frisbie, dated October 4, 1995;
- G. Letter to Ray Gilmore from Peter Katich, dated October 6, 1995;
- H. Letter to Ray Gilmore from Peter Katich, dated October 9, 1995;
- I. Notice of Appeal of Hearing Examiner Decision to the City of Gig Harbor from Stanley Stearns and Gig Harbor Marina, signed by Thomas Oldfield.

12. The Mayor identified the applications to be considered by the Council, and asked whether the Councilmembers had any ex parte contacts or appearance of fairness issues to disclose. Councilmember Markovich stated that he received a telephone conference call a couple of months before from Mr. Sloan and Mr. Oldfield (applicant's attorneys), in which they expressed their unhappiness with the progress of the permit processing at the City. Councilmember Markovich stated that the conversation was very brief and he didn't recall anything else about the substance of the conversation.

The Mayor then asked for a ruling from the City Attorney on the disclosure. The City Attorney asked Councilmember Markovich whether the conversation affected his ability to make an impartial decision on the applications before the Council, and he responded that it did not affect his ability to be impartial at all. Councilmember Markovich participated in this decision.

The Mayor asked if any member of the public wished to challenge any member of the Council on the grounds of appearance of fairness, and there was no response. The Mayor informed the public that the Council's consideration of the applications would be on the record before the Hearing Examiner, and there would be no new testimony presented.

13. **Staff Presentation:** Planner Steve Osguthorpe briefly explained the proposal. He stated that the parking was the biggest issue with regard to these applications because the code requires 92 parking spaces, and the applicant proposes to only provide 65. Mr. Osguthorpe further stated that the yacht club parking requirement was based upon the City Building Code occupancy classification. The number of parking spaces required for a yacht club is greater than for office space.

Councilmember Markovich asked Mr. Osguthorpe whether the Hearing Examiner gave consideration to the height of the proposed structure, and if height was also the subject of a formal request for a variance. Mr. Osguthorpe explained that there is a process to allow additional height of up to 24 feet within the Waterfront Millville District under Section 17.48.060, if two waterview/access amenities are provided. According to Mr. Osguthorpe, the Hearing Examiner determined that the prior development on the site had provided these two amenities, and so additional height could be allowed.

Councilmember Owel asked Mr. Osguthorpe whether the Hearing Examiner's decision on the height issue considered a 1993 agreement signed by the applicant which addressed interpretation of Section 17.48.060 as to this property and any future development. Mr.

Osguthorpe replied that while the staff had reviewed this agreement, it was not entered into the evidence at the Hearing Examiner hearing.

14. Mr. Robert Frisbie, 9720 Woodworth Avenue, Gig Harbor, testified that he appealed the Hearing Examiner's decision because the Examiner revised the applicant's site plan.

Mr. Frisbie stated that the Examiner could give the applicant the opportunity to revise his own site plan, but the Examiner could not modify the site plan for the applicant.

Mr. Frisbie explained that because the Examiner did not state where the required parking had to be provided, there was the possibility that the decision could be interpreted to allow the applicant to provide parking off-site. He then began a description of a situation involving the City and an agreement for use of a dock and parking. The City Attorney interrupted him and reminded him that no additional evidence was allowed on appeal.

15. Peter Katich, 3509 Ross Avenue, Gig Harbor, stated that in his appeal, he was representing himself, his wife, Jake and Pat Bujacich, Bruce and Linda Dishman, Clark and Nancy Eaton and Adam and Sherry Ross. All live in close proximity to the proposed development and believe that the Hearing Examiner erred in decided to grant the CUP for the yacht club.

Mr. Katich testified that this neighborhood is unique, as it is comprised of single family dwellings and small commercial businesses, which in conjunction with substantial open space and the marine orientation, provide a village-like character and a very high quality of life. The preservation of the unique character has been formally recognized by the City in the adoption of the Waterfront Millville zoning district and the development regulations which are designed to ensure that this character is not adversely impacted by new development activity. Mr. Katich stated that the proposed development would be utilized continually and be an ongoing nuisance to his quiet neighborhood.

Regarding the issue of frequent use, Mr. Katich noted that the applicant had testified on the record before the Hearing Examiner as to his association with numerous yacht clubs from all over Puget Sound and his intention to make this site a destination for all boaters in the region. Mr. Katich stated that the anticipated success of the yacht club, and its subsequent frequent and heavy use, is the reason he feels that the club will impose adverse impacts on the neighborhood.

In addition, Mr. Katich gave his opinion that the intensity and operational characteristics of a yacht club -- which are similar to a restaurant -- are such that significant parking and noise problems will occur from nighttime and weekend use. This will not only impact the comfort and convenience of the neighborhood and the families living there, but also negatively impact the character of the area and the value of the surrounding property.

Finally, Mr. Katich described the manner in which the Hearing Examiner's decision did not consider the necessary criteria for approval of a CUP. Section 17.64.040(D) clearly requires

that all required parking be provided for a CUP, and the Hearing Examiner's decision which conditionally approves the CUP, is erroneous.

16. Thomas Oldfield, attorney for Stanley Stearns, testified on behalf of the applicant. He noted that if the proposed development were built and used entirely as a professional office, it could be built in that zone without a variance or without a CUP. However, a yacht club is treated as an assembly occupancy, which increased the parking requirement, and under the City staff's interpretation of the zoning code, there was insufficient parking. Mr. Oldfield stated that the applicant had a difference of opinion with the City regarding the applicability of the parking requirement in Section 17.48.070 in the Waterfront Millville district. He explained that this section required the parking requirements to be totalled if there were multiple uses. According to Mr. Oldfield, this is the interpretation used throughout the City.

The second requirement relating to parking is in Section 17.72.030(Q)(4), which refers to residential and commercial uses that are combined with a watercraft related use. Mr. Oldfield gave his opinion that under this section, the use requiring the higher level of parking is the use that will control. He stated that the applicant had tried to make it abundantly clear that the yacht club facility is inexorably tied to the marina facility. According to Mr. Oldfield, the applicant proposed limitations on the use so that only a small portion of the people using the facility could arrive other than by water. The membership in the yacht club was also restricted, under the bylaws submitted by the applicant, to people who are residents and are utilizing the Arabella's landing facility. Mr. Oldfield explained that the proposed yacht club is not a disguised restaurant, and a person cannot come up and buy a membership and dinner.

Councilmember Platt asked Mr. Oldfield how many slips in the marina were permanent slips, and the latter responded that there were 30 permanent and 18 transient. Councilmember Platt then asked whether the yacht club would have 30 members and any other persons who had their boat tied at the marina. Mr. Oldfield replied that the moorage patrons of the marina could either be a yacht club member or have guest privileges as a member of the yacht club. Mr. Oldfield further explained that people coming into the yacht club by boat would have guest privileges, but there would be no ability for a person to come into the yacht club on foot or by car and obtain guest privileges. Mr. Oldfield was also asked whether a person visiting a boatowner would be allowed to join the yacht club, and he responded that the visitor would be allowed as the boater's guest.

Councilmember Owel asked Mr. Oldfield about the definition of membership in the yacht club, and stated that in her review of the bylaws provided by the applicant, she could not find a clear definition. Mr. Oldfield replied that there were problems defining a yacht club in the City code. He noted that while another yacht club currently exists in the City, this club does not have moorage facilities.

On the issue of adverse impacts of the development on the neighborhood, Mr. Oldfield stated that the applicant proposed one condition of approval which would require that there could be no activity in the club that would have any noise audible off site. He found the Examiner's condition that the doors and windows be shut during any activity at the club to be unreasonable.

Mr. Oldfield pointed out that Mr. Stearns had refused to allow a wedding reception to take place at Arabella's Landing recently, and the same wedding party ended up at the City municipal dock with a band until midnight.

Councilmember Picinich asked Mr. Oldfield whether the moorage patrons from both Arabella's Landing and Bayview Marina would be yacht club members. Mr. Oldfield stated that the yacht club would operate in conjunction with both marinas, and that the Bayview Marina only had 9 slips.

Councilmember Ekberg asked Mr. Oldfield how many marina moorage spaces were there, because the project was originally approved for 48 slips and the Staff counted 51, while the applicant's submittals stated that 12 of the 68 marina moorage spaces were limited to transient moorage. Mr. Oldfield stated that about one third of the moorage spaces are not rented on a monthly basis, and are held for transient use.

Councilmember Platt asked Mr. Oldfield if a person pulling his boat into the marina could become a member of the yacht club for the day, and whether membership could be bought one day at a time. Mr. Oldfield replied that a person who was a moorage guest would be extended the privileges of the yacht club.

Mr. Oldfield again addressed the parking issue, and mentioned that the provisions regarding multiple uses in the Waterfront Millville district and the provision regarding uses combined with a watercraft usage can and should be harmonized so that a use which reduces parking demand should have a lower parking requirement. He also mentioned that the proposed development has substantially less density than several surrounding structures.

Finally, Mr. Oldfield stated that an equal protection issue had arisen because of an application before the Hearing Examiner where the City was not recommending that the required parking be provided. The City Attorney reminded Mr. Oldfield that no new testimony could be presented.

17. There were no other persons who wished to speak and the public testimony portion of the meeting was closed.

## **FINDINGS AND CONCLUSIONS**

18. Variance. In order to grant a variance, the Hearing Examiner must find that all of the following criteria are met:

- A. The proposed variance will not amount to a rezone nor authorize any use not allowed in the district;
- B. Special conditions and circumstances exist which are peculiar to the land such as size, shape, topography or location, not applicable to other land in the same district and that literal interpretation of the provisions of this title would deprive the property owner

of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title;

C. The special conditions and circumstances do not result from the actions of the applicant;

D. Granting of the variance requested will not confer a special privilege that is denied other lands in the same district;

E. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated;

F. The hearing examiner shall further making a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land.

Section 17.66.030(B).

The Council is reviewing the Hearing Examiner's decision on the variance on appeal. In its review of that record and after receipt of the above testimony and evidence, the Council affirms that portion of the Hearing Examiner's decision which concluded that because the development is located in the Waterfront Millville zoning district, the specific parking requirements in that district (Section 17.47.070) are applicable. As a result, the Council also affirms the Hearing Examiner's decision that because the applicant's proposal did not contain the required number of parking spaces, a variance was necessary.

Because Section 17.66.030 GHMC requires the Hearing Examiner to find that all of the variance criteria have been met in order to approve a variance, and the Examiner did not find that Sections 17.66.030(B)(2), (B)(3), (B)(4), (B)(5) or (B)(6) were satisfied, the Council affirms the Examiner's denial of the variance. The testimony and evidence presented demonstrate that the applicant was only proposing to provide 70% of the required parking for the development. While the evidence did not show that the proposed variance would amount to a rezone, no evidence was presented to demonstrate that any special conditions or circumstances existed which were (1) peculiar to the land; (2) not applicable to other land in the same district; or that the property owner would be deprived of rights commonly enjoyed by others in the district if the code were enforced literally. Quite to the contrary, this particular property allowed more development opportunities than most other waterfront parcels. Because no such special conditions were shown, the Council did not make a finding whether the special conditions resulted from the actions of the applicant.

Given that the code parking requirements were not met for the proposed development, the applicant failed to meet his burden to show how the provision of only 70% of the code-required parking would not be materially detrimental to the public welfare or injurious to the property or improvements in the surrounding area. Finally, no evidence was submitted by the applicant to

demonstrate that the applicant's intended provision of only 70% of the code required parking was the minimum variance needed to make possible the reasonable use of the property.

19. Conditional Use Permit. In order to grant a Conditional Use Permit (CUP), the Hearing Examiner must find that all of the following criteria are met:

1. That the use for which the conditional use permit is applied for is specified by this title as being conditionally permitted within, and is consistent with the description and purpose of the zone district in which the property is located;
2. That the granting of such conditional use permit will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located;
3. That the proposed used is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and further, that the use can be adequately served by such public facilities and street capacities without placing an undue burden on such facilities and streets;
4. That the site is of sufficient size to accommodate the proposed use and all yards, open spaces, walls, and fences, parking loading, landscaping and other such features as are required by this title or as needed in the opinion of the examiner.

#### Section 17.64.040.

The Council is reviewing the Hearing Examiner's decision on the CUP on appeal. After reviewing that record, the evidence and testimony presented, the Council reverses the Examiner's conditional approval of the CUP. Significantly, the Examiner has premised his approval on the condition that the applicant provide the parking spaces required by the City code, yet under the above criteria in Section 17.64.040, a CUP cannot be granted approval unless the code requirements for parking are met.

In his decision, the Examiner found that the proposed development is not of adequate size to accommodate the code required parking for all of the proposed uses, as required by Section 17.64.040(D). While evidence was also submitted on the adverse effect the proposed development might have on the surrounding neighborhood, the Examiner's failure to find that this CUP application complied with at least two of the mandatory criteria for approval on the parking issue is sufficient for reversal of his conditional approval of the CUP.

20. Site Plan. The Hearing Examiner's recommendation to the Council on a site plan application must demonstrate:

1. Compatibility with the City's comprehensive plan;

2. Compatibility with the surrounding buildings' occupancy and use factors; and
3. All relevant statutory codes, regulations, ordinances and compliance with same.

Section 17.96.030. The Examiner recommended denial of the site plan because it did not meet the code parking requirements.

The Council finds that the site plan is not consistent with the City's comprehensive plan, which allows "medium usage" in this area, and the proposed use is not "medium usage." The evidence presented demonstrates that the applicant anticipates that the yacht club will be frequented by not only the owners of permanent moorage, but also the daily users of the transient moorage of two marinas, and these daily user's guests.

The Council further finds that the Hearing Examiner's decision does not explain how the development, which is proposed to be 24 feet high above the main plaza level, conforms to the maximum height limitation of 16 feet in Section 17.48.060 for the Waterfront Millville district. Finally, the Council agrees with the Hearing Examiner's recommendation that the site plan does not conform to the code requirements for parking, as required by Section 17.48.070. Therefore, the Council adopts the Hearing Examiner's recommendation of denial of the site plan application.

## **DECISION**

The City Council renders the following decision on the above applications:

Variance (VAR) 94-08: Denied.

Conditional Use Permit (CUP) 94-06: Denied.

Site Plan (SPR): Denied.

**RESOLVED** by the City Council this 13th day of November, 1995.

APPROVED:

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MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

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CITY ADMINISTRATOR, MARK HOPPEN  
APPROVED AS TO FORM;

OFFICE OF THE CITY ATTORNEY:

BY: \_\_\_\_\_

FILED WITH THE CITY CLERK: 11/9/95  
PASSED BY THE CITY COUNCIL: 11/13/95  
RESOLUTION NO. 456