

**CITY OF GIG HARBOR
RESOLUTION NO. 384**

The City Council of the City of Gig Harbor, Washington, enters the following findings:

1. Mr. Peter Darrah requested a Shoreline Management Substantial Development permit and variance approval from the parking standards of the Shoreline Master Program and Zoning Code.
2. The Gig Harbor City Council had previously adopted Ordinance #489, which establishes guidelines for the reviewing of Shoreline Management Substantial Development permits and variances and other land use issues.
3. The Planning Department for the City of Gig Harbor recommended denial of the application in a staff report dated November 12, 1992.
4. The Gig Harbor Hearing Examiner conducted a public hearing on the application on November 18, 1992, and subsequent to said public hearing, the Hearing Examiner entered findings and conclusions and recommended denial of the application in his report dated December 3, 1992.
5. The Gig Harbor City Council, at its regular public meeting of January 11, 1993, considered the recommendation of the Hearing Examiner and in review of the information provided, determined to establish their own public hearing and directed the applicant to submit detailed plans to City staff to address the items set forth hereinafter, which plans were to be submitted on or before April 1, 1993 for consideration at a public hearing by the City Council on May 10, 1993. The items and materials to be provided were as follows:
 - A. The Staff, working with the applicant, shall modify all documents to reflect that the applicant is within the WM zoning district.
 - B. The staff will prepare a report detailing the required parking based upon the parking condition contained within the WM zone under Section 17.48.070.
 - C. The applicant shall submit a revised plan, to scale, signed by a Washington State Registered Engineer or Land Surveyor, that details at a minimum all of the following:
 - 1) Show all existing improvements from Harborview Drive to the Outer Harbor Line and from the northerly side of the covered condominium moorage;
 - 2) Show the area of the Hix tideland lease and the area if the Hix harbor area

lease;

- 3) Show the area of the Ross tideland lease and the area of the Ross Harbor Area lease;
- 4) Show the tidelands area proposed to be leased by the applicant;
- 5) Locate the outer harbor line consistent with the surveys done prior to Pac-Tech/Mel Garland's survey of the Hix property;
- 6) Clearly indicate all new improvements proposed;
- 7) For the applicant's property, draw a cross section of all existing improvements and proposed improvements from Harborview Drive to the outer harbor line;
- 8) Dimension all major components in the drawing; and
- 9) Plan view shall contain five (5) foot intervals of the applicant's property from Harborview Drive to the outer harbor line.

D. The applicant shall list all of the various uses existing and proposed for the applicant's property such as but not limited to:

- 1) Moorage greater than 45 feet;
- 2) Moorage less than 45 feet;
- 3) Museum;
- 4) Single family residences;
- 5) Bed and breakfast;
- 6) Office;
- 7) Repair Shop;
- 8) Detail any/all other uses.

E. Show the location of the parking to support uses described in letter D, above.

6. The applicant did submit material by April 1, 1993, which substantially complied with the Council's directive.
7. The Planning Department in its report of May 10, 1993, recommended denial of a zoning variance from the parking standards of the zoning code and recommended

conditional approval of that portion of the project which provided for moorage, off-street parking and a museum. The staff concluded that the proposal meets the requirements for obtaining a shoreline management variance permit from the parking standards of the Shoreline Master Program pursuant to WAC 173-14-150, due to the limitations of the property as detailed in the staff report of May 10, 1993, pages 12 and 13 as follows:

- A.Extraordinary circumstances, including the existence of three historical structures, make development of this parcel difficult without the removal of the structures. Because of the Comprehensive Plan's emphasis on retaining, preserving, and adaptive reuse of older buildings, it is presumed that the public interest is best served by protecting the dwindling number of historical structures which reflect local culture and historical development, and that it would be to the detriment of the public to remove such structures without a substantial effort to save them.
- B. The historic nature of the museum, net shed, and Novak house make them integral components of the site's characteristics and should not be separated from any consideration of the site's natural characteristics or from a determination of a "reasonable" use of the property without due consideration of their value to the community. Accordingly, a strict application of the parking requirements may preclude a reasonable use of the property by destroying or excessively altering the historic character of the site.
- C.The hardship is specifically related to the existence of two historic structures on a small parcel with a developable portion of less than 9500 square feet and not from the actions of the applicant.
- D.The design of the project is nautically oriented, making the waterfront location appropriate and compatible with other permitted activities. However, the park plan option does not meet the full parking requirement and it is difficult to determine (a) if the benefits of the park plan outweigh the costs of the reduced parking, or (b) what the costs of reduced parking will be (e.g., will 5 spaces be adequate for the proposed uses on the site?). Currently there are no parking spaces.
- E.The requested variance does not constitute a grant of special privilege not enjoyed by other property owners in the area. Few remaining waterfront parcels involving development requests have structures which might be considered historical in nature.

8.The City Council convened a public hearing on the application at its regular meeting of May 10, 1993, pursuant to notice.

9. At the hearing, the City Council received into the record all of the previous staff reports and Hearing Examiner's recommendation, together with substantial public testimony by the applicant, the applicant's representatives, the legal representative on behalf of the adjacent owner and several members of the public who expressed concerns about past operations and problems concerning parking with respect to the applicant's proposal.
10. At the hearing, Mr. Paglia, representative of an adjacent property owner, challenged Councilmember Markovich on the basis of appearance of fairness due to the fact that Councilmember Markovich was alleged to have made statements prior to this hearing concerning zoning. The statements were made prior to the time that this matter was before the City Council, were not specific to this project and did not constitute a prior statement concerning said application. The City Attorney ruled that on the bare basis of the challenge made by Mr. Paglia, that the Appearance of Fairness Doctrine was not violated.
11. Mr. Paglia objected to the jurisdiction of the City Council holding its own hearing. The City Council has delegated the hearing functions on these matters to the Office of the Hearing Examiner. The Hearing Examiner makes only a recommendation to the City Council. The City Council determined that an additional hearing was necessary and exercised its inherent power as the final decision maker to conduct its own *de novo* hearing.
12. The City Council received written and oral testimony and at the conclusion of the receipt of the same, closed the public input portion of the hearing and returned the matter to the Council for deliberation.

From the foregoing findings, the City Council makes the following conclusions:

1. The proposal, as modified by City Council with respect to allowed uses and parking, is consistent with the City of Gig Harbor zoning codes, Chapter 17.48 (Waterfront Millville District), Chapter 17.72 (Off-Street Parking and Loading Standards) and Section 17.76 (Boat Moorage).
2. The current use of the floating structure as a residence is prohibited by the City of Gig Harbor Shoreline Master Program, Page 27, Regulation 7.
3. The City of Gig Harbor Shoreline Master Program, Page 27, Regulation 7, provides that living on watercraft may be allowed provided that a Shoreline Management Conditional Use permit is obtained on an annual basis and that conditions for waste disposal shall be included.
4. The City Council concludes that the proposal is consistent with the City of Gig Harbor Shoreline Master Program for marinas, piers and docks, and commercial development.

5.The City Council concludes that the maritime museum is consistent with the intent section of Chapter 17.48, Waterfront Millville District, of the Gig Harbor Municipal Code.

The proposal, as modified hereafter, meets the requirements for obtaining a Shoreline Management Substantial Development and Variance permit. The following decision on the Shoreline Substantial Development Variance permit and conditions are hereby approved by the City Council as follows:

1.The zoning variance request for parking is denied. There is ample evidence that the proposed use of the premises will need parking and the criteria for granting of a zoning variance has not been met.

2.A request for phased development approval is denied and the only phase to be considered for any approvals hereunder would be the proposed phase one.

3.The historic nature of the museum, net shed and Novak house make them integral components of the site's characteristics and should not be separated from any consideration of the site's natural characteristics or from a determination of a reasonable use of the property without due consideration of their value to the community. Due to the Comprehensive Plan's emphasis on retaining, preserving and adaptive reuse of older buildings, it is in the public interest to protect the dwindling number of historical structures which reflect local culture and historical development. The City Council concludes that it would be to the detriment of the public to remove such structures without a substantial effort to save them.

4.The particular site is a very small parcel with a developable portion of less than ninety-five hundred (9,500) square feet. These site restrictions are not due to the actions of the applicant.

5.The design of the project is nautically oriented, making the waterfront location appropriate and compatible with other permitted activities. However, the park plan option does not meet the full parking requirement.

6.The substantial development permit and variance permit is approved subject to the following conditions:

A.Access to the existing museum structure shall be limited to 9 people and shall be clearly posted inside. An increase of occupancy may be achieved by constructing a stairway which provides egress from the northeast end of the museum, subject to review and approval of the City's Building Official.

B.All new decking shall be no wider than 8 feet in any section unless incorporated with alternating grated areas which allow light to penetrate the deck. Additionally, no grated area shall be covered with materials which do not allow light to penetrate or be used for storage or placement of any materials,

furnishings, etc.

- C.The site plan referred to as "2-P" shall be taken back by the applicant's representative and remove all reference to Phase II and remove the reference to Phase I so it will depict solely this application. This will make it the least confusing document possible.
- D.The site plan shall not be approved as a phased plan. Any additions or alterations proposed on the applicant's phased plan shall be reviewed under a new Shoreline permit application.
- E.No commercial lodging shall be permitted aboard the Ketch Krestine or other vessels while moored at the facility.
- F.The site plan shall include a covenant which shall state that any conversion, addition, new construction or expansion of any structure or use shall comply with the relevant sections of the City's master program and zoning code for parking.
- G.All fire flow and fire protection shall be provided for the marina and buildings as per Uniform Fire Code and Uniform Building Code and as approved by the City's Building Official.
- H.All walkways and ramps shall have the required guardrails and handrails as per UBC requirements and as reviewed and approved by the City's Building Official.
- I.Prior to permit issuance, a landscaping plan shall be submitted, which is consistent with Chapter 17.78 of the Gig Harbor zoning code, and approved by the Planning Staff. An assignment of funds equal to 110 percent of the cost of the landscaping, shall be required prior to issuance of building permits.
- J.Prior to building permit issuance, the applicant shall provide the City with evidence of a lease agreement with the DNR which shall reflect the proposed lease area identified on the submitted site plan, and reference updated drawing 2-P and the Layton & Sells drawing dated 4/30/93 - Revision 1, Sheet 1, revised 5/04/93.
- K.The amended site plan 2-P and the Layton & Sells drawing Revision 1, Sheet 1, shall be a binding site plan. A copy of the site plan indicating all commercial areas as well as personal storage and office areas, etc., shall be recorded with the Pierce County Auditor's office, with a copy of the recorded document and its recording number being returned to the City prior to permit issuance.
- L.The project shall be completed within two years of the date of filing of the Shoreline Permit with the Department of Ecology. If the project is not

completed by the end of this two year period, the Shoreline Permit shall be considered void and all vessels, structures, uses and expansions not in compliance with this approval, the City's zoning code, the Uniform Building Code, and the Uniform Fire Code shall be removed or be subject to civil penalty charges.

M.The applicant is to revise drawing 2-P with the latest revision made forth 1993 as submitted by Mr. Gagliano and the Layton Sells' drawing with the date of April 30, 1993, Revision 1, Sheet 1, revised 5/04/93, to reflect what has been approved by Council. Both those drawings shall show complete dimensions of the project, and in addition, all Phase II references and Phase I references are to be removed. The uses on the 2-P drawing are to be detailed as follows:

	<u>Use:</u>	<u>Parking Req'd:</u>
1)	Museum - maximum 1,000 s.f.	2 spaces
2)	Sales	1 space
3)	Moorage greater than 45' - 3 boats	3 spaces
4)	Moorage less than 45' - 6 boats	3 spaces

Total spaces required - 9 (nine) as per City Code 17.72.

N.All vessels shall be limited along the dock to side ties of one single vessel as depicted on sheet 2-P.

O.Applicant recognizes that he or she may be restricted solely to ingress/egress over the tideland area owned and/or leased by applicant from the DNR and accepts this potential restriction to the use of his property.

P.The applicant shall remove the previously constructed building marked on first floor as 990 s.f., existing personalized storage - non-public, and second floor, stairs to the office with no public access, within 120 days of the execution of this permit unless the applicant, within the next 14 calendar days, can produce a valid building permit authorizing construction or other proof to the satisfaction of our city attorney for that structure.

Q.Consistent with Regulation 7, Page 27 of the City of Gig Harbor Shoreline Master Program, the applicant shall remove the floating home within thirty (30) days of the date of City Council approval of this permit, to wit, on or before June 23, 1993. Said use is not permitted by the GHMC.

R.Consistent with Regulation 7, Page 27, of the City of Gig Harbor Shoreline Master Program, should the applicant intend to reside in a vessel at the moorage facility, the applicant shall apply for and receive a Shoreline Conditional Use Permit within 120 days of the date of City Council entry of these findings, conclusions and decision.

S. Applicant or their successors and assigns shall not allow any use not permitted by
City codes of applicable state laws or regulations, to exist on the owned or
leased premises.

RESOLVED this 24th day of May, 1993.

APPROVED:

Gretchen A. Wilbert, Mayor

ATTEST/AUTHENTICATED:

Mark E. Hoppen, City Administrator

Filed with City Clerk: 05/20/93

Passed by City Council: 05/24/93