

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicant:** Rozema Boat Works
c/o Dirk Rozema
11130 Bayview-Edison Road
Mount Vernon, WA 98273
- Requests:** Shorelines: Shoreline Substantial Development/ Variance
and Conditional Use Permit -- PL17-0495
Upland Use: Alternative Landscaping Variance – PL17-0496
Setback Reduction Variance – PL17-0497
Minimum Lot Coverage Variance – PL17-0498
- Location:** 11130 Bayview-Edison Road, Mount Vernon – within a portion
of Sec. 31, T35N, R3E, W.M.
- Land Use Designations:** Shorelines: Rural Residential
Zoning: Rural Marine Industrial
- Summary of Proposal:** To build a wharf and building addition; to reduce the setback to
zero along the north and east property lines; to exceed the
maximum lot coverage and impervious surface area; to allow for
an alternative landscape plan.
- Public Hearing:** July 10, 2019. Testimony by Planning and Development Services
(PDS) staff and by applicant and applicant’s consultant. No public
Testimony.
- Decision/Date:** The application is approved, subject to conditions. July 23, 2019
- Reconsideration/Appeal:** Shorelines: Reconsideration may be requested by filing with PDS
within 5 days of this decision. Appeal is to Board of County
Commissioners by filing with PDS within 5 days of this decision
or decision on reconsideration if applicable.
Zoning: Reconsideration may be requested by filing with PDS
within 10 days of this decision. Appeal is to Board of County
Commissioners; by filing with PDS within 14 days of this decision
or decision on reconsideration if applicable.
- Online Text:** The entire decision can be viewed at:
www.skagitcounty.net/hearingexaminer

FINDINGS OF FACT

1. Rozema Boat Works seeks permission to expand facilities at its long-time Bayview site in order to fabricate vessels up to 80 feet in length and to promote an efficient and safe work environment.

2. The site is at 11130 Bayview-Edison Road on the east shore of Padilla Bay. The property is within the NW1/4 Sec. 31, T35N, R3E, W.M. The Assessor's Parcel Nos. are P1189 and P35094. The existing shoreline is protected by a rock bulkhead.

3. The shoreline designation for the site is Rural Residential. The zoning designation is Rural Marine Industrial (RMI). The site is within a designated coastal flood hazard area.

3. The applicant seeks permits under both the local Shoreline Master Program and the County's zoning code. The shoreline approvals sought are a Substantial Development Permit, a Shoreline Conditional Use Permit and a Shoreline Variance. The zoning approvals sought are three land-use variances: (1) to allow an alternative landscape plan; (2) to reduce the 50 foot setback to 0 along the north and east property lines; and (3) to exceed the maximum lot coverage and impervious surface area, maintaining the existing level of 88% lot coverage.

4. The project involves constructing a wharf which will be 30 feet (east-west) wide and 110 feet (north-south) long, located adjacent to and waterward of the existing boat work fabrication facility. No excavating, dredging or filling will occur. The pier will be built using 21 driven steel pipe piles, seven steel pipe caps, precast concrete deck panels and cast-in-place concrete overlay. The pier will also include 13 driven steel pipe fender piles with plastic pipe sleeves. The deck will match the elevation of the existing fabrication building floor which is approximately 13 feet above the Mean Lower Low Water Datum.

5. The plan also proposes to remove a 1,670 square-foot wooden structure and a 1,200 square foot tensile structure to allow for the construction of a 3,100 square-foot L-shaped addition to the main fabrication building. The addition will extend west and north of the main building, occupying 60 feet of the pier to its western (waterward) edge. The remainder of the area vacated by the removal structures will become a laydown area consisting of a concrete slab on grade, connecting to the new wharf. An eight-foot wood or metal panel fence will be installed along the north and northeastern portion of the site.

6. The existing facilities will be incorporated into the new wharf and pier design. With the wharf and building addition, fabricating operations will be carried out in an enclosed work area, allowing vessels to be safely completed on site. The wharf will offer temporary moorage for shipping barges, permitting finished vessels to be safely loaded and transported from the facility.

7. Because of land access constraints, some or all of the pile driving will take place from a barge-mounted crane. The water is shallow at the site, meaning that the work will either be performed during high tides or with the barge grounded on the seafloor.

8. Bayview-Edison Road abuts the boat works to the east. Across the road are residential uses. Adjacent to the north are a public boat launch and Bayview State Park. To the south are additional residential properties. The enclosed work environment, when completed, will result in reduced noise impacts on adjacent residential and recreational land.

9. Parking for the facility is and will remain off-site. Traffic is not expected to be affected by the project.

10. Aesthetically, the addition will not be a negative change. The existing tensile fabric structure will be gone; there will be an addition to the fabrication building. The addition will be the same height as the existing building. It will have metal siding similar to that used on the existing building. On the northeast perimeter fence, murals depicting a marine or nautical scene will be placed.

10. The boat works has been a component of the Bayview community since the 1920's, with the Rozema family operating the facility since approximately 1955. Thus, it long predates the Shoreline Management Act and modern zoning requirements. It is a pre-existing lawfully established water dependent industry.

11. Between the road and the bay, the facility sits on property averaging less than 100 feet in depth. The project has been designed to reconfigure development on site to include an overwater wharf and building addition that will be constructed on areas already covered by structures and impervious surfaces. However, the changes sought cannot be accomplished without shoreline approval and without setbacks, lot coverage and landscaping variances.

12. A Notice of Development application was published in a newspaper of general circulation on October 5 and 12, 2017, and mailed and posted as required by law.

13. A Determination of Non-Significance (DNS) was issued on March 8, 2018, under the State Environmental Policy Act (SEPA). No appeals were filed.

14. A water quality monitoring plan was prepared by Fairbank Environmental Services for monitoring during construction for turbidity, for pH, and for petroleum fluids, oil and grease. The Department of Ecology is the lead on this through the 401 Water quality Certification Program.

15. Stormwater review will take place with the building permit and floodplain development permit applications. The Department of Ecology will determine if a National Pollutant Discharge Elimination Permit is needed.

16. Critical areas review is accomplished here through jurisdictional substitution. The project will require permits from the U.S. Army Corps of Engineers, the Washington State Department of Fish and Wildlife, the Washington State Department of Ecology. A Biological Assessment and update were prepared by Fairbanks Environmental Services. The assessments detailed potential impacts to critical areas, including an eelgrass survey, and contained a

mitigation plan to offset impacts. Copies of permits from other agencies must be submitted to finalize critical area compliance.

17. As a part of the planned mitigation, some of the man-made debris scattered in the intertidal area will be removed. Suitable gravel will be placed at the toe of the rock bulkhead seaward in a strip approximately 10 feet wide and 180 feet long for forage fish spawning and to increase the density of epibenthic fish prey for juvenile salmon. Moreover, the solid wood decking on the existing 80- foot pier and ramp will be replaced with grating to reduce shading, enhance the growth of vegetation and epibenthic fauna, and allow a continuous corridor for juvenile salmon migration that will avoid shaded areas.

18. A cultural resources assessment was prepared by Cascadia Archaeology, dated March 15, 2017. The report noted no potentially significant cultural resources within the area of potential effects for the project. The recommendation is for the project to proceed. If archaeological materials are encountered, the work is to be halted until an assessment of them is made.

19. Staff's shorelines master program (SMP) review for the project determined that the proposal constitutes a significant expansion of an existing development and is therefore subject to review for compliance with SMP provisions. Staff review concluded that the proposal is consistent with all relevant SMP policies and requirements for a Substantial Development Permit, a Shoreline Conditional Use Permit (expanding non-conforming use) and a Shoreline variance (shore setback).

20. Staff produced a separate report analyzing the project under the relevant land use variance criteria (front and side setbacks)(maximum lot coverage)(landscaping) and concluded that the proposal is consistent with the applicable variance criteria. The site is currently at 88% impervious coverage and with the completion of the proposal will remain at 88%.

21. As to landscaping, the proponents have made a novel proposal. While existing vegetation along the northern property boundary is proposed to be retained, there is no additional area to implement a planting program to satisfy landscape requirements. Therefore, the proposal is to substitute signs and murals for plantings. The plan is to move existing signs present on the north wall of the wood frame structure to be eliminated. These will be placed on eight foot fence panels at the approximate location of the existing signs adjacent to the Bay View Boat Launch. In addition a mural or series of murals approximately 35-70 feet in length and eight feet high will be placed along the northwest corner of the perimeter fence. The mural(s) will depict a marine or nautical scene. Staff of the Padilla Bay National Estuarine Research Reserve will be invited to assist in selection of an appropriate theme.

22. Staff concluded that this conceptual alternative plan will be consistent with the purpose of landscape provisions of the Zoning Ordinance because it will "soften and enhance transition between industry and recreation," and "provide a visual buffer between industrial activities, recreation and the travelling public."

23. Four comment letters were received from members of the public. One of them said the Rozema Boat Works has been a great neighbor for many years. The three others were highly critical of the boat works as a neighbor, expressing a long litany of complaints including that storage is insufficient leading to the use of nearby parcels, that paint fumes have been bothersome, and that operations have been conducted outside of normal hours. The nub of the opposition appears to be the contention that the boat works has outgrown its site and, rather than being expanded, should be moved to a location suitable for industrial operations.

24. It is worrisome that some neighbors have a negative view of the boat works. The Rural Marine Industrial designation was obviously intended to accommodate the long pre-existing operation. The core question in the expansion of non-conforming uses is normally the question of compatibility with other permitted uses in the area. In these circumstances, where an industrial use is explicitly allowed within an otherwise residential setting, the lack of “fit” is to some degree foreordained. The Boat Works obviously needs to consider and perhaps re-emphasize its obligations to be a good neighbor. However, after due consideration, the Examiner is of the view that the proposed changes will not adversely affect the status quo as to compatibility.

25. The Hearing Examiner concurs with the Staff analysis as to both SMP approvals and land use variances. The Staff Reports are by this reference incorporated herein as though fully set forth.

26. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this proceeding. SMP 8.07, SCC 14.06.060, SCC14.10.020.

2. The provisions of the State Environmental Policy Act (SEPA) have been complied with.

3. As conditioned, the requested project meets the relevant approval criteria. SMP 9.02, 10.03, 11.03; SCC 14.10.040, SCC 14.16.810(4).

4. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The project shall be carried out as described in the application materials, except as the same may be modified by these conditions.

2. All required permits shall be obtained and their conditions adhered to.

3. The applicant shall submit a copy of this decision with building permit applications.

4. The applicant shall comply with the Flood Damage Prevention Ordinance, Chapter 14.34 SCC (permit required). New structures and substantial improvement to existing structures must be elevated per SCC 14.34.150.

5. The project shall address all applicable stormwater and temporary erosion and sedimentation control measures in place at the time of building permit application.

6. All applicable Low Impact Development (LID) techniques shall be incorporated into the project to the greatest extent feasible.

7. The project must meet setbacks from water lines per Chapters 12.48 and 12.05 SCC.

8. The applicant shall comply with the State water quality standards for surface and ground water (Chapters 173-201A WAC and 173-200 WAC), and with Maximum environmental noise levels (Chapter 173-60 WAC).

9. The applicant shall comply with all other applicable State and local ordinances.

10. The Washington Department of Ecology shall be contacted regarding any required discharge permits.

11. A copy of the current billing for water supply with any requirements for water supply protection shall be furnished with the building permit application.

12. The applicant shall perform the monitoring outlined in the water quality monitoring plan, or as modified by the Washington Department of Ecology. Effective measures shall be taken to control, treat and release project site surface water so that receiving water quality and shore properties and features are not adversely affected.

13. The applicant shall perform the mitigation described in the mitigation plan included in the biological assessment prepared by Fairbanks Environmental Services, dated April 18, 2018, or as modified by the U.S. Army Corps of Engineers or the Washington State Department of Fish and Wildlife as part of their permitting processes.

14. Industrial wastes shall be disposed of in an approved manner, outside of the shoreline area.

15. Overhead wiring and plumbing are not permitted on the wharf.

16. A mural or series of murals shall be designed and installed as described in the application (35-70 feet long by 8 feet high), depicting a marine, nautical or natural environment scene. The design shall be reviewed by Planning and Development Services prior to installation and must be completed/installed prior to the final building inspection sign off.

17. The vegetation along the north property line shall remain. The interpretive signs along the north property line shall be reinstalled on eight-foot fence panels as proposed.

18. All outstanding planning review fees shall be paid prior to final approval.

19. The project shall be commenced within two years of the effective date of the shoreline permit approvals and completed within five years thereof..

20. If the applicant proposes any modification of the subject proposal, he/she shall notify Planning and Development Services prior to the start of construction.

21. Failure to comply with any condition of approval may result in permit revocation.

DECISION

The applications for a Shoreline Substantial Development, Conditional Use and Variance permit (PL17-0945) and for an administrative variance (alternative landscape plan) (PL17-0496), administrative setback reduction (PL17-0497), and hearing examiner variance (maximum lot coverage) (PL17-0498) are granted, subject to the conditions set forth above.

SO ORDERED, this 23rd, day of July, 2019.



Wick Dufford, Hearing Examiner

Transmitted to applicant and staff, July 23, 2019

