



PLANNING AND COMMUNITY DEVELOPMENT
DEPARTMENT

Planning Division
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DESIGN REVIEW PERMIT
Fairhaven Harbor
800 Harris
DRC2004-00033A

I. SUMMARY OF DECISION.

- Applicant:** Ted Mischaikov, 909 Harris, Bellingham WA 98225, 734-7755 for 8th and Harris Holding Company LLC.
- Request:** To amend the previous Design Review Permit, DRC2004-00033: Construction of a 3 to 10 story building with underground parking in the Fairhaven Design Review District, on the block bound by Harris, 9th, McKenzie, and 8th.
- Decision:** Amended design review permit is issued with conditions.
- Date:** February 7, 2007.

II. FINDINGS OF FACT.

1. In December 2004, 8th and Harris Holding Company LLC ("Applicant") submitted application for permits to construct a new mixed use development in the block bounded by 8th Street, 9th Street, Harris Avenue and McKenzie Avenue in Bellingham Washington.
2. The Applicant completed a State Environmental Policy Act (SEPA) Checklist for the proposed project in December 2004. The checklist evaluated the environmental impacts for a building approximately 85 feet high. The plan set accompanying the checklist showed the tallest building as being approximately 85 feet high (calculated as 116 feet above sea level). A copy of the checklist and plan set is attached as Exhibit A and incorporated by reference.

3. Based on this checklist, a Determination of Non-Significance was issued for the proposal pursuant to the State Environmental Policy Act by the City's Responsible Official on April 11, 2005. A copy of the DNS is attached as Exhibit B and incorporated by reference.
4. A Planned Contract, PDC2004-00034, was issued for the proposal on November 14, 2005. A copy of the Planned Contract is attached as Exhibit C and incorporated by reference.
5. The westerly portion of the subject property is located within 200 feet of the shoreline of the Padden Creek estuary. A Shoreline Conditional Use Permit was issued on May 4, 2005 to allow a portion of the proposed development to extend within 100 feet of the ordinary high water mark of the shoreline. This permit was approved by the Washington State Department of Ecology and later appealed to the State Shorelines Hearings Board. The appeal was settled in February 2006, allowing the conditional use permit to stand subject to additional conditions. A Shoreline Substantial Development Permit was approved for the development on October 19, 2005. Copies of the Shoreline Conditional Use Permit, Settlement Agreement for the appeal filed with the Shorelines Hearings Board, and the Shoreline Substantial Development Permit are attached as Exhibits D, E, and F respectively and incorporated by reference.
6. On March 8, 2006, Design Review Permit, DRC2004-00033, was issued by the Planning Director for Applicant's proposal. The original Design Review Permit is attached as Exhibit G and is incorporated by reference.
7. Two separate appeals of the City's original Design Review Permit for this project were filed. In Findings of Fact, Conclusions of Law, and Order dated August 8, 2006, the City's Hearing Examiner denied the appeals and upheld the City's original Design Review Permit.
8. In November 2006, the applicant filed an application to amend the original Design Review Permit, DRC 2004-00033. The new application proposes smaller buildings on the eastern portion of the property. However, one of the buildings will still consist of ten stories and be approximately 102 feet tall. The new proposed plans are attached as Exhibit H and incorporated by reference.
9. In response to the application to amend the original Design Review Permit, DRC2004-00033, the City received approximately 74 written comments from the public which were considered and are on file in the Planning and Community Development Department.

10. The Bellingham Municipal Code does not provide a procedure for making major amendments to an existing design review permit.

III. CONCLUSIONS OF LAW.

1. The application to amend the original Design Review Permit, DRC 2004-00033, submitted by Applicant proposes a major amendment to the permit. Because the Bellingham Municipal Code does not provide a procedure for making major amendments to an existing design review permit, the City reviewed and considered the application to amend the permit in the same manner as the original design review permit application.
2. The original SEPA checklist, plan set, and Determination of Non-Significance for the original Design Review Permit, DRC2004-00033, did not evaluate the environmental impacts of a building taller than 85 feet.
3. To the extent Applicant's proposal to amend the original Design Review Permit, DRC2004-00033, meets the conditions imposed by the original Design Review Permit (Exhibit G) and does not include buildings that exceed 85 feet in height, the proposal meets the City's design review, development, and environmental review standards and should be approved.
4. To the extent Applicant's proposal to amend the original Design Review Permit, DRC2004-00033, includes buildings that exceed 85 feet in height, the City needs additional information regarding the potential environmental impacts of a building taller than 85 feet, including, but not limited to, the impacts on view, shading, wind, and historic preservation. The City needs this information to determine whether or not the original DNS should be withdrawn under WAC 197-11-340.
5. Any Finding of Fact that should be denominated a Conclusion of Law shall be deemed to be a Conclusion of Law. Any Conclusion of Law that should be denominated a Finding of Fact shall be deemed to be a Finding of Fact.

IV. DECISION.

Based on the above findings of fact, and conclusions of law, the Planning and Community Development Department Director approves Applicant's proposed amendment of the original Design Review Permit and issues an amended Design Review Permit, DRC2004-00034A, for the plans attached as Exhibit H, subject to the following conditions:

1. All conditions contained in the original Design Review Permit, DRC2004-00033, shall be met except as modified below:

1. Building Materials and Architectural Features:

k. Create the appearance of four different buildings as described below:

- i. Building "A" at 7-8 stories on the NW corner of McKenzie and 9th,
- iv. Building "D" at 5-6 stories on the SW corner of 9th and Harris.

2. Mechanical Equipment and Lighting

d. Lighting

- iv. Any exit stairways may be lit, but shall be shielded by frosted glass or a similar treatment.
- v. [Deleted in its entirety].

2. In accordance with the original SEPA Checklist, plan set, and Determination of Nonsignificance, building height shall be limited to 85 feet above mean sidewalk elevation (calculated as 116 feet above sea level, City datum).

3. Building and other construction permits shall be consistent with this design review approval and the plans attached as Exhibit H, as modified for the 85 foot height restriction. The Director may approve minor adjustments to the plans. Such adjustments shall be limited to minor changes in the dimensions, siting of improvements, and/or design details.

The Applicant has fourteen days to take one of the following actions:

- 1. Accept the amended Design Review Permit, DRC2004-00033A, and proceed with the project without providing a revised SEPA checklist. Upon the Applicant's acceptance of the amended Design Review Permit, the City will consider the original Design Review Permit, DRC2004-00033, as withdrawn;
- 2. Withdraw its application to amend the Design Review Permit, DRC2004-00033, and resubmit the application with a revised SEPA checklist that evaluates the potential environmental impacts of a building taller than 85 feet, including, but not limited to, the impacts on view, shading, wind, and historic preservation;
- 3. Appeal the amended Design Review Permit, DRC2004-00033A, to the Hearing Examiner. Upon filing of the appeal, the City will treat the existing Design Review Permit, DRC 2004-00033, as withdrawn; or

4. Withdraw its application to amend the Design Review Permit, DRC2004-00033, and proceed under the original Design Review Permit.

The City will consider reasonable requests to extend this 14-day deadline to allow the Applicant more time to determine a course of action. All agreements to extend the deadline must be in writing. If the Applicant declines to take any of the above actions, the City will consider the amended Design Review Permit, DRC2004-00033A, in effect and the original Design Review Permit, DRC2004-00033, as withdrawn.

So decided this ____ day of _____, 2007.

Tim Stewart
Director