



MEDINA, WASHINGTON

HEARING EXAMINER

A Remote Public Hearing

Tuesday, January 21, 2025, 2:00 PM

AGENDA

Virtual Meeting Participation

The scheduled hearing will be held using remote meeting technology. Please either login or call in a few minutes before the start of the meeting to participate. Written comments may still be submitted before the hearing by emailing Jonathan Kesler, AICP, Planning Manager, at jkesler@medina-wa.gov. Written comments are given the same weight as verbal public testimony.

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Meeting ID: 822 7536 4990

Passcode: 642070

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+12532158782,,82275364990#,,,,*642070# US (Tacoma)

Public Hearings:

***NOTE:** The Hearing Examiner has the discretion to limit testimony to relevant non-repetitive comments and to set time limits to ensure an equal opportunity is available for all people to testify.*

PRE-DECISION HEARING:

File No.: P-23-065 Non-Administrative Substantial Development Permit

Applicant or

Agent: Evan Wehr, Agent for Liwei Liu, property owner

Proposal: Non-Administrative Substantial Development Permit to repair and extend an existing pier (resulting in the pier being considered a “new” pier), install three new boat lifts and two double jet-ski lifts at 3261 Evergreen Point Road (Parcel #242504-9065) and 3263 Evergreen Point Road (Parcel #242504-9211), Medina, WA 98039

Legal Info: Parcel #242504-9065: LOT "3" OF MEDINA SP #PL-SHTPLAT- 14-001 REC #20180416900003 SD SP LOC IN SE 1/4 OF SE 1/4 OF NW STR 24-25-04

Parcel # 242504-9211: N 1/2 LESS E 496.5 FT OF FOLG-N 137.98 FT OF S 306.962 FT OF GL 6 TGW SH LDS ADJ LESS E 30 FT FOR RD

Prepared by: Thomas Carter, Associate Planner, LDC, Inc., Planning Consultant for the City of Medina

PART 1 – GENERAL INFORMATION

ZONING: R-20, Residential

COMPREHENSIVE PLAN DESIGNATION: Residential

SHORELINE ENVIRONMENT DESIGNATION: Shoreline Residential

CRITICAL AREAS: Shoreline, as regulated below

EXHIBITS:

1. Staff Report
2. Declaration of Agency, received November 17, 2023
3. Statutory Warranty Deed, received November 17, 2023
4. Ecological No Net Loss Assessment Report, received June 28, 2024
5. Legal Notices
 - a. Determination of Complete Application, dated February 29, 2024
 - b. Notice of Application, dated March 11, 2024
 - c. Revised Notice of Application, dated May 17, 2024
 - d. Notice of Hearing, dated January 6, 2025
6. Non-Administrative Substantial Development Application, received November 17, 2023
7. Dock Easement 1956, received May 9, 2024
8. Assignment of Dock Rights, received May 9, 2024
9. SEPA Environmental Checklist, February 28, 2024
10. Site Plan received October 28, 2024
11. Mailing Labels and Buffer Map received January 8, 2024
12. Technical Memorandum, Grette Associates, dated October 4, 2024
13. Correspondence with Applicant and Consultant, dated September 4, 2024
14. Public Comments
15. Water Depth Waiver, received May 16, 2024
16. Determination of Non-Significance, dated March 15, 2024

PART 2 – SITE CHARACTERISTICS

EXISTING CONDITIONS: Parcel # 2425049211 is developed with a single residence, tennis court, pier and related site improvements. Parcel # 2425049065 is currently vacant and under development for a new single-family residence with a pool and associated site improvements.

SURROUNDING ZONING:

Direction	Zoning	Present Use
North	R-20 District	Residential
South	R-20 District	Residential
East	R-16 District	Residential
West	Lake Washington	N/A

ACCESS: Vehicular access is from Evergreen Point Rd.

PART 3 – COMPREHENSIVE PLAN

The residential nature of the city’s shoreline preserves its character while encouraging good stewardship and enjoyment of the shoreline, including protecting and preserving shoreline ecological functions, which is the primary vision of the shoreline master program (SMP). The following comprehensive plan goals and policies apply to the proposed project:

SM-G8: Manage shoreline modification to avoid, minimize, or mitigate significant adverse impacts.

SM-G9: Minimize impacts to the natural environment and neighboring uses from new or renovated piers and docks and their associated components, such as boat lifts and canopies.

SM-P4.4 At a minimum, development should achieve no net loss of ecological functions, even for exempt development.

SM-P7.2: Where feasible, boating facilities should include measures that enhance degraded and/or scarce shoreline features.

SM-P7.3: Boating facilities should not unduly obstruct navigable waters and should avoid causing adverse effects to recreational opportunities such as fishing, pleasure boating, swimming, beach walking, picnicking and shoreline viewing.

SM-P7.4: Preference should be given to boating facilities that minimize the amount of shoreline modification, in-water structure, and overwater coverage.

SM-P7.6: Boating facilities should be located, designed, constructed and operated so that other appropriate water-dependent uses are not adversely affected and to avoid adverse proximity impacts such as noise, light and glare; aesthetic impacts to adjacent land uses; and impacts to public visual access to the shoreline.

SM-P8.4: Structures should be located and designed to avoid the need for future shoreline stabilization where feasible.

SM-P9.5: Establish development regulations that encourage property owners to make renovations to their existing piers and docks outside of normal maintenance and repairs that improve the environmental friendliness of their structure.

SM-P13.4: The City should encourage retention and development of the shoreline for joint use private recreational activities, such as moorage, decks, beach clubs, etc.

PART 4 – AGENCY REVIEW/PUBLIC COMMENT

NOTICES (Exhibit 5):

Application received:	November 17, 2023
Determination of Completeness:	March 5, 2024
Notice of Application:	March 11, 2024
2 nd Notice of Application:	May 17, 2024
Notice of Hearing:	January 6, 2025

The application was received on November 30, 2023, and was deemed *incomplete* on January 4, 2024, with a resubmittal occurring on February 21, 2024, which was deemed *complete* on March 5, 2024, pursuant to MMC 16.80.100. A Notice of Application was sent by mail to property owners per MMC 16.80.140(B)(2) and was posted on-site and at other public notice locations such as city hall, the Medina Post Office, park boards and the City of Medina’s website on March 11, 2024. Pursuant to MMC 16.80.110(B)(7), a 14-day comment period was used; however, after the public raised concerns that the application materials provided were not consistent with the MMC 16.80.100, an additional Notice of Application was issued May 5, 2024, which was followed by another 14-day comment period. Consistent with MMC 16.80.120, a Notice of Hearing was issued on January 6, 2025. The notice was mailed to property owners according to MMC 16.80.140(B)(2), published in The Seattle Times newspaper, and posted on the site and other public notice locations including city hall, the Medina Post Office, city park boards, and the City of Medina’s website.

GENERAL PUBLIC COMMENTS: As of the date of this staff report, the City received several written comments. Public comments can be found in Exhibit (14) and also included in this staff report as an appendix.

Who	When
Mark Holmes	April 14, 2024
Howard Hawks	April 10, 2024
Chris & India Coho	April 9, 2024
Vikram and Vandana Nagaraj	April 10, 2024

AGENCY COMMENTS: No agency comments were received.

PART 5 – STAFF ANALYSIS

GENERAL:

1. Liwei Liu is the owner and taxpayer of record of 3263 Evergreen Point Road (tax parcel # 242504-9065) (Liu Tract) according to the Statutory Warranty Deed (see Exhibit 3). The property owner is represented by Evan Wehr (see Exhibit 2).
2. Troy Gessel is the owner and taxpayer of record of 3261 Evergreen Point Road (tax parcel # 242504-9211) (Gessel Tract) according to the Statutory Warranty Deed (Exhibit 3). The property owner is represented by Evan Wehr (see Exhibit 2)
3. The proposed pier will be jointly shared by the owners of 3263 Evergreen Point Road (tax parcel # 242504-9065), 3261 Evergreen Point Road (tax parcel # 242504-9211), and a tract owned by Happe Carolina Dybeck (per tax records) addressed as 3267 Evergreen Point Road (tax parcel # 242504-9278) (Dybeck Tract), according to the Assignment of Dock Rights, recorded under Instrument No. 20220520001172 (see Exhibit 8).
4. The proposed pier replacement and installation will occur on the shared property line between the Liu Tract and the Gessel Tract. Both tracts are zoned R-20 (residential). (a) The Gessel Tract is rectangularly shaped with maximum dimensions of approximately 362 feet (greatest length) by 70 feet (greatest width). The lot is currently under construction for a single dwelling with related improvements such as landscaping, a driveway and a pier. (b) The Liu Tract is rectangularly shaped with maximum dimensions of approximately 845 feet (greatest length) by 70 feet (greatest width). The lot is fully developed with a single dwelling, a pier, and related site improvements including a driveway, deck, pool, sports court, and landscaping.
5. The applicant has applied for a Non-Administrative Shoreline Substantial Development Permit to repair and extend an existing pier as well as install three new boat lifts and two double jet-ski lifts at 3261 Evergreen Point Road (Parcel # 242504-9065) and 3263 Evergreen Point Road (Parcel # 242504-9211), Medina, WA 98039.
6. The project includes the replacement of all existing pier framing plus a significant pier extension. Of the existing 16 piles, 13 will be rebuilt, 3 will remain. 14 new piles will be added. The project is a replacement with significant additional and minor repairs. More than sixty percent (60%) will be removed. Under MMC 16.10.040, Administrative Authority, the Director has determined that this is a **new** pier.

ENVIRONMENTAL (SEPA) REVIEW:

7. The proposed project has undergone a SEPA Threshold Determination under Permit # P-23-066. The lead agency for this proposal has completed a SEPA Environmental Checklist (see Exhibit 9) and other project information on file and has determined that the proposed project does not have a probable significant adverse impact on the environment. A Determination of Non-significance (DNS) was issued according to WAC 197-11-355 on March 15, 2024 (Exhibit 16), with an appeal deadline of March 29, 2024. No appeals were filed by the deadline.

ANALYSIS OF THE NON-ADMINISTRATIVE SUBSTANTIAL DEVELOPMENT PERMIT:

8. The Medina Municipal Code (MMC) 16.72.100(D) requires a Non-Administrative Substantial Development Permit for activities and uses defined as “development” pursuant to RCW 90.58.030(3)(a) and located within the shoreline jurisdiction as defined by the Shoreline Management Act. The Proposal for the new pier, including the repair and

extension of an existing deck as well as the installation of three new boat lifts and two double jet ski lifts meets these criteria. The proposal does not qualify for an exemption as outlined in MMC 16.70.040. The project proposal also does not qualify for an *Administrative* Substantial Development Permit as outlined in MMC 16.71.060. Therefore, a *Non-Administrative* Substantial Development Permit is required to authorize the proposed project.

9. The Shoreline Use Table is codified in MMC 16.62.040 and outlines that the proposed use (e.g., piers, docks, and boat lifts) are permitted uses in the City's Shoreline Residential Environment designation.
10. MMC 16.66.010(B) requires that to assure no net loss of shoreline ecological functions, applicants must demonstrate a reasonable effort to analyze environmental impacts from a proposal and include measures to mitigate impacts on shoreline ecological functions.

The applicant has prepared an Ecological No Net Loss Assessment Report (see Exhibit 4). It was prepared by a professional biologist and details the avoidance and minimization measures, shoreline planting plan, conservation measures and best management practices that ensure the proposed project will not yield a loss of ecological function.

The Ecological No Net Loss Assessment Report was reviewed by the City's third-party biological consultant, Grette Associates (Grette), for their recommendation on whether the project aligned with provisions of the MMC governing no net loss of ecological function. Grette reviewed the No Net Loss Report from the applicant and provided comments related to post-project monitoring, mitigation standards, and mitigation sequencing.

The applicant has provided an updated report that was reviewed by Grette who confirmed that the updated report addressed the comments, except the requested mitigation sequencing. A meeting with the applicant was held with Jonathan Kesler, AICP, Medina Planning Manager, on August 30th where the applicability of providing mitigation sequencing was discussed. The Director, in conjunction with the City's consultant, has agreed that the mitigation sequencing is an unnecessary element of the No Net Loss Report, according to the following authorities: (1) According to MMC 16.66.010(C.4), an analysis of no net loss of shoreline ecological functions is not required when specific standards—such as setbacks, pier dimensions, and tree planting—are provided, unless explicitly referenced in this section; and (2) Under MMC 16.66.010(D.4), the director has determined that, because the proposed use has specific dimension and design standards, less information is needed to adequately demonstrate no net loss of shoreline ecological functions. (Exhibit 13)

Therefore, the No Net Loss Report provided on June 28, 2024, has sufficient information to prove a no net loss of ecological function. The applicant has demonstrated a reasonable effort to analyze the environmental impacts of the proposed new pier and has included measures to mitigate impacts that could occur to shoreline ecological functions.

11. MMC 16.65.060, 16.65.080 and 16.65.040 establish the dimensional and design standards of pier repair and additions and boat lifts. The applicant is proposing to repair/replace the existing pier as well as the expansion of the pier structure. This expansion would include the installation of 3 boat lifts and 2 double jet ski lifts.

MMC 16.65.060- Repair and maintenance of overwater structures:

MMC 16.65.060.B provides in pertinent parts:

The following requirements apply to the repair and maintenance of overwater structures where the repair work is for the purpose of preventing the decline, lapse, or cessation of the structure:

...

B. Repair and maintenance may include replacing a structure with a similar structure if the replacement does not increase the size or shape of the structure, or significantly alter the configuration of the entire structure;

The applicant is proposing the repair of the existing pier structure by replacing the existing structure with new materials. The existing pier has an overwater coverage of 697 square feet. Due to the intensity of replacement happening to the existing pier, the replacement is seen as a **new** structure entirely and is subject to the requirements of a **new** structure in MMC 16.65.040, per MMC 16.10.040, Administrative Authority.

MMC 16.65.040 – (New Structure) Pier:

The maximum overwater surface coverage for a new pier is 1,000 square feet (when shared/joint-use by more than two property owners). There are no setback requirements for shared/joint-use piers when straddling a common property line. The maximum length of the pier shall not exceed 100 feet. The maximum length of fingers is 20 feet. The maximum width of a walkway located within 30 feet waterward of the ordinary high-water mark (OHWM) is 4 feet. The maximum width of a walkway located greater than 30 feet waterward of the OHWM is 6 feet. The maximum width of a finger is 2 feet. The maximum height above the plane of the OHWM and the top of the decking of a pier is 5 feet. Decking for piers, docks, and platform lifts shall be grated or made with materials that allow a minimum of 40% light to be transmitted through.

The applicant is proposing the expansion of an existing 697-square-foot deck as well as an addition to the existing deck structure totaling 409 square feet for an overwater coverage total of 1,106 sf. The proposed deck and expansion would serve three (3) property owners (see Exhibit 8). The existing pier and proposed expansion would straddle the common property line of Parcel # 242504-9065 and Parcel # 242504-9211 (see Sheet 4 of Exhibit 10). The proposed expansion would extend the existing pier from approximately 59 feet to 100 feet in length (see Sheet 6 of Exhibit 10). The existing walkway width of the pier is approximately 6 feet, 3 inches. The proposed expansion would include a walkway that will have a width of 6 feet (see Sheet 6 of Exhibit 10). The proposed expansion and replacement would also include the addition of 4 fingers. The proposed fingers vary in width, ranging from 4 feet to 1 foot 6 inches. Two of the fingers are 26 feet long, while the remaining two are 12 feet 6 inches in length. These structures are designed to support the addition of the proposed boat lifts. The height of the pier above the plane of the ordinary high-water mark (OHWM) and the top of the decking of the pier and expansion will be approximately 1 foot 6 inches (see Sheet 9 of Exhibit 10). The existing pier will be repaired/replaced and resurfaced with a Thru-Flow® grate, rated at 43% light penetration (see Exhibit 4).

As proposed, the new pier does **not** meet the applicable code as the structure exceeds the design standards outlined in MMC 16.65.040. These inconsistencies include:

1. Exceeding maximum overwater coverage by 106 square feet;
2. Exceeding the walkway widths of 4 feet when located within 30 feet waterward of the ordinary high-water mark (OHWM) and 6 feet when located greater than 30 feet waterward of the OHWM ;
3. Exceeding the finger width of 2 feet and length of 20 feet.

Accordingly, as proposed, the new pier **cannot** be approved under the Code. Therefore, the site plan must be revised to comply with the design standards for **new** structures.

MMC 16.65.080 - Boat Lifts and Jet skis:

MMC 16.65.080 sets the requirements for boat and jet ski lifts. The maximum distance waterward of the OHWM where a lift may be located is no more than 100 feet. The minimum distance waterward of the OHWM where a lift may be located is no less than 30 feet and 9 feet of water depth. The maximum number of boat lifts and/or jet ski lifts allowed per single dwelling that shares the pier or dock is 3 each per single-dwelling. There are no side property line setback requirements for shared joint-use facilities straddling a common property line.

The distance of the furthest boat lift is located approximately 100 feet from the OHWM (see Sheet 6 of Exhibit 10). The existing boat lift and jet ski lifts are located within 30 feet of the OHWM (see Sheet 6 of Exhibit 10). The proposed jet ski and boat lifts will be located 30 feet from the OHWM (see Sheet 6 of Exhibit 10). Most of the proposed jet ski and boat lifts will not be able to meet the 9-foot water depth (see Sheet 8 of Exhibit 10). A water depth waiver has been approved and included (see Exhibit 15).

The maximum number of boat lifts and jet skis allowed for this pier is nine (9). The applicant currently has one (1) boat lift and one (1) jet ski lift associated with the existing pier. The applicant is proposing to locate on the site three (3) additional boat lifts and two (2) double jet ski lifts for a total of four (4) boat lifts and five (5) jet ski lifts (see Sheet 6 of Exhibit 10). The project proposes 1,000 sq. ft. of shoreline planting for mitigation purposes (see Sheet 11 of Exhibit 10).

Therefore, the applicants have proposed boat lift and jet ski lift structures that are consistent with the dimensional and design standards outlined in MMC 16.65.080.

PART 6 – CONCLUSIONS

1. According to MMC 16.72.100(C) and MMC 16.80.060(C), the Hearing Examiner has the authority to hold a public hearing and issue a decision on this application.
2. Notice for this public hearing was posted on the property and mailed to surrounding property owners within 300 feet, published in the Seattle Times newspaper on January 6, 2025, more than 15 days before the hearing date (Exhibit 5). Furthermore, the Notice of Hearing date of January 21, 2025, was posted the same day at City Hall, the Medina Post Office and other locations around Medina.

3. According to MMC 16.72.100(F), a Substantial Development Permit may only be approved if the following criteria are met:

- a. *Requirement: The proposed development is consistent with the policy and provisions of the State Shoreline Management Act of 1971 (chapter 90.58 RCW).*

CONCLUSION: The Medina Shoreline Master Program (SMP) has been adopted in a manner that is consistent with the policies and provisions of the Washington Shoreline Management Act (“the Act,” RCW 90.58). MMC 16.60.060(A) sets forth that “all use and development proposals, including those that do not require a permit, must comply with the policies and regulations established by the Act as expressed through the Shoreline Master Program (SMP)”. Because the Medina SMP has been adopted to express the Act’s policies and regulations, an applicant’s consistency with the provisions of the Medina SMP inherently conveys consistency with the policies and provisions of the Act. As concluded in Part 5 of this staff report, the proposed project is inconsistent with the provisions of the Medina SMP as the pier exceeds the standards set for in MMC 16.65.040; therefore, this criterion has **not** been satisfied.

- b. *Requirement: The proposed development is consistent with the State Shoreline Management Permit and Enforcement Procedures (chapter 173-27 WAC).*

CONCLUSION: The Medina SMP has been adopted in a manner that is consistent with the guidelines of WAC Chapter 173-27. MMC 16.60 has been adopted under the authority of RCW 90.57 and WAC Chapter 173-27 (MMC 16.60.040), and its purpose is to comply with WAC Chapter 173-27 (MMC 16.60.030). Because the Medina SMP has been adopted in a manner that complies with WAC Chapter 173-27, an application’s consistency with the provisions of the Medina SMP inherently conveys consistency with WAC Chapter 173-27. As is concluded in Part 5 of this staff report, the proposed project is **inconsistent** with the provisions of the Medina SMP due to the proposed pier exceeding the size standards under MMC 16.65.040; therefore, this criterion has **not** been satisfied.

- c. *Requirement: The proposed development is consistent with the provisions of the city shoreline master program.*

CONCLUSION: As has been demonstrated in the analysis provided in Part 5 of this staff report, the applicant’s proposed new pier is **inconsistent** with the size limitations outlined in the provisions of the Medina SMP. Therefore, this criterion has **not** been satisfied.

PART 7 – STAFF RECOMMENDATION

Staff recommends the Hearing Examiner **deny** the Non-Administrative Substantial Development Permit (File No. P-23-065) as the project has not demonstrated consistency with the Medina Municipal Code, Medina Shoreline Master Program, the State Shoreline Management Act of 1971, and the State Shoreline Management Permit and Enforcement Procedures.

If the Hearing Examiner decides to **approve** the Non-Administrative Substantial Development Permit, then the following **conditions** shall be included:

1. The project shall be redesigned to reduce the size of the pier and its components so as not to exceed the maximum size, width and length allowed under MMC 16.65.040.
2. Mitigation shall be provided consistent with Exhibit 10, including the monitoring plan. The monitoring report is required to be provided to the U.S. Army Corps of Engineers (Corps) and shall also be provided to the City in written form simultaneously with the applicant's submittal to the Corps.
3. The development must comply with and be consistent with the Medina Shoreline Master Program (Chapters 16.60 through 16.67 MMC, in combination with Sub-Element 2.1 of the Medina Comprehensive Plan per MMC 16.60.010), Chapter 173-27 WAC (Shoreline Management Permit and Enforcement Procedures), and Chapter 90.58 RCW (Shoreline Management Act).
4. All other zoning and development regulations applicable to the project shall be followed and confirmed during the building permit review.

Date: 1-16-25

Thomas Carter, Associate Planner, LDC, Inc.
on behalf of the City of Medina