
DOCKET REQUEST FORM

The following information is required to be included. Failure to complete this form may result in the application being incomplete. Incomplete applications will not be considered during the annual docket process.

APPLICANT INFORMATION

Name: Mercer Island Beach Club
Address: 8326 Avalon Drive
Phone: (206) 232-3125
Email: gardner.morelli@gmail.com (using my email for purposes of this application vs. General Mgrs.)

AGENT/CONSULTANT/ATTORNEY: (COMPLETE IF PRIMARY CONTACT IS DIFFERENT FROM APPLICANT)

Name: _____
Address: _____
Phone: _____
Email: _____

REQUEST INFORMATION

Please complete a separate Docket Request Form for each item you are requesting to be added to the Docket.

Is this request related to a specific property or zone? Yes No

If yes, please complete the following information:

Property Owner: Mercer Island Beach Club
Address: 8326 Avalon Drive
County Assessors Parcel No.: 312405-9003
Parcel Size (sq. ft.): 327518

If the application is submitted by an agent/consultant/attorney, please demonstrate that that the application has been submitted with the consent of all owners of the affected property. For example, attach a signed letter providing consent.

Is this request for a Comprehensive Plan amendment or a development code amendment?

Comprehensive Plan amendment Development code amendment

Would you like to submit a suggestion for a comprehensive plan or development code amendment, or is this an application for a specific amendment (check boxes)? Please note: applications are subject to [applicable permit fees](#).

Suggestion Application

DOCKET REQUEST NARRATIVE – REQUIRED FOR ALL APPLICATIONS

Please attach a narrative responding to the following questions. Attach any additional sheets, supporting maps or graphics. Answer each question separately and reference the question number in your answer. **The application will be considered incomplete without a narrative answering all of the following questions.**

1. Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.
 - a. Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.
 - b. If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with ~~strikeouts~~.
 - c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.
2. How does the proposal benefit the community or the environment?
3. Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).
4. For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?
5. For development code amendments: how does the proposal align with the goals of the City's Comprehensive Plan?

Signature: _____

Gardner Merelli

Date: _____

9/29/2022

DOCKETING CRITERIA (MICC 19.15.230 (E)):

Docketing criteria. The following criteria shall be used to determine whether a proposed amendment is added to the final docket in subsection D of this section:

1. The request has been filed in a timely manner, and either:
 - a. State law requires, or a decision of a court or administrative agency has directed, such a change; or
 - b. All of the following criteria are met:
 - i. The proposed amendment presents a matter appropriately addressed through the comprehensive plan or the code;
 - ii. The city can provide the resources, including staff and budget, necessary to review the proposal, or resources can be provided by an applicant for an amendment;
 - iii. The proposal does not raise policy or land use issues that are more appropriately addressed by an ongoing work program item approved by the city council;
 - iv. The proposal will serve the public interest by implementing specifically identified goals of the comprehensive plan or a new approach supporting the city's vision; and
 - v. The essential elements of the proposal and proposed outcome have not been considered by the city council in the last three years. This time limit may be waived by the city council if the proponent establishes that there exists a change in circumstances that justifies the need for the amendment.

COMPREHENSIVE PLAN DECISION CRITERIA (MICC 19.15.230 (F)):

Decision criteria. Decisions to amend the comprehensive plan shall be based on the criteria specified below. An applicant for a comprehensive plan amendment proposal shall have the burden of demonstrating that the proposed amendment complies with the applicable regulations and decision criteria.

1. The amendment is consistent with the Growth Management Act, the countywide planning policies, and the other provisions of the comprehensive plan and city policies; and
 - a. There exists obvious technical error in the information contained in the comprehensive plan; or
 - b. The amendment addresses changing circumstances of the city as a whole.
2. If the amendment is directed at a specific property, the following additional findings shall be determined:
 - a. The amendment is compatible with the adjacent land use and development pattern;
 - b. The property is suitable for development in conformance with the standards under the potential zoning; and
 - c. The amendment will benefit the community as a whole and will not adversely affect community facilities or the public health, safety, and general welfare.

DEVELOPMENT CODE AMENDMENT DECISION CRITERIA (MICC 19.15.250 (D)):

Criteria. The city may approve or approve with modifications a proposal to amend this Code only if:

1. The amendment is consistent with the comprehensive plan; and
2. The amendment bears a substantial relation to the public health, safety, or welfare; and
3. The amendment is in the best interest of the community as a whole.

**Narrative – Attached to Mercer Island Beach Club Docket Request
September 23, 2022**

Listed below in *Italics* are the criteria stated on the City’s Docket Request form, followed by the Mercer Island Beach Club’s response.

Please attach a narrative responding to the following questions. Attach any additional sheets, supporting maps or graphics. Answer each question separately and reference the question number in your answer.

The application will be considered incomplete without a narrative answering all of the following questions.

1. *Please provide a detailed description of the proposed amendment and a clear statement of what the proposed amendment is intended to accomplish.*
 - a. *Indicate the specific Comprehensive Plan Elements, maps, goals or policies or the specific sections of the development code you propose to amend.*

RESPONSE: The Mercer Island Beach Club (MIBC or Club) seeks to update and rebuild its current marina to meet modern, more environmentally friendly standards. While the MIBC could, and still may, file permit applications under current codes, the City Staff has suggested that pursuing a code amendment is also a good option. Therefore, MIBC requests an amendment to a note found at the end of MICC 19.13.040, Table B, Shoreland Uses Waterward of the Ordinary High Water Mark.

- b. *If the proposal would amend existing Comprehensive Plan or development code text, please provide the proposal in underline/strikeout format with text to be added indicated by underlining and text to be deleted indicated with strikeouts.*

RESPONSE: The MIBC seeks to amend one footnote found at the end of MICC 19.13.040, Table B, Shoreland Uses Waterward of the Ordinary High Water Mark as follows:

Notes:

A use not listed in this table is not permitted within shorelands, provided, however, that this footnote does not preclude any existing private club or residential community serving more than 10 families from using a Shoreline Conditional Use Permit process for the redevelopment of its moorage facilities, floating platforms, mooring piles, diving boards and diving platforms, associated swim areas and other accessory uses, all where the applicable development standards are to be determined on a case-by-case basis.

A use permitted by this table shall meet all other applicable regulations, including, but not limited to, being an allowed use in the applicable zone.

c. If a map amendment is proposed, please provide a map that clearly outlines the areas proposed to be changed.

RESPONSE: The MIBC does not seek a map amendment.

2. *How does the proposal benefit the community or the environment?*

RESPONSE: The MIBC's project proposal as well as this code amendment will benefit both the community and the environment. For example, the marina renovation and reconfiguration will benefit the community, including the significant portion of the Island's families who are MIBC members, by repairing damaged and inaccessible portions of the marina and updating other portions of the marina so as to better protect moored boats, and improve access to the Club's swim area, while at the same time benefitting the Island and surrounding communities by opening and enhancing fish habitat along the shoreline and throughout the marina. However, in direct response to this Docket Request criterion, only the benefits to the community and the environment from the proposed code amendment are described below.

The primary benefit of this code amendment is to clarify the City's Shoreline Master Program (SMP) for all of the community and to ensure that the SMP code provisions are consistent with the City's Comprehensive Plan and State law.

The City of Mercer Island's SMP Comprehensive Plan policies and regulations combine and treat together two similar shoreline uses that are provided for in State law. Under State law, "recreational development" is a type of shoreline use that includes "commercial and public facilities designed and used to provide recreational opportunities to the public." WAC 173-26-241(3)(i). In contrast, "boating facilities" are a separate type of private dock and moorage, albeit specifically excluding docks serving four or fewer single-family residences. WAC 173-26-241(3)(c).

MIBC representatives and City staff have met, separately, with the Washington State Department of Ecology (Ecology). As the Club understands the situation, a use like the MIBC's marina would typically be regulated in a local SMP as a "boating facility," and all development standards would be set on a case-by-case basis. Case-by-case determination of development standards is used because it is difficult to craft regulations to govern the wide variety in marina design resulting from unique shoreline geography, wave action and weather patterns. Since "boating facilities" were not separately described in the SMP regulations, MIBC presumes that its redevelopment was intended to be permitted using the catchall State law allowances for Shoreline Conditional Use Permits.¹ Specifically, WAC 173-26-241(2)(b) calls for conditional use permits to be used to

¹ The opposite presumption that the use is prohibited is not consistent with State law, because State law, RCW 90.58.020, sets a policy to prefer water-dependent uses, not prohibit them.

permit unanticipated uses that are not otherwise classified in that SMP, and WAC 173-27-160(3) also allows uses not classified in the SMP to be authorized as conditional uses.

However, when the City's current Shoreline Master Program was adopted, MICC 19.13.040, Table B, Shoreland Uses Waterward of the Ordinary High Water Mark, included a footnote stating "a use not listed in this table is not permitted within shorelands." Due to that footnote, City Staff is concerned now about how to process the MIBC's desired redevelopment permits and whether or not a Shoreline Conditional Use Permit can be used, as MIBC contends it must under State law. MIBC anticipates similar concerns may be raised in the event the Mercerwood Shore Club, or Covenant Shores seeks to redevelop their favored, water-dependent uses.

Thus, community benefits of the proposed code amendment include not only assisting the permitting process for the MIBC and the significant number of residents who are its members, but also assuring that other private marinas on the island which serve a significant number of residents, such as the marina at the Mercerwood Shore Club and the marina at Covenant Shores, will now have the same clarified permitting process described in code.

The scope of the amendment includes reference to facilities used by more than 10 families. The reason for the dividing line at more than 10 families, is because the City's current SMP code provisions applicable to uses that are landward of the ordinary high-water mark creates different categories for "semi-private waterfront recreation areas" serving either 10 or fewer families, or more than 10 families. Because 10 families is set as a dividing line for those upland uses, the MIBC's proposed code amendment for shoreland uses also sets the dividing line at more than 10 families.² MIBC crafted its code amendment proposal to ensure that the MIBC code amendment provides the community benefit of not altering the existing permitting process and standards for any private moorage facility serving 10 or fewer families.

The environmental benefits of the code amendment are to clarify that redevelopment of the Island's several private marinas is possible, and to expressly state that all development standards (e.g., dock width) for these marinas will be set on a case-by-case basis. This ensures that the facilities can upgrade to today's environmentally friendly designs, rather than be forced to continue to simply repair and replace decades old facilities.

Finally, we again note that all of the component parts of the MIBC's marina are listed as permitted shoreland uses on MICC 19.13.040, Table B, including "moorage facilities," "floating platforms", and "mooring piles, diving boards and diving platforms." Given that reality, the MIBC contends that its planned reconstruction already is permitted under the current code. However, in response to City Staff suggestion, the Club is seeking this code

² This is intentionally different from the State law definition of boating facilities, which sets a dividing line at all docks that serve four or fewer families. Importantly, the State law definition of boating facilities "excludes" docks serving four or fewer families but does not preclude a local City from regulating boating facility docks serving between four and 10 families differently, from boating facilities serving more than 10 families.

amendment so as to emphasize the permissibility of the planned reconstruction and to better clarify the permit process.

3. *Explain how the request relates to the applicable decision criteria (MICC 19.15.250(D) for code amendments, and MICC 19.15.230(F) for Comprehensive Plan amendments, see below).*

RESPONSE: The criteria for a code amendment stated in MICC 19.15.250(D) are:

- D. *Criteria.* The city may approve or approve with modifications a proposal to amend this Code only if:
1. The amendment is consistent with the comprehensive plan; and
 2. The amendment bears a substantial relation to the public health, safety, or welfare; and
 3. The amendment is in the best interest of the community as a whole.

The MIBC code amendment proposal meets these criteria. First, consistency of the proposed code amendment with the Comprehensive Plan is described in item 5, below.

Second, this code amendment bears a substantial relation to the public health, safety, or welfare. As described above under item 2, the City's adopted SMP is unusual and should be implemented in a manner that ensures continued support for water dependent uses. For a City like Mercer Island that includes several private marinas used by many island residents, as well as other potential shoreland uses that include many of the various component parts listed as permitted uses in the shoreland use table, a Shoreline Conditional Use Permit should be an available tool. This code amendment ensures this and retains all of the existing environmental and private property protections of the existing SMP. Finally, this amendment assures that those older marinas can redevelop so as to provide enhancements and improvements to the aquatic environment.

Third, this amendment is in the best interests of the community as a whole, because it (a) retains the prohibition of any unlisted shoreland uses the community originally adopted into the shoreland uses table to assure whatever protection was then desired remains in place, but (b) clarifies that all community club and similar marinas serving 10 or more families may pursue a Shoreline Conditional Use Permit to modify existing facilities to meet the community interests of continued access to marina facilities and protection of the shoreline aquatic environment.

4. *For Comprehensive plan amendments: Is the proposal consistent the Growth Management Act and King County Countywide Planning Policies?*

RESPONSE: This criterion is not applicable, because MIBC does not propose a Comprehensive Plan amendment.

5. *For development code amendments: how does the proposal align with the goals of the City's Comprehensive Plan*

RESPONSE: The MIBC's proposed code amendment aligns with the goals of the City's Comprehensive Plan.

First, the Comprehensive Plan Shoreline Management Program management policies include that within the Urban Residential Shoreline Environment, "non-commercial recreational areas" should be allowed. The MIBC land is within the Urban Residential Shoreline Environment and provides a non-commercial recreational area.

Next, goals and policies for new recreational development and new boating facilities are included in the Comprehensive Plan.³ Because these policies apply to new development, they are not applicable to the current code amendment affecting redevelopment. Within the discussion of Recreational Development, the Comprehensive Plan explains that "Covenant Shores, a continuing care retirement community, owns approximately 650 feet of shoreline which serves as open space, swimming, picnicking, and moorage for its residential units," and expressly acknowledges the MIBC and the Mercerwood Shore Club stating, that "there are two private waterfront clubs owning a combined 1,194 feet of frontage. They provide swimming, moorage, and boat launching facilities to a significant portion of the Island's families." Redevelopment of these existing uses is addressed in different goals and policies of the Comprehensive Plan.

³ The Comprehensive Plan provides one Goal and three Policies regarding new Recreational Development:

GOAL: Water-dependent recreational activities available to the public are to be encouraged and increased on the shoreline of Mercer Island where appropriate and consistent with the public interest.

POLICIES:

- (1) Provide additional public water-oriented recreation opportunities.
- (2) Locate public recreational uses in shoreline areas that can support those uses without risks to human health, safety, and/or security, while minimizing effects on shoreline functions, private property rights, and/or neighboring uses.
- (3) Priority should be given to recreational development for access to and use of the water.

The Comprehensive Plan also includes a single policy, without a goal and with no discussion, regarding new Boating Facilities:

POLICY:

New boating facilities should be designed to meet health, safety, and welfare requirements; mitigate aesthetic impacts; minimize impacts to neighboring uses; provide public access; assure no net loss of ecological functions and prevent other significant adverse impacts; and protect the rights of navigation and access to recreational areas.

The General Goals and Policies of the City's Comprehensive Plan Shoreline section include a goal to "Increase and enhance public access to and along the Mercer Island Shoreline where appropriate and consistent with public interest, provided public safety, private property rights, and unique or fragile areas are not adversely affected." Among the implementing policies for this goal are that "when substantial modifications or additions are proposed to substantial developments, the developer should be encouraged to provide for public access to and along the water's edge if physically feasible provided that no private property be taken involuntarily without due compensation." In addition, the Conservation and Water Quality provisions set a goal that the "resources and amenities of Lake Washington are to be protected and preserved for use and enjoyment by present and future generations," with an implementing policy to conserve existing natural resources, so long as consistent with private property rights, including that "aquatic habitats, particularly spawning grounds, should be protected, improved and, if feasible, increased." These goals and policies are fostered by the proposed code amendment because the code amendment clarifies that the three larger private marinas on the island: the Beach Club, the Shore Club and Covenant Shores, as well as any other private marina serving more than 10 families can redevelop, while respecting private property rights, and while ensuring that when redevelopment occurs, aquatic habitat areas should be improved, when feasible.

The Comprehensive Plan also sets policies for shoreline modifications, that is, the physical work needed to achieve redevelopment. Those policies include that the "repair, renovation, and replacement of existing piers and docks should be allowed." Similarly, the Plan sets a goal for shoreline uses to "ensure that the land use patterns within shoreline areas are compatible with shoreline environment designations and will be sensitive to and not degrade habitat, ecological systems, and other shoreline resources," supported by a policy to ensure that all "development and redevelopment" be designed to ensure no net loss of shoreline ecological functions. The MIBC code amendment aligns with these goals and policies because it clarifies that redevelopment, renovation and replacement of existing piers and docks at larger private marinas is allowed.