



**City of Bellevue
Development Services Department
Land Use Staff Report**

Proposal Name: Chang Residence Slope Modification

Proposal Address: 10015 SE 25th Street

Proposal Description: Application for Critical Areas Land Use Permit to modify the structure setback along the shoreline of Lake Washington to accommodate the construction of a sports court. Proposal includes a restoration of the shoreline buffer.

File Number: 08-132008-LO

Applicant: David Chang, Property Owner

Decisions Included: Critical Areas Land Use Permit
(Process II - LUC 20.30P)

Planner: David Pyle, Land Use Planner

**State Environmental Policy Act
Threshold Determination:** SEPA Exempt per RCW 197-11-800 and
BCC 22.02 (Not in defined Critical Area)

Director's Decision: **Approval with Conditions**
Michael A. Brennan, Director
Development Services Department

Carol V. Helland

Carol V. Helland, Land Use Division Director
Development Services Department

Application Date: August 26, 2008
Date Application Deemed Complete: September 11, 2008
Notice of Application Publication Date: September 25, 2008
Decision Publication Date: January 8, 2009
Project Appeal Deadline: January 22, 2009

For information on how to appeal a proposal, visit Development Services Center at City Hall or call (425) 452-6800. Appeal of the Decision must be received in the City's Clerk's Office by 5 PM on the date noted for appeal of the decision.

I. Proposal Description

This is a proposal for Critical Areas Land Use Permit to construct a new sport court within the structure setback along the shoreline of Lake Washington. The proposal includes a restoration of the shoreline buffer.

Critical areas land use permit (LUC 20.30P): The project site is located adjacent to Lake Washington and is subject to the City's Land Use Code critical areas requirements for shoreline critical areas, buffers, and structure setbacks. The applicant is requesting a modification of the required shoreline critical area buffer and structure setback to allow for the construction of a new sport court within the structure setback and the replanting of the shoreline buffer with native vegetation, an action that requires approval through the critical areas land use permit process. The critical areas land use permit action is discussed in greater detail in Section III.B below.

II. Site Description, Zoning, Land Use, and Critical Areas

A. Site Description

The Chang property is located at 1001 SE 25th Street. The project site is located in the west central portion of Bellevue in the NW quadrant of Section 8, Township 24 North, Range 5 East. The site is zoned single-family residential, one single family residence is currently under construction (redevelopment). The site is located directly south and adjacent to the City of Bellevue Chesterfield Beach Park and is within the City of Bellevue Shoreline Overlay District due to proximity to Lake Washington. The single family residence under construction is situated on a flat bench area between two slopes that constrain the useable area of the site. The slope to the west is adjacent to Lake Washington and is not regulated as a steep slope. The slope to the east has been identified as a regulated steep slope (steeper than 40%) area. Past topographic modifications to the site are evident and were likely done to accommodate the development of the single family residence that historically occupied the site. Vehicle access to the site is provided by an existing 20 foot wide access easement and an 11 foot wide paved shared driveway the terminus of which is located at the subject property.

Generally, the portion of the property along the shoreline of Lake Washington and under evaluation as part of this application is in poor condition when compared to an intact highly functional shoreline reference site. The area where the activity is proposed primarily consists of maintained lawn and few significant trees. Current shoreline developments include a small dock with a covered moorage and a concrete bulkhead built at the ordinary high water mark. See **Figure 1** below for a recent aerial oblique photograph of the shoreline and **Figure 2** for an aerial photograph of the entire property.



Figure 1: Site Oblique Photo



Figure 2: Site Aerial

B. Zoning

The site is zoned R-1.8 and is within the Critical Areas Overlay District due to the presence of steep slope critical areas and the shoreline of Lake Washington. The proposed sport court is allowed in this zone as part of a single family development.

C. Land Use Context

The property has a Comprehensive plan Land Use Designation of SF-L (Single Family Low Density). The proposed activity is consistent with single family development and is allowed in the single family comprehensive plan land use designation.

D. Past Land Use Decisions

A Critical Areas Land Use Permit was issued in 2007 to allow for the modification of the steep slope in the eastern portion of the site under a proposal to expand the driveway and vehicle turn around. This decision was processed under file number 06-138645-LO. The current application for Critical Areas Land Use Permit does not include any proposal to modify the steep slope in the eastern portion of the property. The proposal under review in this application is limited to review of a proposal to construct a sport court in the Lake Washington shoreline critical area structure setback and replanting of the Lake Washington shoreline critical area buffer with native vegetation.

E. Critical Areas Functions and Values and Regulation

- i. **Lake Washington Shoreline-** The subject site is along the shores of Lake Washington and as such is subject to the requirements of the Shoreline Overlay District and the Critical Areas Overlay District. Shorelines provide a variety of functions including shade, temperature control, water purification, woody debris recruitment, channel, bank and beach erosion, sediment delivery, and terrestrial-based food. Shorelines provide a wide variety of functions related to aquatic and riparian habitat, flood control and water quality, economic resources, and recreation, among others. Each function is a product of physical, chemical, and biological processes at work within the overall landscape. In lakes, these processes take place within an integrated system (ecosystem) of coupled aquatic and riparian habitats. Currently, the site is characterized primarily by maintained urban landscape consisting of mowed lawns and few significant trees (see **Figure 1** and **Figure 2** above).
- ii. **Shoreline Overlay District/Shoreline Substantial Development Permit-** The Shoreline Overlay District regulations (LUC 20.25E) allow for the construction of a single family residence and associated appurtenances as an exemption (LUC 20.25E.050), however, all applicable performance standards must be met. The proposed sport court is considered an appurtenance and is exempt from Shoreline Substantial Development Permit. The proposed activity meets the performance standards identified in LUC 20.25E.080.B and 20.25E.080.G as required.
- iii. **Shoreline Critical Areas-** The proposed sport court is subject to the Shoreline Critical Areas regulations outlined in LUC 20.25H.115. Under this section, modification of the structure setback is allowed through the Critical Areas Report and Critical Areas Land Use Permit process. The sport court may be located within the shoreline structure setback (as a non-structure) if requirements of the Critical Areas Report process can be met. The Critical Areas Report and Critical Areas Land Use Permit are addressed in greater detail in section VI of this report.

III. Consistency with Land Use Code Requirements:

A. Zoning District Dimensional Requirements – LUC 20.20.010:

The site is located in the R-1.8 land use zoning district. General dimensional requirements from LUC 20.20.010 for development in this district are identified below. The scope of review completed under this application was limited to consistency of critical areas regulations as they pertain to the construction of the proposed sport court and associated buffer replanting/restoration. This proposal does not include any modification of the existing residence that is currently under construction and no modification of the approved building plans is allowed as part of this permit outside of changes associated with the new sport court and buffer replanting/restoration. Any future proposal to modify plans for the single family residence under construction, including the addition of the sport court, must comply with the dimensional standards identified in LUC 20.20.010.

Front yard setback:	30 feet
Rear yard setback:	25 feet
Side yard setback:	5 feet
Two side yards combined:	15 feet
Maximum lot coverage by structures:	35%
Maximum coverage by impervious surface:	50%

B. Critical Areas Report Requirements - LUC 20.25H.230:

As allowed under LUC 20.25H.115.B.2, the applicant has submitted application for critical areas land use permit in combination with the critical areas report process to permit the development of a 1,884 square foot sport court that is partially located in the shoreline structure setback. Critical areas land use permits with critical areas reports are governed by LUC 20.25H.230 and typically include an assessment of site conditions in relation to the proposed modification (modification of the structure setback). Materials and concepts submitted through this process must include a proposal to restore or enhance degraded portions of the property with the objective of a net increase in functions as identified in Section II.E.i above. In response to these requirements, the applicant has proposed restoring and enhancing the 25 foot shoreline buffer behind the bulkhead (landward, and restoration of portions of the structure setback along the property side yards and has submitted a conceptual restoration/replanting plan (LUC 20.25H.220).

All restoration/replanting will be done with native plantings in quantities (densities) that meet the requirements of the city's critical areas handbook. As a condition of approval, the applicant is required to submit a final restoration/replanting plan that meets the requirements of the land use code and the critical areas handbook and that must be approved before release of permit to construct the sport court improvements. The applicant is also required to maintain the restored area through five years of maintenance and monitoring and will be required to submit a security device (assignment of savings or bond) to ensure the plantings will be installed and maintained over the required five year period. See related conditions of approval in Section VIII. Proposal consistency with the Critical Areas Report Decision Criteria is addressed in section VI below. The conceptual restoration plan is included as **Attachment I.**

IV. Public Notice and Comment

Application Date: June 17, 2008
Public Notice (500 feet): September 11, 2008
Minimum Comment Period: September 25, 2008

The Notice of Application for this project was published in the City of Bellevue Weekly Permit Bulletin on September 25, 2008. It was mailed to property owners within 500 feet of the project site. Seven comment letters were received regarding the proposal. Comment letters are included as **Attachment II** to this report. Comments included opposition to the proposed sport court due to an increase in noise and lighting associated with sport court activity. Several of the letters received indicated that the sport court would disrupt the residents and users of the park due to the level of activity the amenity would bring to the shoreline. Other comments received were related to construction practices associated with the new home that is currently being built on the site and generally in opposition to the change in neighborhood character brought by several of the new residences constructed along the lake in the neighborhood.

In response to the issues identified, City Codes do not regulate lighting associated with single family development along the shoreline of Lake Washington. Noise is regulated by the City's Noise Ordinance, which is located in BCC 9.18. Similar to adjacent properties and the Chesterfield Park, all sport court activity must comply with the requirements of the City's Noise Ordinance. Additionally, recreational and general activity associated with single family residences is not regulated by operational hours (outside of the noise ordinance) and other single family residences within the City's jurisdictional boundary are not regulated with regards to sport court use.

V. Summary of Technical Reviews

A. Clearing and Grading

Any proposal for building permit or clearing and grading permit must conform to all applicable city code requirements and meet applicable conditions of approval. Erosion control is required. See related conditions of approval in Section VIII of this report.

VI. Decision Criteria

A. Critical Areas Report Decision Criteria LUC 20.25H.255

The proposal, as conditioned below, meets the applicable regulations and decision criteria for a Critical Areas Report pursuant to LUC Section 20.25H.255.

1. The modifications and performance standards included in the proposal lead to levels of protection of critical area functions and values at least as protective as application of the regulations and standards of this code;

Finding: This proposal to construct a sport court within the shoreline structure setback will not lead to a reduction in the level of protection of the shoreline as

compared to the current and historic condition and as compared to the standards of the land use code. The critical areas report is intended to provide flexibility for sites where the expected critical area functions and values are not present due to degraded conditions or other unique site characteristics. In this case the shoreline, shoreline buffer, and shoreline structure setback have been degraded by past clearing and development activity and many of the expected functions (as identified in section II.E.i above) are not present. The applicant has demonstrated through submittal of conceptual restoration/replanting plans that the proposal with the requested modifications leads to an enhancement of critical area functions and values over what would result from the application of the standard requirements. See related conditions of approval in Section VIII.

2. Adequate resources to ensure completion of any required mitigation and monitoring efforts;

Finding: As a condition of approval, the applicant is required to maintain the restored area through five years of maintenance and monitoring and will be required to submit a security device (assignment of savings or bond) to ensure the plantings will be installed and maintained over the required five year period. See related conditions of approval in Section VIII.

3. The modifications and performance standards included in the proposal are not detrimental to the functions and values of critical area and critical area buffers off-site;

Finding: This proposal to construct a 1,884 square foot sport court and restore/replant the shoreline buffer will not be detrimental to the functions and values of the Lake Washington shoreline or buffer. Through enhancement of the shoreline and buffer with native vegetation and the maintenance of the restored area for five years, it is expected that an overall improvement in the natural function of the shoreline will be achieved.

4. The resulting development is compatible with other uses and development in the same land use district.

Finding: The proposed activity is allowed in this zone as it is part of a single family development. Sport courts are common single family amenities and are located as appurtenances to single family development throughout Bellevue. The proposed sport court is compatible with single family development, including the adjacent Chesterfield Park.

B. Critical Areas Land Use Permit Decision Criteria LUC 20.30P

The proposal, as conditioned below, meets the applicable regulations and decision criteria for a Critical Areas Land Use Permit pursuant to LUC Section 20.30P.

1. The proposal obtains all other permits required by the Land Use Code;

Finding: A building or clearing and grading permit is required. See related conditions of approval in Section VIII of this report.

2. The proposal utilizes to the maximum extent possible the best available construction, design and development techniques which result in the least impact on the critical area and critical area buffer;

Finding: The applicant has designed the proposed sport court so that it does not extend into the buffer. To ensure any potential buffer impact is minimized, the proposal includes a plan for restoration of the 25 foot shoreline buffer with dense vegetation to limit pet or human use. See related conditions of approval in Section VIII of this report.

3. The proposal incorporates the performance standards of Part 20.25H to the maximum extent applicable, and ;

Finding: There are no applicable performance standards in LUC 20.25H. However, the applicant is required to meet the performance standards identified in LUC 20.25E.080.B and 20.25E.080.G. See related conditions of approval in Section VIII of this report.

4. The proposal will be served by adequate public facilities including street, fire protection, and utilities; and;

Finding: The proposed project will be served by adequate public facilities. The site has historically been built out with an existing single family residence. No new streets or utility connections will be needed to serve the site. Additionally, fire and police protection are currently available at the site.

5. The proposal includes a mitigation or restoration plan consistent with the requirements of LUC Section 20.25H.210; and

Finding: A final mitigation and restoration plan must be prepared as required by LUC 20.25H.220.H. See related conditions of approval in Section VIII of this report.

6. The proposal complies with other applicable requirements of this code.

Finding: As discussed in Section III of this report, the proposal complies with all other applicable requirements of the Land Use Code.

VII. Conclusion and Decision

After conducting the various administrative reviews associated with this proposal, including Land Use Code consistency, City Code and Standard compliance reviews, the Development Services Director does hereby **approve with conditions** this proposal to modify the structure setback along the shoreline of Lake Washington to accommodate the construction of a 1,884 square foot sports court and restore/replant the shoreline buffer.

Note- Expiration of Approval: In accordance with LUC 20.30P.150 a Critical Areas

Land Use Permit automatically expires and is void if the applicant fails to file for a Clearing and Grading Permit or other necessary development permits within one year of the effective date of the approval.

VIII. Conditions of Approval

The applicant shall comply with all applicable Bellevue City Codes and Ordinances including but not limited to:

<u>Applicable City Code Sections</u>	<u>Contact Person</u>
Clearing and Grading Code- BCC Title 23	David Pyle, 425-452-2973
Land Use Code- BCC Title 20	David Pyle, 425-452-2973

The following conditions are imposed under the Bellevue City Code or SEPA authority referenced:

1. Disturbance Limit: The structure setback modification approved is limited to the area to shown in the Land Use decision issued on January 8, 2009 and depicted in the approved site plan.

Authority: Land Use Code 20.30P.120
Reviewer: David Pyle, Development Services Department

2. Building Permit or Clearing and Grading Permit Required: Approval of this critical areas land use permit does not constitute an approval of a building or clearing and grading permit. Application for building or clearing and grading permit must be submitted and approved prior to the commencement of construction. Plans submitted as part of the building or clearing and grading permit application must be consistent with the activity permitted under this critical areas land use permit.

Authority: Land Use Code 20.30P.140
Reviewer: David Pyle, Development Services Department

3. Special Inspection Required: Special inspection of the shoreline restoration following construction must be completed by the Land Use Planner.

Authority: Land Use Code 20.25H.210
Reviewer: David Pyle, Development Services Department

4. Clearing Limits for Permanent and Temporary Disturbance: Prior to commencement of construction, clearing limits must be delineated in preparation for preconstruction inspection by clearing and grading and land use staff and certified in the field to be in conformity with this approval.

Authority: Bellevue City Code 23.76.160
Reviewer: David Pyle, Development Services Department

5. Buffer Restoration and Maintenance Plan Required: To mitigate for the allowed permanent disturbance on the site within the structure setback, a final buffer

restoration plan that meets the requirements of Land Use Code section 20.25H.210 shall be submitted for review and approval by the city prior to issuance of the building permit. The final plan must include details on maintenance and monitoring for a period of five years to ensure plantings have the opportunity to establish.

Authority: Land Use Code 20.25H.220
Reviewer: David Pyle, Development Services Department

6. Rainy Season Restrictions: Due to the proximity to Lake Washington, no clearing and grading activity may occur during the rainy season, which is defined as November 1 through April 30 without written authorization of the Development Services Department. Should approval be granted for work during the rainy season, increased erosion and sedimentation measures, representing the best available technology must be implemented prior to beginning or resuming site work.

Authority: Bellevue City Code 23.76.093.A
Reviewer: David Pyle, Development Services Department

7. Pesticides, Insecticides, and Fertilizers: The applicant must submit as part of the required building permit information regarding the use of pesticides, insecticides, and fertilizers in accordance with the City of Bellevue's "Environmental Best Management Practices" .

Authority: Land Use Code 20.25H.220
Reviewer: David Pyle, Development Services Department

8. Noise Control: The proposal will be subject to normal construction hours of 7 am to 6 pm Monday through Friday and 9 am to 6 pm on Saturdays, except for Federal holidays and as further defined by the Bellevue City Code. Upon written request to Development Services, work hours may be extended to 10 pm if the criteria for extension of work hours as stated in BCC 9.18 can be met.

Authority: Bellevue City Code 9.18
Reviewer: David Pyle, Development Services Department

9. Installation and Maintenance Assurance Devices: To ensure the proposed plantings are installed and that the five year maintenance and monitoring plan is implemented, the applicant shall post an Installation Assurance Device and a Maintenance Assurance Device prior to building permit or clearing and grading permit issuance. These devices will be released when the applicant demonstrates that the five year maintenance and monitoring plan has been implemented and the restoration successfully established and at the end of five years following implementation.

Authority: Land Use Code 20.25H.255.B.4
Reviewer: David Pyle, Development Services Department

10. Bald Eagle Management Plan: Prior to the issuance of a building permit or clearing and grading permit evidence of communication with WDFW must be

submitted. If a Bald Eagle Management Plan is required, the approved plan must be submitted prior to building permit or clearing and grading permit.

Authority: Land Use Code 20.30P
Reviewer: David Pyle, Development Services Department

11. Tree Removal Prohibited: No tree removal in the shoreline buffer is allowed. Tree removal in the shoreline structure setback shall be limited to what is necessary to construct the sport court.

Authority: Land Use Code 20.25H.210
Reviewer: David Pyle, Development Services Department

Attachments

- I. Conceptual Restoration/Replanting Plans - In File
- II. Public Comment Letters – In File