



City of Seattle

Gregory J. Nickels, Mayor

Department of Planning and Development

D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3004419
Applicant Name: Boyd Pickrell
Address of Proposal: 1601 South State Street
(changed from 1750 Sturgus Avenue South)

SUMMARY OF PROPOSED ACTION

Land Use Application for to allow two, four-unit townhouse structures (for a total of eight units) in an environmentally critical area. Parking for eight vehicles will be located in attached garages.

The following approval is required:

ECA Variance – to allow development of up to 30% of the steep slope and buffer area (0% allowed without variance, 29% proposed) Section 25.09.180.E

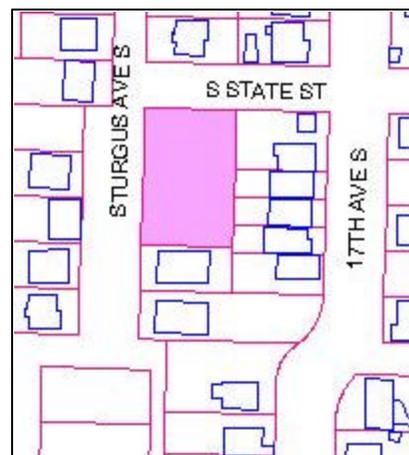
SEPA – Environmental Determination – Review of development proposals in areas mapped as Environmentally Critical Areas. (Seattle Municipal Code Chapter 25.09)

SEPA DETERMINATION: [] Exempt [X] DNS [] EIS
[] DNS with conditions
[] DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

BACKGROUND DATA

Site Description

The site is located on South State Street on an unimproved section of road west of 17th Avenue South. The subject property contains steep slope and potential slide ECA areas. The western portion of the lot slopes steeply upwards to the west property line. Sturgus Avenue South, which borders the site to the west, is undeveloped and heavily vegetated. There are several mature trees, shrubs, and groundcover on the site.



Zoning for the site and all surrounding parcels is Lowrise 1 (L-1). The 15,010 square foot parcel is currently vacant of any structures. Surrounding development consists of a mixture of single and multi family structures.

Description of Proposal

The project involves the construction of two, four-unit townhouse structures (for a total of eight units) in an environmentally critical area. Parking for eight vehicles will be located in attached garages. Access is proposed from State Street, at the northeastern corner of the site.

The proposed structure would be located both within the steep slope area and buffer. The proposed development would disturb 29% of the steep slope areas.

Pursuant to SMC 25.09.180, 25.09.080 and 25.09.320, the proposal is required to comply with ECA requirements for steep slopes, potential landslide areas, and trees and vegetation.

Steep slope critical areas (SMC 25.09.180)

The applicant has provided a topographical survey and geotechnical reports that identify and delineate the steep slopes areas and buffers. These documents have been reviewed by DPD geotechnical engineers.

Landslide-prone critical areas (SMC 25.09.080)

The applicant has provided a geotechnical soils report, which has been reviewed by DPD geotechnical engineers. Vegetation removal, replacement, and monitoring plan activities have been proposed by the applicant and are included as conditions of approval, per SMC 25.09.320.

Trees and Vegetation (SMC 25.09.320)

This code section is often referenced in other Environmentally Critical Area code sections, including those discussed above. The applicant has provided arborist reports, vegetation and re-vegetation plans in accordance with the requirements of this section. The decision has been additionally conditioned to ensure compliance with this and other ECA code sections.

Public Comment

DPD published public notice of the proposed development on January 4, 2007, and the associated public comment period ended on January 17, 2007 and was extended to January 31, 2007. No comment letters were received.

Environmentally Critical Areas Regulations

SMC Section 25.09.180 provides specific standards for all development on steep slopes and steep slope buffers on existing lots, including the general requirement that development shall be avoided in these areas whenever possible.

SMC Section 25.09.180.E authorizes variances to ECA development standards. Development may occur in up to 30% of the steep slope area with this variance, subject to specific criteria. Relevant criteria are discussed below. ECA Variance decisions are Type II decisions, subject to the provisions of SMC 23.76 and are appealable to the City Hearing Examiner.

General Requirements and standards are described in Section 25.09.060 of the ECA ordinance and include the recording of conditions of approval, the recording of the identified ECA areas in a permanent covenant with the property as well as specific construction methods and procedures.

The proposal must also comply with the specific requirements for development in areas with landslide potential areas (Section 25.09.080), steep slopes (Section 25.09.180) and trees and vegetation (Section 25.09.320). All decisions subject to these standards are non-appealable Type I decisions made by the Director (or designee) of DPD.

ANALYSIS – STEEP SLOPE AREA VARIANCE

Pursuant to SMC 25.09.180.E the Director may reduce the steep slope area buffer and authorize limited intrusion into the steep slope area and buffer only when all of the facts and conditions stated in the numbered paragraphs below are found to exist:

SMC 25.09.180.

E. Steep Slope Area Variance.

1. The Director may reduce the steep slope area buffer and may authorize limited intrusion into the steep slope area and steep slope buffer to the extent allowed in subsection E2 only when the applicant qualifies for a variance by demonstrating that:

a. the lot where the steep slope or steep slope buffer is located was in existence before October 31, 1992; and

No subdivision activity has occurred on the subject lot since October 31, 1992.

b. the proposed development otherwise meets the criteria for granting a variance under Section 25.09.280B, except that reducing the front or rear yard or setbacks will not both mitigate the hardship and maintain the full steep slope area buffer.

Approximately 87% of the site is covered by ECA steep slopes and buffer area. After subtracting the steep slope and its buffer, as well as the remaining side setback of five feet and 20-foot rear setback, the development site remaining is an approximately 509 square foot irregularly shaped area. In order to avoid development in the buffers, all grading, structures, driveways, and impervious areas could not exceed the 509 square foot area. This area is situated near the southeastern corner of the site and is surrounded by steep slope buffer to the west and north rendering access to this area impossible without encroachment of the critical area buffer. A development limited to this amount of soil disturbance and constrained by the awkward shape and size would be impossible to develop; therefore reductions to the setbacks would not mitigate the hardship nor maintain the full steep slope buffer.

Criteria and responses for granting a variance found in SMC 25.09.280.B are listed below:

SMC 25.09.280.B. Yard and setback reduction and variance to preserve ECA buffers and riparian corridor management areas.

B. The Director may approve a yard or setback reduction greater than five feet (5') in order to maintain the full width of the riparian management area, wetland buffer or steep-slope area buffer through an environmentally critical areas yard or setback reduction variance when the following facts and conditions exist:

1. The lot has been in existence as a legal building site prior to October 31, 1992.

The subject property was in existence prior to October 31, 1992 and consists of three historically platted lots.

2. ***Because of the location of the subject property in or abutting an environmentally critical area or areas and the size and extent of any required environmentally critical areas buffer, the strict application of the applicable yard or setback requirements of Title 23 would cause unnecessary hardship; and***

Response is the same as that found in discussion for SMC 25.09.180.E.1.b; presence of ECA's and buffers reduces the area of potential development to 509 square feet, causing unnecessary hardship.

3. ***The requested variance does not go beyond the minimum to stay out of the full width of the riparian management area or required buffer and to afford relief; and***

As noted earlier, the only area of the site that does not lie within a critical area or buffer cannot be accessed without disturbing the ECA. Reducing the setback to zero does not resolve this challenge since much of the setback area overlaps with buffer area. Reducing the setback, however, does alleviate the need to develop over the identified steep slope. Such reduction allows the development to shift away from the steep slope areas than would otherwise be allowed if the setback reduction was not allowed.

The proposed townhouse structures are shallow and wide, in response to the location of the ECA and buffer areas. The proposal would create development in nearly all of the steep slope buffer, and 29% of the steep slope itself. The proposed footprints of each building would be approximately 2,043 square feet in size. Approximately 27% of the 15,010 square foot lot would be covered by structure.

The proposed development includes two four-unit multi-family structures, which is similar to nearby development in the zone and vicinity. Furthermore, the variance would result in a development that has a smaller footprint and less lot coverage than the average development on a similarly sized lot within the same zone. The placement and shape of the proposed structures also minimizes intrusion into the steep slope areas. Given the variety of development in the vicinity, as well as the construction of two smaller structures versus one larger one, the proposal does not go beyond the minimum to afford relief.

4. ***The granting of the variance will not be injurious to safety or to the property or improvements in the zone or vicinity in which the property is located; and***

The applicant has provided a geotechnical report at this stage ("Geotechnical Engineering Services," dated July 6, 2006 by Geotech Consultants, Inc. along with a follow-up memo dated March 27, 2007). The report has been reviewed by DPD staff. The catchment wall and the project itself will provide landslide and debris flow protection for the properties to the east, which are not currently protected from such an event. The geotechnical engineer that performed soils testing on the site and authored the soils report concluded that if the recommendations of soils report are followed, the construction of the proposed buildings will not adversely affect the overall stability of the existing slope. For these reasons, the project does not pose a threat to the safety or property of other improvements in the vicinity. The proposed development will also be subject to geotechnical and engineering review at the construction permit stage to ensure there is no damage to adjacent property stability. In addition, a replanting plan for the undeveloped steep slope areas has been reviewed and approved by DPD staff. Granting the variance to intrude into the steep slope areas will not be injurious to safety, property, or improvements in the zone or vicinity, subject to conditions of approval and appropriate reviews of associated construction permits.

- 5. *The yard or setback reduction will not result in a development that is materially detrimental to the character, design and streetscape of the surrounding neighborhood, considering such factors as height, bulk, scale, yards, pedestrian environment, and amount of vegetation remaining; and***

All adjacent properties share the same zoning as the proposed project: Lowrise 1. The proposed development includes two multi family structures with attached garages, which is similar to and compatible with the nearby neighborhood character consisting of many two to three story multi family residences with attached garages. The proposed project is, therefore, consistent with the underlying zoning and existing development pattern in the vicinity.

Further, because the requested variances do not permit enough relief to fully mitigate the hardship imposed by the ECA code, the bulk and scale of the proposed project is actually less than that permitted on adjacent sites. As a result of the reduced bulk and scale, the proposed project provides a larger amount of open space than is required on adjacent sites. The project is located down slope that it will not block any of the views of the buildings above. The properties most affected by the requested variances are those located adjacent to the rear yard. These properties continue to slope down hill toward the east, which will allow the windows of the proposed project will look over the roofs of the existing structures and not into the structures themselves. In addition, a fence will be built along the entire length of the eastern property line, which will mitigate the project's impact on the neighbors to the east. The requested variances will not, therefore, be materially detrimental to the other properties in the vicinity in which the subject property is located.

Currently, there are no sidewalks in the immediate vicinity and South State Street is unimproved, however, the proposed development is required to improve the State Street right of way, which will better contribute to the pedestrian environment. The de facto setbacks resulting from the ECA areas, combined with the proposed height, bulk and scale of the development will not result in materially detrimental effects on the character, design, and streetscape of the surrounding neighborhood.

- 6. *The requested variance would be consistent with the spirit and purpose of the environmentally critical policies and regulations.***

The environmentally critical policies and regulations were created to preserve existing environmentally critical areas while allowing reasonable use of existing parcels. The applicant proposes to build a multi family structure on a multi family zoned existing property with minimal intrusion into environmentally critical areas and buffers. The proposal would be consistent with the spirit and purpose of the environmentally critical policies and regulations, subject to the Conditions section below.

- C. *When an environmentally critical areas variance is authorized, the Director may attach conditions regarding the location, character and other features of a proposed development to carry out the spirit and purpose of this chapter.***

Applicable conditions are listed in the Conditions section below.

SMC 25.09.180.E. Steep Slope Area Variance.

2. ***If any buffer reduction or development in the critical area is authorized by a variance under subsection E1, it shall be the minimum to afford relief from the hardship and shall be in the following sequence of priority:***
 - a. ***reduce the yards and setbacks, to the extent reducing the yards or setbacks is not injurious to safety;***
 - b. ***reduce the steep slope area buffer;***
 - c. ***allow an intrusion into not more than thirty percent (30%) of the steep slope area.***

The front, rear, and north side setbacks are less restrictive than the ECAs requirements on the site, so reducing the required setbacks would not provide adequate relief. The steep slope buffer occupies a large portion of the area outside of the steep slopes. The applicant has proposed to place the building footprint in a large portion of the steep slope buffer. Development of the entire remaining buffer constitutes an awkward irregular shape. It would be difficult to achieve construction of multi family residences if restricted to this area. The applicant has therefore proposed to extend a part of the structure beyond the buffer and into the steep slope areas. This intrusion into the steep slope area would impact 29% of the total steep slope area. The overall proposal is designed to place more development in the buffer in order to minimize intrusion into the actual steep slopes.

The proposed development follows the sequence of priority and does not create an intrusion of more than 30% of the steep slope area. The proposal therefore meets this criterion.

3. ***The Director may impose additional conditions on the location and other features of the proposed development as necessary to carry out the purpose of this chapter and mitigate the reduction or loss of the yard, setback, or steep slope area or buffer.***

The subject property currently contains 19 large mature trees, shrubs, and groundcover. The submitted tree evaluation by Gilles Consulting (dated April 13, 2007) and the subsequent Replanting Plan (dated April 27, 2007) provides an analysis of the existing vegetation. Some of this vegetation will be removed in the development process. Much of the other vegetation includes invasive non-native species. The applicant has proposed to remove invasive non-native vegetation and replant with native trees. The arborist report documents that,

“15 of the existing trees are in poor condition or are dying. They either have advanced stages of center and base rot, have structural deformities that pre-dispose them to partial or complete failure, have disease problems or lack wind firmness. [W]hen the area down slope is cleared and developed, the majority of these trees have the potential to fail and cause bodily injury or property damage. These 15 trees are recommended for severe shortening...or complete removal.”

The Replanting Plan recommends keeping all stumps and root systems in place, controlling the invasive species, planting replacement trees and shrubs in existing open spaces, hydro-seeding any left over open soil areas and maintenance. The decision below includes conditions to ensure compliance with these recommendations.

Conditions imposed as a means of compliance with the ECA ordinance are non-appealable. General requirements and standards are described in Section 25.09.060 of the ECA ordinance and include the recording of conditions of approval, the recording of the identified ECA areas in a permanent covenant with the property as well as specific construction methods and procedures. The proposal must also comply with the specific requirements for development in areas with landslide potential areas (Section 25.09.080), steep slopes (Section 25.09.180), riparian corridors (Section 25.09.200.A), and trees and vegetation (Section 25.09.320). All decisions subject to these standards are non-appealable Type I decisions made by the Director (or designee) of DPD.

DECISION – STEEP SLOPE AREAS VARIANCE

ECA Variance to allow development of up to 28% of the areas measured over 40% steep slope and to place development in the steep slope buffer is **CONDITIONALLY GRANTED**.

ANALYSIS - SEPA

Due to the presence of steep slope environmentally critical areas, the application is subject to SEPA review. SMC 25.05.908 provides that the scope of environmental review of projects within critical areas shall be limited to: 1) documenting whether the proposal is consistent with the City's Environmentally Critical areas (ECA) regulations in SMC 25.09; and 2) evaluating potentially significant impacts on the critical area resources not adequately addressed in the ECA regulations. This review included identifying additional mitigation measures needed to protect the ECA in order to achieve consistency with SEPA and other applicable environmental laws.

Environmental review resulting in a Threshold Determination is required pursuant to the Seattle State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated December 7, 2006. The information in the checklist, supplemental information provided by the applicant (soils report), project plans, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states in part: "where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation" (subject to some limitations). Under certain limitations/circumstances (SMC 25.05.665 D 1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

Short-term Impacts

The following temporary or construction-related impacts on the identified critical area are expected: 1) temporary soil erosion. This impact is not considered significant because it is temporary and/or minor in scope (SMC 25.05.794).

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. The Stormwater, Grading and Drainage Control Code regulates site excavation for foundation purposes and requires that soil erosion control techniques be initiated for the duration of construction. The ECA ordinance and DR 3-93 and 3-94 regulate development and construction techniques in designated ECA areas with identified geologic hazards. The Building code provides for construction measures and life safety issues. Compliance with these applicable codes and ordinances will reduce or eliminate short-term impacts to the environmentally critical area and no further conditioning pursuant to SEPA policies is warranted.

Earth/Soils

The ECA Ordinance and Directors Rule (DR) 3-93 require submission of a soils report to evaluate the site conditions and provide recommendations for safe construction in areas with landslide potential and/or a history of unstable soil conditions. The applicant has submitted a Geotechnical Engineering Study prepared by Gerry Bautista, P.E. of Geotech Consultants and dated July 6th, 2006 along with a subsequent memo dated March 27, 2007. Any additional information showing conformance with applicable ordinances and codes (ECA ordinance, The Stormwater, Grading and Drainage Control Code, DR 3-93, and 3-94) will be required prior to issuance of building permits. Applicable codes and ordinances provide extensive conditioning authority and prescriptive construction methodology to assure safe construction techniques are utilized; therefore, no additional conditioning is warranted pursuant to SEPA policies.

Long-term Impacts

Long-term or use-related impacts are also anticipated as a result of this proposal including: increased surface water runoff due to greater site coverage by impervious surfaces, and loss of plant and animal habitat.

Several adopted City codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the ECA Ordinance, the Stormwater, Grading and Drainage Control Code which requires provisions for controlled tightline release to an approved outlet and may require additional design elements to prevent isolated flooding. Compliance with these applicable codes and ordinances is adequate to achieve sufficient mitigation of most long-term impacts and no further conditioning is warranted by SEPA policies.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public agency decisions pursuant to SEPA.

- Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030 2C.
- Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030 2C.

CONDITIONS - SEPA

None required.

NON-APPEALABLE CONDITIONS OF APPROVAL

Prior to Issuance of Any Construction Permits

The owner and/or responsible party shall:

1. Show on building plans the location of a temporary, durable, highly visible construction fence at the boundary between the construction activity area and areas of steep slope and steep slope buffer which are to be left undisturbed. (25.09.060)

CONDITIONS OF VARIANCE APPROVAL

Prior to Issuance of a Master Use Permit

2. The submitted landscape plan (Sheet L-1) shall be updated to reflect all of the recommendations contained on page 6 of the Tree Evaluation and pages 5-7 of the Replanting Plan completed for this project and in the project file.

During Construction

3. All recommendations contained in Condition 2 above shall be adhered to during all construction activities.

Signature: (signature on file) Date: May 10, 2007
Lisa Rutzick, Land Use Planner
Department of Planning and Development