



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: 3004999
Applicant Name: Molly Johnson
Address of Proposal: 8629 45th Ave NE

SUMMARY OF PROPOSED ACTION

Land Use Application to allow a new two-story, 2,831 square foot single family residence in an environmentally critical area. Parking for one vehicle will be located within the structure.

The following approval is required:

Variance – to allow development of up to 30% of the steep slope and buffer area (0% allowed without variance, 13% proposed) Section 25.09.180.E

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

BACKGROUND DATA

Site Description

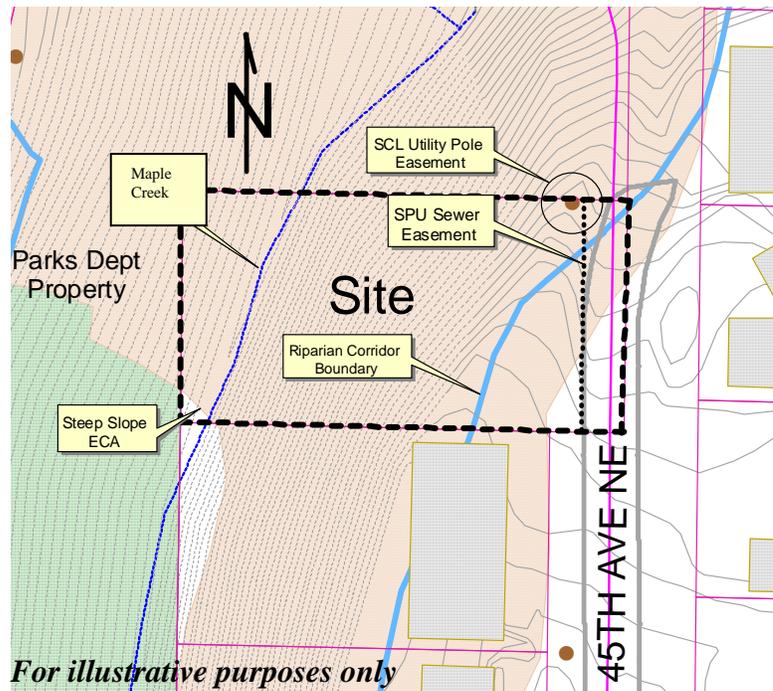
The site is located on 45th Ave NE on a dead end section of road north of NE 86th St, northwest of the Sand Point Country Club. The subject property contains steep slope, potential slide, and riparian corridor (Maple Creek) ECA areas. The western portion of the lot slopes steeply to the west, terminating in Maple Creek near the west property line. Seattle Parks Department owns the property to the west, along the Maple Creek corridor. There are several mature trees, shrubs, and groundcover on the site.

A Seattle Public Utilities sewer line and associated easement occupies the eastern edge of the site. The pavement for 45th Ave NE also occupies part of this area. A Seattle City Light overhead power line is located slightly west of the easement, with a power pole on the north property line. Seattle City Light has required that all development is located at least 10 feet from the power pole.

Zoning for the site and all surrounding parcels is Single Family Residential 7,200 square foot minimum lot size (SF 7200). The 17,100 square foot parcel is currently vacant of any structures. Surrounding development consists of one to two story single family structures with garages.

Description of Proposal

The applicant proposes to construct a new two story 2,831 square foot single family residence with attached one car garage.



The proposed structure would be located both within the riparian corridor and the steep slope area and buffer. The proposed development would disturb 13% of the steep slope areas and 28% of the Limited Development Riparian Area (half the width of the entire Riparian Corridor area). The remaining areas of the Limited Development Riparian Area would be planted with additional native plants and trees. Planted areas would be concentrated near Maple Creek.

Pursuant to SMC 25.09.080, 25.09.200.A, and 25.09.320, the proposal is required to comply with ECA requirements for landslide potential areas, riparian corridors, and trees and vegetation.

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. The applicant has followed the sequence of priority for development in a critical area.

Riparian Corridors – Fish and Wildlife Habitat Conservation Areas (SMC 25.09.200.A)

The subject property is currently undeveloped with a riparian corridor covering most of the site. Maple Creek is located on the western portion of the property. A large part of the slope entering Maple Creek is vegetated with native and non-native plants. Due to the lack of diversity in the existing habitat, the riparian management area is not functioning to adequately protect fish and animal habitat or protect water quality from erosion.

The proposed development would take place only in the 50 foot Riparian Limited Development Area (RLDA). The development (structures and soil disturbance) would impact 28% of the RLDA, even less of which would consist of impervious surface. The proposed development is well below the maximum permitted 35% impervious surface in the RLDA.

The applicant has proposed to remove some of the existing vegetation and trees in order to develop part of the riparian corridor (area of development greater than 750 square feet). A vegetation and re-vegetation plan was provided, along with a vegetation monitoring plan. Arborist reports (“Robert W. Williams, Consulting Arborist” reports dated 7/28/06 and 10/04/06) provided with the application state that non-native vegetation should be removed in the riparian corridor prior to re-vegetation with native plants. This has been included as a Condition of the Decision.

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

Notice of the proposal was issued on May 25, 2006. Six 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), 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.

ANALYSIS – STEEP SLOPE AREA VARIANCE

Pursuant to SMC 25.09.180.E the Director may reduce the steep slope area buffer and authorize limited development in 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

The applicant has provided a Statutory Warranty Deed indicating transfer of ownership in 1971. Subdivision controls were implemented in 1972. Therefore, the Deed indicates that the lot was legally in existence prior to October 31, 1992.

b. the proposed development otherwise meets the criteria for granting a variance under Section 25.09.280~~3-C~~B, except that reducing the front or rear yard or setbacks will not both mitigate the hardship and maintain the full steep slope area buffer.

As noted in the Site Description, the subject property is constrained by an easement and street pavement that occupy approximately the east 26 feet of the site and constrain the property further than the front yard. In addition to this, Seattle City Light requires an area free of development within 10 feet of the power pole on the north property line and a 10-foot clear area on either side of the overhead power lines that cross from the power pole to south of the subject property.

After subtracting the steep slope buffer, riparian corridor, easement areas, utility areas, pavement, and remaining south side yard of five feet, the development site remaining is an approximately 600 square foot triangular area. In order to avoid development in the buffers, all grading, structures, driveways, and impervious areas could not exceed the triangular 600 square foot area. This area is also directly adjacent to the paved driving area of 45th Ave NE, leaving no room for a driveway. A development limited to this amount of soil disturbance and constrained by a triangular shape would be very difficult to develop.

The easements to the east are more restrictive than front yard requirements at that property line. The riparian corridor is also located closer to the proposed structure than the rear yard at the west property line. Reducing front and rear yard setbacks to zero would still result in a 600 square foot triangular building area. Reducing front or rear setbacks will not both mitigate the hardship and maintain the full steep slope buffer and riparian corridor.

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. The applicant has provided a Statutory Warranty Deed indicating transfer of ownership in 1971. Subdivision controls were implemented in 1972. Therefore, the Deed indicates that the legal lot was in existence prior to 1992.

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 ECAs, buffers, and easements reduces the area of potential development to 600 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

The proposed house is shallow and wide, in response to the location of the ECAs, buffers, and easements. The proposal would create development in nearly all of the steep slope buffer, and 13% of the steep slope itself. The proposed house and garage footprint would be approximately 1,980 square feet in size. Approximately 12% of the 17,100 square foot lot would be covered by structures.

Nearby properties on this street have a footprint of approximately 2,700 square feet in size. Properties along this side of the riparian corridor have a footprint of approximately 2,400 square feet. Approximately 27% of nearby lots averaging 12,000 square feet in size are covered by structures. Approximately 20% of lot areas on the west side of 45th Ave NE are covered by structures. Lots on the west side of 45th Ave NE are approximately 13,500 square feet in size.

The requested variance would result in a development that has a smaller footprint and less lot coverage in a larger lot than nearby average development. The placement and shape of the proposed residence also minimizes intrusion into the steep slope areas. Given the constraints of the easements on the east portion of the property and the average size of development in the vicinity, 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 proposed development will be subject to geotechnical and engineering review at the construction permit stage to ensure there is no damage to adjacent property stability. The applicant has provided a geotechnical report at this stage ("Geotechnical Engineering Services," dated May 2nd, 2006 by GeoEngineers). Page 3 of the report states the proposed residence can be successfully built with recommended foundation. The report has been reviewed by DPD staff. In addition, a planting plan for the undeveloped steep slope areas has been reviewed and approved by DPD staff. The proposed development includes a single family house with an attached one-car garage, which is similar to nearby development in the zone and vicinity. Granting the variance to minimally 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*

The proposed development includes a single family house with an attached one-car garage, which is similar to nearby neighborhood character consisting of one to two story single family residences with attached garages. As discussed above, the proposed residence would be smaller on average than existing nearby development. There are no sidewalks in the immediate vicinity to contribute to the pedestrian environment, and none appear to be proposed with the development. The de facto setbacks resulting from easements and 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 single family house on a single family zoned existing property with minimal intrusion into environmentally critical areas and buffers, as well as proposing to remove invasive non-native vegetation on site and replace with additional native trees and vegetation. 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 yard, rear yard, and north side yard are less restrictive than the ECAs requirements and easements on the site, so reducing the required yards would not provide adequate relief. The steep slope buffer occupies a large portion of the area outside of the easements, riparian corridor, and steep slopes. The applicant has proposed to place the building footprint in a large portion of the steep slope buffer. The only areas of the buffer not proposed for development are occupied by easements. Development of the entire remaining buffer constitutes a triangular area of approximately 1,000 square feet. It would be difficult to achieve a single family home with one car garage access if restricted to a triangular shape. The applicant has therefore proposed to extend a part of the residence beyond the buffer and into the steep slope areas. This intrusion into the steep slope area would impact 13% 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 several large mature trees, shrubs, and groundcover. Some of this vegetation will be removed in the development process. Other vegetation includes invasive non-native species. The applicant has proposed to remove invasive non-native vegetation and replant with native trees and shrubs, as noted on page A1.0 of the plans. The applicant has also provided an arborist report documenting which trees would be removed and replaced and a vegetation monitoring plan. The decision below includes conditions to ensure that all non-native vegetation in the ECA is removed.

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.

