



City of Seattle

Greg Nickels, Mayor
Department of Planning and Development
Diane Sugimura, Director

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

Application Number: 3006146
Applicant Name: David Neiman
Address of Proposal: 1330 35th Avenue South

SUMMARY OF PROPOSED ACTION

Land Use Application to allow a 785 sq. ft. third story addition to a single family residence.

The following approvals are required:

Variance - to allow a portion of the principal structure into the required front yard.
(SMC 23.44.014.A)

Variance – to allow the expansion of a nonconforming structure. (SMC 23.44.082)

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 proposal site is 5,088 square feet in size and is located in the Leschi neighborhood of Seattle. The property is zoned single family 5000 zone (SF 5000) and contains an area of steep slope (not mapped, but delineated on the topographical survey in the plan set). The site is entirely overlain by a potential slide ECA designation, and two known slides are located on the eastern edge of the site. Currently the site contains one single family residence one story high as seen from the street, and 3 stories as seen from the east. The house is located in the required front yard. The existing structure is situated in the northwest corner of the property and has a nonconforming front yard of 6'1," a huge rear yard two side yards of 6'7" along the south property line and 7'4" along the north property line.

Development in the Vicinity

The subject site is the only one with a house on its side of its short block; the other two parcels are vacant. To the north, the Lakeside Avenue South right-of-way wraps around the house and vacant parcel to the north. To the south, the only apparent development are the open space improvements and

paths associated with the I-90 right of way where the bridge springs from the Seattle side. The uphill parcels across the street to the west are developed with single family residences. To the east, well downhill across the broad Lakeside Avenue South right of way, the lakefront parcels are developed with substantial homes.

Proposal Description

The applicant has proposed an addition to the upper level of the existing structure whose major bulk would be entirely conforming. The portion of the roof within the required front yard would be maintained at essentially the same level, although a pitch would be added for drainage purposes that would rise up to 2 feet above the existing roof level at its highest point within the required front setback. A small “stair penthouse” would be developed within the required front yard to provide access to the new addition. This would continue up the existing stair, which serves the existing lower levels. All of the expansion would be over existing development; there would be no extension of the building envelope in horizontal directions.

Public Comment

Several public comment letters were received representing two households, one expressing concern about geotechnical stability of the site under the proposed development, and in particular about risks to downhill lakeside developments and to obstruction of Lakeside Avenue South. One expressed concern about view blockage of the properties uphill to the west.

ANALYSIS - VARIANCES

As provided in SMC 23.40.020, variances from the provisions or requirements set forth in the Seattle Municipal Land Use code shall be authorized only when all of the following facts and conditions are found to exist:

1. *Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity;*

The site is unusual in its geotechnical constraints, in particular that known landslides have been mapped on the site. The steep slope ECA to the immediate south of the existing structure acts as a further constraint. Clearly, it would be most environmentally appropriate to limit development to the existing footprint. This creates an additional hardship of a sort, making the layout of the existing structure a genuine constraint. To strictly apply the development standards at issue to the proposal would deprive the applicant of property rights enjoyed by their neighbors.

2. *The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located;*

The requested variances to allow the expansion of a nonconforming structure and to allow a portion of the principal structure into the required front yard do not go beyond the minimum necessary to afford

relief nor do they constitute a grant of special privilege. The proposed expansion falls mostly outside the required front yard, and the portions within are the minimum necessary to function reasonably within constraints set by the existing structure. The increased height of the pitched roof over the westerly (lower) section of the addition is due to the increased joist depth needed to span the existing structure; otherwise, the pitch is the same as that of the existing roof in that area. The stairwell is located above the existing stair, carrying it up, and is of the minimum width necessary to allow transit. Every effort appears to have been made to limit the extent of development in the required front yard. Thus the proposed addition would accommodate a permitted addition without granting a privilege not enjoyed by others in the same zone.

3. *The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located.*

There would be adverse impacts to the existing views enjoyed by uphill residences, as demonstrated by the photos in the comment letter by Elicia Tamburine. However, it is long-established City policy to not protect private views. Moreover, portions of the lake view are fully obscured in “leaf season” by the large tree in front of the subject property; this will also serve to obscure at least 50% of the addition for a large portion of the year. Even given the proposed development, substantial lake views to the north of the subject site will remain from the Tamburine property in all seasons. Thus, although the impacts will be adverse, they are both not protected and not so substantial that they would ordinarily attain any reasonable reading of “materially detrimental.”

Concerns about the stability of the land under the proposed development are well warranted. However, they are best addressed not by denial of the variance, but by requiring proper professional address of the concern. Hence, approval is conditioned such that, prior to issuance of the MUP, the owner(s) and/or responsible party(s) shall provide a geotechnical report documenting that the proposed development qualifies for the exception set forth at SMC Section 25.09.045.F. Otherwise, the building permit will undergo full ECA review. In either case, proper assurance of geotechnical security will obtain. Given compliance with this condition, it would be inappropriate to find material detriment in this regard. In short, granting these variances will not be materially detrimental to the public welfare or injurious to the property or improvements in zone or vicinity in which the subject property is located.

4. *The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause undue and unnecessary hardship.*

Literal interpretation of the land use code would allow the applicant to construct an addition/remodel of the existing structure that comports with front yard requirements, but would require substantial intrusion upon geotechnically sensitive areas that other codes importantly protect. In addition, substantial additional building costs would be entailed. The minor variances sought do not warrant such intrusion and/or cost. Therefore literal interpretation of the requirements of the Land Use Code would result in undue hardship to the applicant.

5. *The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan, as applicable.*

Single family residential area policy #6 Bulk and Siting states that “The height and front yards of existing adjacent single family residences shall be used to determine bulk and siting patterns for future construction.” The new house to the north of the subject house is considerably bulkier than the one that would result from the proposed expansion, especially in the central portion near the street. In context of this adjacent house, the proposed development will not seem out of scale. Therefore granting the requested variance s would be consistent with the adopted Land Use Code and reflect the spirit of the Land Use Policies.

DECISION-VARIANCE (based upon plans on file)

The proposed variance to allow a portion of the principal structure into the required front yard is **CONDITIONALLY APPROVED.**

The proposed variance to allow the expansion of a nonconforming structure is **CONDITIONALLY APPROVED.**

CONDITIONS-VARIANCE

Prior to issuance of the MUP

1. The owner(s) and/or responsible party(s) shall provide a geotechnical report documenting that the proposed development qualifies for the exception set forth at SMC Section 25.09.045.F. Otherwise, the building permit shall undergo full ECA review. (If the latter, a note shall be added to the cover sheet of the MUP.)

Signature: (signature on file) Date: May 10, 2007

Paul Janos, Land Use Planner
Department of Planning and Development