



City of Seattle

**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:** 3003853  
**Applicant Name:** Mona Magathan  
**Address of Proposal:** 3643 46<sup>th</sup> Avenue Southwest

**SUMMARY OF PROPOSED ACTION**

Land Use Application to allow a 468 sq. ft. two-story addition to an existing single family residence (one car garage 468 sq. ft. addition and deck all previously built).

The following approvals are required:

**Variance** - To allow portion of principal structure to extend into the required rear yard in a single family zone. Seattle Municipal Code 23.44.014(B)

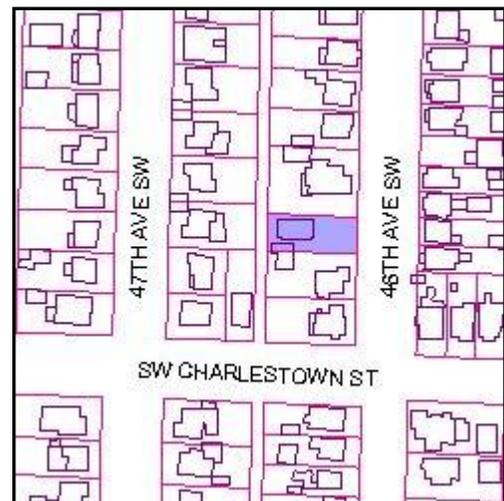
**Variance** - To allow portion of principal structure to extend into the required side yard in a single family zone. Seattle Municipal Code 23.44.014(C)

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

**BACKGROUND DATA**

Site Description

The development site is located in the 3600 block of 46th Avenue Southwest on the west side, between Southwest Spokane Street to the north and Southwest Charlestown Street to the south, in West Seattle. The subject lot is rectangular in shape (49.32' X 117'), occupying approximately 5,770 square feet of land in a Single-Family 5000 zone (SF 5000). There are two



unique characteristics associated with the development site. The existing house is located within the west half of the subject lot, approximately 60 feet from the front property line. It's only one of two houses with frontage along this block with this atypical street presence. The second unique characteristic is a mapped Environmentally Critical Areas (ECA) 40% Steep Slope encroaching across the west property line in the rear. Based on a site inspection it was determined that the 40% Steep Slope did not exist and the ECA designation was removed on 4/18/07.

The site is currently developed with a modest one-story single-family residence (built in 1918) with what appears to be a daylight basement. A (18' by 26') two-story addition was recently added without permit replacing a detached accessory structure (garage) along the south property line. The development site features a moderately downward sloping lot from the east to west, approximately 14 feet over a distance of 117 feet. Prior to the unpermitted addition the existing single family house conformed to all required yard development standards as characterized in survey and GIS mapping system. Except for an encroachment onto the abutting property to the south, the previous detached garage appeared to conform to current development standards, with the exception of being under width for a parking space and encroaching over a property line. Mature hedges and trees line the subject site's street front perimeter which provides a sense of privacy along 46<sup>th</sup> Avenue SW. Forty-sixth Avenue SW is a fully improved right-of-way with paved roadway surface, sidewalks, curbs and gutters. Access to parking is taken off a 10 foot wide shared driveway with the property immediately to the south (addressed, 3649 46<sup>th</sup> Avenue SW). A heavily vegetated unimproved alley abuts the subject lot to the west.

The immediate vicinity is zoned SF 5000. The area is developed primarily with one and two-story single family residences in a mix of architectural styles. The general area sits upon the west slope of a hillside that slopes downward to the west. Forty-sixth Avenue SW slopes subtly downward to the end of the block, where at its terminus, across SW Spokane Street; James Madison Junior High School is located. The area is marked with ECA Steep Slopes and New Potential Slide on the west facing hillside. The area appears to be well developed and could support additional development.

### Proposal Description

The applicant has proposed to remodel an existing residential structure to accommodate an expanded living area and new one-car garage. The remodeling project includes expanding gross floor area on the (split) main level with the addition of a one-car garage below. The project will entail a reconfiguration of the living room, circulation areas and addition of a bedroom. The proposed one-car attached garage will be directly below the expanded floor area above. From the exterior façade, the two-story addition will measure 18 feet in width, 26 feet in depth, and will extend to a maximum 19.75 feet in height as measured from the southeast corner.

The existing single family structure with detached garage was conforming with regards to the location of structures and lot coverage. The applicant received a notice of violation (Case #1005735) for the two-story addition without obtaining permits for construction. After discovering the addition did not meet single family development standards, the applicant now seeks variance relief from development standards.

CODE SECTION	STANDARD	REQUEST
SMC 23.44.014(B).	The required rear yard shall be twenty-five (25) feet. The minimum required rear yard for a lot having a depth of less than one hundred twenty-five (125) feet shall be twenty (20%) percent of the lot depth and in no case be less than ten (10) feet. The required rear yard at the subject lot is twenty-five (25) as measured from the centerline of the alley.	Allow addition (exterior wall) to extend 8.41 feet from the rear property line and 16.41 feet from the centerline of the alley.
SMC 23.44.014(C).	The side yard shall be five (5) feet.	Allow addition (exterior wall) essentially zero separation from property line. With external architectural features (eaves & chimney) projecting up to 1.8 feet into the abutting property.

Public Comment

Date of Notice of Application: June 21, 2007

Date End of Comment Period: July 04, 2007

# Letters 5

Issues: Of the five comment letters received for this project only one expressed support for the requested variances. Though no letters provided specific arguments against the proposal through the variance criteria, associated impacts were identified. The block frontage features a number of quaint residences with conforming spatial separation and building size, granting the variance would disrupt this pattern, and would not meet compliance to the Code. Health and safety concerns were raised with the chimney exhaust overhanging the property line. Granting the variance would constitute granting a special privilege for home owners who build first and seek relief afterwards, which may lead others to follow suit. Other letters voiced concern with the hillside, water runoff, soil stability, and impacts upon the existing vegetation.

**ANALYSIS - VARIANCES**

As provided in SMC 23.40.020, variances from the provisions or requirements set forth in the Seattle Municipal 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 development site is located on Lot 4, Block 8, Sparkman & Mclean's 2<sup>nd</sup> addition, according to the plat thereof recorded in volume 10, of plats, page 99, records of King County, Washington. The development site comprises a land area of approximately 5,770 square feet, slightly above the standard land area of 5,000 square foot required for this single family residential neighborhood (SF 5000). The mapped Environmental Critical Areas (ECA) 40% Steep Slope Area designation was removed by a DPD official on 4/18/2007, because the grade elevations did not fall within the ECA criterions at the subject lot. In single family zones, the Land Use Code requires a 20 foot setback from the front property line or the average of adjacent structures for front yards. Required side yards are 5 feet from the side property line. Rear yards shall be 25 feet. The minimum required yard for a lot having a depth of less than 125 feet shall be 20% of the lot depth and in no case be less than 10 feet. The subject site is 49.32 feet wide by 117 feet deep. Lot depth is calculated from the centerline of the alley.

The existing single family structure prior to the unpermitted construction activity was sited towards the rear half of the lot. The required rear yard at the subject lot is twenty-five (25) as measured from the centerline of the alley. The existing single family structure was approximately 20 feet from the rear property line, 28 feet from the centerline of the alley (rear yard). An existing deck projects approximately eight feet from the rear façade. The structure is sited approximately 9 feet from the north property line and 18 feet from the south property line prior to expansion (both side yards). The structure's front façade is located approximately 61 feet from the front property line. Though the structure is sited towards the lot's rear half, it met all yards standards and lot coverage standards. Except for the detached garage structure's encroachment into the neighboring property by approximately one foot to the south, it similarly met development standards. Detached garage structures are permitted along the side property line within 35 feet of the centerline of the alley. The siting of the principal structure may be considered unusual but it cannot be construed to deprive the owner of the ability to expand in a conforming manner.

If the owner's desire was simply to add a one-story attached garage in approximately the same location removing all encroachments onto neighboring properties, with additional floor area above in a conforming location of the unpermitted construction, this could have been accomplished with an expansion that extends within five feet from the south property line. This expansion would accommodate a single car garage with storage area for the home owner.

Other neighboring properties along the block, substantially share similar siting conditions relative to front and side property lines, with the exception of the subject lot and one other property (addressed 3634 46<sup>th</sup> Avenue SW). The neighborhood is representative of older housing stock built during a time when the Code posed different siting standards. One-story attached garages are found throughout the area, no examples of two-story attachment could be found in the area. The existing house with detached garage was constructed in 1918; since that time no records can be found to indicate permits to alter or expand the existing structure. The existing one-story residential structure, prior to an unpermitted expansion, occupied an area of approximately 825 square feet. The principal structure was conforming to current development standards. An application to build a second story addition above the existing footprint would be allowed outright. The replacement of the accessory garage is more challenging in that its previous location encroached onto the adjoining lot.

The owner requests variance relief to allow a two-story expansion into the required rear and side yards created by the owner who hired a contractor who did not receive the necessary permits from DPD to construct the expansion. DPD records show the contractor paid one visit to DPD's Application Service Center. No other records can be found related to permits to construct the addition. The addition was nearly completed when discovered by a city official during a routine inspection in the neighborhood. If allowed as built, the two-story addition which encroaches onto the neighboring property would compromise separation of the residential structures as it relates to depth of side and rear yards.

It is not uncommon for detached garages to be constructed on a common side lot line near the back of the property and it is permitted outright if within prescribed distances from the rear or if approved by the neighbor with an accessory structure agreement. Reconstruction of a detached garage in the same location would also be allowed if the encroachment were removed. Furthermore, construction of a wider garage would also be allowed outright, provided a minimum 5 foot separation from the house is maintained. In order to allow a wider garage that also no longer encroaches over a property line, it is not unreasonable to allow less than the 5 foot separation from the house or even to allow it to be attached.

Furthermore, without the garage, the house could be expanded up to the 5 foot side yard. Approving this variance as requested would constitute granting a special privilege by allowing a two story addition on the property line which is not enjoyed by others in the vicinity. Whereas allowing a wider one story garage in the side yard would have a similar impact to the neighbor as the previous detached garage.

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 owner of the subject lot is proposing to replace a detached one-car garage with a two-story addition to the existing house with garage at street level and habitable space above to allow reconfiguration and expansion of the floor plate. Prior to the unpermitted expansion the existing single family structure sat approximately 18 feet from the south property line. The expansion's exterior wall, measuring 26 (upper level) feet in depth would be located along the south property line with eaves and chimney overhanging up to 1.8 feet into the adjacent property. The width of the addition would be 18 feet. The street level attached garage is the actual controlling factor in determining the minimum dimensions for parking a single vehicle within an enclosed structure. The Code requires one complying parking space per single family use. Parking stall standard is eight feet in width by 16 feet in depth. Enclosing said stall will require a larger inner wall area to accommodate door openings. Standard construction practice for interior walls would equate to a minimum addition of 12 feet in width and 18 feet in depth to allow for ease of movement within the structure. To accommodate areas to store items which are typical of single family garage structures the request 18 feet by 24 feet would be consistent with other similarly scaled structures and would not be a grant of special privilege.

As designed and partially constructed the unpermitted two-story addition would be a grant of special privilege. Not only does the two-story addition encroach into the side yard but the eaves and chimney projects 1.8 feet into the abutting property. The owner requests consideration to expand the structure's footprint to accommodate increased interior floor area on the second floor and the

addition of a one-car garage below because the unpermitted addition is nearly completed. The Director sees no compelling reason to grant an addition at the second story level and to do so would be a grant of special privilege.

The owner provided examples of existing single family development sites with existing nonconforming conditions. Upon closer scrutiny most of these structures were built at a time when side yard requirements met different standards. The examples of attached single story garages located along the side property lines establish a pattern that is compelling. The greater majority of the homes were constructed before 1957. From 1913 – 1923 the Code required a 3 foot side setback between facing facades; from 1923 - 1957, the 3 foot side setback was measured from the property line. Prior to 1923 there were no rear yard setback requirements in single family districts; from 1923 – 1957; a 15 foot rear yard was required. To approve this variance request to allow a two-story addition would be a grant of special privilege inconsistent with the limitations upon other properties in the vicinity.

Therefore, the requested variance to allow a two-story addition in the rear and side yards can be partially granted to allow a one-story attached garage within the required yards, eight feet to top of wall plate as measured from the front façade where the garage door is located, with an additional three feet to top of ridge. This would not go beyond the minimum necessary to afford relief and would not constitute a grant of special privilege.

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.*

The proposed two-story expansion in the rear and side yards, to accommodate a one-car garage at grade level and habitual space above would result in significant impacts to the abutting property to the south and to a lesser degree to the property to the north and the surrounding vicinity. The bulk and scale of the proposed remodel and expansion would have a dramatic impact at the development site along the shared property line to the south and would create additional negative visual impacts upon the surrounding properties.

The abutting property to the south will be directly impacted by the proposed expansion. The abutting property (addressed 3649 46<sup>th</sup> Avenue SW) will be significantly impacted owing in part to a two-story structure located along the shared property line with eaves and chimney overhanging up to 1.8 feet onto their property. If the addition is to remain, maintenance of the external wall will require the subject lot's owner to trespass on the abutting lot for routine work like washing windows, painting siding, cleaning gutters, etc. The spatial openness of the abutting lot's rear yard has been compromised with the two-story addition along the shared property line. The addition imposes its bulk in the rear yard with its scale by casting shadows and invading upon the privacy the abutting parcel with upper level window opens. This will require the neighbor to be more cautious with activities in the rear yard, an imposition that would rise to the degree of being materially detrimental with the addition encroaching architectural features onto the abutting property line.

The previous bulk impact of the one-story detached garage structure on the neighboring property to the south was marginal. Both properties had detached garage structures that had relative impact on in the zone and vicinity. An attached single story garage structure would have a similar marginal impact on the adjacent property. It would equate to a build out in the area between the principal structure and the previous detached garage.

The abutting property (3639 46<sup>th</sup> Avenue SW) to the north is less impacted but has similar bulk impacts of a two-story structure in the rear yard with a windows looking out into the abutting property's rear yard affecting privacy. Other properties located in the vicinity are anticipated to be minimally impacted due to horizontal distance and topographic conditions in the area. In single family zones setbacks from property lines to establish predicable separations is one of many crucial elements for individuals choosing to reside in detached homes with surrounding open space they can call their own. Thus, the two-story addition along the south façade does pose a significant impact upon private properties and the public welfare upon neighboring properties.

Therefore, partially granting the requested variance to allow a one-story addition within the required side yards would 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, provided that all encroachments are removed. Any second story additions would be allowed outside of the required yards as allowed by the Land Use Code.

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

The development site land area is 5,770 square feet above the standard sized range for the underlying zone (SF 5000), with an existing structure located in the west half of the lot. The Land Use Code requires single family structures limit their height, bulk and scale on development sites. At the subject site this limitation results in a principal building area five feet away from side property lines, 25 feet from the centerline of the alley, and 20 feet from the front property line. Setbacks are established from property lines to limit location and use of structures to protect life, health and safety upon adjacent properties. Prior to the unpermitted construction activity which lead to this variance request to allow a two-story addition to an existing single family structure, the structure conformed to current development standards. At the time of the original structure's construction in 1918, the house conformed to setback development standards, and maintained that distinction up through 2004<sup>1</sup>.

In isolation, denying the replacement of the single story garage structure in both the rear and side yards would cause undue hardship and practical difficulties. Relocating the one-story garage structure solely on the subject lot with no encroachments onto the adjacent lot would be lessen the severity of preexisting conditions. Attaching the garage to the principal structure would be consistent with other properties in the area. The Code allows for one parking space per dwelling unit in single family zones, which was previously established in a detached garage at the development site. The location of the existing residential structure prior to the unpermitted

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<sup>1</sup> From 1913 – 1923, the Code required a 3 foot side setback between facing facades, 1923 - 1957, the 3 foot setback was measured from the property line. Prior to 1923 there were not a rear yard setback requirement for single family districts, 1923 – 1957; a 15 foot rear yard was required.

expansion would allow a number of permutations to obtain the necessary gross floor footage to accommodate the needs of the owner. Many residential lots in the immediate area appear to have principal structures conforming to required yard developments. The applicant requests relief from the yard development standards after an unpermitted two-story addition to the existing principal structure. The nearly completed two-story addition created two nonconforming conditions with respects to rear and side yards.

The Code allows the owner to expand structures in a way that is conforming to Land Use development standards. If the owner had secured the necessary permits for the single family addition, the structure could have meet development standards and this application would not be necessary with the possible exception of the garage addition. As conveyed on the survey the unpermitted expansion, the addition's exterior wall is located along the shared side property line with its eaves and chimney encroaching up to 1.8 feet into the abutting property. The fact that the addition was nearly completed before it was discovered by a city official doesn't excuse the owner from complying with development standards. Construction remodels including additions or expansion to existing structural frames incur cost associated with construction related activities, which should not be misconstrued as causing financial hardship or practical difficulties. To remove the nonconforming portion would not create additional inconveniences the owner has not already experienced. Additionally, no inspections were conducted to evaluate compliance to building code along certain construction phases (i.e., foundation, framing, electrical, etc.) which calls into question the health and safety concerns. It is possible that in order for DPD to evaluate the structural integrity of the addition certain parts of the building may have to be deconstructed as part of the construction permit review and approval process. The loss of a one-story garage attachment option would cause the owners practical difficulties or create undue hardships.

Therefore, the literal interpretation of the requirements of the Land Use Code would result in undue hardship or practical difficulties for the applicant if they are unable to replace existing parking within an enclosed one-story structure.

5. *The requested variance would be consistent with the spirit and purpose of the Land Use Code regulations for the area.*

Single family zones are the heart of our City, where human interactions on residential blocks are enhanced by attractive and active streetscapes that can be impacted by the bulk and scale of the housing stock. The spirit and purpose of the Land Use Code provides for preservation and maintenance of the physical characteristics of single-family neighborhoods. This well established residential neighborhood with its architectural mix of structures and number of mature trees creates a sense of calm and intimacy. It is the responsibility of the City to preserve and protect single-family residential areas within its jurisdiction. Prior to construction activity to expand the existing single family residence with detached garage, the development site was in keeping with what is typical of the residential uses in single family zones and the surrounding area. A portion of residential structures in the immediate area were found to be nonconforming to required side and rear yard requirements.

The establishment of a single family use at the subject site occurred in 1918. The greater majority of the homes were constructed before 1957, at a time when the Code required a 3 foot

side setback (from 1913 – 1923, side setbacks were between facing facades; after 1923 up to 1957, 3 foot setback from the property line was required). Prior to 1923 there were no setback requirements for single family districts, 1923 – 1957; 15 foot rear yard was required. In recognizing the importance of protecting life, health, and safety of its residential population the City enacted the Land Use Code. It is further accepted that the City encourages home ownership and use of private property with proscriptions in an ever changing world. The single family section within the Land Use Code contemplates expansion of non-conforming structures but limits the creation of non-conforming structures.

Seattle Municipal Code's (SMC) Land Use Chapter 23.40.002 requires the "owners of such structures, buildings or premises or parts thereof are responsible for any failure of such structures, buildings or premises to conform to the regulations of this title and for compliance with the provisions of this title in or on such structures, buildings or premises." Even when another individual or entity created, caused or contributed to a condition in or on such structures, buildings or premises shall be held responsible with the owner shouldering the burden of demonstrating their impunity. Owner(s) of parcels are responsible for reduction of required spaces on the lot where the existing single family structure is located. According to SMC Section 23.40.004.A, no reductions in yards are allowed on development sites existing on or after July 24, 1957 that fall below the minimum required by the Land Use Code, except as specifically provided in the Code. It is the responsibility of the owner to resolve the creation of the nonconforming condition.

Seattle's Comprehensive Plan allows for the development of single family dwellings in single family areas that ensures new development is consistent with the existing and planned character of a neighborhood and that physical and environmental constraints are accounted for. One stated goal (LUG5), "Encourage, through the City's land use regulations, development that protects the public's health and maintains environmental quality." One stated policy (LU35) specifically addresses setback impacts; "Use setbacks in residential areas to provide for adequate light, air, and open space, to help ensure privacy, and to maintain compatibility with the existing development pattern."

A sense of openness and privacy upon abutting properties is a desired and expected characteristic within single family zones. The proposed bulk and scale of the two-story expansion would not be in keeping with the pattern on lots in the immediate area and would not meet the bulk and siting provisions in single family zones. The granting of the requested variance will adversely affect the physical characteristics or use of the surrounding neighborhood, with the remodel and expansion of a single family residence to accommodate a two-story addition in an area designated to provide light, air, and adequate separation between properties. A one-story attached garage addition within the required side and rear yards and limited to the area as shown on the site survey would not compromise height, bulk and scale as evidence throughout the neighborhood.

Therefore, granting a one-story attached garage in the required side and rear yards would be consistent with the spirit and purpose of Land Use Code regulations for the area.

## **DECISION - VARIANCE**

The proposed variance to remodel and expand an existing residential structure that includes a one-story attached garage addition in the required side and rear yard, at 3643 46th Avenue Southwest is **Conditionally Approved**.

**CONDITIONS - VARIANCE**

Prior to Issuance of MUP

1. Applicant shall revise plan sets to show no more than a one-story attached garage addition (no greater than 18 feet in width by 24 feet in length) encroaching in the rear and side yards. The maximum height of the attached garage structure shall be eight feet to top of wall plate as measured from the front façade where the garage door is located, with an additional three feet to top of ridge if a pitched roof is proposed. If a flat roof is proposed, no portion of the roof shall exceed nine feet. No portion of the structure shall encroach onto adjoining properties. All subject to the approval by the DPD planner.

Signature: \_\_\_\_\_ (signature on file) Date: April 22, 2010  
Bradley Wilburn, Land Use Planner  
Department of Planning and Development  
Land Use Services

BMW:lc

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