



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: 3005589
Applicant Name: Kevin Broderick
Address of Proposal: 9015 26th Ave NW

SUMMARY OF PROPOSED ACTION

Land Use Application to allow a three-story single family residence with an attached garage in an environmentally critical area.

The following approval is required:

Critical Area Variance – Variance to allow an extension into the steep slope buffer area (SMC 25.09.180) (0% allowed; 6.5% proposed).

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

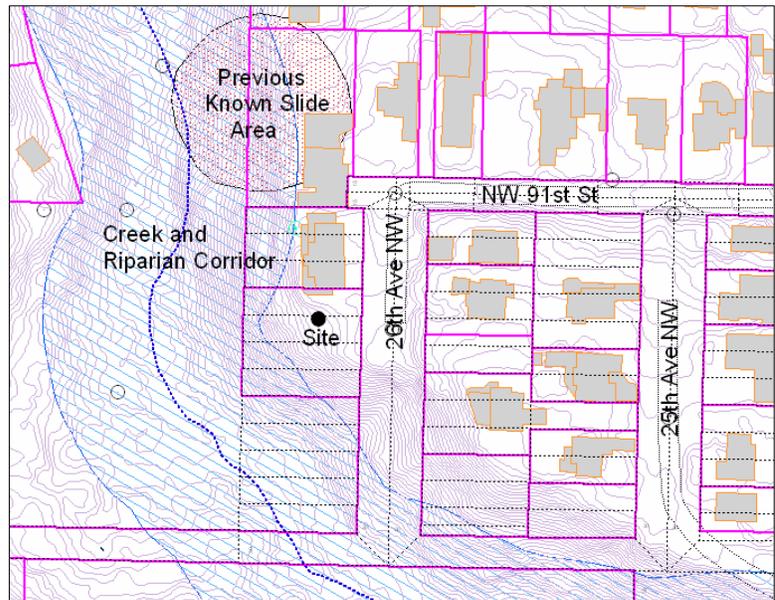
BACKGROUND DATA

Site Description

The site is located on 26th Ave NW south of NW 91st Street near North Beach Park and Ravine. The property contains an existing house and drops off sharply to the west into a forested ravine. A creek runs along the bottom of the ravine, through the park property. Mapped environmentally critical areas (ECAs) on the property include 40% steep slope, potential slide area, riparian corridor, and heron habitat. Additionally, a Type 1 wetland lies adjacent to portions of the creek and the wetland buffer extends onto the site. North of the property is a known slide area, where the western slope of the adjacent property failed in 1996, and was later stabilized with a rockery and retaining wall.

Zoning for the site and adjacent houses is Single Family Residential, with a 5,000 square foot minimum lot size (SF 5000). The subject parcel is 19,250 square feet and contains a two-story house with an attached garage. Development in the area consists of similar two-story houses.

The original plat of Stephan's Add to Ballard consisted of 25' wide by 100' or 110' deep lots. Most houses on the block are sited on 2 or 3 such lots. The subject property contains 7 of such lots, for a total width of 175'. The house has been built on the northerly 3 lots, with an attached deck extending onto the 4th lot. The northerly 3 lots (8,250 sq. ft.) are sufficient to meet all development standards for the existing house, providing that the attached deck is removed and a side yard easement agreement is recorded to ensure a 10 foot separation between the existing and proposed new structure. Thus, the southerly 4 lots (11,000 sq. ft.) comprise a separate legal building site.



Description of Proposal

The applicant proposes to construct a three-story single family residence (2,822 sq ft. plus 2-car garage and decks) on the 11,000 sq ft. site. The project proposes reducing a portion of the front yard setback to 5' in order to stay outside the steep slope, while extending into a portion of the 15' steep slope buffer. 78% of the site (8640 sq ft.) is comprised of steep slope or steep slope buffer; the footprint would occupy 6.5% of this area, and extend up to 14' into the 15' buffer. The proposed disturbance would be outside the riparian corridor and wetland areas, and would not require the removal of any trees. Planting of native trees is proposed on the subject site within the wildlife habitat area to mitigate the proximity of the development to the heron colony area in the North Beach ravine.



Public Comment

Notice of the proposal was issued on August 31, 2006. Three comment letters were received.

Environmentally Critical Area (ECA) Code Requirements

The development is required to comply with the following requirements of the ECA ordinance. All decisions subject to these standards are separate from the variance decision, and are non-appealable. Type I decisions made by the Director (or designee) of DPD.

General Requirements and Standards for ECAs (SMC 25.09.060). General requirements and standards for all ECAs include recording of the identified ECA areas in a permanent covenant running with the land, recording of conditions of approval, as well as specific construction methods and procedures.

Landslide-prone critical areas (SMC 25.09.080). The applicant has provided a geotechnical soils report, which has been reviewed by DPD geotechnical engineers. The geotechnical report sets out structural measures to ensure stability of the proposed construction.

Steep Slopes (SMC 25.09.180). SMC Section 25.09.180 provides specific standards for development on steep slopes and their buffers, including the general requirement that development shall be avoided in these areas whenever possible. Subsection E of this section allows variances for development in a steep slope buffer and in up to 30% of the steep slope area if certain criteria are met. The criteria are evaluated under the variance analysis section of this decision.

Riparian Corridors (SMC 25.09.200 A). A riparian corridor (the 100' adjacent to the stream) extends onto the subject property. The proposed development will stay outside the corridor.

Fish and wildlife Habitat Conservation Areas (SMC 25.09.200 D) – Heron Habitat. The property is within a heron habitat area. The whole of the North Beach ravine, which consists of a west ravine and an east ravine, is considered a heron colony nesting area. The proposed house is at the edge of the east ravine. Great blue herons and their nests are protected under RCW 77.15.130 (Protected fish or wildlife -- Unlawful taking), and great blue heron nesting colonies are listed as a WDFW Priority Species. As herons are particularly sensitive to noise and disturbance during the nesting period (February 1 – July 31), and may abandon nests if disturbed, a year-round vegetated buffer between the proposed house and the heron colony nesting areas is important in mitigating the impact of the proposed location of the house. An evaluation by the City's biologist concluded that the area of the subject property downhill from the proposed house is comprised mainly of older alder trees, and as such does not provide a year-round buffer. Further, the aging alders are beginning to fail and as they do, the location of the house in proximity to the heron colony nesting area will impact the likelihood of heron nesting. The typical progression of a native forest would see the older alders replaced by conifers such as red cedars as the alders fail. On the subject property, new conifer saplings are not evident, potentially due to the amount of non-native weeds in the area. The addition of red cedar or other native conifers is proposed as part of the project to ensure that as the alders age, conifers will take their place, and continue to provide a buffer from the developed area for the heron colony. Absent this long-term mitigation, the location of the development could create a long term impact. Studies have shown that heron nesting decreases in proximity to human activity. Trees provide a buffer, and conifers provide a year round buffer. Planting of bare root stock to establish the trees is easiest and has the best chance of survival on a steep slope where digging of larger planting pits is undesirable, and watering and monitoring would be difficult. It is

recommended that double the number of root stalk to desired trees be planted to gain the optimal number of surviving trees. Based on the site size, 30 sapling bare root stalks are recommended by the City's biologist for planting, in the more open areas of ravine on the subject site. Removal of invasive weeds, such as ivy will be needed prior to planting to allow the cedars to start becoming established.

Standard conditions within a heron habitat area, per Director's Rule 5-2007 allow no exterior construction during the nesting season of February 1st through July 31st, unless a site specific plan verified by the Washington State Department of Fish and Wildlife (WDFW) and the City's biologist confirms that for the specific property, based on the time of year and location of existing nests, that construction can be done without disturbing nesting habitat. Per the ECA code, the standard condition will be placed on the construction permit.

Trees and Vegetation (SMC 25.09.320). This code section is often referenced in other Environmentally Critical Area code sections, including those discussed above. No significant vegetation is proposed to be removed. The area for the proposed footprint is a grassy flat area bounded by a rockery. Planting of native conifers, and removal of noxious weeds within the heron habitat area on the site is allowed under the tree and vegetation removal section of the code when it is part of a condition of a permit.

The decision has been conditioned to ensure compliance with relevant ECA code sections.

STEEP SLOPE AREA VARIANCE (SMC 25.09.180E).

The land use code generally prohibits development in environmentally critical areas, including steep slopes and steep slope buffers, but allows for a variance process in order to provide relief from a hardship caused by the ECA development standards. Such variance decisions are Type II decisions, subject to the provisions of SMC 23.76 and are appealable to the City Hearing Examiner.

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 existing plat of the property establishes 7 lots (25' x 110') that pre-date 1992. The southerly 4 lots comprise a legal building site of 11,000 sq. ft., which greatly exceeds the 5,000 sq. ft. minimum lot size in the zone.

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.

The proposed development meets the criteria for granting a variance under Section 25.09.280B, as analyzed below, except that reducing the front yard will not provide for adequate developable area without extending into the steep slope buffer as well. The front yard is proposed to be reduced to 5'. Given roof overhangs into the front yard, and vehicular access needs, this is the maximum it is reasonable to reduce the front yard.

The area taken up by steep slopes and their buffers leaves a triangular shaped area of 586 sq. ft. The proposed extension into the front yard is 319 sq. ft. Even so, it is difficult to develop a workable floor plan within this area, given the shape, so the applicant has proposed to extend into a portion of the buffer. The amount of building area proposed to extend into the buffer is 237 sq. ft. The buffer currently is not in a natural state, and the development would not require the removal of any substantive vegetation. No impact to the slope would be created by the proposal. Given these facts, requiring the shape and floor plan of the development to be limited strictly by the area outside the steep slope buffer would be an unreasonable hardship.

Steep Slope Variance - Sequence of Priority

In addition to the criteria under subsection E1 above, the section further requires that a steep slope variance follow the sequence of priority outlined under Section 25.09.180E2:

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 applicant has proposed to reduce the front yard to 5', and is proposing to extend only into a portion of the 15' steep slope buffer. The proposal will not extend into the steep slope area itself. The applicant has followed the sequence of priority for development in a critical area.

Environmentally Critical Area Variance - SMC 25.09.280B

Criteria and responses for granting an environmentally critical areas (ECA) variance, found in SMC 25.09.280.B, are as follows:

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 southerly four lots of record, in existence prior to October 31, 1992, constitute a legal building site.

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;*

Environmentally critical areas and their buffers cover 78% of the site (8640 sq. ft. of the 11,000 sq. ft. lot). Subtracting the front and side yards, and areas of existing rockeries, the remaining footprint is an irregularly shaped area estimated at 586 sq. ft. Even a five-foot reduction in front yard setback to 15 feet (the amount allowed without a variance) would result in only approximately 615 sq. ft. of development area – less than 6% of the entire site. Creating a workable house design within this footprint would cause an 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 building footprint (1090 sq. ft.) has been designed and located to stay out of the steep slope and to extend minimally into the buffer. The house design is an average size for a new house, consisting of 2,822 sq. ft. of living area, a 2 car garage (456 sq. ft.), and 488 sq. ft. of cantilevered or elevated decks and entry bridge/patio, which provide the primary open space. The moderately sized house is located on 3 levels, without a basement level, to minimize the footprint and associated ground disturbance.

Comparing the size of the house footprint with others on the block, the proposed footprint is below the average on the street. For the five houses on the dead end section of 26th Av NW, the average first floor living space is 1388 sq. ft. Some houses have additional footprint for detached garages or sheds. The proposed building footprint, at 1090 sq. ft., is below the average size on the block.

The area proposed to project into the front yard is approximately 319 sq. ft. of the building's footprint. The main portion of the house would project 15 feet into the front yard (a setback of 5 feet from the property line). Narrower portions of the house containing primarily steps and entry areas, project between 5 and 8 feet into the front yard. In summary, the size of the proposed footprint is conservative for the block. The front yard variance is the minimum necessary to allow the construction of the house outside the steep slope and adjacent rockery.

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 has been reviewed for its impact to the steep slope buffer, and approved as meeting technical standards for construction in such a location. The location will retain the existing rockery, minimizing ground disturbance, and will not extend into the steep slope. The project design incorporates a drilled pier foundation system that is designed to minimize impacts and reduce the likelihood of erosion in the steep slope and

buffer. The drilled piers will extend 15 to 20 feet below the existing site grade to provide stability. The only vegetation to be removed is an area of grass. Granting the variance to extend into the steep slope buffer 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 house is three stories (30 feet) with an attached two-car garage. Most of the houses in the area are two stories, however, the natural setting with substantial vegetation and a topography where houses across the street are at a higher elevation, effectively reduces the scale of the building. The footprint of the house is small in order to minimize intrusion into the critical area. The house is not out of character with the area.

Due to the situation of the lot at the end of a dead end street, the topography, and the relatively low density of the area, the impact of the reduced setback is minor. Only one house is adjacent to the lot, and that house is owned by the project proponents. The north façade of the proposed house does extend about 14' further toward the street than the adjacent house. This façade is not modulated and has relatively few windows. Planting vegetation in this area would reduce the apparent bulk of the building as viewed from the north. A condition to this effect is detailed in the conditions section.

Since the street has no sidewalks, and a 60 foot right-of-way, there is 21 feet of undeveloped right-of-way between the lot and the street – 26 feet between the closest section of the house and the street. The limited development on this dead end street, and surrounding environmentally critical area make is very unlikely that the street would be widened or that sidewalks would be developed. The separation between the house and the road edge would remain at 26 feet, providing an ample buffer between the house and the street. The reduced setback will not be materially detrimental to the streetscape. There is relatively little pedestrian traffic so the pedestrian environment would not be negatively affected.

The location of the proposed house is currently a grassed and fenced yard for the existing house on the property. No vegetation removal other than grass will be required for construction of the house.

Considering the height, bulk and scale, and separation from adjacent development, the proposed residence on the end of the block will not result in materially detrimental effects on the character, design, and streetscape of the surrounding neighborhood.

5. *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 lot of 11,000 sq. ft. with no intrusion into environmentally critical area, and limited intrusion into the steep slope buffer. The proposal would be consistent with the spirit and purpose of the environmentally critical policies and regulations, subject to the Conditions section below.

Additional Conditions – SMC 25.09.180 E.3. and SMC 25.09.280C.

Pursuant to the code sections on ECA yard variances (SMC 25.09.280C), the placement of conditions regarding the location, character and other features of a proposed development is allowed in order to carry out the spirit and purpose of the chapter. Similarly, the code section on Steep Slope variances (SMC 25.09.180 E.3.) allows the placement of additional conditions on features of the proposed development as necessary to mitigate the reduction of the yard, setback or steep slope area or buffer.

To mitigate the north façade of the building extending further forward toward the street than adjacent structures, planting of vegetation including trees will be required.

A complete list of applicable conditions are listed in the Conditions section below.

DECISION – STEEP SLOPE VARIANCE

A steep slope variance to reduce the front yard to 5' and to allow development within the steep slope buffer is **CONDITIONALLY GRANTED**, subject to the conditions listed below.

NON-APPEALABLE CONDITIONS OF APPROVAL

Prior to Issuance of a Master Use Permit

1. Permanent visible markers shall be placed along the edge of the nondisturbance area as approved on the site plan. The markers shall be either reinforcing steel or metal pipe driven securely into the ground with a brass cap affixed to the top similar to survey monuments. The brass cap shall be visible at the ground surface and indicate the purpose of the marker. Markers shall be placed at all points along the edge of the nondisturbance line where the line changes direction. Markers must be in place before issuance of this Master Use permit. Markers should be detailed in accordance with description contained in Director's Rule 3-94.
2. The ECA Covenant recording number (20070619000828) shall be noted on the MUP and building plans.
3. Notes shall be added to the MUP Site Plan A1.1 reflecting conditions 7 and 8.

Prior to Issuance of Any Construction Permits

The owner and/or responsible party shall:

4. Show on the 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. (SMC 25.09.060)
5. Notes shall be added to the construction site plans A1.0 reflecting conditions 7 and 8.

During Construction

6. Heron habitat conditions shall apply: No exterior grading or construction shall be allowed between February 1 and July 31, unless an updated, site-specific plan is obtained from the Department of Fish and Wildlife substantiating that there are no active nests in the vicinity that would be impacted by the construction.
7. Ivy and other noxious weeds shall be removed from the steep slope area, and 30 western red cedar or other native conifer bare root stalk shall be planted in the more open areas of the ravine on the subject site. Ivy and noxious weed removal shall be done prior to the tree planting.

CONDITIONS OF VARIANCE APPROVAL

During Construction

8. Vegetation, including shrubs and at least one tree, shall be planted along the north facade of the proposed house.

For the Life of the Permit

9. The vegetation noted in Condition 8 shall be retained for the life of the permit.
10. This variance shall tied to the specific plans approved under this permit. The reduction of the front yard, and intrusion into the buffer area shall be limited to that shown on the approved plans.

Signature: _____ (signature on file) Date: September 6, 2007
Holly E. Anderson, Land Use Planner
Department of Planning and Development

HEA:lc