



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: 3007454
Applicant Name: Jason Henry
Address of Proposal: 1700 17TH Avenue East

SUMMARY OF PROPOSED ACTION

Land Use Application to landscape existing single family property in an environmentally critical area. Landscaping includes, but is not limited to, grading of 532 cubic yards of material, installation of a 59 lineal feet of retaining wall, removal of existing green house and other abandoned building and replace with gazebo, resurfacing of a sports court, removal and replacement of a 6,000 square feet of asphalt paving with lawn and plantings, renovation of existing pool, construction of a new out building and installation of lawns, planting and walking paths. The applicant proposes to install 127 trees in this first phase of construction, along with 4,000 square feet of native shrubs.

The following approvals are required:

ECA Variance – to allow disturbance of an Environmentally Critical Area (ECA) steep slope buffer, SMC 25.09.180.

SEPA - Environmental Determination – SMC Chapter 25.05

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

BACKGROUND DATA

Substantive Site Characteristics:

The irregular shaped site extends in a north south direction beginning near the intersection of 17th Avenue East and East Garfield Street. Surrounded mostly by Interlaken Park and Boren Park,

the 3.6 acre property (160,432 square feet) also borders the Seattle Hebrew Academy to the east and a small cluster of single family properties to the north and a single family house to the south. The property gradually descends from 17th Ave. E along a long driveway to the estate's house. On either side of the driveway, gardens, parking areas, a green house, a swimming pool and a sports court branch off from it. Beyond these landscape features, the property descends dramatically to the east, west and north (behind the house). In effect, the useable portions of the property sit upon the top of a peninsula that extends above a steep ravine.

The site contains steep slope, potential landslide, known slide, wetland buffer, riparian corridor buffer and Environmentally Critical areas. The steep slope area and its buffer cover most of the site with the exception of a small peninsula comprising the driveway, house and landscape features. The potential slide area comprises the entire site. City of Seattle has mapped two known slides near the house. A wetland area runs alongside of the stream below the property to the west. Its buffer extends onto the property and into the previously graded area above the 244 foot elevation. As the property falls away from the house and previously developed area, two riparian corridors run parallel to the north south axis of the property. Only on the western edge of the property does the riparian buffer creep above the 244 foot elevation where the property has been extensively graded and developed. A Wildlife area borders much of the parcel to the east.

The site lies within a Single Family 5,000 (SF 5000) zoning designation.

Proposal Description:

The proposal includes extensive renovation to the estate's grounds including its swimming pool, driveway and sport court, removal and replacement of a 6,000 square foot concrete parking area into a lawn, replacement of existing concrete walks on east (in ECA) and west sides of house with pavers or concrete and pin pile support, removal of a horseshoe pit in 110 foot wetland buffer, installation of a two foot walking path along east side of the driveway and replacement of existing exotic plant species with primarily drought tolerant or native plant species. Other improvements to the landscape include adding a 59 lineal feet of retaining wall and removing an existing green house. Renovation of the house has been approved under separate DPD project number 6130806.

Within the ECA steep slope lies 579 square feet of existing terraces, paths and retaining walls on three areas along the eastern edge of the previously improved landscape. The applicant proposes to increase the total square footage by 48 feet in order to install a pathway that would provide egress from an existing basement doorway. One tiny portion of the area within the steep slope would be returned to pervious surface (lawn and plantings) with the removal of the large concrete parking area. A total of 10,029 square feet of landscape elements currently lie within the 15 foot ECA steep slope buffer. According to the applicant, the total pervious area would be reduced by nearly 28 percent (2,782 square feet). The removal of the parking area would account for most of the change. Inclusive within the total reduction are the creation of new walkways and the resurfacing of others, a gazebo, gateway, and trellis. The 2,782 sq. ft. of land would be planted.

A total of 446 square feet of paving sits within the 110 foot wetland buffer along the west side of the property. The applicant proposes to restore seven square feet of the wetland area by removing both a horseshoe pit in which a portion lies within the wetland and removal of a retaining wall.

Changes within the steep slope and its buffer require variances. The proposal does not impact the riparian buffer or the wildlife critical area.

Public Comment:

DPD received one letter expressing concerns about access, drainage / run-off from the eastern slope and trespass if the project would later have a public element to it. The letter wondered if vehicular access to the property would change to Interlaken Dr. E. from the current location at 17th Ave. E. The correspondent asked whether there would be “safeguards in place to guarantee that run-off problem isn’t merely shifted to abutting Parks property or the abutting Northern private property?”

ANALYSIS – ECA VARIANCE

This variance request pertains to proposed disturbance of an identified Environmentally Critical Area (ECA) steep slope buffer. Such variances may be authorized according to the provisions of SMC 25.09.180 E, quoted below.

1. *Steep Slope Area Variance. 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*
 - b. *the proposed development otherwise meets the criteria for granting a variance under Section 25.09.280 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 subject lot existed prior to October 31, 1992. The referenced criteria relate to the reduction of required yards to provide for preservation of ECA buffers. The cited criteria are discussed below.

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 subject lot is unusually shaped with most of the existing and proposed improvements quite distant from the property lines and the side and rear yards. Reducing the yards would not have an impact upon the steep slope area.

The applicant proposes to remove 2,782 sq. ft. of impervious landscape features from the steep slope buffer converting the irregular area to natural plantings. This conversion of land to a more natural state could actually be larger if not for the applicant's desire to place landscape elements such as a gazebo, trellis and small goat barn onto a former parking lot. Given the size and unusual shape of the property, the buffer and the steep slope wind through the property. Forty-eight square feet of new walkway proposed in the steep slope area would provide egress from a basement doorway and connect an area behind the house to the front. Were this exit needed in an emergency, the new pathway would ensure that residents would not fall into the ravine as they scrambled out of the basement. The additional 48 sq. ft. represents considerably less than 30 percent of the steep slope area amounting to a .03 percent reduction in the steep slope area. The proposed walkway would hug the side of the house.

- 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 amount of intrusion in the steep slope would be diminutive---a total of 48 sq. ft. added to the 579 sq. ft. of landscape features currently within the steep slope. The latter were likely added before the existence of the Critical Area ordinance. A total of 2,782 sq. ft. of land within the steep slope buffer would be converted to pervious surface.

In addition to the provisions discussed above, DPD may grant an ECA variance only when all of the following criteria are met, as set forth in SMC 25.09.280 B, stated below:

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

The subject lot existed as a legal building site prior to October 31, 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*

The proposed new development within the ECA includes a new pedestrian gate attached to an existing vehicular gate which is needed for pedestrians to safely enter and exit the site and a pin pile / concrete walkway to safely exit from the north and east side of the residence. The current conditions of the site would not allow for safe exit from the residence in the event of a fire or other emergency. Thus, the strict application of Title 23 would cause 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*

SMC 25.09.180 E modifies this provision to allow for developmental disturbance within the steep slope ECA and/or its buffer. The requested reduction of the steep slope critical area would allow a walkway along the eastside of the house to allow safe egress from the basement level.

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*

Due to the site vicinity, the variance will not be injurious to the safety or property of the natural Parks Department land and the neighboring residents. Overall, the significant increase in the amount of pervious surface (both within and outside of the ECA and its buffer) would mitigate some of the area runoff.

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 project will not need yard or setback reductions. The considerable distance to neighboring properties and the amount of slope and trees between them would obscure any proposed landscape improvements. DPD considers the project's design to adequately address the above criterion.

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

The requested variance achieves a reasonable protection of existing steep slope areas on this site.

DECISION – VARIANCE

DPD **CONDITIONALLY APPROVES** the requested variance to allow landscape improvements in the steep slope and its buffer.

ANALYSIS - SEPA

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 November 27, 2007. The information in the checklist, public comment, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The development site is located within several Environmentally Critical Areas (ECAs), thus the application is not exempt from SEPA review. However, 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 ECA regulations in SMC 25.09; and

- 2) Evaluating potentially significant impacts on the critical area resource, in this case landslide-prone, steep slope and known slide areas, wetland buffers and riparian buffers not adequately addressed in the ECA regulations.

This review includes identifying additional mitigation measures needed to protect the ECA in order to achieve consistency with SEPA and other applicable environmental laws. Environmental impacts of the project that may affect the geologically hazardous area include an increased rate of stormwater runoff, loss of vegetation and increased water pollution.

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, that "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 such limitations/circumstances (SMC 25.05.665 D1-7) mitigation can be considered.

Short-term Impacts

The following temporary or construction-related impacts are expected: (1) temporary soil erosion; (2) the possibility of construction related landslide damage to the bluff and temporary loss of vegetation (3) decreased air quality due to increased dust and other suspended air particulates during excavation, filling and transport of materials to and from the site as well as due to vehicle exhaust from operation of construction equipment; (4) increased noise and vibration from construction operations and equipment; and (5) slightly increased traffic and parking demand from construction personnel traveling to and from the work site;.

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 Environmentally Critical Areas regulations provides rules to protect the public health, safety and welfare, promote safe development through the use of the best possible planning and engineering techniques, and prevents harm to the environment. The Street Use Ordinance requires debris to be removed from the street right of way, and regulates obstruction of the sidewalk. Puget Sound Clean Air Agency regulations require control of fugitive dust to protect air quality. The Building Code provides for construction measures and life safety issues. Finally, the Noise Ordinance regulates the time and amount of construction noise that is permitted in the city.

Most short-term impacts are expected to be minor and of short duration. However, impacts associated with earth and plants warrant further discussion.

Earth/Soils and Plants

The ECA Ordinance and Directors Rule (DR) 33-2006 and 3-2007 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. A "Geotechnical Engineering Study," prepared by Robert Ward, PE, dated October 24, 2007, was submitted with

this application and is undergoing separate geotechnical review by DPD. The construction plans, including shoring of excavations as needed and erosion control techniques are receiving separate review by DPD. Any additional information showing conformance with applicable ordinances and codes (ECA ordinance, The Stormwater, Grading and Drainage Control Code, DR 33-2006 and 3-2007) 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, compliance with these applicable codes and ordinances will reduce or eliminate most short-term impacts to the ECA and no additional conditioning is warranted pursuant to SEPA policies.

Erosion from loose soils could occur during construction so best management practices will be used during construction to minimize disturbance to existing slope and to control storm water runoff. Best management practices will include; scheduling construction during the dryer months of the year, protecting exposed earth surfaces, working in small sections to minimize disturbance, minimizing the amount of time soils are opened for work, stabilizing areas as soon as they can be regarded and landscaping all exposed earth surfaces with suitable vegetation to prevent erosion.

The Stormwater, Grading and Drainage Control Code and the ECA code provides extensive conditioning authority with respect to temporary erosion control. DPD staff with expertise in geotechnical and biological issues has reviewed the project to ensure code compliance.

Long-term Impacts

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.

Steep Slope and Potential Slide ECA

Vegetation in potential slide and steep slope areas provides filtration of storm water runoff and increases slope stability. The applicant has proposed to increase the amount of impervious surface. In addition to removing exotic plant species, the applicant proposes to provide native vegetation.

Summary

The Department of Planning and Development has reviewed the environmental checklist submitted by the project applicant; reviewed the project plans and any additional information in the file; and any comments which may have been received regarding this proposed action have been considered. As indicated in the checklist and this analysis, this action will result in probable adverse impacts to the environment. However, due to their temporary nature and limited effects, the impacts are not expected to be significant.

DECISION

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 requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

[X] 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 43.21.030(2) (c).

[] 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 (2)(C).

CONDITIONS - SEPA

During Construction

1. All grading, demolition, and other construction related earthwork must follow the recommendations contained in the geotechnical report prepared by Associated Earth Sciences, Inc.

Signature: _____ (signature on file) Date: July 31, 2008
Bruce P. Rips, AICP Senior Land Use Planner
Department of Planning and Development

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