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: 3008498

Applicant Name: Tim Hossner

Address of Proposal: 5611 NE 77th

SUMMARY OF PROPOSED ACTION

Land Use Application to allow construction of a 2,903-square-foot single family residence with an attached two-car garage in an environmentally critical area.

The following approvals are required:

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

SEPA DETERMINATION: [X] 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 subject property is located at 5611 NE 77th Street. The site is situated just west of the intersection of 56th Ave NE and NE 77th St. The lot is irregularly shaped with a panhandle that fronts 56th Ave NE. The northern panhandle is somewhat level and extends about 45 feet to the south. The remainder of the site slopes steeply to the south towards a small creek. The approximately 9,384 square-foot property is currently undeveloped, situated on south facing slope, the majority of which is steeper than 40% with a small area of relatively level ground abutting NE 77th Street. The subject property contains steep slope, potential slide, and riparian Environmentally Critical Areas.

All but the northernmost portion of the property is mapped as steep slope by the City of Seattle. An un-named, non-fish bearing stream flows eastward along the southern property boundary. The stream channel is incised approximately 2 feet below the top of bank and is rip-rapped for its entire on-site length. City mapping shows that this stream may also be a wetland, but DPD's wetland specialist waived the need for a wetland report after he determined that the likelihood of wetlands existing in relationship to the stream is extremely low due to the topography and the fact that stream flows through an uninterrupted incised channel. All but the northernmost portion of the property is mapped as a riparian management area by the City of Seattle. The riparian management area extends eastward from the property for approximately 500 feet to Sand Point Way NE where it terminates.

According to City of Seattle landslide records, four landslides have been reported within about a two block radius of the project site, but no landslides have been reported on or adjacent to the project site.

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

Proposal Description:

The applicant proposes to construct a 2,903-square-foot single family residence with an attached two-car garage in an environmentally critical area. The approximately 9,384 square-foot property is currently undeveloped, situated on south facing slope, the majority of which is steeper than 40% with a small area of relatively level ground abutting NE 77th Street. The residence will be two stories with a daylight basement, and the lower level will have an overall dimension of about 50 feet in the north-south direction and about 25 feet in the east-west direction. A soldier pile wall will be installed below the south wall of the residence to provide lateral support to the structure. The upper levels will cantilever out from 4 to10 feet on the west, south and east sides of the house. Per SMC 23.44.014.D.2, the project proposes to extend into the side yard on the east side by providing a 10-foot side yard easement on the adjacent property. The side yard setback on the west side is proposed to be reduced by 4.5" along its length, providing an approximately 4.5 foot setback along the western property line. A 20-foot front yard setback is proposed.

The proposed structure would be located both within the riparian corridor and the steep slope area and buffer. The proposed development would disturb 21.56 % of the steep slope areas and 77.28% of the Limited Development Riparian Area (LDRA), exceeding the 35% development threshold in the LDRA per SMC 25.09.200A 3 d (3). Per SMC 25.09.200 A 3 e, the applicant may submit a restoration plan in lieu of requiring compliance with subsections 3 d (2) and (3) if the applicant demonstrates that the plan meets criteria for protection and restoration of the watercourse and riparian management area. This plan was reviewed and approved by DPD and includes extensive riparian buffer restoration activities in the 50-foot riparian buffer, including removal of invasive species and planting of a wide variety of native shrubs, trees and groundcover. Extensive removal of non-native vegetation would occur in the 50-foot riparian buffer and planting of native trees, shrubs and groundcover. Any areas disturbed in the LDRA by construction would be replanted with native vegetation consistent with the restoration plan for the riparian buffer. The required riparian buffer restoration plan is labeled sheet 1 of 3, dated October 24, 2009, and is incorporated in the plans for this project.

Public Comment:

One comment letter was received within the public comment period, which ended on Aug. 6, 2009. The letter expressed concern about drainage problems at the site, the potential for erosion and damage downstream due to building on the steep slope, and potential impacts to the wetland area.

Regarding impacts to the riparian corridor, the extensive enhancement of the riparian buffer at this location, including removal of invasive species and planting of a wide diversity of native trees and shrubs will have long-term positive benefits for the stream and wildlife habitat at the location and downstream. Stormwater will not discharge to the slope or stream, but will be collected and conducted to storm drains on NE 77th. Implementation of the riparian buffer plan as proposed and the recommendations of the Geotechnical Engineering Report, reviewed by DPD, will address erosion control on the site and protection of water quality downstream. 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.

ANALYSIS – ECA STEEP SLOPE AREA 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.*

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 was created in 1985. Criteria and responses for granting a variance found in SMC 25.09.280.B are listed below, following this section.

The 20-foot front yard setback consists entirely of steep slopes and buffer areas and thus it provides no significant relief to steep slopes intrusion to build in this area. The width of the lot at the front yard setback is 21.9 ft wide. In order to stay out of the 50-foot riparian buffer, the structure is already situated in the narrow end of this irregularly shaped lot. Forcing more of the house into this narrow a footprint would impose a hardship on the owner, presenting practical difficulties with regard to reasonable internal circulation and room size.

If the full front yard setback were not maintained, the opportunity for off-street guest parking would be eliminated and the garage would be reduced from a smallish two car garage to a single car garage. This would be viewed as a significant hardship and safety issue due to the narrow (21'), steep (20% grade), trafficked, winding street with poor sightlines and no sidewalks or shoulder for pedestrians with limited on-street parking available. The plan geometry of the site is such that it narrows like a funnel towards the street. Assuming that the proposed structure's square footage is maintained (the house and garage building footprint is 1194 sq. ft. on grade), a front yard reduction of 10 feet would net a rear yard setback increase of only 4.6 ft. The net effect on steep slopes development area would be insignificant (from 20.35% to 18.25%) - especially relative to the hardships outlined above.

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 trees, shrubs, and groundcover. Some of this vegetation will be removed in the development process, including three bigleaf maple trees, and two paper birch trees. Total cover of non-native, invasive species within the understory is greater than 90%, with cover by English Ivy alone having greater than 50% cover. The applicant has proposed to remove invasive non-native vegetation and replant with native trees and shrubs, as noted on Sheet 1 of the plans. The 50-foot riparian buffer will be planted with more than 250 supplemental native shrub and 8 tree plantings, as a requirement of project approval.

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 was created in 1985.

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*

Ninety-one percent (91.4%) of the site consists of steep slopes and virtually all of the remainder is buffer areas. The total site area outside of steep slopes and buffers is 40 sq. ft. Relief in the form of an ECA Variance for steep slopes is necessary to allow development of the property with a single family residence.

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 structure is specifically designed to create relief while minimizing impact to the ECA. The proposed dwelling minimizes the building footprint, with its area distributed over three floors with a compact footprint of 1194 sq. ft. on grade. Further, it is designed to cantilever outward from a stepped foundation base in order to minimize ground disturbance.

The variance proposal maintains the full standard front yard setback for the following reasons:

1. The front yard setback consists entirely of steep slopes and buffer areas and thus it provides no significant relief to steep slopes intrusion to allow building in this area.

2. The width of the lot at the front yard setback is 21.9 ft wide. In order to stay out of the 50-foot riparian buffer, the structure is already situated in the narrow end of this irregularly shaped lot. Forcing more of the house into this narrow a footprint would impose a hardship on the owner, presenting practical difficulties with regard to reasonable internal circulation and room size.

3. If the full front yard setback were maintained, the opportunity for off-street guest parking would be eliminated and the garage would be reduced from a smallish two car garage to a single car garage. This would be viewed as a significant hardship and safety issue due to the narrow (21’), steep (20% grade), trafficked, winding street with poor sightlines and no sidewalks or shoulder for pedestrians and limited on-street parking available.

4. The plan geometry of the site is such that it narrows like a funnel towards the street. Assuming that the proposed structure’s square footage is maintained, a front yard reduction of 10 feet would net a rear yard setback increase of only 4.6 ft. The net effect on steep slopes development area would be insignificant (from 20.35% to 18.25%) - especially relative to the hardships outlined above.

The variance proposal reduces the side yard setback on the west side by 4.5” for the following reasons:

1. In order to stay completely out of the 50-foot riparian buffer, the structure is situated in the narrow end of this irregularly shaped lot. Without taking further reductions in the structure width that would impact reasonable circulation and room size, the west side yard is reduced by 4.5” along its length. Additionally, a corner of the structure on angle enters the setback as shown on site plan, with a minimum side yard setback of 2’7” at one corner. Both reductions are minor and allow the structure to stay completely out of the 50-foot riparian buffer.

2. The location of the structure in the narrow end of the lot also reduces the amount of development in the steep slope area.

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 dated May 21st, 2008 by PanGeo Inc. 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 (see below). The proposed development includes a single family house with an attached two-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. The slight reduction of the west side yard is not injurious to safety.

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 design maintains 72.5% of the lot as undeveloped/pervious areas. The house structure is similar in size and scale to adjacent structures and it steps down the hillside from the street – further reducing the bulk and height presented to the street. The minor reduction in the west side yard setback would not be materially detrimental to the character, design and streetscape of the surrounding neighborhood. The size of the adjacent lot to the west would suggest that any future development that may occur on it would not find it desirable to build up to their 5-foot setback from the east property line.

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

The spirit and purpose of the Environmentally Critical Areas Policies and Regulations is to protect environmentally sensitive areas while allowing measured relief as necessary in order mitigate hardship or to allow reasonable use of properties. The reduction of the west side yard is the first relief in sequence of priority for minimizing development in a critical area per SMC 25.09.180.E.2.a. This proposal, which includes extensive removal of non-native vegetation and planting of native trees and vegetation, is carefully measured to allow construction of a new single family residence with a minimum reduction of protected areas.

VARIANCE CONCLUSION

As described above, the proposed project meets criteria for intrusion into the steep slope area per SMC 25.09.180 E and SMC 25.09.280 B.

DECISION – STEEP SLOPE AREAS VARIANCE

ECA Variance to reduce the side yard setback on the west side by 4.5" and to allow development of up to 21.56 % of the areas measured over 40% steep slope and to place development in the steep slope buffer is **CONDITIONALLY GRANTED**.

CODE REQUIREMENTS

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.

Prior to Issuance of a Master Use Permit

1. Permanent visible markers shall be placed along the edge of the Covenant 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 Covenant Area 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. Submit a recorded copy of the ECA Covenant to the Land Use Planner.

3. Submit legible signed copy of 10-foot side yard easement on east side of property to the Land Use Planner

Prior to Issuance of Any Construction Permits

The owner and/or responsible party shall:

4. Show on the site plan the location of permanent ECA markers.

5. Show on 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. (25.09.060)

6. All future building permits must include the landscape restoration and monitoring as shown on Sheets 1 and 2.

7. For the life of the project, the vegetation specified in the riparian restoration plan shall be retained.

Signature: (signature on file) Date: March 17, 2011
Ben Perkowski, Land Use Planner
Department of Planning and Development

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