



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:** 3009139  
**Applicant Name:** Mark Johnson of ESA Adolfson, for Eric Kormondy  
**Address of Proposal:** 111 33<sup>rd</sup> Avenue E

**SUMMARY OF PROPOSED ACTION**

Land Use Application to allow for future construction of a single family residence.

The following approvals are required:

**Variance** - To allow a lot, described as Lot 15, Block 2, Waddell's Madrona Park Addition, to qualify for development as a separate building site under lot requirements (Seattle Municipal Code Section 23.44.010). *Requirement: The lot shall be 5000 in extent - Proposed: the lot is approximately 3,991 square feet.*

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

**BACKGROUND DATA**

**Subject Site and Vicinity**

The subject property of this variance application is zoned Single Family 5000 (SF 5000) and is part of a development site consisting of Lots 14 and 15, Block 2, Waddell's Madrona Park Addition. A house, addressed as 111 33<sup>rd</sup> Avenue East was built on these lots in 1941. Although the house is situated largely on Lot 15, a portion of the structure, exclusive of eaves, extends onto Lot 14. A detached garage is located entirely on Lot 14. There is one lot to the south on the same block face, with an area of 5,922 square feet and developed with a single-

family structure addressed as 105 33<sup>rd</sup> Avenue East. The remainder of the block face, extending north of the subject site to East John Street, is undeveloped. It is part of the Harrison Ridge Greenspace that is owned by the City of Seattle and controlled by the Department of Parks and Recreation. The east side of 33<sup>rd</sup> Avenue East is developed with two single-family residences addressed as 33<sup>rd</sup> Avenue East and taking access from that street. Development on other lots is addressed and takes access off 34<sup>th</sup> Avenue East.

Properties in the immediate vicinity are zoned Single Family 5000 (SF 5000) and developed predominately with older one and two story, single family residences. Although there are a few developed single-family sites which enjoy lots of 6,000; 7,000 and 8,000 square feet (with an occasional site of 12,000 square feet), approximately 75 percent of the houses in the SF 5000 zone within 500 feet of the subject site are nestled in lots that have an area of less than 5,000 square feet.

The legal description of the subject property is lot 15, Block 2, Waddell's Madrona Park Addition. The lot is approximately 37.28 feet wide along 33<sup>rd</sup> Avenue East and 39.87 feet wide, at the west property line, by 99.95 feet deep. The total lot area is approximately 3,991 sq. ft.

#### Proposal Description

The proposed project includes construction of a new three-story residence with attached garage. The applicant is requesting a variance to allow construction of a single-family residence on a lot that does not meet the minimum requirement of 5,000 square feet in area in a Single Family 5000 (SF 5000) zone nor does it meet any of the criteria for Exceptions to Minimum Lot Area for undersized lots in a single-family zones (SMC 23.44.010 B). Lot 15 has an area of approximately 3,991 square feet.

#### Public Comment

Two comment letters were received during the comment period, which ended on May 28, 2008. One was a request to be made a party of record and receive notice of the decision, without any specific comments regarding the proposal. The other, from owners of the property due south of the proposal site, was in opposition of the proposal. The comments in this letter maintained that strict enforcement of the Land Use Code would not deprive the subject property of rights and privileges enjoyed by other properties in the same zone and vicinity and that granting the variance would be a grant of special privilege. In addition, the writers maintained that granting the variance would be materially detrimental to the public welfare.

#### Additional Information

The entire property, Lots 14 and 15, lies within a mapped environmental critical area ("ECA") due to slopes in excess of 40 percent. The entire site is designated a "potential slide area" and the northwest corner of Lot 14 is designated as a "known slide area." The topographic survey provided by the applicant shows a relatively flat area on the front of Lot 14, with the property dropping off in the rear half of the platted lot. It also shows that the front two-thirds of Lot 15 is relatively level, with a drop off at the rear of the lot.

On the 25<sup>th</sup> day of April, 2008, the Department of Planning and Development issued an Interpretation of the Land Use Code regarding whether the site comprised of Lots 14 and 15 qualified for development as two legal building sites, pursuant to exceptions to lot area requirements under the Code. The Department concluded that none of the codified lot area exceptions applied to this property and the development site occupied by the single family house addressed as 111 33<sup>rd</sup> Avenue East did not qualify for development as two separate lots.

In the light of this ruling the applicant seeks relief through a variance.

### **ANALYSIS - VARIANCE**

Variances from the provisions or requirements of the Land Use Code shall be authorized only when all of the following facts and conditions are found to exist:

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

There is one lot to the south of the subject property, Lot 16, at the corner of 33<sup>rd</sup> Avenue East and East Denny Way, with an area of 5,922 square feet, and developed with a house addressed as 105 33<sup>rd</sup> Avenue East. The remainder of the block face, extending to the unopened right-of-way of East John Street at the north, is undeveloped and controlled by the City of Seattle Department of Parks and Recreation. It consists of 10 underlying platted lots, Lots 9 through 13, Block 2, Waddell's Madrona Park Addition, and Lots 6 through 10, Block 10, Coulter's Addition. Each lot has a platted dimension of 40 feet by 100 feet, with the exception of Lot 10, Block 10, Coulter's Addition, which is platted 44 feet by 100 feet. These ten lots lie totally within "steep slope" and "potential slide" ECA designations. Portions of the lots are also mapped a "known slide areas."

According to the provisions of SMC 23.44.010 B 1a, "Exceptions to Minimum Lot Areas," an undersized lot may be developed or redeveloped as a separate building site if, prior to July 24, 1957, it was established as a separate building site in the public records of the County or City, "and has an area of at least seventy-five (75) percent of the minimum required lot area and at least eighty (80) percent of the mean lot area of the lots on the same block face and within the same zone in which the lot will be located...." This so called "75/80 rule" allows development of undersized parcels that are compatible with surrounding lots.

In a Single Family 5000 zone, lots must have an area of at least 3,750 square feet to meet the first part of the overall requirement. Lot 15, Block 2, Waddell's Madrona Park Addition, with an area of approximately 3,991 square feet would meet this. Although there are ten undeveloped platted lots to the north of Lots 14 and 15, each under 5000 square feet in area, these lots are entirely or nearly entirely within a steep-slope ECA. According to the limitations of SMC 23.44.010 B5, however, where neighboring undersized lots in a steep-slope ECA are under

common ownership. They may not be separately developed unless proposed and future development will not intrude upon the steep-slope ECA or its buffer. Based upon this restriction, the Park Department property to the north would not qualify as ten separate lots. In order to qualify as parcels that may be developed as separate building sites, the platted lots would need to be paired up to form five potential building sites, four with areas of approximately 8,000 square feet and one with an area of approximately 8,400 square feet.

Including the developed lot south of the subject site, with an area of 5,922 square feet, and the five potential building sites that are a part of the Park Department's property, the six lots on the same block face have a mean area of approximately 7,720 square feet. In order to meet the 80 percent requirement of SMC 23.44.010 B 1b, Lot 15 would therefore require an area of 6,176 square feet to qualify as a separate building site.

The parcels on the Park's Department property are unlikely for development. Ironically, even doubled in size, the park land parcels would not be developable without significant intrusion into the steep-slope ECA, whereas development on Lots 15 and 14 would be possible with no disturbance to the steep-slope ECA and buffers. A combination of topographical circumstances and location not created by the owner and a strict application of the "75/80 rule" in this instance could be said to deprive the property of rights and privileges enjoyed by other properties in the same zone and vicinity.

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; and*

The house proposed for the site is two stories in height above a partially- above -grade basement. The proposed structure will meet all zoning requirements of the SF 5000 zone, including yards, height, and lot coverage. The applicant proposes lot coverage of 1,383 square feet which is slightly less than 35 percent of the lot size. Development on site is proposed to take place entirely outside the ECA steep-slope area and required buffers. Granting of the requested variance will be conditioned to limit lot coverage to 35 percent of the size of the lot so that development is not perceived to overwhelm the undersize lot and it will be conditioned so that no development on site extends into the ECA steep-slope areas or their required buffers. With these mitigating conditions the requested variance does not go beyond the minimum necessary to afford relief and does 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; and*

The proposed development will otherwise comply with all development standards for single-family residential structure in the SF 5000 zone. In addition, the development on Lot 15 will comply with all the requirements of SMT 25.09, "Regulations for Environmentally Critical Areas." The site lies within a broad area of Single Family 5000 zoning where a substantial majority of lots were platted with areas under 5,000 square feet. A survey of lots developed with single family residences within 500 feet of the subject site indicates three-quarters of the lots

with lot sizes under 5,000 square feet. Eleven of those lots were smaller than the subject site. There is no reason to believe that the granting of the variance will 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.

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;*

As noted above, under the discussion of facts and conditions for point #1, strict application of the “75/80 rule” in this instance would require a development site of 6,176 square feet. The intent of the “75/80 rule” is to allow development of undersized lots while protecting the character of single-family development in the same immediate vicinity. In this instance limitation of development does not appear to further the intent of the Code provision. Proposed development on the site can be achieved with full conformance to Land Use Code single-family development standards and with full conformance to SMC 25.09, “Regulations for Environmentally Critical Areas.” The majority of developed lots in the vicinity are under 5,000 square feet in area and the requirements of the Land Use Code for a lot equaling 6,176 square feet in area when compliance with single-family development standards and the intention of protecting the ECA areas can be met on the undersized Lot 15, imposes undue hardship and practical difficulties on development of the property.

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

The purpose of the Land Use Code is to protect and promote public health, safety and the general welfare through a set of regulations and procedures for the use of land. It is the responsibility of the City to preserve and protect areas that are currently in predominantly single-family residential use. The spirit and purpose of the Land Use Code also assumes flexibility as an important directive to allow the owners of property in single family areas maximum use and enjoyment of their land.

There are two adopted Comprehensive Plan policies that relate to single-family minimum lot area requirements, LU66 and LU67. The first refers to use of minimum lot size requirements to maintain a low-density residential environment while reflecting differences in development conditions and the densities and scale of housing in various single-family residential areas. The second policy statement refers to permitting “exceptions to minimum lot size requirements to recognize building sites created in the public records under previous codes, to allow the consolidation of very small lots into larger lots, to adjust lot lines to permit more orderly development patterns, and to provide housing opportunity through the creation of additional buildable sites which are compatible with surrounding lots and do not result in the demolition of existing housing.” The construction of a single-family residence as proposed would be in character with surrounding development and preserve the existing neighborhood character. No adverse effects on adjacent properties in the area are anticipated and the public interest will not suffer as a result of this variance.

