



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: 3009425
Applicant Name: Daniel Yarger for Clark Kokich and Lisa Strain
Address of Proposal: 119 Tower Place

SUMMARY OF PROPOSED ACTION

Land Use Application to allow a 725.5 sq. ft. pool and patio addition accessory to a single family residence in an environmentally critical area (steep slope).

The following approvals are required:

ECA Variance – SMC 25.09.180.E. to allow development to encroach 23% into the steep slope and buffer area.

SEPA - Environmental Determination - Chapter 25.05, Seattle Municipal Code.

SEPA DETERMINATION: [] Exempt [X] DNS [] EIS

[] DNS with conditions

[] DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

BACKGROUND DATA

Site and Vicinity Description

The subject site is located on the south slope Queen Anne Hill approximately 200 ft. east of Queen Anne Ave N. in a residential area zoned Single Family 5000 (SF5000) and is developed with a single family residence (built in 1925) and a detached garage. Two designated scenic routes, Queen Anne Boulevard and W. Highland Drive, are within 500 ft. Tower Place is a T-shaped narrow roadway located south of Lee Street; it varies in width between 16 ft. and 25 ft. and is located adjacent to the site's northern property line

The subject property contains steep slopes greater than 40% in the portion of the lot south of the existing single family structure. The house (including a 648 sq. ft. second story deck) is located in the middle of the lot, about 65 ft. from the front (north) property line and 50 ft. from the rear (south) property line on the 145 ft. deep lot. North of the principal structure, the first twelve feet of lot area has been graveled and is used for parking, in addition to a 324 sq. ft. garage in the northeastern portion of the lot. A courtyard (approximately 1,200 sq. ft. in area) is located between the parking and the house. The steep slope starts at the bottom of a retaining wall approximately 20 ft. south of the house. A 15 ft. steep slope buffer extends north of the retaining wall. The survey identifies 1,938 sq. ft. of steep slope area within the 7,655 sq. ft. lot (approximately 25% of the lot area). According to a letter from Kevin Baker (dated May 25, 2005) all the trees on the southern slope were found to be “badly pruned for several years and showed signs of decay”. Subsequently the owner had all of the trees removed.

Development immediately surrounding the lot consists of two and three story single family homes on parcels zoned Single Family Residential (SF 5000, with 5,000 square foot minimum lot sizes) and the single family zoning continues to the north and east. The zoning transitions to multifamily, midrise to the west and lowrise to the southwest within two blocks of the subject site. There is neighborhood commercial zoning (NC2) along an arterial to the northwest.

Description of Proposal

The applicant proposes to construct a pool and patio accessory to the single family residence. The proposed location, to the south of the principal structure, is within the steep slope area and the steep slope buffer. The proposed approximately 351 sq. ft. pool is surrounded by patio that includes additional patio and a hot tub, outside of the environmentally critical area, under an existing second story deck. The proposed development would disturb 23% of the steep slope area. The information provided on the plans calls out 190 cubic yards of grading proposed in the steep slope ECA. The applicant proposes construction staging off site but did not identify the location and also has not provided information on the total area of disturbance in the ECA due to construction activity onsite.

Public Comment

Notice of the proposal was issued on September 10, 2008. One comment letter was received during the comment period that ended September 24, 2008. Opinions about the authority to regulate private property and about permit fees were raised in the letter.

Environmentally Critical Areas Regulations

General Requirements and standards for environmentally critical areas (ECA's) 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 (Section 25.09.080), steep slopes (Section 25.09.180) 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.

Trees and Vegetation (SMC 25.09.320)

This code section is referenced in other Environmentally Critical Area code sections, including those discussed above. A vegetation replacement plan is included in the plan set and is included as a condition of approval, per SMC 25.09.320.

Landslide-prone critical areas (SMC 25.09.080)

The applicant provided a geotechnical soils report (by Gary Flowers dated May 2, 2008), which has been reviewed by DPD geotechnical engineers. The applicant's Geotechnical Engineer suggests that if the recommendations in the report are followed, stability in the critical area could increase when loose soils at the top of the slope are excavated.

Steep Slopes (SMC Section 25.09.180)

This code section provides specific standards for all development on steep slopes and steep slope buffers on existing lots, including the general requirement that development shall be avoided in these areas whenever possible.

SMC Section 25.09.180.E authorizes variances to ECA development standards. In some circumstances limited development in a steep slope area may be allowed under a steep slope variance, subject to specific criteria as discussed under Analysis - ECA Variance, below. ECA variance decisions are Type II decisions, subject to the provisions of SMC 23.76 and are appealable to the City Hearing Examiner.

State Environmental Policy Act - SEPA

The project is also subject to review under SMC 25.05, Environmental Policies and Procedures. 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).

SMC 25.05.908 provides that the scope of the SEPA review of projects within critical areas shall be limited to: 1) documenting whether the proposal is consistent with the City's Environmentally Critical Areas (ECA) regulations in SMC 25.09; and 2) Evaluating potentially significant impacts on the critical area resources not adequately addressed in the City's ECA regulations (SMC 25.09.080 and 180, as described above). This review includes identifying additional mitigation measures needed to protect the ECA in order to achieve consistency with SEPA Policies and other applicable environmental laws.

ANALYSIS – SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated July 20, 2008. The information in the Environmental (SEPA) Checklist, the Geotechnical Report by Gary Flowers (dated May 2, 2008), pertinent public comment, and the experience of the lead agency (the Department of Planning and Development) with review of similar projects form the basis for this analysis and decision.

This action will result in some adverse impacts to the critical area however, the disturbance of the critical area as regulated by the City's applicable codes such as: Stormwater, Drainage and Grading; Environmentally Critical Area; and Building Codes along with the recommendations found in the Applicant's Geotechnical Report. The adverse impact to the critical area is not expected to be significant (as defined in SMC 25.05.794).

The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and certain neighborhood plans and other policies explicitly referenced, may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part, "*Where City regulations have been adopted to address and environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation*" subject to some limitations. The SEPA Policies applicable to the project, as identified by the lead agency, are discussed below.

Short-term Impacts

The following temporary or construction-related impacts to the environmentally critical area are expected: 1) potential soil erosion; and 2) increased potential for landslide. Specifically, the City's Stormwater, Drainage and Grading ordinance provides best management practices (BMP's) for erosion control including limitation to the time of year that work can be conducted to avoid work in the rainy season. Other construction related impacts for erosion or possible earth movement are mitigated by the recommendations found in the Geotechnical Report for the proposed project.

City codes and/or ordinances apply to the proposed project and will provide mitigation for some of the identified impacts. Per the SEPA Overview Policy (SMC 25.05.665) adopted City regulations are adequate and no further mitigations pursuant to this SEPA review are required.

Long-term Impacts

Long-term or use-related impacts associated with approval of this proposal include drainage, erosion and possible slide activity. Several adopted City Ordinances provide mitigation for some of the identified impacts. The Grading and Building Codes and the recommendation found in the Geotechnical Report by Gary A. Flowers, PLLC (dated May 2, 2008) will determine the design and construction materials, specifications and methods that address the structural integrity of the pool and the hillside. The Drainage code regulates the design and function of onsite stormwater collection for the life of the project. Specifically, the Stormwater, Grading and Drainage Control Code (SMC 22.800) requires on-site detention of stormwater with provisions for controlled tight-lined release of to an approved outlet. This will be true for discharge of the pool water as well. The Environmentally Critical Areas Regulations (SMC 25.09) provide for regulation of vegetation replacement to provide for erosion control over the life of the project and the revegetation plan will be a condition of approval.

Compliance with all applicable codes and ordinances along with application of the recommendations found in the applicant's Geotechnical Report are adequate to achieve sufficient mitigation of long-term impacts associated with the project and no additional conditioning associated with SEPA policies for Drainage and Earth (SMC 25.05.675.C and D) is warranted.

The existing codes and development regulations along with the recommendations found in the Geotechnical Report by Gary A. Flowers, PLLC (dated May 2, 2008), applicable to the proposed project will provide sufficient mitigation.

DECISION – SEPA

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).

ANALYSIS – ECA VARIANCE

Pursuant to SMC 25.09.180.E the Director may reduce the steep slope area buffer and authorize limited development in the steep slope area and buffer only when all of the facts and conditions stated in the numbered paragraphs below are found to exist:

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***

King County Records indicate a transfer of the Deed of Trust in 1978 and 1982 and document that the lot was legally in existence prior to October 31, 1992.

- 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 proposed location of the pool begins approximately 16 ft. from the rear façade of the principal structure. As noted above in the Site Description, the steep slope area covers most of the southern portion of the site beyond an existing retaining wall which is located approximately 20 ft. from the back of the house. The required 15 ft. buffer would extend north of the rockery and end approximately 5 ft. from the back of the house. Reducing the required rear yard (located off the southern property line) would not keep the proposed pool out of the environmentally critical area (ECA) and/or the required buffer.

Moving the location of the pool closer to the house would increase the portion of the structure in the ECA buffer and reduce the intrusion into the steep slope. An ECA exemption may be available to reduce the steep slope buffer. A patio is proposed in the area directly behind the house and under the second story deck. The option of moving the pool into this area, closer to the house, was not explored by the applicant. Alternately, moving the pool further down the hillside (away from the house) would not reduce the area of intrusion into the ECA as this is also a steep slope area.

Development in the environmentally critical area could be avoided if the proposed pool was located on the flat portion of the lot to the north of the existing principal structure where (as described above under site description) there is a 1,200 sq. ft. courtyard that is completely outside of the ECA. The applicant objects to this location due to shadows cast by the principal structure and this option was not explored further by the applicant. Additional information about structures on adjoining lots would be required to establish the required front yard and a yard reduction could be considered. It appears likely, based on the information available in the plans provided, that there may even be adequate area outside of the required front yard (off the north property line) to accommodate the pool proposed.

Criteria and responses for granting a variance found in SMC 25.09.280.B are listed below:

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 subject property was in existence prior to October 31, 1992 (see 25.09.180.E.1 above).

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

As discussed above under SMC 25.09.180.E.1.b; the southern portion of the lot is primarily steep slopes and buffer and the application or reduction of rear yard requirements will not accomplish keeping the pool out of the environmentally critical area. However, there are options that were not explored by the applicant. If the pool were located closer to the existing principal structure in an area previously disturbed by development it would decrease the intrusion into the ECA. There is also lot area completely outside of the ECA, Steep Slope (to the north of the house) that would allow for (the existing) front yard and still accommodate the 725.5 sq. ft. pool.

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 applicant proposes establishing a pool and patio, behind the home, within the steep slope and the steep slope buffer. The applicant has indicated that they object to the location on the north side of the house because of the shadow cast by the existing two-story residence. The proposal as presented would create development in 23% of the steep slope and virtually the entire (675 sq. ft.) steep slope buffer and does not explore the option of locating on the flat portion of the lot to the north of the principal structure or moving the pool closer to the principal structure in an area previously disturbed by development of the house and a second story deck. Based on information available to the Department, there are alternative locations

on the site for the pool and patio that would not intrude into the steep slope. Further, no comparisons were offered for the size or shape of the pool that might reduce the encroachment into the ECA. The project as proposed does not meet this criterion.

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 applicant has provided a geotechnical report with the Land Use Permit application and the report has been reviewed by DPD geotechnical staff. The report provides recommendations for the construction of the proposed pool in the steep slope area and suggests that removal of the loose fill at the top of the existing slope reduces the potential for earth movement on the hillside (paragraph 3, page 6 of Gary Flowers Geotechnical Report, dated May 2nd 2008). A planting plan for the undeveloped steep slope areas has been reviewed and approved by DPD staff.

Further, the Stormwater and Drainage code will provide regulation of stormwater and pool drainage associated with the proposal; however insufficient information was provided to the City's Geotechnical reviewer to complete a review of drainage impacts at this time.

Additional information is required to complete the geotechnical review of the proposed project. The proposed development will also be subject to geotechnical and engineering review at the construction permit stage to ensure there is no damage to adjacent property stability.

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 pool as designed will rise from finish grade ('0') to approximately 8ft. above grade in about 13 ft. of run. The south facing pool foundation wall will be at or above the surrounding fence height and the pool will be located 5 ft. from the side property lines. Landscaping (pacific wax myrtle and oregon grape) is proposed along the east and south sides of the pool and a pathway is proposed along the west side. The proposed pool and patio at this height will increase the outdoor human activity and raise the noise level in the rear yard up to the top of the fence line (8ft or above as shown on the plans) . While neighbors on properties abutting the rear yard may have increased disturbance, this would not be considered materially detrimental to the neighborhood.

6. *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 applicable regulations for steep slopes begins with the premise that development should stay out of the environmentally critical area and provides flexibility such as reducing required yards when possible. The applicant proposes to build a pool and patio in an environmentally critical area (steep slope) and the required buffer. Reducing required yards

would not keep the proposed development out of the steep slope area; however, options such as locating the pool in the portion of the lot outside of the ECA were not considered, nor were there alternatives for the size of the pool offered. The proposal would not be consistent with the spirit or purpose of the environmentally critical area policies and regulations which direct development away from the ECA steep slopes and steep slope buffer unless the variance criteria are met.

C. When an environmentally critical areas variance is authorized, the Director may attach conditions regarding the location, character and other features of a proposed development to carry out the spirit and purpose of this chapter.

The applicant has not demonstrated that the ECA Variance criteria are met. The ECA Variance application is denied; therefore conditions are attached.

SMC 25.09.180.E. Steep Slope Area Variance.

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.***

A reduction of the rear yard would not prevent intrusion into the ECA. However, a reduction of the front yard would be considered by the Department with additional information to determine the actual required yard depth. If located to the north of the house the pool would be completely outside of the ECA.

An ECA exemption may be available for the lot area immediately behind the residence which would effectively reduce the buffer to zero. A reduction in buffer width may reduce the extent of the intrusion into the ECA (the actual extent of intrusion would be determined after the plans are corrected to represent the actual ECA area per the City's Geotechnical reviewer) however, reducing the steep slope buffer was not recommended by the Geotechnical report, an exemption was not pursued and moving the pool closer to the house was not an option the applicant was willing to explore. The project as proposed would mean an intrusion into 23% of the steep slope and the entire buffer. Information on construction disturbance area and corrections to the actual area of the ECA, as determined by the Geotechnical reviewer were not provided during the first three correction rounds so the actual area of disturbance and encroachment is not reflected on the plans that were available at the time of this decision.

Per code (SMC 25.09.180.E), the proposed development may not create an intrusion of more than 30% of the steep slope area and the first step is to see if the development can avoid intrusion into the ECA. When considering the site as a whole, the proposal as presented does not follow the sequence required in the approval criteria to avoid or limit development in the critical area.

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.*

No conditions are attached as the criteria for an ECA Variance have not been met and the Variance is denied.

Conclusion

This proposal to construct a pool and patio accessory to a single family residence in a steep slope and steep slope buffer does not meet all of the Steep Slope Variance criteria, as required by the ECA ordinance. Based on the information available to the Department, there is lot area available for the pool outside of the ECA steep slopes and the steep slope buffer.

NOTE: At the time of this decision the Department's Geotechnical reviewer has an outstanding correction for additional information on: drainage, the total ECA area to be disturbed during construction, an accurate representation of the ECA on the survey and site plan and other essential information that is need to complete the geotechnical review and make a final determination on compliance with the applicable code requirements.

DECISION – STEEP SLOPE AREAS VARIANCE

The ECA Variance to allow development to encroach 23% into the steep slope and steep slope buffer area is **DENIED.**

VARIANCE CONDITIONS

None.

SEPA CONDITIONS

None.

Signature: _____ (signature on file) Date: March 26, 2009
Justina Guyott, Land Use Planner
Department of Planning and Development

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