



City of Seattle

Gregory Nichols, Mayor
Department of Planning and Development
D. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3009836
Applicant Name: Jan Kumsangeamporn, Batt & Lear Designers & Builders
Address of Proposal: 3802 Burke Avenue North

SUMMARY OF PROPOSED ACTION

Land Use Application to allow encroachment into the required western front and southern side yards to permit a 582 sq. ft. 2nd story addition, front canopy encroachment, recognize the prior removal of the required off-street parking space and a deck encroachment into the southern side yard to an existing single family residence.

The following approval is required:

Variance - Land Use Application to allow the requested variances noted below to an existing single family residence.

- *Increase Maximum Permitted Lot Coverage – SMC 23.44.010.C*
- *Reduced Front Yard Requirement – SMC 23.44.014.A*
- *Reduced Rear Yard Requirement – SMC 23.44.014.B*
- *Reduced Side Yard Requirement – SMC 23.44.014.C*
- *Projections into Required Yards – SMC 23.44.014.D.6.a*
- *Reduce Off-Street Parking Requirement – SMC 23.54.015 Chart B*

SEPA DETERMINATION: Exempt DNS MDNS EIS

DNS with conditions

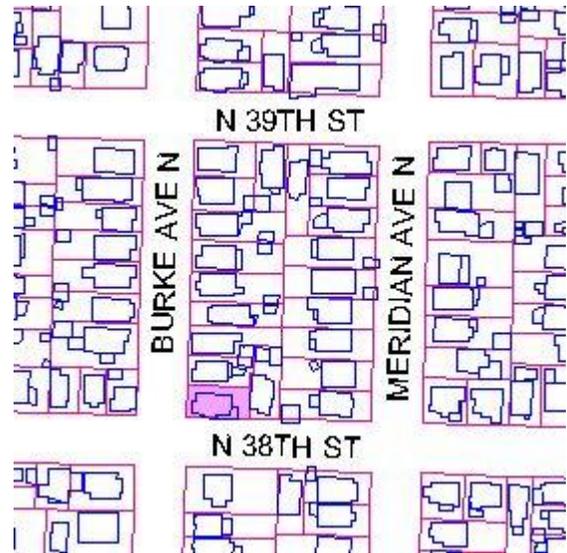
DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

BACKGROUND DATA

Site and Vicinity Description

The site measures approximately 3,200 square feet and is zoned Single Family residential with a 5000 square foot minimum lot size (SF 5000). The SF zoning designation applies to all surrounding properties in the immediate vicinity, and all adjacent structures are single family homes.

The subject site is relatively flat to the west where it fronts on Burke Avenue North, then falls off to the east with a change in elevation of 6 to 8 feet of the 40' wide by 80' deep lot. This area has not been identified as a steep slope per the Environmentally Critical Areas Ordinance. The site is currently developed with a single-story, 1940 (approx.) square foot single family home.



The subject property is located at the northeastern corner of the intersection of Burke Avenue North and North 38th Street. There is an existing concrete retaining wall parallel to the required rear yard approximately 4 to 6 feet tall within the North 38th Street right-of-way. In addition to the retaining wall, stairs from the driveway, a trellis and a portion of an existing deck were also constructed within the North 38th Street right-of-way without a Street Use Permit (or building permits). It is not known when this construction was completed. The current owners bought the property in 2000 with the improvements in-place. There was also an attached garaged which was removed prior to the current owner's purchase. There is an existing 8' wide driveway and curbcut along N 38th Street. Research showed that the King County Assessor Treasurer anticipated that the unpermitted improvements were added prior to 1996.

The neighborhood is generally platted into small deep lots that are between 3,600 square feet to 4,800 square feet with the exceptions of the subject lot and the lot just north which are 3,200 and 3,300 square feet in size, respectively. The setback from the sidewalk's inside edge to the property lines are 6 feet. In many of Seattle's neighborhoods this setback is normally 2 to 3 feet.

Proposed Action

The applicant has requested a variance to allow for a front yard encroachment for a second-story addition, a deck encroaching into the required street side side yard and removal of the required off-street parking space. Portions of the deck, deck supports, a trellis and a retaining wall with stairs leading to the back yard are all constructed within the North 38th Street right-of-way and have obtained an after-the-fact Street Use Permit (#92612) from the Seattle Department of Transportation (SDOT).

The prior parking location was an attached garage in the house's basement that was accessed from North 38th Street. A driveway and curbcut still exists, providing evidence of the garage's prior existence. A 1940s era photograph received from the King County Assessor Treasurer's Office showed a garage as well. The garage was replaced with habitable living space sometime prior to the current owner's purchase.

The proposed 2nd story addition requires a variance to permit a 10¼ inch encroachment into the required front yard. The removal of the required off-street parking space and the existing deck's encroachment into the street side side yard and rear yard as it wraps around the south and east side of the house is included in the variance request. The deck is more than 18 inches above grade and requires a variance to be maintained in its current location. The second story addition does not require a side yard variance because it is in conformance with SMC 23.44.012.D.4.a and is not within 3 feet of the side property line.

The applicant is also proposing to provide a wrap-around canopy over the front entryway (the canopy is proposed to wrap around the southern portion of the front entry to meet the chimney extension) to protect the front entrance from the weather. The canopy is proposed to be within 2 feet 7½ inches from the front property line and 3 feet 6 inches from the south property line as it wraps around the house's south side to meet with the chimney extension. This type of external architectural detail is only permitted an 18 inch encroachment into any required yard (SMC 23.44.012.D.6.a). The existing eave is only 1 foot 11 inches from the front façade of the house's front door. A variance will be required to allow the encroachment into the required front and street side side yard (10 feet required yard when the lot is a reversed corner lot – which this lot is).

The Street Use Permit (#92612) obtained by the applicant allows the deck, deck supports, trellis, stairs and retaining wall located within the North 38th Street right-of-way to legally remain per SDOT regulations. An annual permit will be required from SDOT to maintain the improvements within right-of-way. This permit grants permission to continue the encroachments and the ability to maintain, repair and remodel the improvements. This is an annual permit and may be revoked by SDOT at any time. A public place indemnity agreement was also recorded (KC Recording #20090616001581).

Public Comment

Comment letters were not received during the public comment period, which ended on February 18, 2009.

Table 1 - Summary of Variance Requests

Reason for Request	Required	Proposed
Front yard - 2 nd story addition	Calculated 12' 8" per SMC 23.44.014.A.1	Reduced to 11' 10"
Front yard - porch canopy	18" projection per SMC 23.44.014.D.6.a	Total 41" projection
Street Side Yard - existing deck	10' street side yard per SMC 23.44.014.C.1	0' from southern property line
Street Side Yard - porch canopy	18" projection per SMC 23.44.014.D.6.a	Total 31" projection
Rear Yard for existing deck	Calculated 16' per SMC 23.44.014.B	15' rear yard
Required off-street parking	1 space per SMC 23.54.015 Chart B	No Off-Street Parking Space
Maximum Permitted Lot Coverage	Calculated 1,480 square feet per SMC 23.44.010.C	Total 1,483 square feet

ANALYSIS - VARIANCE

Variations from the provisions or requirements of this Land Use Code shall be authorized only when all of the following facts and criterion (stated in *italics*) 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*

Wallingford in general is characterized by older housing stock with many properties in the vicinity having multiple non-conformities to required yards and no off-street parking. The proposed addition and the legalizing of non-permitted additions fit in with the character of this neighborhood.

The lot is the smallest platted lot on the block at 3,200 square feet. The majority of lots found on this block are between 3,600 and 4,600+ square feet. The lot (at the curblin) also slopes down to the east along North 38th Street. The addition of the retaining wall allowed a prior owner to back fill and level out the back yard. There is a 6 to 8 feet difference in grade at the curb line.

The calculated required front yards of the homes that are interior along the western side of the Burke Avenue North block front have the advantage of averaging between their neighbors' reduced front yards while the subject property must average the reduced front yard of the home to the north with 20 feet as required in SMC 23.86.010.B.1.e. This creates a deeper than average required front yard than those of other lots located on the same block front. In addition the setback to the property line from the interior sidewalk edge is 6 feet in this neighborhood. Other residential areas of the city only have a 2 to 3 feet setback from the sidewalk's interior edge. This is an unusual circumstance that is not evident throughout the city. If this house was situated like the other houses on the block's interior lots, a front

yard variance would not be required. As it is, the second story addition only requires an encroachment of 10¼ inches to extend the main wall for the second story addition.

The proposed front canopy does not add additional bulk to the building's front and side façades. The additional encroachment that is proposed will provide adequate weather protection and is in keeping with the covered and posted front porches of the properties on the same block front and vicinity. This canopy also does not present the bulk of these other covered porches since it is not proposed to have any supports at the corners. It also is an interesting architectural detail in keeping with the overall reduction of the structure's bulk as the pitched roof of the existing structure is becoming a shed roof with a green roof component.

The existing deck which encroaches into North 38th Street right-of-way was originally constructed without building permits and an SDOT Street Use Permit. Since the deck is more than 18 inches above grade it is not allowed to encroach into the street side yard. The deck wraps around from an entry door along the south side of the house (exiting at the dining area) and extends easterly to the rear deck which was constructed and provides access to the "mud" room. The deck in the street side yard requires an encroachment to the side property line to stay within its current configuration. The deck attached to the rear of the house also extends into the required 16 foot rear yard. The amount of existing encroachment is 4 feet which includes the deck stairs. This deck provides additional outdoor living area on a lot that cannot provide much outdoor living area due to the small lot size. Other lots on the block are larger in size and provide more outdoor living area. The proposal reconfigures the deck access to be in compliance with permitted projections into the required rear yard. The existing deck encroachment will only be 1 foot into the required rear yard after modification. The applicant has also provided information in regard to city issued permits to repair or replace other nonconforming decks or balconies in the neighborhood that encroach into similar required yards.

When the prior unpermitted work was completed (estimated to be somewhere in the 1990s) permitted lot coverage would have been 1,750 square feet. Current lot coverage (as calculated under the current standards) is 1,501 square feet. Currently, the allowable maximum lot coverage is 1,480 square feet. The applicant is reducing the lot coverage to 1,483 square feet but would still be considered to be not meeting the standard. The change in permissible lot coverage was not created by the owner. Even though the additions were not permitted at the time of original construction, they would have been under the 1,750 square feet maximum lot coverage. The applicant is proposing to reduce the amount of lot coverage to be more in compliance with the current standard.

As cited by the applicant, there are other lots in the vicinity that were not developed with off-street parking. A parking utilization study (consistent with Client Assistance Memo 117 - Parking Waivers for Accessory Dwelling Units) was also conducted by the applicant. Its findings were summarized in a report provided by the applicant showing that there are 100 (that includes both sides of the block) on-street parking spaces within 400 feet of the subject property. On-street parking counts were conducted on 2 consecutive nights (June 9 and 10, 2009 after 7 pm). The results show that an average of 52.5% spaces was utilized. On average 42 on-street parking spaces are available within 400 feet of the property. This is a

circumstance that is not found in most of Seattle's residential neighborhoods where on-street parking is in short supply.

There are two alternative locations (other than restoration of the previous parking space) to provide the required off-street parking space on this lot; adjacent to the house on the north side yard and within the rear yard of the lot. The north side yard is not practical location since there is not enough space between the house and the property line to provide the required 10 foot wide driveway and parking space. An easement granted by the adjacent property owner would be needed to provide the required width. This would also require cutting of three mature trees on the neighbor's property. Each of the three trees are 6" or greater in diameter. The city has many tree preservation policies and regulations that encourage tree preservation to maintain and enhance the city's physical and aesthetic character. This location is not a practical solution. The rear yard provides similar problems. There is ample room to provide the required width and required setbacks for an open parking space or a detached garage. However, the driveway slope limitation to no more than 20% grade cannot be reasonably met without a lot of excavation work to either location (10 feet from property line for an open parking space or 20 feet from the property line in the case of a detached garage). The back yard (or what remains of it) would have to be lowered almost 5 feet for the detached garage or almost 7 feet to provide an open parking space. The retaining walls that would have to be built in addition to the amount of excavation and export of soil from the property would result in a significant reduction in open space. This would also have an impact on the adjacent neighbor. Additional retaining walls would be required to protect the neighbor's property and potentially have to rebuild the neighbor's stairs.

The applicant also provided information in regard to the basement area that was considered the prior off-street parking space or the garage. Through the applicant's investigation it was shown that the garage was not part of the original construction but at some point in the past an addition was constructed that added a garage and other livable space above. Load bearing supports in the basement have been identified by the applicant who demonstrates that the prior parking space in the garage would not meet today's parking space requirement. A load bearing column is still present in the basement's habitable area and would be located within the parking space. It is located approximately 6 feet 10 inches from the eastern wall. There are also 2 concrete piers that provide structural support for the floor above that encroach into the required parking space. This configuration demonstrates that the prior parking area/garage would be considered substandard to today's code requirements.

The lot size and configuration as described above is a situation not created by the applicant or the current owner. The strict application of the Land Use Code would deprive the owner of other rights and privileges enjoyed by neighboring property owners if relief is not granted.

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 requested variances are as follows:

- Required Front yard for 2nd story addition's façade: 11' 10" reduced from required 12' 8" front yard.
- Projection into required front yard for wrap around canopy: total of 41 inches from permitted 18 inch projection.
- Encroachment into Street Side Yard for existing deck: 0' to the property line from required 10 foot street side yard.
- Projection into Street Side Yard for proposed wrap around front entry canopy: total 31 inches increasing from permitted 18 inches.
- Encroachment into Rear Yard for existing deck: 1 foot after stairs reconfigured reducing required rear yard to 15 feet from 16 feet.
- Removal of required off-street parking space.
- Increase permitted lot coverage to 1,483 square feet from 1,480 square feet.

A parking utilization study shows that there is ample off-street parking within 400 feet. There are also a number of examples cited by the applicant identifying other homes within the vicinity which were constructed without off-street parking. The current property owners have had no off-street parking since 2000 when they moved into the house.

The requested variances do not go beyond the minimum necessary to afford relief and do not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone.

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 proposal will not be materially detrimental to the public welfare or cause injury to property or improvements in the zone or vicinity by granting the requested variance. Legalizing the current parking situation would not create any change in the condition of the subject property or the vicinity in which it is located. Permitting the deck encroachment in the street side side yard and the rear yard is not materially detrimental to the public welfare since SDOT has permitted the encroachment onto their property. The 2nd story addition and wrap around front porch canopy will not be injurious to property or improvements in the vicinity as the proposed additions are similar to the adjoining properties. The elimination of the required off-street parking space will also not be detrimental to the vicinity as demonstrated by the on-street parking utilization study submitted by the applicant. Other properties within the vicinity have also been shown to have been originally constructed without off-street parking. The three feet increase in permissible lot coverage is neither materially detrimental to the public welfare nor injurious to the surrounding properties.

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; and*

Strict application of the Code would cause the applicant practical difficulties in regard to the required off-street parking. Requiring the applicant to provide off-street parking would cause undue hardships to the applicant and adjoining neighbors. It would be difficult to obtain an easement to provide the code required 10 foot wide driveway from the northern neighboring property owner when it would cause the elimination of three mature trees on the neighbor's property. It would also be a major difficulty to restore off-street parking in a location that has been shown to not meet current parking space standards and would eliminate needed living space for a growing family. The last alternative, a parking space or detached garage within the rear yard would also be a practical difficulty in regard to removing and reconstructing retaining walls, excavating and exporting soil off-site to provide a driveway that would meet the maximum 20% driveway slope. Both options would take the current back yard down 5 feet and the other would reduce it by almost 7 feet. This proposal would not only affect the current lot but the eastern neighbor requiring reconfiguring the eastern neighbor's stair access to their property.

In regard to the proposed 2nd story addition, the practical difficulty would be the engineering that would be required to meet the required front yard. The hardship would be the constructed methods required to support the upper wall's offset from the structure's front bearing wall. It is more practicable to allow the additional encroachment into the required front yard to provide a more consistent façade along the block front.

Reducing the deck encroachment into the street side side yard and rear yard provides less of an issue in regard to causing undue hardships or practical difficulties. However, it would be impossible to provide a deck that met the required street side side yard of 10 feet since the house is located 5 feet from the southern property line. The deck does provide an access through the dining room to the back yard and down to the street via the stairs. The proposed renovation of the deck that encroaches into the rear yard will be made less non-conforming by rearranging the stairs from the back yard so that the encroachment is reduced to 1 foot.

The additional three square feet of lot coverage is considered to be de minimis especially in consideration in what was permissible when the additions were constructed. The applicant is voluntarily reducing the lot coverage to be more in compliance with the current standards.

5. *The requested variance would be consistent with the spirit and purpose of the Land Use Code regulations for the area.*

The spirit and purpose of the Land Use Code provides for preservation and maintenance of the physical characteristics of single-family neighborhoods. It is the responsibility of the City to preserve and protect areas which are currently in predominantly single-family residential use. The granting of the variances will not adversely affect the physical characteristics or use of the surrounding neighborhood because it is not altering existing conditions of the subject property (with the exception of eliminating the required off-street parking space), which is already integrated into the established residential character of the surrounding environment.

DECISION - VARIANCE (Based upon approved plans in the file).

The proposed variances to allow the requested deviations in the required development standards as summarized in Table 1 above are **Conditionally Granted**.

CONDITIONS

Prior to Building Permit Application

1. Include in the building permit application the prior basement renovation and the deck addition plans. This includes electrical and plumbing work that was completed to provide habitable space and may necessitate opening up basement walls for inspection (at the inspector's discretion).
2. The existing driveway and curbcut shall also be abandoned, restoring the curb, gutter, sidewalk, and planting strip. This requirement shall also be included in the building permit application.

Signature: _____ (signature on file) _____ Date: July 20, 2009
Craig Flamme, Land Use Planner
Department of Planning and Development

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