



City of Seattle
Edward B. Murray, Mayor

Department of Construction and Inspections
Nathan Torgelson, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS**

Application Number: 3014960
Applicant Name: Randall Spaan, Randall Spaan Designer
Address of Proposal: 14012 41st Ave NE

SUMMARY OF PROPOSED ACTION

Land Use Application to allow a three-story 3,477 square foot single family dwelling unit with an attached garage in an environmentally critical area.

The following approval is required:

Environmentally Critical Area Variance – to allow development into not more than 30% of the steep slope and buffer area. (Proposal is to disturb 23.8% of steep slope.) (SMC 25.09.180E).

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 Description

The 17,896 square foot site is located on 41st Avenue NE in Seattle. Zoning is Single Family 9600 (SF 9600). The wooded site is characterized by Environmentally Critical Areas (ECAs) including Steep Slope and Potential Slide. There are no structures on the site.

The surrounding parcels are zoned Single Family 9600 (SF 9600). The majority of the site is comprised of either steep slope or steep slope buffer. The steep slope area (40% or greater steep slope) is 9,060 square feet.



The steep slope buffer is 15 feet at the toe and top of the steep slope area which leaves a small portion of land outside the steep slope or buffer at the rear of the site. The wooded site is characterized by Bigleaf maple, Douglas fir and Red alder. There are native and non-native trees, shrubs, and groundcover on the site.

Area Development

Surrounding development consists of single family homes along 41st Avenue Northeast which is a winding non-arterial with narrow shoulders.

Description of Proposal

The proposal is to build a 3,477 square foot single family dwelling. The proposed structure would be located in the steep slope area. The project (construction and construction disturbance) proposes to disturb approximately 24% of the steep slope. The applicant has proposed to remove some of the existing vegetation in order to develop the proposal. New, native plants will be planted where the slope has been disturbed.

Trees and Vegetation (SMC 25.09.320 and SMC 25.11)

Several trees and shrubs are proposed to be removed with this application. There are two exceptional trees, as defined by SDCI, which will be proposed to be retained and protected during construction. An Arborists report was prepared by Greenforest Incorporated, August 19, 2014. The arborist outlines methods to protect the trees which will be followed by the applicant. The applicant will replant in accordance with the requirements of SMC 25.09.320 and SMC 25.11.

Public Comment

Comment letters were received during the official public comment period which ended on May 4, 2016. Comments point out the slide prone nature of the soils in the area, that past slides have occurred in the area, loss of trees and vegetation is unfavorable, and that the steep slope nature of the site is problematic. Other comments also point out the nature of the 41st Avenue NE as a narrow roadway.

Environmentally Critical Areas Regulations

SMC Section 25.09.180 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. Development may occur in up to 30% of the steep slope area with this variance, subject to specific criteria. Relevant criteria are discussed below. ECA Variance decisions are Type II decisions, subject to the provisions of SMC 23.76 and are appealable to the City Hearing Examiner.

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, planting schedules 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), 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.

ANALYSIS – STEEP SLOPE AREA VARIANCE

Regulations found in SMC 25.09.180.A-D apply. 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***

The property at 14012 41st Avenue NE is assigned assessor's parcel number (APN 220604-0914 and 0917) and is part of the Cedar Park neighborhood with parcels platted prior to 1920. Therefore, the lot has been 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-E~~ 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.***

As shown in the topographic survey and site plan, the property is designated as a steep slope Environmentally Critical Area (ECA) and steep slope buffer. Strict application of the steep slope standards would require avoidance of both the steep slope area and the steep slope buffer preventing further development on the site.

The applicant considered reducing the front yard, the rear yard, and side setbacks and showed that the reductions will not both mitigate the hardship and maintain the full steep slope area buffer. Reduction of the yards does not result in a building footprint outside of the steep slope and steep slope buffer, thus there is no relief from hardship created by the strict application of the steep slope standards nor is the full steep slope or buffer undisturbed.

Criteria and responses for granting a variance found in SM25.09.280 B are discussed 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.***

See response to SMC 25.09.180.E.1.a, 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***

See response to SMC 25.09.180.E.1.b, above.

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***

This criterion is not applicable since there is no riparian management area or required (riparian) buffer on site.

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 ("Preliminary Geotechnical Report," dated September 26, 2012 by Gary A. Flowers, PLLC). The report has been reviewed and approved by SDCI geotechnical staff. A final report will accompany the construction permit. Granting a variance to 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.

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 applicant is not requesting a variance for a reduced front yard, (7.6 feet required) since such a reduction would not mitigate the hardship nor maintain the full steep slope buffer. The applicant has incorporated project elements that maintain neighborhood character, including proposing a sloped roof, two story residence at the street facade, an entry facing 41st Avenue and retaining many trees while replanting disturbed areas with native landscape plants. The landscape plan is an ECA code requirement and must be incorporated into the associated building permit in order for the project to be approved.

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 in an effort to protect ecological functions, prevent erosion and protect the public health, safety and welfare in landslide-prone (including steep slope) areas, and to permit landowners reasonable development, and to avoid development that causes injury to persons, property, public resources or the environment.

The applicant proposes to construct a 3,477 square foot structure. The site is characterized by either steep slope or steep slope buffer, which limits the potential areas of the property where a structure may be located. The steep slope area is 9,060 square feet and the steep slope buffer is approximately 3,400 square feet. Disturbed areas will be re-vegetated with native vegetation. Variance relief is necessary to allow the proposed development. The proposal would be consistent with the spirit and purpose of the environmentally critical policies and regulations.

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.

No conditions are imposed.

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.***

The applicant is not requesting a variance for a reduced front yard, since such a reduction would not mitigate the hardship nor allow or maintain the full steep slope buffer.

The steep slope area is 9,060 square feet and the steep slope buffer is approximately 3,400 square feet. The proposed development disturbance is 2,160 square feet for a 23.8% disturbance of the steep slope. 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 proposed accessory structure is designed to be minimally intrusive to the ECA and buffer, with a total steep slope ECA disturbance of 23.8%. Disturbed areas will be required to be vegetated with native vegetation. A non-disturbance area covenant is required by the ECA code and will be required for all ECA areas not included in the 23.8% disturbance area. A Restoration Planting Plan will also be required. With these code requirements (ECA covenant) no additional mitigation or conditions are warranted.

ECA CODE REQUIREMENTS

- The owner and/or responsible party shall provide a signed and notarized ECA Non-disturbance Covenant to the Land Use Planner for recording in accordance with instructions contained in Director's Rule 4-2007.
- The Restoration Planting Plan must be incorporated into the building permit set of plans.

DECISION – STEEP SLOPE AREAS VARIANCE

Granted.

CONDITIONS OF APPROVAL

None.

Holly J. Godard, Senior Land Use Planner
Seattle Department of Construction and Inspections

Date: June 2, 2016

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IMPORTANT INFORMATION FOR ISSUANCE OF YOUR MASTER USE PERMIT

Master Use Permit Expiration and Issuance

The appealable land use decision on your Master Use Permit (MUP) application has now been published. At the conclusion of the appeal period, your permit will be considered “approved for issuance”. (If your decision is appealed, your permit will be considered “approved for issuance” on the fourth day following the City Hearing Examiner’s decision.) Projects requiring a Council land use action shall be considered “approved for issuance” following the Council’s decision.

The “approved for issuance” date marks the beginning of the **three year life** of the MUP approval, whether or not there are outstanding corrections to be made or pre-issuance conditions to be met. The permit must be issued by **Seattle DCI** within that three years or it will expire and be cancelled (SMC 23-76-028). (Projects with a shoreline component have a **two year life**. Additional information regarding the effective date of shoreline permits may be found at 23.60.074.)

All outstanding corrections must be made, any pre-issuance conditions met and all outstanding fees paid before the permit is issued. You will be notified when your permit has issued.

Questions regarding the issuance and expiration of your permit may be addressed to the Public Resource Center at prc@seattle.gov or to our message line at 206-684-8467.