City of Seattle
Edward B. Murray, 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: 3016000

Applicant Name: Amy Janof for Marianne Painter

Address of Proposal: 4451 33rd Ave West

SUMMARY OF PROPOSED ACTION

Land Use Application to allow a two-story, 1,858 sq. ft. single family residence with an attached 190 sq. ft. carport in an environmentally critical area. Existing shed to be demolished.

The following approvals are required:

ECA Variance – to allow intrusion into the steep slope area (SMC 25.09.180).

ECA Variance – to allow a reduced front yard (SMC 25.09.280).

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

Zoning: Single Family 5,000 (SF 5000)

Environmentally Critical Areas: Steep Slope landslide hazard
Riparian Corridor
Wetland
Wildlife Habitat

Prior Uses on Site: The existing small shed is to be demolished.

Substantive Site Characteristics:

The 4397 sq. ft. site is adjacent and generally up slope from Kiwanis Memorial Preserve Park, a wildlife sanctuary often referred to as Kiwanis Ravine. The entire site slopes downhill fairly steeply the farther you are from 33rd Ave West. The least amount of slope occurs at the top of the site near the street. A nearby wetland and stream in Kiwanis Creek requires the site to have wetland and riparian corridor buffers. The future construction permit will also be required to have a Great Blue Heron Management Plan (as referenced in Director's Rule 5-2007).

The adjacent land is zoned for single family development in all directions although there is a strip of Lowrise multifamily zoning (LR3 RC) and of Neighborhood Commercial zoning (NC1-40') along West Government Way, the nearby arterial street.

Proposal Description:

The proposal includes demolishing a small shed and constructing a two story, approx. 1,858 sq. ft. single family residence with an attached 190 sq. ft. carport. Most of the site is subject to either Land Use Code setback requirements and/or ECA non-disturbance requirements such that a house cannot be built without relief from at least some of these requirements through an ECA Variance.

Public Comment:

The comment period on this application ended on April 16th, 2014. One written comment was received.

ANALYSIS – ECA VARIANCE

This variance request pertains to proposed disturbance of an identified Environmentally Critical Area (ECA) steep slope. 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.*

The subject lot existed prior to October 31, 1992. The referenced criteria relate to the reduction of required yards to provide for preservation of ECA buffers. The cited criteria are discussed below.

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 majority of the site is an environmentally critical area steep slope with a slope grade of 40% or more. Construction of a new house is not allowed outright in the steep slope area or the adjacent ECA buffer which is 15 feet upslope of the steep slope area. Furthermore, based on the contour survey, the site also has a Land Use Code front yard requirement of 18 feet (20 foot standard front yard less one foot for each percentage of slope in excess of 35% in the first 60 feet of the site). The 18 foot required front yard can be administratively reduced to 13.5 feet but only if development on the steep slope and buffer is entirely avoided. Based on the site survey, a 13.5 foot required front yard would leave only a slender portion of the site of approximately 100 sq. ft. where construction of a new house could be allowed that is not in the required side yard or in the steep slope area or its buffer.

The applicant proposes a modest sized two story house and carport to be located mostly on the flattest portion of the site, adjacent 33rd Ave W. This property will be the last house accessed from the minimally-improved street. Fully reducing the front yard requirement will not be injurious to safety for the occupants of the site or for anyone in the adjacent 33rd Ave West right of way. Development within the front yard would likely be a great risk to the health of an exceptional tree which has a trunk located on adjacent Park property less than a foot from the side property line of the site. A significant portion of the tree's roots which have grown in the subject site front yard area are proposed to be removed, cut, or otherwise disturbed. There is already some concern about the long term health of this tree and loss of a significant portion of the root system would greatly increase the risk to the tree. The applicant proposes to remove the tree. Parks Dept. has agreed to authorize removal of the tree if appropriate compensation has been provided. Provided the tree is removed, a reduction of the front yard requirement likely will not be injurious to safety.

In order to have a large enough building area for this house, the steep slope buffer also will be reduced to zero. The slope steepens and becomes 40% or greater at a point 35 feet downhill from the street when measured along the northerly side property line and at a point about 15 feet downhill from the street when measured along the southerly side lot line. In order to have enough area to construct the house while allowing 5 feet of side setbacks, and a few feet of room on the downhill side of the structure to construct the foundation, an intrusion into the small portion of the steep slope that is within 35 feet of the front property line will be allowed. This will allow about 374 sq. feet of intrusion into the steep slope area. Since 3017 sq. ft. of the site has been calculated at a slope grade of 40% or greater, this intrusion will only disturb 12% of the site's steep slope 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.*

In order to not increase any risk to safety, the project will be conditions so that large big leaf maple tree on Park property must be removed with Park approval prior to beginning any construction activity within 18 feet of the tree.

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 existed as a legal building site prior to October 31, 1992.

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

Because of the extent of the lot which is covered by environmentally critical area and buffer, meeting the front yard requirement effectively precludes construction of any house on the site.

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

SMC 25.09.180 E modifies this provision to allow for developmental disturbance within the steep slope ECA and/or its buffer. The requested buffer reduction and small intrusion into the steep slope is a reasonable minimum to allow for development of one house on the 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 applicant has provided a geotechnical report which provides findings and preliminary recommendations for future development on the site. A large tree that could be at risk on an adjacent site will be removed. Assuming development is conducted in accordance with recommendations of the geotechnical report and construction plans as approved by DPD, the granting of the variance should not be injurious to the property or to neighboring properties.

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 construction of one two story residence will not be materially detrimental to the character, design, and streetscape of the surrounding neighborhood.

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

The requested variance achieves a reasonable protection of existing steep slope areas on this site while allowing reasonable development.

DECISION – VARIANCE

The requested ECA Variance to construct a house in a steep slope area is **CONDITIONALLY GRANTED**.

CONDITIONS – ECA VARIANCE

Prior to Issuance of Construction Permit

1. Provide an ECA Covenant for the site.

Prior to Commencement of Construction

2. Make final arrangement with Parks Dept. to remove the large maple tree near the easterly corner of the site, including any compensation required by Parks, prior to commencement of construction on-site. Alternative arrangements that do not put the tree at risk can alternatively be provided if mutually agreeable between the project applicant and the Parks Dept. Provide confirmation from Parks to the DPD Land Use Planner that all arrangements are in place so that project construction on-site can commence. This condition does not limit work approved under SDOT Street Improvement Permits.

3. Install temporary construction fencing to delimit the northerly 35 feet of the site. Provide evidence to the assigned Land Use Planner that the fencing is in place. Grading and other construction activities are allowed only in the northerly 35 feet of the site as shown by the Limit of TESC Construction on Sheet A1.3 of the ECA Variance plan set. Tree and vegetation maintenance, management and mitigation as shown on the approved plans are allowed throughout the site. This condition does not limit work approved under SDOT Street Improvement Permits.

Signature: Denise R. Minnerly for Date: June 22. 2015
Jerry Suder, Land Use Planning Supervisor
Department of Planning and Development

JS:drm

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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 DPD 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.