



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: 3017285
Applicant Name: Wei Yang
Address of Proposal: 4724 22nd Ave NE

SUMMARY OF PROPOSED ACTION

Land Use Application to allow a 5-story structure containing 34 small efficiency dwelling units in an environmentally critical area. The existing single family residence will be removed.

The following approvals are required:

Environmentally Critical Area Variance – to allow 30% disturbance of the steep slope area pursuant to Seattle Municipal Code (SMC) 25.09.180E.

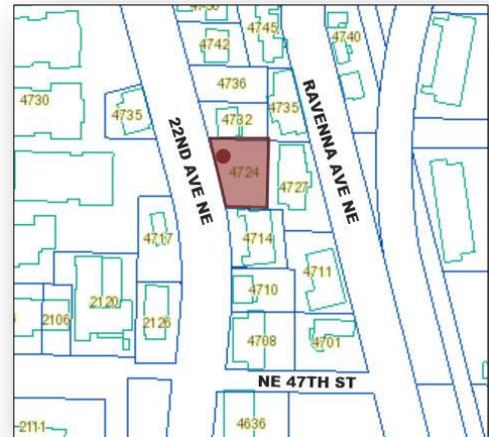
SEPA – Environmental Determination – Chapter 25.05 Seattle Municipal Code

SEPA Determination: [] Exempt [X] DNS [] MDNS [] EIS
[] DNS with conditions
[] DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

BACKGROUND DATA

Site Description

The 7,125 square foot site is located on 22nd Ave NE, north of the University of Washington campus and overlooking University Village Shopping Center in Seattle. Zoning is Lowrise 3 (LR3). The wooded site is characterized by Environmentally Critical Area (ECA) 40% Steep Slope. The existing one story home was built in 1952.



Zoning for the surrounding parcels to the north, south, and west are Lowrise 3 (LR3). Zoning for parcels to the east are Lowrise 1 (LR1). The steep slope and buffer comprises 97.2% of the site. The steep slope area (40% or greater steep slope) is 5,704 square feet, the steep slope buffer is 1,221 square feet, and the non-steep slope and non-buffer area is 200 square feet. There are native and non-native trees, shrubs, and groundcover on the site.

Area Development

Surrounding development consists of single family structures used as rooming houses and small apartment buildings. Many properties do not have off street parking. Properties that do have parking do not have vehicle maneuvering on site in which case vehicles must back out onto 22nd Ave NE a sloping, curving, minor arterial with narrow shoulders. There are sidewalks on both sides of the right of way. However, portions of the sidewalk on the west side of 22nd are compromised by vegetation growth and cars that park at an angle to the street. Parking is allowed on both sides of 22nd Ave NE and is often at capacity.

Description of Proposal

The proposal is to construct an apartment building with 34 small efficiency dwelling units. The new building footprint is 2,449 square feet; in contrast, the existing house foot print is 335 square feet. The new third floor pedestrian entry is at street grade with two floors below and two floors above for a total of five floors. There are three floors visible from 22nd Ave NE.

The proposed structure would be located both in the steep slope area, the buffer, and the 200 square feet of non-buffer area. The total project (addition and construction disturbance) proposes to disturb 30% of the steep slope.

The applicant has proposed to remove the existing invasive 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)

This code section is often referenced in other Environmentally Critical Area code sections, including those discussed above. The applicant will replant in accordance with the requirements of this section.

Public Notice and Comment Period

Ten comment letters were received during the public comment period for the project ended on April 29th 2015. Four additional letters were received after the end on the comment period. Their concerns were: Increased density in the area, increased demand for vehicle parking on the street, no vehicle parking being provided, trash receptacles on the street, shadows cast by the proposal, risk of slides, the removal of trees, and construction noise.

The Land Use Application information is available at the Public Resource Center located at 700 Fifth Ave, Suite 2000¹.

¹ <http://www.seattle.gov/dpd/toolsresources/default.htm>

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 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 is located at 4724 22nd Ave NE, King County Assessor's parcel number APN 092504-9080. The dwelling on the property was built in 1952. 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, 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 by the topographic survey and site plan, the property is designated as a steep slope ECA or steep slope buffer, with the exception of 200 square feet that is not steep slope or 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 is proposing a reduced front yard (required: 5 feet, and proposed: 2 feet) to site the apartment. However, reduction of the front yard does not result in a building footprint outside of

the steep slope and steep slope buffer, so it does not fully mitigate the hardship created by the strict application of the steep slope standards nor does it maintain the full steep slope buffer. 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 ("Geotechnical Engineering Study" dated August 25th 2014 by Earth Solutions NW, LLC). The report has been reviewed and approved by DPD geotechnical staff. 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 requesting a variance for a reduced front yard (5 feet front yard required) since such a reduction would mitigate the hardship of maintaining the full steep slope buffer. The applicant has incorporated project elements that maintain neighborhood character by stepping the building back from the front property line; maintaining scale by alternating siding colors,

materials, and textures; and maintaining as many trees as possible 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 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 an 11,911 square foot structure (7,905 square feet of small efficiency dwelling units and 4,006 square feet of common area). The site is almost entirely 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 5,704 square feet, the steep slope buffer is 1,221 square feet, and the non-steep slope and non-buffer area is 200 square feet for a total site area of 7,125 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 requesting a variance for a reduced front yard since such a reduction would mitigate the hardship of maintaining the full steep slope buffer and front yard setback. A buffer reduction alone would not provide a large enough footprint for a functional apartment.

The steep slope area is 5,704 square feet, the steep slope buffer is 1,221 square feet, and the non-steep slope and non-buffer area is 200 square feet for a total site area of 7,125 square feet. The proposed construction development disturbance is 3,132 square feet (1,711 square foot of steep slope disturbance, 1,221 square feet of steep slope buffer, and 200 square feet of non-steep slope and non-buffer area). The proposal is to disturb 30% of the steep slope area according to the plans (steep slope area is 5,704 sq.ft. multiplied by 30% equals 1,711.20). 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 structure is designed to be minimally intrusive into the ECA, with a total steep slope ECA disturbance of 30%. Disturbed areas will be required to be vegetated with native vegetation as shown on the Revegetation Plan as an ECA code requirement. A non-disturbance area covenant is required by the ECA code and will be required for all ECA areas not included in the 30% disturbance area. With these code requirements (Revegetation Plan and 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 Revegetation Plan must be incorporated into the building permit set of plans.

DECISION – STEEP SLOPE AREAS VARIANCE

Granted.

CONDITIONS OF APPROVAL

None.

ANALYSIS - SEPA

The proposal site is located in a mapped environmentally critical area (ECA) due to steep slopes. The property is still subject to all other ECA standards and is regulated as a potential landslide site, thus the application is not exempt from SEPA review. However, SMC 25.05.908 provides that the scope of environmental 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 ECA regulations. This review includes identifying additional mitigation measures needed to protect the ECA in order to achieve consistency with SEPA and other applicable environmental laws.

Environmental review resulting in a Threshold Determination is required pursuant to the State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant. A geotechnical report dated April 25th 2014 was submitted. The information in the checklist, the geotechnical report, supplemental information submitted by the applicant and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

The Department of Planning and Development has analyzed the environmental checklist submitted by the project applicant; reviewed additional information in the file; and any comments which may have been received regarding this proposed action have been considered. As indicated in this analysis, this action will result in adverse impacts to the environmentally critical area. However, due to their temporary nature and limited effects, the impacts are not expected to be significant.

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. Short-term adverse impacts are anticipated from the proposal. No adverse long-term impacts on the environmentally critical area are anticipated.

Short Term Impacts

The following temporary or construction-related impacts are expected: temporary soil erosion; decreased air quality due to increased dust and other suspended air particulates during excavation, filling and transport of materials to and from the site; and increased vibration from construction operations and equipment. Compliance with applicable codes and ordinances will reduce or eliminate most adverse short-term impacts to the environment.

Earth/Soils - The ECA Ordinance and Directors Rule (DR) 18-2011 require submission of a soils report to evaluate the site conditions and provide recommendations for safe construction in landslide prone areas. Pursuant to this requirement the applicant submitted a geotechnical report (Earth Solutions NW, LLC; August 25th 2014). The geotechnical study has been reviewed by DPD’s geotechnical experts who determined that the impacts to soils can be sufficiently mitigated through the Grading Code and Stormwater Code review by the Geotechnical Engineer during the Building Permit phase of review. The applicant will be required to submit geotechnical studies and any other information to determine compliance with those Codes during Building Permit review. No additional mitigation is warranted pursuant to SEPA policies.

Long Term Impacts

Long term or use-related impacts on the environmentally critical area are also anticipated as a result of this proposal and future unit lot subdivision, including: increased surface water runoff due to greater site coverage by impervious surfaces; and loss of plant and animal habitat. Compliance with applicable codes and ordinances will reduce or eliminate most adverse long-term impacts to the environment.

No further conditioning or mitigation is warranted pursuant to specific environmental policies or the SEPA Overview Policy (SMC 25.05.665).

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 (Revised Code of Washington (RCW) 4

- Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21.030(2)(c).
- Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An EIS is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued after using the *Optional DNS Process* in WAC 197-11-355 and *Early Review DNS Process* in SMC 25.05.355. There is no further comment period on the DNS.

SEPA CONDITIONS

None.

DECISION – STEEP SLOPE AREAS VARIANCE

Granted.

VARIANCE CONDITIONS

None.

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 Revegetation Plan must be incorporated into the building permit set of plans.

Signature: Denise R. Minnerly for Date: June 22, 2015
Colin R. Vasquez, Senior Land Use Planner
Department of Planning and Development

CV:drm

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.