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: 3019225

Applicant Name: Don Gillmore

Address of Proposal: 1941 Aurora Avenue North

SUMMARY OF PROPOSED ACTION

Land Use Application to relocate an existing structure and to change the use from office and apartment to a drive through coffee shop and one apartment unit in an environmentally critical area. Parking for two vehicles will be provided on the site.

The following approvals are required:

ECA Variance– to allow development in the steep slope buffer. Section 25.09.180.E

SEPA Environmental Determination (SMC Chapter 25.05)

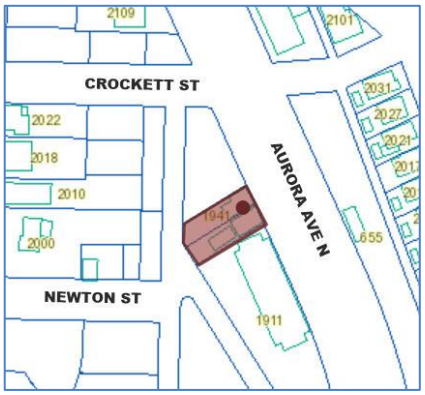
SEPA DETERMINATION:

Determination of Non-Significance

☒ No mitigating conditions of approval are imposed.

☐ Pursuant to SEPA substantive authority provided in SMC 25.06.660, the proposal has been conditioned to mitigate environmental impacts.

BACKGROUND INFORMATION



Site Description

The subject property has a lot area of 7025 sq. ft. and is zoned Commercial (C1-65). Adjacent properties to the north and south are also zoned Commercial (C1-65). Single Family (SF 5000) and Lowrise (LR2) zoning districts are located to the west of the

subject site. The property slopes upward toward the west, the west portion of the site located within the steep slope and steep slope buffer Environmentally Critical Area (ECA).

Description of Proposal

The applicant proposes to relocate an existing structure approximately 12 feet to the southeast and to change the use of a portion of the structure to a drive through coffee shop. The drive through coffee shop will be oriented toward the front of the property along Aurora Ave N. Vehicular and pedestrian access is proposed from Aurora Ave N.

The west portion of the site is designated as environmentally critical due to the presence of steep slopes and buffers, and known slides. Disturbance of an ECA buffers requires variance approval. A catchment wall, an additional vehicle queuing lane, solid waste storage area, and other paved areas would be located in the ECA buffer.

Public Comment

The public comment period ended on May 25, 2015. Comments were received and carefully considered, to the extent that they raised issues within the scope of this review. These areas of public comment related to the variance criteria, impacts on the environmentally critical area and slope stability. Comments were also received that are beyond the scope of this review and analysis per SMC 25.05.

I. ANALYSIS – ECA VARIANCE

The applicant has requested a variance from one requirements of the environmentally critical areas ordinance: ECA Variance to reduce a steep slope buffer. Pursuant to the environmentally critical areas ordinance (SMC 25.09) the Director may allow this ECA Variance 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 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 lot was originally platted in 1904. An ordinance (VO 64510) vacated a portion of Aurora Avenue in 1934, enlarged and maintained the lot as a legal building site. This criterion is met.

    b. the proposed development otherwise meets the criteria for granting a variance under Section 25.09.280B, 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 analysis of the proposal in response to criteria in 25.09.280B follows the analysis of 25.09.180E in this document.

As shown by the topographic survey and site plan, the west portion of the site is designated as a steep slope ECA or steep slope buffer. The strict application of the steep slope standards would require avoidance of both the steep slope area and the steep slope buffer, preventing development of the catchment wall, parking spaces, and trash enclosure on the site.

Since the site is commercially zoned, the front setback requirement is zero feet. The proposed building site is located at the lot line already, and as such there are no opportunities to reduce the front setback to minimize disturbance to the 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.

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 front setback requirement is zero feet, further reduction is not possible. The applicant proposes to construct an engineered catchment wall within the 15-foot steep slope buffer to protect the proposed reuse and redevelopment of an existing structure. The catchment wall must be located adjacent to the toe of the slope to provide the most protection to the structures on the property from landslide hazards. Compliance with all ECA development standards will not permit the construction of a catchment wall to protect the project site, and would not allow construction of the proposed additional vehicle queuing lane, solid waste storage, and other paved areas. No intrusion into the ECA steep slope is proposed.

The applicant proposes a reduction of the steep slope buffer and no intrusion into the steep slope, including all site disturbances (construction impact area, access and utilities). The proposed development follows the sequence of priority and does not create an intrusion 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 project is designed to be minimally intrusive. The catchment wall, proposed additional vehicle queuing lane, solid waste storage, and other paved areas are proposed in the ECA buffer; no intrusions are proposed in the steep slope. A non-disturbance area covenant is required per SMC 25.09.335.B, and apply to all areas not included in the ECA buffer disturbance area.

In addition to the provisions discussed above, Seattle DCI may grant an ECA variance only when all of the following criteria are met, as set forth in SMC 25.09.280 B, as stated below.

SMC 25.09.280.B. Yard and setback reduction and variance to preserve ECA buffers and riparian corridor management areas.

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 lot was originally platted in 1904. This criterion is met.

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***

There is no required setback for a building of this size in commercial zones. The strict application of the applicable setback requirements would not cause unnecessary hardship. Conversely, reducing the setback would not make the proposed construction possible.

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 front setback requirement is zero feet. The proposed building site is located at the front lot line already, and there are no opportunities to reduce the front setback to minimize disturbance. A variance to modify commercial setbacks would not provide relief.

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 (Associated Earth Sciences, dated September 8 2014,) which provided findings and preliminary recommendations for future development. The geotechnical report has been reviewed and was approved on October 27, 2015 by Seattle DCI's geotechnical engineer. Seattle DCI's geotechnical experts have 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. Geotechnical studies and other information will be required to determine compliance with those Codes during Building Permit review.

Development will be required to be conducted in accordance with these recommendations before issuance of any permits allowing for disturbance of the site, and such disturbance within the steep slope and steep slope buffer should therefore not be injurious to the property or to neighboring properties. In addition, a drainage plan is required by the ECA Code to minimize disturbance of the steep slope buffer, and will be detailed and reviewed during review of the associated building permit. Further, the applicant is proposing to relocate the structure on the most level and most stable portion of the property.

The proposal was also reviewed by Seattle DCI's transportation planner in consultation with SDOT to ensure the granting of the ECA variance will not be injurious to safety. The submitted MUP plans show space for six vehicles to queue in the inside lane and an additional vehicle

queuing lane. The proposed variance would allow construction of the additional vehicle queuing lane in the ECA buffer. If the variance was denied, the site size and dimension would allow only one queuing lane with no additional vehicle queuing lane.

The applicant submitted a transportation impact study and supplemental memo prepared by Heffron Transportation, Inc., dated June 19, 2013and October 12, 2015. Seattle DCI's transportation planner and SDOT determined that one queuing lane could result in occasional traffic queuing on Aurora Ave N, which would conflict with large volumes of high speed traffic and bus lanes. This situation could create a safety hazard. The addition of an additional vehicle queuing lane in the ECA buffer would allow for sufficient queuing on site, and would prevent traffic from queuing on Aurora Ave N. However, Seattle DCI's transportation planner and SDOT noted that the merge of the additional vehicle queuing and queuing lane on site could result in traffic conflicts and safety concerns for vehicles merging back on to Aurora Ave N as they exit the site. Adequate management of the additional vehicle queuing lane is necessary, in order to prevent safety hazards.

Therefore, in order to ensure that granting of the ECA variance to allow the additional vehicle queuing lane would not be injurious to improvements in the zone and vicinity, a condition will be required. This condition will require that the applicant demonstrate a clear method of allowing the two lanes to merge prior to the pick-up window, either through passive means (such as lights signaling which lane should proceed) or active means (such as employee direction).

With that condition, granting the ECA variance to allow construction of the additional vehicle queuing lane and other paved areas and the retaining wall in the ECA will not be injurious to safety, property, or improvements in the zone or vicinity.

5. ***The yard or setback reduction that will not result in a development 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***

Given that the applicant is proposing only minor modifications, it is clear that the design of the structure will be compatible with the character of the commercial area and other structures in the vicinity. Therefore, the proposed development will not result in materially detrimental effects on the character, design, 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 environmentally critical policies and regulations were created 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 avoid development that causes injury to persons, property, public resources or the environment.

The existing structure will be relocated and reduced to a footprint of 1,034 sq. ft. The total proposed total site coverage including driveway and walkways is 6,675 sq. ft., or approximately 85% site coverage.

In addition, the proposal allows for the preservation of existing Exceptional Trees. An arborist report prepared by Katie Hogan, Certified Arborist, dated October 8, 2015 has been submitted and reviewed by Seattle DCI. The Director reviewed the arborist report and concurs with the arborist's tree inventory and site plan showing the location of the trees. The Director determined the proposal is consistent with the provisions of SMC 25.11.060.

SMC 25.09.180 provides for variances to reduce steep slope buffers and allow limited development in steep slopes. Variance relief is necessary to allow development of a catchment wall in the steep slope buffer to prevent future landslides, and to allow construction of an additional vehicle queuing lane and other paved areas in the steep slope buffer. The additional vehicle queuing lane would allow adequate management of vehicles exiting and entering Aurora Ave N from the site, and the other proposed paved areas would include Code-required solid waste storage area. 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.

The analysis shows that conditions are not required in order to carry out the spirit and purpose of this chapter. Consistent with the requirements of SMC 25.09.335B, a non-disturbance covenant shall be required prior to issuance of the Master Use Permit.

DECISION – ECA VARIANCE:

Seattle DCI **CONDITIONALLY APPROVES** the requested variances to allow the relocation and change of use of an existing structure to be developed within the steep slope buffer.

II. ANALYSIS - SEPA

The proposal site is located in a mapped Environmentally Critical Area (ECA) due to steep slope, potential slide, and known slide events. The property is subject to all 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 disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant and signed January 22, 2015. A geotechnical report dated September 8, 2014, a habitat evaluation dated July 22, 2014 and transportation analysis and supplemental letter dated June 19, 2013 and October 12, 2015 were submitted. The information in the

checklist, the geotechnical report and 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 Seattle Department of Construction and Inspections has analyzed and annotated 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 to the ECA are expected: temporary soil erosion. Compliance with applicable codes and ordinances will reduce or eliminate most adverse short-term impacts to the environment. The following analyzes greenhouse gas and earth impacts, as well as mitigation.

Greenhouse Gas Emissions

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant. Therefore no further mitigation is warranted pursuant to SMC 25.05.675.F.

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 Associated Earth Sciences, dated September 8, 2014. The geotechnical report has been reviewed by Seattle DCI'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 SMC 25.05.675.D.

Long Term Impacts

Long term or use-related impacts on the Environmentally Critical Area are also anticipated as a result of this proposal including: increased surface water runoff due to greater site coverage by impervious surfaces. Compliance with applicable codes and ordinances will reduce or eliminate most adverse long-term impacts to the environment. However, impacts to greenhouse gas emissions, and plants and animals warrant further analysis.

Greenhouse Gas Emissions

Operational activities, primarily vehicular trips associated with the project construction and the project's energy consumption, are expected to result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant, therefore, no further mitigation is warranted pursuant to SMC 25.05.675.F

Plants and Animals

Two trees are located onsite and are classified as Exceptional (25" Western Red cedar, and 30"Bigleaf maple). The project proposes retaining the two Exceptional Trees located on the site and planting 6 trees. The applicant submitted an arborist report prepared by Katie Hogan, Certified Arborist dated October 8, 2015. The arborist report included tree evaluation data, tree retention and removal data, and a tree inventory plan. The Director reviewed the arborist report and concurs with the arborist's tree inventory and site plan showing the location of the trees. The Director determined the proposal is consistent with the provisions of SMC 25.11.050 and 25.11.070 which sets forth exceptional tree determination and protection requirements as well as SDCI's Director's Rule 16-2008. No further conditioning or mitigation is warranted pursuant to SMC 25.05.675.N

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.

☒ 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).

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (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.

CONDITIONS – ECA VARIANCE

For the Life of the Project

1. To ensure efficient use of both ordering lanes, the project will be required to demonstrate a clear method of allowing the two lanes to merge prior to the pick-up window, either through passive means (such as lights signaling which lane should proceed) or active means (such as employee direction).

CONDITIONS - SEPA

None required.

Magda Hogness, Land Use Planner Date: February 4, 2016
Seattle Department of Construction and Inspections

MH:bg

Hogness/3019225 ECA Decision REVISED v3 2.3.16.docx

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.