



**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR  
SEATTLE PUBLIC UTILITIES**

**Project Address:** 601 34<sup>th</sup> Ave

**Applicant Name:** Brad Easton, Walnut, LLC

**Department of Planning and Development Project Number:** 6413010

**SUMMARY:**

Exception request to the requirement of the Stormwater Code to extend the public drainage system across the full frontage of the property.

**BACKGROUND AND PROPOSAL:**

The project associated with this exception request will establish the use as a single family residence and will construct one single family residence with terraced garage per plan.

The applicant for the proposed exception, Brad Easton, is identified as the owner and financially responsible party in the contact information provided to DPD for project number 6413010. Dave Biddle is identified as the primary applicant.

On April 16, 2014, Mr. Biddle applied for a land use permit to demolish structures on the Genesis House property, a group home. This application was approved on 7/15/2014 under Project 3017471. The applicant for the proposed exception has stated that permits for 10 single family residences will possibly be proposed by various owners of the Genesis property.

The Preliminary Assessment report issued to Mr. Biddle for Project 3017471 completed on April 22, 2014, identified the following requirement for future development pursuant to SMC 22.800.080.I: *Unless an adjustment per subsection 22.800.040.B or an exception per subsection 22.800.040.C is approved by the Director, an owner or occupant who is required, or who wishes, to connect to a public drainage system shall be required to extend the public drainage system if a public drainage system is not accessible within an abutting public area across the full frontage of the property.*

Pursuant to SMC 22.800.040.C.1: *The Director may approve a request for an exception to the requirements of this subtitle when the applicant demonstrates that the exception will not increase risks in the vicinity and/or downstream of the property to public health, safety and welfare, or to water quality, or to public and private property, and [one of 4 criteria in subsections C.1.a-d are met].*

The applicant has requested an exception to this code requirement under the criterion in subsection 22.800.040.C.1.a:



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*The storm main extension would cause a severe and unexpected financial hardship that outweighs the benefits of the storm sewer extension.*

Under subsection 22.800.040.C.8 *An application for an exception on the grounds of severe and unexpected financial hardship must describe, at a minimum, all of the following:*

- a. The current, pre-project use of the site; and*
- b. How application of the requirement(s) for which an exception is being requested restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of this current subtitle; and*
- c. The possible remaining uses of the site if the exception were not granted; and*
- d. The uses of the site that would have been allowed prior to the adoption of this subtitle; and*
- e. A comparison of the estimated amount and percentage of value loss as a result of the requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the requirements of this subtitle; and*
- f. The feasibility of the owner or developer to alter the project to apply the requirements of this subtitle.*

The applicant has submitted information, including a Contractor's bid in the amount of \$569,879.39 for the storm main extension. The applicant has proposed a series of infiltration trenches to manage stormwater on each lot as an Alternate Proposal.

The applicant addresses the criteria in subsection 8 as follows:

*b. how application of the requirement(s) for which an exception is being requested restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of this current subtitle;*

“The side sewer extension requirement adds significant costs to the Project compared to the Alternative proposal. It also requires a combined system for a series of unrelated projects, which is a burden on the current owners of the lots (the lots are owned by different parties) and the future owners of the lots.”

*c. The possible remaining uses of the site if the exception were not granted;*

“If the exception is not granted, then development of the sites is infeasible. It is too expensive for individual projects to bear the burden of providing a storm main extension. The owners would likely sell some of the properties to another party who would run the group home. The existing group home could be sold with a slightly different lot configuration (LBA), and the ten



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homes would not be developed. It is possible that the LBA could re-configure a couple lots at each end of the block to be all fronting storm mains in E Cherry and E James St.”

*d. The uses of the site that would have been allowed prior to the adoption of this subtitle;*

“If the grading and drainage control subtitle did not allow SPU to demand a storm main extension, then ten homes could have been built on this block. The feasibility of adding the storm main extension makes development of the individual homes infeasible.”

*e. A comparison of the estimated amount and percentage of value loss as a result of the requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the requirements of this subtitle;*

“The cost of the Alternative Proposal would be approximately 5-6k a lot. This is roughly 10% of what the storm main would cost per lot (56k est.)”

*f. The feasibility of the owner or developer to alter the project to apply the requirements of this subtitle.*

“SPU is not offering any alternatives to providing a storm main extension. If the exception to this requirement is not granted, then the owners would likely sell the property. The existing group home could be sold with a slightly different lot configuration, and the ten homes would not be developed.”

**Public Comment:** One written comment letter was received during the comment period that ended on September 5, 2014.

**ANALYSIS:**

- The applicant did not provide a response for subsection 22.800.040.C.8.a. Per a building site letter/preliminary zoning analysis written by Andy McKim, for the property, a 1997 permit, No. 692353, recognized the existing use as a “congregate residence” and also added a child care center. A child care center is an institutional use that may be permitted by conditional use permit in a Single Family zone. Congregate residences are not a permitted use in the zone, so the existing residential use is legally nonconforming. This zoning analysis was conducted under project number 3016639.
- To meet criteria C.1.a that the requirement causes a “*severe and unexpected financial hardship*” the requirement must be severe and unexpected. The applicant failed to



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demonstrate that this requirement is unexpected. This requirement has been in the Code since 1988 and was included in the 2009 Stormwater Code update as well. Since this proposal for a single family development was made well after this requirement was enacted, the applicant for the exception was on notice that this requirement would apply. In addition, the requirement to extend the public storm drain was specifically transmitted to the applicant for the proposed redevelopment, Dave Biddle, through the Preliminary Assessment Report (PAR) for Project 3017471, which was completed on April 22, 2014, prior to the formal application for the proposed redevelopment. The PAR is in the file for this property and was available to Walnut LLC before proposing development of a part of the Genesis property for this single family project. This is not deemed to be “unexpected”.

- The applicant also failed to demonstrate severe financial hardship resulting from this requirement. In response to factor C.8.c, the applicant describes a development scenario of keeping the property with a group home and developing 4 single family lots that front storm mains on E Cherry and E James St.
- The applicant has not demonstrated that granting the exception will not increase risks in the vicinity and/or downstream of the property to public health, safety and welfare, or to water quality, or to public and private property. The applicant’s Alternate Proposal is to infiltrate all stormwater on-site. On-site infiltration for all ten properties is not prudent because the site is within 500 feet of a steep slope environmentally critical area. While there are advantages to managing some stormwater on-site, in a dense urban environment with small lots and setbacks, attempting to manage all the rainfall volume on-site can lead to other problems. These problems include water intrusion into adjoining basements, infiltrated stormwater “piping” through utility trenches, and collection through footing drains in the downslope properties which are connected to the legacy combined sewer system. In addition, the long-term performance of infiltration systems and the lack of ability to conduct preventive maintenance on these types of facilities is why an overflow is required, which would be the public storm drain system.
- The applicant contends exceptions have been granted for other properties for similar development, but this proposal is not similar to others. Typically, when permitting the development of single family residences, all efforts are made by the City to examine drainage alternates that, mainly due to cost, do not require an extension of the public drainage system. This is primarily related to the nature of developing vacant lots within established neighborhoods (“infill development”), or the demolition of one single family residence, to be replaced with a new single family residence. The redevelopment of the Genesis House property is unique in that after the demolition of the existing group home; it will allow the redevelopment of an entire block face, where the underlying platting and zoning will permit up to 10 new residences. In this respect, the Genesis House property meets the criteria of a



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“contiguous combination”<sup>1</sup> of lots where the permit for the addition or replacement of impervious surface is proposed. Therefore the City is not treating this application differently from the examples the applicant has cited.

- The City considered the possibility of allowing the curb and gutter along the west side of 34<sup>th</sup> Ave to be reconstructed, as was also suggested by the applicant as an alternative in their submittal. Due to the presence of existing trees and the need to match existing grades, this did not meet the requirements of the SDOT Right of Way Improvement Manual and the City of Seattle Standard Plans and Specifications for Road, Bridge and Municipal Construction and therefore, it is not considered an acceptable proposal.
- Acknowledging that impacts can be inequitably borne by a single developer, in accordance with RCW 35.91.020, Seattle Public Utilities has adopted a process to allow applicants who are required to extend drainage and sewer facilities to enter into “latecomer’s agreements”. Subsequent developments which did not contribute to the original cost of the facilities are assigned a pro-rata share of the initial cost to construct the facility, regardless of ownership. This could mitigate the financial impacts to the applicant as properties are developed on both the east and west sides of 34th Avenue.

**Decision:**

The proposed exception request is denied.

Information regarding this decision is available at SPU by contacting Cris Horbelt at (206) 233-2527 or [cristofer.horbelt@seattle.gov](mailto:cristofer.horbelt@seattle.gov).

Signature: 

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Tim Ramsaur P.E. – Acting Director Utility Systems Management Branch – Drainage and Wastewater LOB

Date: 

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<sup>1</sup> SMC 22.801.200 "Site" means the lot or parcel, or portion of street, highway or other right-of-way, or contiguous combination thereof, where a permit for the addition or replacement of impervious surface or the undertaking of land disturbing activity has been issued or where any such work is proposed or performed. For roadway projects, the length of the project site and the right-of-way boundaries define the site.

