



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: 3021776
Applicant Name: Kellyn Vandenburg
Address of Proposal: 4608 South Findlay Street

SUMMARY OF PROPOSED ACTION

Land Use Application to allow a 12-foot-tall sound barrier wall.

The following approval is required:

Variance – to allow a fence (maximum 12-foot tall) on the east property line to exceed the height limit in the required front yard (Seattle Municipal Code (SMC) 23.44.014.D.10)

Variance – to allow a fence (maximum 12-foot tall) on the east property line to exceed the height limit in the required side yard (Seattle Municipal Code (SMC) 23.44.014.D.10)

Variance – to allow a fence (maximum 12-foot tall) on the east property line to exceed the height limit in the required rear yard (Seattle Municipal Code (SMC) 23.44.014.D.10)

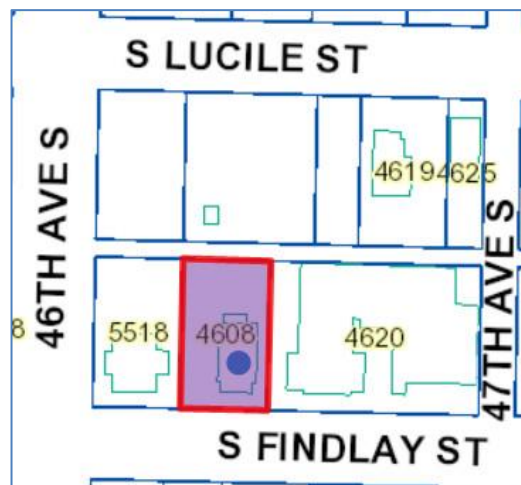
SEPA DETERMINATION:

Exempt

BACKGROUND

Site and Vicinity

Site Zone: Single Family 5000 (SF5000)



Nearby Zones: North: SF5000
South: SF5000
West: SF5000
East: SF5000

ECAs: None

Site Size: 6,180 square feet

Project Description

The proposal is for a 12-foot noise barrier to be constructed along the east property line of the subject site, from the front property line to the rear. The barrier will be a double sided fence with a hollow cavity frame to contain noise mitigating materials to reduce sound transmission. The purpose of the noise barrier is to mitigate noise and glare impacts from the abutting use at 4620 South Findlay Street. Pursuant to SMC 23.44.014.D.10, the following is permitted:

Fences, freestanding walls, bulkheads, signs and similar structures 6-feet or less in height above existing or finished grade, whichever is lower, may be erected in any required yard. The 6-foot height may be averaged along sloping grade for each 6-foot long segment of the fence, but in no case may any portion of the fence exceed 8-feet. Architectural features may be added to the top of the fence or freestanding wall above the 6-foot height if the features comply with the following: horizontal architectural feature(s), no more than 10 inches high, and separated by a minimum of 6 inches of open area, measured vertically from the top of the fence, are permitted if the overall height of all parts of the structure, including post caps, is no more than 8-feet. Averaging the 8-foot height is not permitted. Structural supports for the horizontal architectural feature(s) may be spaced no closer than 3 feet on center. The Director may allow variation from the development standards listed in subsection 23.44.014.D.10.a, according to the following: 1) no part of the structure may exceed 8-feet; and 2) any portion of the structure above 6-foot shall be predominately open, such that there is free circulation of light and air.

Public Comment

The public comment period ended on March 23, 2016. 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 support for the proposed sound barrier to mitigate noise and glare impacts.

ANALYSIS - VARIANCE

As provided in SMC 23.40.020, variances from the provisions or requirements of Seattle Municipal Code Title 23 shall be authorized only when all of the facts and conditions stated in the numbered paragraphs below are found to exist:

- 1. Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant,***

the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity;

A child care center that serves up to 37 children is legally established on the neighboring church property at 4620 South Findlay Street. Under Section 23.44.022 of the Land Use Code, child care centers in Single Family zones typically require administrative conditional use approval, and one of the criteria for that approval is that, for the purpose of reducing noise impacts, the Director is to consider the location of outdoor recreation areas. The Director may also require measures such as sound barriers and landscaping. In this case, however, conditional use approval was not required, and analysis and conditioning to address noise impacts did not occur. The facility evidently took advantage of a special provision, adopted in 1989 by Seattle Ordinance No. 114875, that allows child care facilities in existing institutions devoted to the care or instruction of children, without requiring conditional use approval.

Although the language of that code provision does not preclude it from being applied to allow a child care center to be set up in a church without separate conditional use approval, a review of legislative history associated with Ordinance 114875 suggests it was contemplated that the provision would be applied to allow child care centers in established public or private schools, and that establishing child care centers in churches under that provision was not contemplated. Existing schools typically already have outdoor play areas, so potential noise impacts from new play areas simply was not addressed in that code provision.

In other circumstances where a proposed institutional use in a Single Family zone is likely to include an outdoor play area, it is either subject to conditional use approval criteria that address the location of the play area and potential noise impacts, or else, if the use is permitted outright (as with public schools) its outdoor play areas are subject to specific setback requirements. (See SMC 23.51B.002, requiring that play equipment on public school grounds be located at least 30 feet from any lot in a Single Family zone and at least 20 feet from any multi-family-zoned lot.) The circumstances at 4608 South Findlay Street are unusual, as the play area for the child care center on the neighboring lot was not subject either to a specific setback standard or to a discretionary review that could have addressed the location and noise impacts of the play area. The presence and location of the play area on the neighboring lot without appreciable setbacks or noise-buffering measures qualifies as an unusual condition that provides a basis for variance relief.

2. The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located;

The subject site is one of two residential properties that abut the existing church and child care center at 4620 South Findlay Street. The subject site is the only residential property that directly abuts the child care center's existing outdoor play area. Potential noise impacts from this play area on residential properties in the vicinity are mitigated by the location of existing structures. The subject site is not afforded this condition; and therefore, proposes a sound barrier to be constructed on the shared property line (east property line of the subject site) to mitigate noise impacts.

According to the SDCI Noise Control Specialist, minimizing sound heard by neighbors is accomplished by considering the location of the noise source, the distance from the noise source to the point of evaluation (neighbor), and the height of a noise barrier. The greater the distance between the source of noise and the point of evaluation, the greater the reduction in noise. In this instance, this distance may not be increased due to existing conditions. This leaves the height of the noise barrier. Evidence provided by the applicant suggests that the proposed maximum height of 12-feet is the minimum necessary to provide sufficient noise reduction and that the sound barrier must be free of gaps or holes. The barrier is proposed with a maximum height of 12-feet above existing grade to conceal the windows on the east façade of the single-family home. In addition to providing a barrier to noise from the adjacent property, the barrier will also shield existing glare from exterior lighting mounted on the adjacent structure. This height is the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity as this site is the only property in the vicinity abutting the identified source of noise and glare

The subject site is the only residential property that abuts this play area, and as noted above, the play area for the child care center on the neighboring lot was not subject either to a specific setback standard or to a discretionary review that could have addressed the location and noise impacts of the play area. The presence and location of the play area on the neighboring lot without appreciable setbacks or noise-buffering measures necessitates mitigation, and the proposal of a 12-foot tall noise barrier along the east property line does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located.

3. *The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located;*

The noise barrier is proposed on the east property line between the subject site and the institution at 4620 South Findlay Street. This noise barrier begins at the front property line and ends at the rear property line. The sound barrier is approximately 6.5-feet tall at the front property line, as measured from average grade of the subject site. The height of the fence in this required front yard is less than the code permitted height of eight-feet. The height of the sound barrier gradually increases to a maximum height of approximately 12-feet at the rear of the property. The height of the noise barrier will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located.

4. *The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause undue hardship or practical difficulties;*

The literal interpretation and strict application of the applicable provisions of the Land Use Code would allow an eight-foot tall fence. As shown in the application materials, a 12-foot tall noise barrier is more effective at mitigating the identified noise impacts from the adjacent child care center's play area. The subject site is the primary receiver of the noise from this play area, and as noted above, the play area for the child care center on the neighboring lot was not subject either to a specific setback standard or to a discretionary review that could have addressed the location and noise impacts of the play area. The presence and location of

the play area on the neighboring lot without appreciable setbacks or noise-buffering measures qualifies as an unusual condition, and the strict application of the code would preclude the subject site from properly mitigating these impacts.

The strict application of the code in this instance, allowing an eight-foot tall fence, would cause undue hardship or practical difficulties for the subject site by not allowing for proper noise mitigation for noise from the adjacent play area.

5. *The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use regulations for the area.*

The eight-foot height limit for fences is principally intended to preserve streetscape character in residential zones. The streetscape character in this residential zone consists of fencing ranging in height from three- to eight-feet. As proposed, the height of the noise barrier at the front property line is approximately 6.5-feet, and is therefore consistent with the spirit and purpose of the Land Use Code and adopted regulations for the area.

DECISION – VARIANCE

The Variance application is **GRANTED**.

CONDITIONS – VARIANCE

None.

Carly Guillory, Land Use Planner
Seattle Department of Construction and Inspections

Date: October 13, 2016

CAG:rgc
3021776.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.