

**FINDINGS AND DECISION OF THE HEARING EXAMINER
FOR THE CITY OF SEATTLE**

In the Matter of the Appeal of

SCOTT FRANCIS

From a decision by the Director, Seattle
Department of Construction and Inspections

Hearing Examiner File:
MUP-16-024(ECAV)

Department Reference:
3021625

Introduction

The Director, Seattle Department of Construction and Inspections (SDCI), issued a master use permit decision that was appealed by the Appellant. The appeal hearing on the above-referenced matter was held on March 6, 2017, before the undersigned Hearing Examiner pro tem. Represented at the hearing were: Appellant Scott Francis, pro se; the Director, SDCI, by Daniel Mitchell, Assistant City Attorney; and the Applicant, 1706-1708 Alki Ave SW LLC, by Katie Kendall, attorney at law.

The record was held open after the hearing to allow Appellant to submit copies of his Exhibits 1-5, and to allow the Examiner to view the site on March 11, 2017. The Applicant objected to Appellant's Exhibits 1-3 and 5 as irrelevant to the issues in this ECAV appeal. Exhibits 1, 2 and 5, which were referenced by the Appellant in his testimony at hearing, are not relevant to the issues in this appeal, but have been admitted for the purpose of providing background information about the project; Exhibits 3 and 4, which the Appellant discussed in support of his claims of risks to his property from the project, have been admitted.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. After due consideration of the evidence elicited during the hearing and the Examiner's inspection of the site, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner.

Findings of Fact

1. The subject site is addressed as 1706 and 1708 Alki Avenue SW and is bounded by Alki Avenue SW and other properties, as shown in the record. The site is approximately 6,900 square feet, and is zoned Lowrise 3 (LR3). The development surrounding the site includes single family and multifamily structures. The Appellant's property is located immediately south and west of the project site.
2. The lot was created as part of the Alki Beach Addition plat in 1935.

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3. The entire site is mapped as an Environmentally Critical Area (ECA) potential slide area, and much of the site is mapped as an ECA liquefaction prone area and an ECA known slide area. As part of its application, the applicant provided geotechnical reports to identify and delineate the steep slope areas on site.

4. The proposal is for two three-story townhouse structures, with a total of seven units, and parking for ten vehicles. The proposed structure at the rear of the site (containing proposed units 5, 6 and 7) would intrude into the steep slope buffer area, as shown at sheet A-10 of Applicant's Ex. 4. Approximately 407 of the 597 square feet of buffer area on the site would be disturbed. The remaining 190 square feet of buffer area on the site would be re-vegetated with native vegetation, and non-native vegetation would be removed from this area. The project would not intrude into the steep slope area.

5. The project is subject to the Alki parking overlay requirement of 1.5 spaces per dwelling unit (rather than 1 space per unit as is generally required for multifamily residential uses) so the project is required to provide 10 parking stalls for the 7 units. The parking and maneuvering areas are shown on sheet A-10 of Ex. 4.

6. Prior to granting the ECA steep slope buffer area variance, SDCI conducted Streamlined Design Review and determined that adjustments to required setbacks should be granted. SDCI allowed the side setback to be reduced to a minimum of three feet, and the southwest facade to be reduced to four feet and six inches. The rear setback was reduced to five feet, and the front setback was reduced to two feet and six inches at the location of balconies.

7. Even with the setback reductions granted through the SDCI process, the project would disturb the ECA steep slope buffer area as noted above; e.g., even if the front yard setback were eliminated, the project would still extend into the steep slope buffer area.

8. SDCI reviewed the proposed ECA steep slope buffer area variance application, including the geotechnical report submitted by the Applicant's geotechnical engineer. As part of its review, SDCI requested additional geotechnical information that would meet the specifications of Director's Rule 18-2011 and that would address the historical stability upslope of the property with regard to the proposed development, and address liquefaction hazards. The Applicant submitted additional information, as well as additional results from test borings at the site. The geotechnical information was reviewed by SDCI's geotechnical engineer, Rob McIntosh, and by another geotechnical consultant, geotechnical engineer James Strange. Both engineers were of the opinion that the proposed steep slope buffer area reduction would not create safety risks to other properties.

9. The Appellant purchased the property at 1710 Alki Avenue SW in the 1980's, when the area was characterized by modest single family houses which enjoyed expansive views of the water. While the Appellant noted that he understands that the project area is zoned LR3, and that he has not been opposed to the development of condominiums in the area, he believes that this project is too large and should be reduced by at least one unit.

10. Prior to hearing, the Applicant and SDCI moved to dismiss some of the issues in the appeal. An Order granting the motion was issued on February 22, 2017.

11. SMC 25.09.180.E provides:

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 25.09.280B, except that reducing the front or rear yard or setbacks will not both mitigate the hardship and maintain the full steep slope area buffer.*

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.*

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.*

4. *The process and procedures for a variance under this subsection E shall be as prescribed for Type II land use decisions in Chapter 23.76.*

12. SMC 25.09.280.B-D provide:

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.*

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

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

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

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

6. The requested variance 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.

D. The process and procedures of an environmentally critical areas yard or setback reduction variance shall be as prescribed for Type II land use decisions in Chapter 23.76.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to Chapter 25.09 SMC and SMC 23.76.022.

2. The appeal identified a number of objections to the project that were dismissed prior to hearing, as they raised claims outside the Hearing Examiner's jurisdiction to review.

3. The issue in this appeal is whether the Director correctly granted the ECA steep slope area variance under the applicable criteria contained in SMC 25.09.180 and 25.09.280.

4. The Appellant argued that reducing the project by one unit (as referenced in SDCI's report), would not create an unnecessary hardship. The Appellant argued that SDCI had not identified and analyzed specific financial impacts on the project that would occur if the Applicant were required to eliminate one unit. The Applicant asserted that the project was not viable at six units, and the Appellant argued that more information should have been presented to SDCI to verify this assertion. However, in making its determination concerning unnecessary hardship, SDCI correctly focused on the condition of the existing buffer area and analyzed whether preservation of the full required buffer area would actually serve the Code's purposes. The evidence, including the testimony of SDCI's project planner and both geotechnical expert

witnesses, demonstrated that the buffer area is flat and in a degraded state, and has limited functional value. Both of the geotechnical experts were of the opinion that, given the existing condition of the buffer area, and the design and engineering of the project, the loss of the 470 square feet of buffer area would not increase any risks to safety or affect the stability of the steep slope area. In addition, even complete elimination of the front yard or rear yard requirements would not allow the project to avoid the steep slope buffer areas. On these facts, requiring all of the buffer area to be preserved would not further the Code's purposes and would constitute an unnecessary hardship.

5. The Appellant also argued that the reduced buffer area would be injurious to safety, and that the proposed project would create risks of slides onto his property. He argued that a proposed retaining wall for the project would not reduce the risk of harm to his property from lateral spreading if liquefaction occurred on the site. (The wall is not a requirement of the variance but was reviewed by SDCI as part of the overall project review.) But the evidence in this record, including the geotechnical studies and the testimony of the two geotechnical expert witnesses, both of whom reviewed the project, showed that the reduced steep slope buffer would not be injurious to safety or to the Appellant's property or other properties or improvements in the zone or vicinity.

6. The Appellant also argued that the development would be materially detrimental to the surrounding neighborhood, since the proposed townhouses would greatly reduce his views of the water, and that the new development would be too large for the site and the surrounding neighborhood. The steep slope buffer reduction is located at the rear of the development facing the hillside, and would not directly affect the streetscape. Although the Appellant understandably opposes impacts on his water views, loss of the private view from his property does not cause the development to be materially detrimental to the neighborhood. The project's design, including its height, bulk and scale, would not be markedly different from other newer development projects in the area, and again, the impact of the variance is to allow more development at the rear of the project. The steep slope buffer reduction would not result in a development that is materially detrimental to the character, design or streetscape of the neighborhood.


7. The Appellant did not identify specific errors in the decision as to other applicable Code criteria. The evidence presented by the respondents was sufficient to show that all other applicable criteria in SMC 25.09.180.E and 25.09.280.B were met: the lot has been in existence as a legal building site prior to October 31, 1992; the buffer reduction is the minimum to afford relief from the hardship and is consistent with the sequence of priority in SMC 25.09.180.E.2 (including the reductions to side, rear and front setbacks to minimize intrusion into the steep slope buffer); the Director has required the Applicant to enter into an ECA covenant to preserve the non-disturbance area of the steep slope ECA to carry out the purpose of Chapter 25.09 SMC; and the requested variance meet the spirit and purpose of the ECA policies and regulations, by allowing the creation of new housing in the LR3 zone while adequately addressing protection of the environmentally critical areas on the site and protecting the public health, safety and welfare in landslide prone areas.

8. The Director's decision granting the ECA steep slope area variance was correct, and should be affirmed.

Decision

The Director's decision is hereby **AFFIRMED**.

Entered this 20th day of March 2017.



Anne Watanabe
Hearing Examiner Pro Tem

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

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**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **Scott Francis**. Hearing Examiner File: **MUP-16-024 (ECAV)** in the manner indicated.

Party	Method of Service
Scott Francis scott.alki@gmail.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
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Dated: March 20, 2017

TK
Tiffany Ku
Legal Assistant