



**City of Bellevue
Development Services Department
Land Use Staff Report**

Proposal Name: Moger Slope Buffer and Setback Modification

Proposal Address: 14003 SE 43rd Street

Proposal Description: Approval of a Critical Areas Land Use Permit to allow modification of a top of slope buffer and toe of slope structure setback for the construction of an in ground swimming pool within an already landscaped lawn area. The approval is subject to geotechnical engineering design requirements.

File Number: 12-111763-LO

Applicant: Jim Bergstrom, Aquaquip (Owner's Agent)

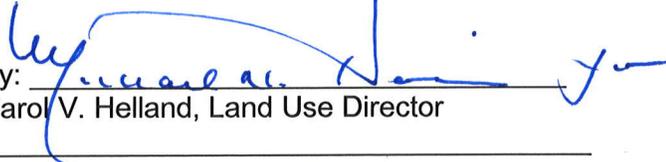
Decisions Included Critical Areas Land Use Permit
(Process II. 20.30P)

Planner: David Pyle, Land Use Planner

**State Environmental Policy Act
Threshold Determination:** Exempt

Director's Decision: **Approval with Conditions**

Michael A. Brennan, Director
Development Services Department

By: 
Carol V. Helland, Land Use Director

Application Date: April 26, 2012
Notice of Application Date: May 3, 2012
Decision Publication Date: May 31, 2012
Project Appeal Deadline: June 14, 2012

For information on how to appeal a proposal, visit Development Services Center at City Hall or call (425) 452-6800. Appeal of the decision must be received in the City's Clerk's Office by 5 PM on the date noted for appeal of the decision.

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Attachments

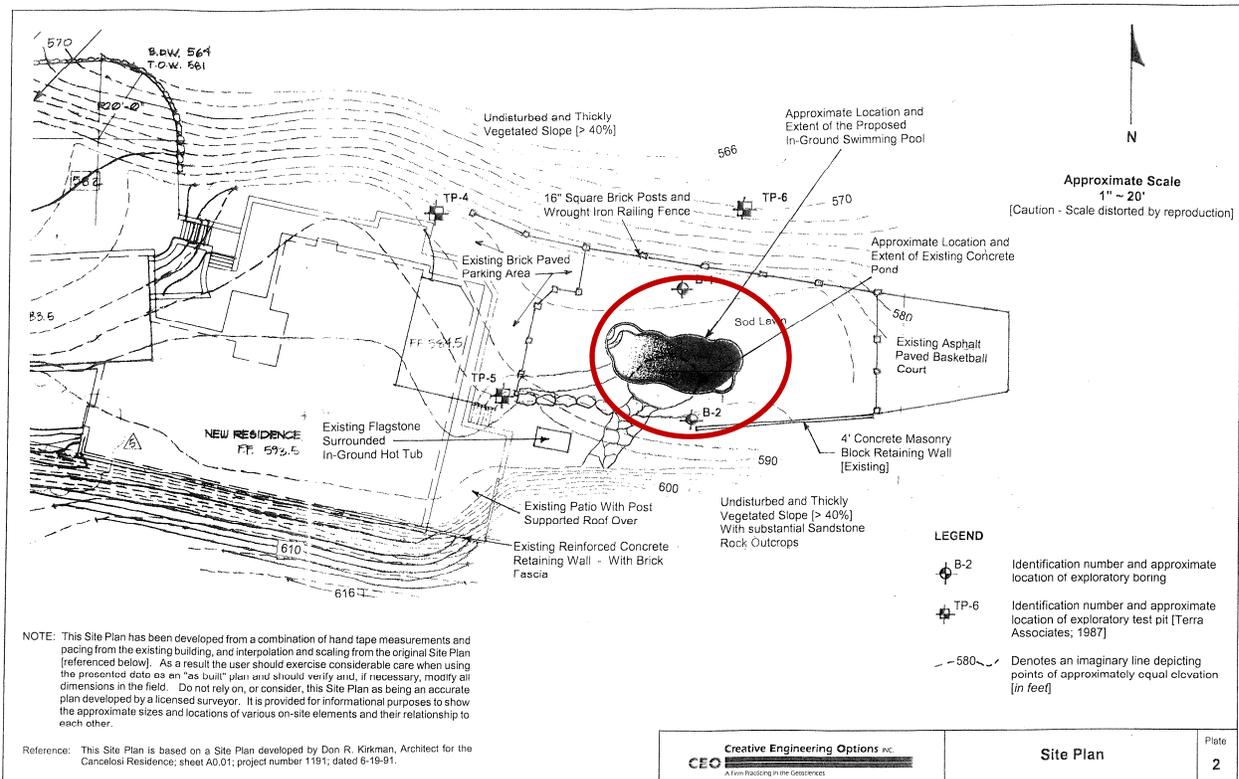
1. Site Plan – Enclosed
2. Geotechnical Report– In File

I. Proposal Description

The applicant proposes to install an in ground swimming pool in an existing landscaped area currently covered with a maintained lawn (sod). The proposed pool is 16x37 feet in dimension with a finished depth of approximately six feet and will require excavation of up to eight or nine feet in depth to accommodate construction. The proposed pool location is within a steep slope critical area top of slope buffer and toe of slope structure setback. This proposal requires the approval of a Critical Areas Land Use Permit for the improvements to be allowed within proximity to the slope areas. There is no proposal to modify steep slope areas and all work will be contained to areas outside of protected slope areas. See Figure 1 below for a site plan showing the proposal.

Figure 1

(Full Size Version In Project File)



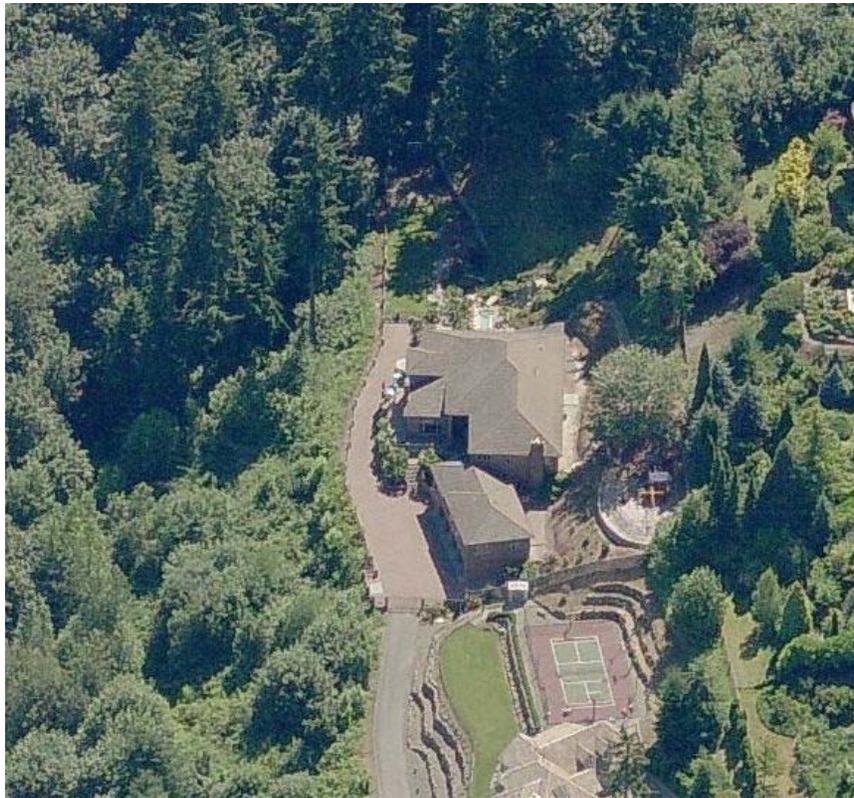
II. Site Description, Zoning, Land Use and Critical Areas

A. Site Description

The subject property is located off the eastern "dead end" of the street, S.E. 43rd Street, approximately a quarter of a mile to the east of the junction with Somerset Boulevard in the Somerset neighborhood. The property is bounded to the south and east by existing well established single family residential development, and to the north and west by predominantly undeveloped and partially wooded property. The area of interest, the site's easterly sod lawn covered yard area immediately adjacent to an existing shallow concrete and flagstone surrounded pond, is flat and relatively level. There is also a flagstone stairway extending up to the upper floor of the residence to the southwest of the pond. Additionally,

there is a rock "waterfall" structure extending upslope from the southwestern corner of the pond over which controlled [pumped] water flows when desired. The area to the north, about twenty (20) feet from the proposed pool location, comprises an existing relatively steep slope which is separated from the flat yard area by a sixteen (16) inch square brick post supported wrought iron railing. The northerly slope exhibits a vertical topographic change of about eighty (80) feet over a distance of about one hundred and eighty (180) feet, or slightly more. This translates to a slope gradient of about 2.2H:1V, or about 44%. This slope is covered with a variety of "wild" vegetation which includes, but is not necessarily limited to, berry vines, ferns, long field grass, and saplings. The slope also supports several fairly mature evergreen and deciduous trees with straight and vertical trunks of up to about three feet in diameter. The area immediately to the south [upgrade] of the proposed pool construction area slopes up towards the nearby upgrade residential development. The vertical topographic change over the length of this slope, a distance of about seventy-three (73) feet, is approximately forty-five (45) feet. This translates to a slope gradient of approximately 1.6H:1V, or about 62%. This slope is covered with a thin surficial layer of "wild" vegetation and landscaping. This slope also supports a number of scattered evergreen trees with straight and vertical trunks of up to about thirty (30) inches in diameter, and exhibits numerous rock outcrops. An oblique photo of the subject site is included below as Figure 2.

Figure 2



B. Zoning

The property is zoned R-3.5, single-family residential and the proposed pool is consistent

with the primary single family use.

C. Land Use Context

The property has a Comprehensive plan Land Use Designation of SF-M (Single Family Medium Density). A pool is consistent with this residential land use.

D. Critical Areas On-Site and Regulations

i. Geologic Hazard Areas

Geologic hazards pose a threat to the health and safety of citizens when commercial, residential, or industrial development is inappropriately sited in areas of significant hazard. Some geologic hazards can be reduced or mitigated by engineering, design, or modified construction practices. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas is best avoided (WAC 365-190).

Steep slopes may serve several other functions and possess other values for the City and its residents. Several of Bellevue's remaining large blocks of forest are located in steep slope areas, providing habitat for a variety of wildlife species and important linkages between habitat areas in the City. These steep slope areas also act as conduits for groundwater, which drains from hillsides to provide a water source for the City's wetlands and stream systems. Vegetated steep slopes also provide a visual amenity in the City, providing a "green" backdrop for urbanized areas enhancing property values and buffering urban development.

III. Consistency with Land Use Code Requirements:

A. Zoning District Dimensional Requirements:

The R-3.5 zoning dimensional requirements found in LUC 20.20.010 apply to the proposed pool. The plans submitted generally demonstrate conformance with zoning dimensional standards, however conformance will be verified during construction permit review.

B. Critical Areas Requirements LUC 20.25H:

The City of Bellevue Land Use Code Critical Areas Overlay District (LUC 20.25H) establishes performance standards and procedures that apply to development on any site which contains in whole or in part any portion designated as critical area, critical area buffer or structure setback from a critical area or buffer. The proposed pool will modify the 50-foot top-of-slope buffer and 75 foot toe of slope setback. The project is subject to the performance standards found in LUC 20.25H.125 which are reviewed below.

i. Consistency with LUC 20.25H.125

Development within a landslide hazard or steep slope critical area or the critical area buffers of such hazards shall incorporate the following additional performance standards in design of the development, as applicable. The requirement for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their level of function.

- 1. Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography;**

The proposed pool is not proposed within a steep slope critical area. The proposed pool is located in a flat area currently landscaped with a maintained lawn.

- 2. Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;**

No construction is proposed in the steep slope critical area and the only vegetation impacted is the existing lawn where the pool is proposed to be located.

- 3. The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties;**

The project geotechnical engineer (Creative Engineering Options) reviewed the proposal and provided recommendations. The project Geotechnical Report, including construction recommendations, is included as Attachment 2. The applicant is required to follow the recommendations included in the project geotechnical report, which shall be verified by an inspection made by a qualified geotechnical engineer. **See Conditions of Approval in Section X of this report.**

- 4. The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes where graded slopes would result in increased disturbance as compared to use of retaining wall;**

The proposed pool is incorporated into the existing topography of the lawn area above the wall.

- 5. Development shall be designed to minimize impervious surfaces within the critical area and critical area buffer;**

The new pool is considered impervious surface and will require appropriate drainage. The proposed pool replaces an existing flagstone patio and lawn area and does not cause for removal of native vegetation or disturbance of native soils.

- 6. Where change in grade outside the building footprint is necessary, the site retention system should be stepped and regrading should be designed to minimize topographic modification. On slopes in excess of 40 percent, grading for yard area may be disallowed where inconsistent with this criteria;**

The proposed pool is designed to minimize topographic modification and is not located in a steep slope critical area.

- 7. Building foundation walls shall be utilized as retaining walls rather than rockeries or retaining structures built separately and away from the**

building wherever feasible. Freestanding retaining devices are only permitted when they cannot be designed as structural elements of the building foundation;

No foundations are proposed.

- 8. On slopes in excess of 40 percent, use of pole-type construction which conforms to the existing topography is required where feasible. If pole-type construction is not technically feasible, the structure must be tiered to conform to the existing topography and to minimize topographic modification;**

No enclosed structure is proposed.

- 9. On slopes in excess of 40 percent, piled deck support structures are required where technically feasible for parking or garages over fill-based construction types; and**

No parking area or garage is proposed.

- 10. Areas of new permanent disturbance and all areas of temporary disturbance shall be mitigated and/or restored pursuant to a mitigation and restoration plan meeting the requirements of LUC 20.25H.210.**

This is a proposal to locate a new pool in an area currently landscaped with a maintained lawn. No new disturbance is proposed.

IV. Public Notice and Comment

Application Date:	April 26, 2012
Public Notice (500 feet):	May 3, 2012
Minimum Comment Period:	May 17, 2012

The Notice of Application for this project was published the City of Bellevue Weekly Permit Bulletin on May 3, 2012. It was mailed to property owners within 500 feet of the project site. One comment was received related to the proposed pool. The comment was submitted by an adjacent neighbor regarding a concern over the impact to view. A response was issued clarifying that the City of Bellevue does not have a view protection ordinance. Additional detail related to the pool design was also provided. No further comment was received.

V. Summary of Technical Reviews

A. Clearing and Grading

The Clearing and Grading Division of the Development Services Department has reviewed the proposed site development for compliance with Clearing and Grading codes and standards. The Clearing and Grading staff found no issues with the proposed development and has approved the application.

VI. Changes to Proposal Due to Staff Review

No changes were requested.

VII. Decision Criteria

A. 20.25H.255.B Critical Areas Report Decision Criteria

The Director may approve, or approve with modifications, a proposal to reduce the regulated critical area buffer on a site where the applicant demonstrates:

- 1. The proposal includes plans for restoration of degraded critical area or critical area buffer functions which demonstrate a net gain in overall critical area or critical area buffer functions;**

This is a proposal to locate a new pool in an area currently landscaped with a maintained lawn. No new disturbance is proposed. The applicant has provided supporting documentation in the form of a geotechnical report that demonstrates that with appropriate design the proposed pool will not reduce slope stability. No additional landscaping is proposed and the proposed pool replaces an existing flagstone patio and lawn area and does not cause for removal of native vegetation or disturbance of native soils. No impact outside of the area of existing lawn is proposed.

- 2. The proposal includes plans for restoration of degraded critical area or critical area buffer functions which demonstrate a net gain in the most important critical area or critical area buffer functions to the ecosystem in which they exist;**

The most important critical area function for the slopes on this site which are slope stability and erosion control are maintained as identified through construction recommendations made in the project geotechnical report. .

- 3. The proposal includes a net gain in stormwater quality function by the critical area buffer or by elements of the development proposal outside of the reduced regulated critical area buffer;**

This is a proposal to locate a new pool in an area currently landscaped with a maintained lawn. No new disturbance is proposed.

- 4. Adequate resources to ensure completion of any required restoration, mitigation and monitoring efforts;**

This is a proposal to locate a new pool in an area currently landscaped with a maintained lawn. No new disturbance is proposed. Outside of pool installation, no resources are required.

- 5. The modifications and performance standards included in the proposal are not detrimental to the functions and values of critical area and critical area buffers off-site; and**

The modifications and performance measures in this proposal are not detrimental to

the functions and values of the steep slope.

6. The resulting development is compatible with other uses and development in the same land use district.

The proposed modifications to the yard area to install a pool are allowed in this zone and are compatible with adjacent land uses. Noise generated by construction of the pool is limited to the hours of 7 am to 6 pm Monday through Friday and 9 am to 6 pm on Saturdays, except for Federal holidays and as further defined by the Bellevue City Code. Noise emanating from construction is prohibited on Sundays or legal holidays unless expanded hours of operation are specifically authorized in advance. **See Conditions of Approval in Section X of this report.**

B. 20.30P.140 Critical Area Land Use Permit Decision Criteria – Decision Criteria

The Director may approve, or approve with modifications an application for a Critical Area Land Use Permit if:

1. The proposal obtains all other permits required by the Land Use Code.

The applicant must obtain required development permits. A construction permit is required. **See Conditions of Approval in Section X of this report.**

2. The proposal utilizes to the maximum extent possible the best available construction, design and development techniques which result in the least impact on the critical area and critical area buffer.

The pool utilizes the best available construction, design, and development techniques. The project geotechnical engineer (Creative Engineering Options) reviewed the proposal and provided recommendations. The project Geotechnical Report, including construction recommendations, is included as Attachment 2. The applicant is required to follow the recommendations included in the project geotechnical report, which shall be verified by an inspection made by a qualified geotechnical engineer. **See Conditions of Approval in Section X of this report.**

3. The proposal incorporates the performance standards of Part 20.25H to the maximum extent applicable.

As discussed in Section III of this report, the applicable performance standards of LUC Section 20.25H are being met.

4. The proposal will be served by adequate public facilities including street, fire protection, and utilities.

The proposed activity will not impact public facilities.

5. The proposal includes a mitigation or restoration plan consistent with the requirements of LUC Section 20.25H.210.

This is a proposal to locate a new pool in an area currently landscaped with a maintained lawn. No new disturbance is proposed and no mitigation measures outside of those required by the project geotechnical report are required. The applicant is required to follow the recommendations included in the project

geotechnical report, which shall be verified by an inspection made by a qualified geotechnical engineer. **See Conditions of Approval in Section X of this report.**

6. The proposal complies with other applicable requirements of this code.

As discussed in this report, the proposal complies with all other applicable requirements of the Land Use Code.

VIII. Conclusion and Decision

After conducting the various administrative reviews associated with this proposal, including Land Use Code consistency, City Code and Standard compliance reviews, the Director of the Development Services Department does hereby **approve with conditions** the modification of the 50-foot top-of-slope buffer and 75 foot toe of slope buffer to construct a pool within a steep slope critical area top of slope buffer and toe of slope structure setback. **Approval of this Critical Areas Land Use Permit does not constitute a permit for construction. A building permit, clear and grade permit, and/or utility permit is required and all plans are subject to review for compliance with applicable City of Bellevue codes and standards.**

Note- Expiration of Approval: In accordance with LUC 20.30P.150 a Critical Areas Land Use Permit automatically expires and is void if the applicant fails to file for a building permit or other necessary development permits within one year of the effective date of the approval.

IX. Conditions of Approval

The applicant shall comply with all applicable Bellevue City Codes and Ordinances including but not limited to:

<u>Applicable Ordinances</u>	<u>Contact Person</u>
Clearing and Grading Code- BCC 23.76	Savina Uzunow, 425-452-7860
Land Use Code- BCC Title 20	David Pyle, 425-452-2973
Noise Control- BCC 9.18	David Pyle, 425-452-2973

The following conditions are imposed under the Bellevue City Code or SEPA authority referenced:

- 1. Building Permit:** Approval of this Critical Areas Land Use Permit does not constitute an approval of a development permit. A building permit for the pool is required.

Authority: Land Use Code 20.30P.140
Reviewer: David Pyle, Development Services Department

- 2. Approved Buffer and Structure Setback Modification:** The buffer and structure setback modification approved is for the construction of the pool only as depicted in the project site plan and does not authorize additional site changes outside of this project

scope. This modification does not allow future structures or improvements to be located in the buffer or setback without approval of a Critical Areas Land Use Permit and/or geotechnical evaluation.

Authority: Land Use Code 20.30P.140
Reviewer: David Pyle, Development Services Department

- 3. Geotechnical Recommendations:** The project shall be constructed per the recommended procedures and practices in the geotechnical report dated April 12, 2012.

Authority: Land Use Code 20.30P.140
Reviewer: David Pyle, Development Services Department

- 4. Geotechnical Inspection:** Geotechnical inspection made by the Engineer of Record to verify implementation of the construction recommendations included in the project geotechnical report dated April 12, 2012 shall be performed during construction in accordance with the following schedule:

- 1) Installation of construction BMP's to protect stockpiled soils from saturation and erosion and to maintain soil condition as recommended in the project geotechnical report dated April 12, 2012. After inspection of BMP's a report shall be provided to the Clearing and Grading Inspector.
- 2) At the point of complete excavation prior to pool installation and prior to backfill. This inspection shall verify the condition of soils to be used as backfill and shall verify the bearing capacity of the soils identified in the project geotechnical report dated April 12, 2012. After inspection of excavation and soils a report shall be provided to the Clearing and Grading Inspector verifying the condition of soils to be used as backfill and verifying the bearing capacity of the underlying surface.
- 3) At the point of complete pool installation and prior to site clean-up/landscaping. This inspection shall verify that pool installation was completed in accordance with the recommendations in the project geotechnical report dated April 12, 2012. After inspection of final pool installation a report shall be provided to the Clearing and Grading Inspector verifying proper implementation of the construction recommendations listed in the project geotechnical report dated April 12, 2012.

Authority: Land Use Code 20.30P.140
Reviewer: David Pyle, Development Services Department

- 5. Land Use Inspection:** Following final pool installation the applicant shall contact Land Use staff for final inspection.

Authority: Land Use Code 20.30P.140
Reviewer: David Pyle, Development Services Department

6. **Noise Control:** Noise related to construction is exempt from the provisions of BCC 9.18 between the hours of 7 am to 6 pm Monday through Friday and 9 am to 6 pm on Saturdays, except for Federal holidays and as further defined by the Bellevue City Code. Noise emanating from construction is prohibited on Sundays or legal holidays unless expanded hours of operation are specifically authorized in advance. Requests for construction hour extension must be done in advance with submittal of a construction noise expanded exempt hours permit.

Authority: Bellevue City Code 9.18
Reviewer: David Pyle, Development Services Department

7. **Hold Harmless Agreement:** Prior to building permit or clearing and grading permit approval, the applicant or property owner shall submit a hold harmless agreement releasing the City of Bellevue from any and all liability associated with the installation of slope stabilization measures. The agreement must meet city requirements and must be reviewed by the City Attorney's Office for formal approval.

Authority: Land Use Code 20.30P.170
Reviewer: David Pyle, Development Services Department