



## PLANNING DEPARTMENT TYPE III DIRECTOR'S DECISION

FILE NUMBER: 2021-CAMJ-0001

APPLICANT: CG Engineering  
Jared Underbrink  
250 4th AVE S  
Edmonds, WA 98020

PROPERTY OWNER Kay and Matthew Spitzenberg  
19734 35 AVE NE  
Lake Forest Park, WA 98155

PROJECT DESCRIPTION: Type III major critical area permit alter steep slopes, landslide hazard areas, and erosion hazard areas. Install ten retaining walls of varying heights on regulated sloped area.

DIRECTOR DECISION: ISSUE subject to conditions

ENVIRONMENTAL DETERMINATION: Determination of Non-Significance  
Issued: October 6, 2021

DATE OF DECISION: October 8, 2021

SITE ADDRESS 19734 35 AVE NE

### FINDINGS OF FACT

On April 22, 2021, the city issued a critical area notice of violation for excavation and construction of retaining walls within a critical area without a permit. The city instructed the owner to apply for an after the fact critical area permit to permit the work.

The site contains an existing single-family residence and attached garage, which are located within the required 50-foot-wide slope buffer and building setback.

Per LFPMC 16.16.080 (A) (1), a major critical area permit shall be required for all activities, including, but not limited to, any activity that requires earth-moving equipment, except as provided in subsection LFPMC 16.16.080 (A) (2).

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The property owner and applicant applied for a critical area permit to authorize the work conducted without a permit on May 27, 2021.

The owner's geo-technical engineer has verified that steep slopes, landslide hazard areas, and erosion hazard areas are present at the site and that the locations of these regulated areas occupy the same space as the excavation and retaining walls.

Permitted alterations to landslide hazard areas and buffers are allowed per LFPMC 16.16.290 (D).

The unpermitted activity included 120 yards of cut and 60 yards of fill using the originally cut material for a total of 180 cubic yards of excavation and fill which does not qualify for a minor construction exemption from the State Environmental Policy Act (SEPA) pursuant to WAC 197-11-800 (1) (b) (v). An anticipated determination of non-significance (DNS) noticed using the optional DNS process on September 20, 2021. There were not any public comments concerning the SEPA determination during the application comment period. The City issued a SEPA determination of a DNS on October 6, 2021.

This decision is being issued under the authority of LFPMC 16.26.030 (C) where critical area permit decisions are classified as a type III decision. This decision will be noticed pursuant to LFPMC 16.26.180 (B).

The applicable code criteria and the facts and conclusions relating to the major critical area permit are as follows:

*LFPMC 16.16.290 (D): Permitted alterations to landslide hazard areas and buffers are allowed only as follows:*

- 1. Landslide hazard areas located on a slope of 40 percent or steeper may only be altered if the alteration meets the standards and limitations established for steep slope hazard areas;*
- 2. Alteration of landslide hazard areas located on slopes of less than 40 percent are permitted only under the following conditions or circumstances:*
  - a. The development proposal will not decrease slope stability on the site or on adjoining properties;*
  - b. A licensed geologist or geotechnical engineer certifies that the landslide hazard area can be safely modified or the development proposal designed so the landslide hazard risk to the property or adjacent property is eliminated or mitigated;*
  - c. The alteration will not adversely impact other critical areas, such as streams; and*
  - d. The alteration will not result in an increase in peak surface water flows or sedimentation to adjacent properties;*

Findings: The applicant has provided the city with a geotechnical report dated August 24, 2021 (see Exhibit 1) which analyzes and confirms the presence of regulated landslide hazard areas in the locations where the illegal excavation and illegal construction of the retaining walls has occurred. Prior to the excavation and retaining walls being installed, the owner's engineer had verified the presence of landslide hazard areas on slopes greater than 40% as well as the presence of landslide hazard areas on slopes less than 40%. An elevation survey of the parcel with data prior to the

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illegal excavation has also been provided to demonstrate the locations of elevations which existed prior to the unpermitted work (see Exhibit 1).

LFPMC 16.16.290 (D) (1) states that landslide hazard areas located on a slope of 40 percent or steeper may only be altered if the alteration meets the standards and limitations established for steep slope hazard areas. The geo-technical report and topographic survey indicate that the vertical elevation change is less than 20 feet meeting the steep slope hazard criteria in LFPMC 16.16.310 (C)1. The report also indicates that, if the recommendations in the report are implemented, the excavation and construction of the retaining walls at the site and in landslide hazard areas that exceed 40% will comply with the standards and limitations established for steep slope hazard areas.

LFPMC 16.16.290 (D) (2) states that alterations to landslide hazard areas located on a slope of less than 40% can occur if the development proposal meets the criteria listed in that section (see above in *italics*).

The geo-technical report states that if the recommendations in the report are implemented excavation and construction of the retaining walls at the site and in those landslide hazard areas less than 40% will meet the requirements in LFPMC 16.16.290 (D) (2) (a) through (d). Specifically the geo-technical report states that the development will not decrease slope stability on the site or on adjoining properties; a licensed geologist or geotechnical engineer has certified that the landslide hazard area can be safely modified and the development proposal has been designed so the landslide hazard risk to the property or adjacent property has been eliminated or mitigated; the alteration will not adversely impact other critical areas, such as streams; and that the alteration will not result in an increase in peak surface water flows or sedimentation to adjacent properties.

The existing home, illegal excavation and illegal retaining walls are located within the regulated landslide hazard buffer area as defined in LFPMC 16.16.290 (A). LFPMC 16.16.290 (D) (3) indicates that where alterations are approved, buffers may not be required.

IBC 105.2 4 states that retaining walls supporting a slope surcharge require a building permit. A condition of approval to obtain the necessary construction level permits for grading, excavation and retaining wall construction will be included as a part of this decision.

Conclusions: If the recommendations in the geo-technical report are followed and the conditions of this decision are satisfied, the excavation and construction of retaining walls at the site meet the criteria for landslide hazard alterations.

LFPMC 16.16.310 (C): *The following may be permitted:*

- 1. Alteration of slopes that are 40 percent or steeper with a vertical elevation change of up to 20 feet; provided, that a soils report prepared by a qualified professional satisfies the planning director that no adverse impact will result from the exception;*

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*2. Any slope that was created through legal grading activity may be regraded as part of an approved development plan; provided, that any slope that remains 40 percent or steeper following site development shall be subject to all requirements for steep slopes.*

*D. When steep slope alterations are allowed by this section, the proposal shall:*

- 1. Not decrease slope stability on the site or on adjoining properties; and*
- 2. Be subject to certification by a qualified professional that the landslide hazard area can be modified safely or that the development proposal eliminates or mitigates the landslide hazard risk to the property or adjacent property; and*
- 3. Not adversely impact other critical areas, such as streams; and*
- 4. Not result in an increase in peak surface water flows or sedimentation to adjacent properties. (Ord. 1150 § 1, 2017; Ord. 930 § 2, 2005)*

Findings: The applicant has provided the city with a geotechnical report dated August 24, 2021 (see Exhibit 1) which analyzes and confirms the presence of regulated steep slope hazard areas in the locations where the excavation and construction of the retaining walls has occurred. LFPMC 16.16.310 (C) (1) states that alteration of slopes that are 40 percent or steeper with a vertical elevation change of up to 20 feet; provided, that a soils report prepared by a qualified professional satisfies the planning director that no adverse impact will result from the exception. The geotechnical report indicates that, prior to the unpermitted work, the regulated slopes were less than 20-feet in vertical elevation change and therefore alteration of those steep slope hazard areas can be permitted, if the recommendations in the report are implemented, pursuant to LFPMC 16.16.310 (C) (1).

LFPMC 16.16.310 (D) states that when steep slope alterations are allowed, the proposal shall comply with specific alteration criteria listed in LFPMC 16.16.310 (D) (1) through (4) (see above code in *italics sections 1 through 4*).

An elevation survey of the parcel with data prior to excavation occurring has also been provided to demonstrate which elevations existed prior to the violation (see Exhibit 1). According to the geotechnical report provided, alterations, excavation, and installation of the retaining walls in the steep slope hazard area complies with the criteria listed in LFPMC 16.16.310 (D) (1) through (4). Specifically, the development proposal will not decrease slope stability on the site or on adjoining properties; and the landslide hazard area can be modified safely; and the development eliminates and mitigates the landslide hazard risk to the property and adjacent property; and the development does not adversely impact other critical areas, such as streams; and that the development does not result in an increase in peak surface water flows or sedimentation to adjacent properties.

IBC 105.2 4 states that retaining walls supporting a slope surcharge require a building permit. A condition of approval to obtain the necessary construction level permits for grading, excavation and retaining wall construction will be included as a part of this decision.

Conclusions: If the recommendations in the geo-technical report are followed and the conditions of this decision are satisfied, the excavation and construction of retaining walls at the site meet the criteria for steep slope alterations.

### **PUBLIC NOTICING AND COMMENT**

The City posted a notice of application pursuant to LFPMC 16.26.040 (D) on September 20, 2021 and received two public comments.

One citizen commented on the potential geo-technical instability of the site due to the illegal excavation and tree removal. The City has determined that if the conditions in this decision and the recommendations in the geo-technical report are followed, there will not be adverse impacts to adjacent properties or critical areas.

Another citizen expressed their support for the project.

This decision was noticed on October 8, 2021 pursuant to LFPMC 16.26.180.

### **DISCUSSION**

The Applicant's submittals, including written material and plans referenced in the above findings, demonstrate that the proposal complies with the criteria for major critical area permits of this type, and specifically the criteria for alterations to landslide hazard areas and steep slope hazard areas. The information provided demonstrates to the Planning Director's satisfaction that the alterations meet the criteria in LFPMC 16.16.290 (D) and LFPMC 16.16.310 (C) and (D).

### **ATTACHMENTS**

The following documents are attached to or referenced as exhibits, and made a part of this decision:

Attached:

Exhibit 1: Geo-technical report dated August 24, 2021 authored by Kristina M. Weller, P.E. of the Riley Group and date stamped August 24, 2021 by the City of Lake Forest Park.

- Elevation survey of pre-violation site conditions date stamped August 24, 2021 by the City of Lake Forest Park

Exhibit 2: Civil site plans:

- Sheet C2.1 date stamped May 27, 2021 by the City of Lake Forest Park.
- Sheet C3.1 date stamped May 27, 2021 by the City of Lake Forest Park

## **CONDITIONS OF APPROVAL SPTIZENBERG PROPERTY 2021-CAMJ-0001**

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This Major Critical Area Permit is subject to compliance with all applicable provisions, requirements, and standards of the Lake Forest Park Municipal Code, standards adopted pursuant thereto, and the following conditions:

1. Apply for a grading permit to bring the excavation performed without a permit into compliance. Pay the violation fee equivalent to triple the grading permit fee.
2. Apply for a building permit(s) to authorize the retaining wall construction. Pay any fines imposed by the building code for work done without a permit.
3. The permittee shall obtain all required tree permits for tree removal and replanting.
4. All work associated with this project shall follow all of the recommendations in the geo-technical report date stamped August 24, 2021 by the City of Lake Forest Park.

**DECISION**

The Major Critical Area Work Permit 2021-CAMJ-0001 allowing alterations to landslide hazard areas and steep slope hazard areas at the Spitzenberg property is approved with conditions. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

Decision issued October 8, 2021



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Nick Holland  
Senior Planner for Steve Bennett; Planning Director

**APPEALS**

This decision may be appealed by the applicant or any party of record under the provisions of LFPMC Section 16.26.190. Appeals must be submitted in writing.