



City of Seattle

Gregory J. Nickels, Mayor

**Department of Planning and Development**

D. M. Sugimura, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR  
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

**Application Number:** 3004460  
**Applicant Name:** Mike O'Leary  
**Address of Proposal:** 1751 Sturgus Avenue S

**SUMMARY OF PROPOSED ACTION**

Land Use Application for the future construction of a two-unit townhouse structure. Parking for two vehicles will be provided at grade.

The following approvals are required:

**SEPA - Environmental Determination**-Chapter 25.05, Seattle Municipal Code.

**ECA Exception** - Chapter 25.09, Seattle Municipal Code.

**Administrative Design Review** - Section 23.41, Seattle Municipal Code, with Development Standard Departures.

**SEPA DETERMINATION:** [ ] Exempt [ ] DNS [ ] MDNS [ ] EIS  
[X] DNS with conditions  
[ ] DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

**BACKGROUND DATA**

Site Description

The development site is zoned Lowrise 1. It is a rectangular-shaped lot and lies midblock on the west side of the un-opened and un-developed right-of-way of Sturgus Avenue S., halfway between S. Massachusetts Street and S. Grand Street. The westernmost portion of the lot slopes uphill and provides the toe for a hill that is the rear of the abutting lot that faces onto 16<sup>th</sup> Avenue S. The proposal site is bounded on the north and south by 3-and-4 -unit multifamily apartments, approximately ten of which are accessed from a 31-foot north-south-running easement that occupies a substantial portion (and most of the only flat section) of the subject site. The eastern half of the subject site is characterized by steep-slope areas in excess of 40 percent slope, also designated as landslide prone.

Proposal:

The applicant proposes to construct a two-unit townhouse structure, with parking for two vehicles at grade on the lot. The lot is rectangular in shape and measures 40 feet in width by 100 feet in length. Access to the lot is by means of an existing easement across the lot and across properties to the north and south. The easement functions as an alley and connects to S. Grand Street. Sturgus Avenue S which abuts the east property line of this lot is not developed and unlikely to be developed.

The applicant proposes the two-unit townhouse structure as an infill project in a block that otherwise is fully developed with apartment building containing three or four units each. All or nearly all of the structures along the same block front are nonconforming with respect to the Lowrise 1 zoning which requires ground-related units. The limited building area on the lot, due to the critical area steep slope and the ingress and egress easement, would effectively preclude development meeting the requirements for open space at the ground level. The proposal is to provide the open space for each unit primarily through a combination of above-grade decks. In applying for Administrative Design Review, the applicant has requested several departures (see below), including a departure from the quantity and the standards for open space. The proposed townhouse dwelling units would each be accessed directly from a small, individual entry court and stair to a main entrance, the landing of which would interconnect to a deck on the west side that would be directly accessible from living space within each unit as well as from an entry hall.. In addition to the decks on the west side of each unit, each townhouse unit would have a deck overlooking the unopened Sturgus Avenue S. right-of-way to the east.

Public Comments:

Three phone calls and one letter were received during the public comment period. Two of the calls were primarily concerned with determining the exact location of the proposal. One call wanted further details regarding the proposal and its parking. The one letter expressed concern about access to other properties along the shared easement and the possible blockage of access by parked vehicles.

**ANALYSIS-DESIGN REVIEW**

As originally presented by the applicant,, the project proposal was to construct a three-unit apartment, with parking for three vehicles at grade on the lot. The Early Design Guidance was issued with that proposal in view, but the siting and design guidelines remain, *pari passu*, applicable to the revised proposal for a 2-unit townhouse structure on site.

Priorities:

After visiting the site and considering the analysis of the site in its context provided by the applicant, and after reviewing the public comment received regarding the proposal, the Director provided the following siting and design guidance and identified by letter and number those siting and design guidelines found in the City of Seattle's *Design Review: Guidelines for Multifamily and Commercial Building* to be of highest priority for this project.

**A-3 Entrances Visible from the Street**

**Entries should be clearly identifiable and visible from the street.**

The emphasis here is on *pedestrian* entrances. It would be an ironic and lamentable outcome if the granting of departures from open space standards would result in the prominent feature at the one clearly visible façade being a vehicular parking lot. Care must be given to “mute” the parking areas by emphasizing the individual entrances to each of the [three] units, including the entry courts to each, enhancing these by choices of careful detailing, lighting and landscaping.

### **A-7 Residential Open Space**

**Residential projects should be sited to maximize opportunities for creating usable, attractive, well-integrated open space.**

In providing for the open space as entry courts, the overall design should take advantage of any opportunity for gaining sunlight from the south. Special care should be given to the design of landscape features and choice of living materials for those ground-level open spaces that are disadvantaged in any way by lack of sunlight. A landscaping plan should also consider ways of enhancing the privacy of each of these dedicated open spaces at ground level through both plantings and other features.

### **A-8 Parking and Vehicle Access**

Siting should minimize the impact of the automobile parking and driveways on the pedestrian environment, adjacent properties and pedestrian safety.

The pedestrian entrances should not be placed in a subordinate role to vehicular entrances, and the parking should respect the access easement as both a vehicular and pedestrian domain. Insofar as possible, the parking allocated to an individual residential unit should be linked, architecturally to that unit.

### **C-3 Human Scale**

**The design of new buildings should incorporate architectural features, elements and details to achieve a good human scale.**

In particular, the west-facing façade should utilize details, elements, and materials that allow people to feel comfortable in passing by or approaching them. In general, the use of roof overhangs and the application of substantial trim around windows and doors and some horizontal banding will add to a human scale, and relate the structure to the smaller scale required of the zone. In addition, more windows at each level on the west-facing façade would relieve a large blank area of exterior wall while reducing the emphasis given the parking lot along this façade.

### **E-2 Landscaping to Enhance the Building and/or Site**

**Landscaping, including plant material, special pavements, trellises, screen wall, planters, site furniture and similar features should be appropriately incorporated into the design to enhance the project.**

It should be assumed that the individual tenants would make the decks their own in choosing their own landscaping elements. A carefully thought out landscaping plan should be developed, however, and incorporated into the project, one that: 1) preserves any significant plantings on site and protects them during construction; 2) provides character, interest, comfort and an element of privacy to the smaller open spaces dedicated to the entry of each unit; 3) combines with a lighting plan to enhance these entry areas; and 4) screens and softens the impacts of the parking area.

#### Development Standard Departures:

Certain departures from Land Use Code requirements may be permitted as part of the design review process. Departures may be allowed if an applicant demonstrates that a requested departure would result in a development which better meets the intent of the adopted design guidelines (see SMC 23.41.012).

At the time the Early Design Guidance for the project was presented, it was indicated to the applicant that the Director would entertain a judicious request for a combination of departures, which might be shown to effectively better integrate the building type with its site. The applicant was asked to demonstrate that the overall development, including departures from Land Use Code standards, would result in a development that better meets the intent of the design guidelines. After undergoing design development, including a downsizing of the project from three units to two units, the proposal was deemed to need the following six departures from development standards:

- (SMC 23.45.014 A 1) The Land Use Code requires, in this instance, a minimum 15-foot front setback; an 11-foot setback is proposed from the property line abutting the unopened Sturgus Avenue S. right-of-way.
- (SMC 23.45.014 C) The Code requirement is for a six-foot side set back; a five-foot side setback is proposed along the north property line only.
- (SMC 23.45.014 F2a) Unenclosed balconies are allowed to extend a maximum of four feet from the structure into the required front setback; the balconies of each unit extend 6 feet into the front setback.
- (SMC 23.45.016 A2a1) An average of 300 square feet of open space is required for each unit; 274 square feet of open space per unit is proposed.
- (SMC 23.45.016 B1c) Open space is required in one contiguous parcel per unit; open space is proposed in 3 non-contiguous spaces, 2 being decks, per unit.
- (SMC 23.45.B2a) No horizontal dimension for required ground-level open space can be less than ten (10) feet. The applicant has requested a departure to allow varying horizontal dimensions between 3 and 10 feet for the open space for each unit.

#### **DESIGN REVIEW DEPARTURE ANALYSIS**

In discussing the functional and location criteria for rezones, the Land Use Code states that the function of the Lowrise 1 zone is to provide additional housing opportunities in areas where it is desirable to provide “low density, *primarily* [italics added] ground-related housing opportunities” (SMC 23.34.016).

The primary, defining attribute of “ground-related housing” is the presence of an average of 300 square feet and a minimum of 200 square feet of “private, usable open space, at ground level and directly accessible to each unit .” The Code (SMC 23.45.016 A 2 a(2)), however, does permit the open space to be provided on decks “of the same size as the required open space” if “built over the sloping ground-level open space” on slopes of twenty percent or more. Thus the Code recognizes, in some measure at least, the case where topography can be found to trump typology.

Typology could be said to exist in the ideal order, unfettered by the constraints of topography. By definition, the sub-type “townhouse” is a kind of “ground-related housing.” The test here, suggested in the latitude provided in SMC 23.45.016 A 2 a (2), should not be the ideal but rather the feasible. “Feasible” is akin to “suitable,” “appropriate,” or, in this instance, “site specific,” “what fits.” The proposal site slopes downward approximately 36 feet from the property line at the west to the property line on the east where it abuts the Sturgus Avenue South right of way. Due to the slope and the vehicular ingress and egress easement which occupies the relatively level portion of the site, it is infeasible to provide room for even a small single-family structure on site that does not intrude into the steep slope and steep-slope buffer areas.

The proposal is for two modest-sized, attached, side-by-side residential units. The project allows for surface parking for a single vehicle in front of each unit while preserving the functionality of the existing easement for vehicular ingress and egress. By locating the structure one foot closer to the north property line than to the south and by lowering the ground floor of the north unit below that of the adjoining unit, the design has fine-tuned agreeable adjustments in the appearance of height, bulk and scale and achieves a differentiation between units that is pleasing and effective. Adequate functional private open space for each unit has been creatively provided in the form of decks at the front and rear of each unit. In short, the design provides a proper fit to the site and to the neighborhood.

### **DIRECTOR’S DECISION**

**SMC 23.41.016** states that the Director’s decision shall be based on the extent to which the proposed project meets applicable design guidelines and in consideration of public comments on the proposed project. In light of the applicant’s positive response to the Early Design Guidelines for this project, in consideration of the public comments received on the proposed project, and following the analysis provided above, the Director **APPROVES** the overall project design and **APPROVES** the requested **DEPARTURES**.

See **CONDITIONS-DESIGN REVIEW** below.

### **ANALYSIS-ENVIRONMENTALLY CRITICAL AREA EXCEPTION**

Under SMC 25.09.300, an applicant for a City permit to develop real property that is located in an environmentally critical area or buffer may apply to the Director for an exception to modify environmentally critical area development standards. The applicant has provided materials and information adequate for the Director to determine that no other applicable administrative remedies in Chapter 25.09 or Title 23 will provide sufficient relief.

The applicant has requested that on-site development be allowed to exceed more than 30 percent within the delineated steep slope area. In addition, development is proposed for a substantial portion of the steep-slope buffer area at the top of the slope.

The applicant has provided the Director with materials and documentation adequate for the Director to determine that no other applicable administrative remedies in Chapter 25.09 or Title 23 will provide sufficient relief.

In addition, the Environmentally Critical Area Exception subchapter requires:

- Technical studies and other data that describe the possible injurious effects of the proposed development on occupiers of the land, on other properties, on public resources, and on the environment;
- Technical studies and other data by qualified persons showing that the proposed development will protect the occupiers of the land, other properties, public resources, and the environment to the same extent as the development standards that are proposed to be modified and explaining how this will be done;
- Plans showing what can be developed in compliance with all environmentally critical area development standards and standards in Title 23, including the yard and setback requirements for front and rear yards;
- An explanation with supporting evidence of how and why compliance with all environmentally critical area development standards as shown on the plans ...would not permit any reasonable use of the property, including, but not limited to, submission of the following evidence:
  1. the date the applicant purchased the property or obtained the right to develop or use it;
  2. the price the applicant paid for the rights described...,and
  3. restrictions or conditions on use or development in existence when the applicant acquired the rights described....

In addition to architectural plans prepared on behalf of the applicant showing the proposed development as well as strict Code-compliant allowed development, the following studies were provided the Director:

- “Subsurface Exploration, Geological Hazard and Geotechnical Engineering Report, O’Leary Triplex, Seattle, Washington,” a report by GeoSource Engineering, Inc. for June 30, 2000.
- “IBC Addendum Soils Report,” a letter by GEO Group Northwerst, Inc for Mr. Mike O’Leary, dated September 22, 2006.
- “Geotechnical Response to Seattle DPD Correction Letter Dated 8/21/06,” a letter by GEO Group Northwest, Inc. for Mr. Mike O’Leary, dated September 26, 2006.

Contained within this documentation is the applicant’s substantive basis for the Director’s consideration of the reasonableness of modifying standards and approving development undertaken pursuant to such modified standards. Upon internal review by DPD, the referenced reports were deemed to be complete with respect to stability issues in support of the steep slope exception application.

As discussed earlier, due to the slope and the vehicular ingress and egress easement which occupies the relatively level portion of the site, it is infeasible to provide room for even a small single-family structure on site that does not intrude into the steep slope and steep-slope buffer areas. A small single-family structure, if proposed, would require of the applicant an application to the Director for an exception to modify environmentally critical area development standards.

The context of this interior block area, this enclave served by its own easement road, is a full build-out, except for this lot, of 3 and 4-unit apartment structures. A single-family dwelling could be said to be architecturally bullied and appear out of place in this setting. As designed, the proposed structure, while still modest in size, will provide a more substantial, a less vulnerable built form. The proposal is for two modest-sized, attached, side-by-side residential units. The project allows for surface parking for a single vehicle in front of each unit while preserving the functionality of the existing easement for vehicular ingress and egress. Adequate private open space for each unit is provided in the form of decks. In short, the design provides a proper fit to the site and to the neighborhood.

The test of reasonableness in this instance is the diminished real alternatives for development posed by the site and the specific circumstances attendant upon it. Providing the opportunity for a two unit attached townhouse structure within some modification of environmentally critical areas development standards, as well as allowing departures from Title 23 development standards granted in accord with the Administrative Design Review process of Chapter 23.41, appears as a reasonable accommodation to circumstance and requirements. This is true if the ECA exception request submitted by the applicant is altered in one respect: although an irrigation system may be needed, as proposed, to establish the proper vegetation on the steep sloped areas of the site, the irrigation system should be disconnected and/or removed after the vegetation is established to prevent prolonged surface water flows within the steep slope areas which may promote superficial landslides down slope. This decision will be conditioned to make the provision for decommissioning the irrigation system a requirement for the issuance of any construction permit for the site. The condition will be prominently noted on construction plan sets and as part of any vegetation removal and replanting plan required by SMC 23.09.320 and 23.09.180 D.

Since the environmentally critical area exception analysis acknowledges that no real residential development on site would be possible without a significant intrusion into more than 30 percent of the steep slope areas on site, it would be inconsistent not to allow development within the steep slope buffers at the top of the slope, otherwise required by SMC 25.09.080C. Based upon the geotechnical information previously cited, DPD internal geological review, and in accord with the criteria of SMC 23.09,180 C 1a, b, and c, the Director determines that a fifteen foot buffer is not required at the top of the slope, and development shall be allowed at the top of the slope as proposed in the approved MUP set of plans.

With the condition noted above and spelled out below, the development undertaken pursuant to the modified environmentally critical area standards for steep slopes (SMC 25.09.180) is adjudged not to cause significant injury to occupiers of the land, to other properties, to public resources, or the environment. Furthermore, in view of topographical and historical circumstances (the existing easement and roadway providing the only access to other lots) attendant to the site as outlined above, the relief granted by these modifications to environmentally critical areas development standards for steep slopes meets the test that compliance with environmentally critical areas development standards would not permit any reasonable use of the property.

## **DECISION - ENVIRONMENTALLY CRITICAL AREA EXCEPTION**

Based on the foregoing analysis and review, the proposal, as conditioned below, satisfies the requirements of SMC 25.09.300 which govern the modification of environmentally critical area development standards. The proposal, as conditioned, is not expected to cause significant injury to occupiers of the land, to other properties, and to public resources, or to the environment, and should be **CONDITIONALLY GRANTED**. The Environmentally Critical Area Exception application is approved with conditions as indicated at the end of this document.

## **ANALYSIS - SEPA**

The disclosure of the potential impacts from this project was made in the environmental checklist dated August 26, 2002 and other, supplemental information in the project file. This information along with the experience of the lead agency in similar situations, form the basis for this analysis and decision. Short and long-term adverse impacts are anticipated from the proposal.

The SEPA Overview Policy (SMC 25.05.665.D) states "where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation," subject to limitations. Several adopted City codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Stormwater, Grading and Drainage Control Ordinance (grading, site excavation and soil erosion); Building Code (construction standards); and Noise Ordinance (construction noise). Compliance with these codes and ordinances will be adequate to achieve sufficient mitigation of identified adverse impacts. Thus, mitigation pursuant to SEPA is not necessary for these impacts. Other short-term impacts not noted here as mitigated by codes, ordinances or conditions (e.g., increased traffic during construction, additional parking demand generated by construction personnel and equipment, increased use of energy and natural resources) are not sufficiently adverse to warrant further mitigation.

### **Short - term Impacts**

The following temporary or construction-related impacts are expected: decreased air quality due to increased dust and other suspended air particulates during construction; potential soil erosion during grading, excavation and general site work; increased runoff; tracking of mud onto adjacent streets by construction vehicles; increased demand on traffic and parking from construction equipment and personnel; conflict with normal pedestrian movement adjacent to the site; increased noise; and consumption of renewable and non-renewable resources. Due to the temporary nature and limited scope of these impacts, they are not considered significant (SMC Section 25.05.794).

One construction impact would be adverse enough to warrant mitigation: construction noise. The proximity of residential uses is such that the limitations of the Noise Ordinance would be inadequate to mitigate potential noise impacts. Pursuant to SEPA policies in SMC Section 25.05.675.B, the hours of excavation, foundation installation and framing activity shall be limited to between 7:00 A.M. and 6:00 P.M. on non-holiday weekdays to mitigate noise impacts. If any work is to be performed outside of these times, approval of the DPD planner in each instance and should be requested at least 3 days prior to each occurrence.

### Long - term Impacts

Long-term or use-related impacts are also anticipated from the proposal: increased bulk and scale on the site; minor increase in airborne emissions resulting from additional traffic; increases in ambient noise due to increased human activity; increased demand on public services and utilities; increased light and glare; loss of vegetation; and increased energy consumption. No unusual circumstances exist which would warrant additional mitigation of these impacts pursuant to SEPA policies.

### Drainage

Site development will inevitably increase the volumes and rates of storm water runoff. “Authority provided through the Grading and Drainage Control Ordinance and Environmentally Critical Areas Ordinance is intended to achieve mitigation of drainage impacts in most cases, although these ordinances may not anticipate or eliminate all impacts” (SMC 25.05.675 C).

One impact relating to increased surface water runoff from greater site coverage by increased impervious surfaces, has warranted further analysis and disclosure of impacts which has been covered within the ECA Exception analysis and is conditioned below. Mitigation other than that condition is unwarranted.

### Parking

Parking will be available to each unit in accord with requirements of the land use code. With these provisions adequate parking will be available for the new residences and no additional mitigation is warranted pursuant to SEPA policies.

In general, except as discussed in the ECA critical area exception analysis above, the expected long-term impacts are typical of a small multifamily residential development and are expected to be mitigated by the City's adopted codes and/or ordinances (together with fulfillment of other City Department requirements). Specifically these are: the Stormwater, Grading and Drainage Control Ordinance (storm water runoff from additional site coverage by impervious surface); the Land Use Code (height, setbacks, parking); and the Seattle Energy Code (long-term energy consumption). Other impacts not noted here as mitigated by codes or conditions (earth/soils, increased ambient noise, increased traffic, increased demand on public services and utilities, increased airborne emissions, increased light and glare, loss of vegetation) are not sufficiently adverse to warrant further mitigation by condition.

## **DECISION - SEPA**

While the likely impacts of the proposal are considered adverse, they are not considered significant.

This decision was made after review by the responsible official, on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(C).
- [ ] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

### **CONDITIONS - SEPA**

#### *During Construction*

The following conditions to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other weatherproofing material and shall remain in place for the duration of construction.

1. All construction activities are subject to the limitations of the Noise Ordinance. Construction activities (including but not limited to demolition, grading, deliveries, framing, roofing, and painting) shall be limited to non-holiday weekdays from 7am to 6pm. Interior work that involves mechanical equipment, including compressors and generators, may be allowed on Saturdays between 9am and 6pm once the shell of the structure is completely enclosed, provided windows and doors remain closed. Non-noisy activities, such as site security, monitoring, weather protection shall not be limited by this condition.

Construction activities outside the above-stated restrictions may be authorized by the Land Use Planner when necessitated by unforeseen construction, safety, or street-use related situations. Requests for extended construction hours or weekend days must be submitted to the Land Use Planner at least three (3) days in advance of the requested dates in order to allow DPD to evaluate the request.

### **CONDITIONS-ENVIRONMENTALLY CRITICAL AREAS EXCEPTION**

#### *Prior to Issuance of any Site or Construction Permit*

2. Any proposed irrigation system within or draining to the steep slope areas of the site should be disconnected and/or removed after the vegetation is established to prevent prolonged surface water flows within the steep slope areas since they may promote superficial landslides down slope. A timetable and specific provisions for decommissioning the irrigation system shall be prominently noted on construction plan sets and as part of any vegetation removal and replanting plan required by SMC 23.09.320 and 23.09.180 D.

