



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: 3007562
Applicant Name: Edi Linardic
Address of Proposal: 4746 Ohio Ave S

SUMMARY OF PROPOSED ACTION

Land Use Application to allow a change of use of 10,000 sq. ft. of existing warehouse space to administrative office and 10,000 sq. ft. of existing warehouse space to retail. Surface parking for 102 additional vehicles to be provided. Project also includes 2,400 cubic yards of grading. (The project initially proposed 25,000 sq. ft. of administrative office space; it was revised due to the Code maximum size limitation for this use.)

The following approvals are required:

Variance – To allow partial parking space maneuvering to be off site (in the right-of-way) (SMC 23.54.030.E.3), and to allow a curb cut wider than allowed (SMC 23.54.030.F.3).

SEPA - Environmental Determination – (Chapter 25.05, Seattle Municipal Code)

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

BACKGROUND DATA

Site and Area Description

The project site extends between the vacated portions of Diagonal Way South to the north 1,830 feet southward toward South Hudson Street ending 200 feet north of this street at an abutting parcel. The site extends the approximately 246 foot distance between Ohio and Colorado Avenues

South along its west and east property boundaries respectively. The existing single structure was built as a warehouse for railcar loading and unloading along the Ohio Avenue frontage and primarily truck loading and unloading along the Colorado Avenue frontage, and also the building's north and south ends. The building is approximately 1,560 feet in length and approximately 180 feet wide, leaving approximately 33 feet between the structure and each of the abutting avenue's rights of way. During the past five years the building has been internally divided and many spaces converted from warehouse to smaller commercial spaces. The building areas that are under this MUP review are two 10,000 square foot areas at its south end.

The Ohio Avenue right of way (ROW) from the site's southern property boundary northward approximately 570 feet is comprised of an inactive railroad siding along the western half of the ROW that is approximately 2-3 feet above the existing paved roadway surface along the eastern half of the ROW. Because of this split grade, a portion of the paved surface on the subject site is used as the northbound vehicle traffic lane in this area. North of this section the street as built is closer to the standard roadway paving requirements, e.g. uniform grade, paved road surface approximately centered on the ROW, and the travel lanes in the road surface.

Proposal Description

As a part of the change of use of the two 10,000 square foot areas from warehouse use to administrative office and retail uses the project proposes to add 42 at-grade parking spaces on the building's south end and 60 parking spaces along the building's west side (Ohio Avenue frontage) from the proposed south parking area entry northward approximately 520 feet. SEPA environmental review is required for an increase of more than 40 parking spaces.

The proposed Ohio Avenue parking spaces would be perpendicular to the building thereby requiring vehicles either backing in or out of these spaces to conduct part of the maneuvering in the right of way. SMC 23.54.030.E.3 requires all vehicle maneuvering to be located on private property. The proposed 60 perpendicular parking spaces on this frontage also require a "curb-cut" to be as wide as the number of spaces. SMC 23.54.030.F.3 limits curb-cuts in this zone to a maximum width of 30 feet. Although there are no curbs now or proposed with the associated street improvements, the Land Use Code defines "curb-cut" as "the intersection of the driveway and the curb-line". "Curb-line" is defined as the edge of the roadway whether marked by a curb or not." The area between the ROW and the proposed parking spaces is the driveway.

Separate from this MUP, but precipitating the requested parking related variances, are major frontage improvements along the 570 foot section of Ohio Avenue described in *Area and Site Description* above. The applicant has applied for and received preliminary approval from the Seattle Department of Transportation (SDOT Project # 41109) to do the following:

- Fill the eastern low portion of the ROW and the 33-foot area between the ROW and the building to create a uniform road grade. The resulting road elevation will bring the road surface to within approximately 6- inches of the top of the building's now approximately 3-foot high loading dock,
- New pavement for a 22.5 foot roadway surface centered on the ROW,
- Add curb, gutter, planting strip with street trees, and sidewalk on the west side (non-project side) of Ohio Avenue.

- Because of the proximity of the existing loading dock and building to the ROW edge (approximately 33 feet) the east side of Ohio Avenue will not be improved similar to the west side but will have the Code required thickened roadway edge and pedestrian walkway.

The applicant's street improvement application anticipated the maneuvering area necessary for the proposed request for perpendicular parking and consequently removed an approximately 9-foot wide portion of the loading dock, leaving an approximately 7'6" wide walkway along the building. The remaining portion will serve as pedestrian access to the numerous entry doors that ring the building and front on the loading dock surface. Consequently, during this MUP application review, the applicants sought and received approval from DPD and SDOT to substitute this former loading dock surface, now functionally an on-site sidewalk, for the required pedestrian walkway. An access easement granting public access to this on-site walkway is required.

Public Comments

One comment letter was received during the two week public comment period between October 16, 2008 and October 29, 2008. The comment from a local business owner apprised DPD of traffic flow problems, congestion and accidents in and around the confluence of streets formed by East Marginal Way South, Diagonal Way South, portions of vacated South Oregon Street and Diagonal Way South (both now Port of Seattle property), the railroad tracks along these streets and vacated streets, and Ohio and Colorado Avenues South. The commenter expressed support for increased parking in the area provided any impacts from it on the above traffic situation were studied and mitigated.

ANALYSIS - VARIANCES

Pursuant to SMC 23.40.020 C, variances from the provisions or requirements of this Land Use Code shall be authorized when all the facts and conditions listed below are found to exist. Analysis of the variance requested follows each statement of the required facts and conditions.

- 1. Because of the 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 the Land Use Code would deprive the property the rights and privileges enjoyed by other properties in the same zone or vicinity;***

The subject site is in an industrial zone predominately characterized by warehouse type structures with many of these structures located close to or at the property line. These siting patterns and a predominant pattern of roadway pavement only (a lack of curbs, sidewalks, and planting strips) have resulted in a predominant parking pattern of unofficial parking spaces perpendicular to the structures and properties being accessed. Many of these parking spaces are close to or in the right of way (ROW).

Ohio Avenue South consists of only two relatively short segments. This segment extends from the north end of the subject site to East Marginal Way South, one short block past South Hudson Street. Until 2005 the southern segment of Ohio Avenue along the project site was unopened, unpaved, and railroad tracks serving the subject site's warehouse building were still located where the current roadway and proposed parking are located. Most of the segment of Ohio Avenue south

of East Marginal Way South today functions as a service road for a manufacturing facility that has buildings along both sides of the street. No portion of the street has curbs or sidewalks, and parking is almost exclusively perpendicular to the adjacent buildings, again with many of these parking spaces close to or in the ROW. These site and vicinity specific conditions are unusual conditions not anticipated by the Land Use Code requirements for parking location and maneuvering.

The substantial street improvements proposed to SDOT and outlined above in *Proposal Description* are a part of the subject site's building upgrades for the adaptive reuse of the former single-purpose railroad oriented warehouse to the smaller spaces and automobile oriented uses that have been occurring and are expected to continue. The evolution from the building's original designed use to the variety of smaller uses does not include demolition of the building and consequently does not increase on-site parking availability. The only locations for typical parking layouts are on the building's north and south ends, approximately 1,560 feet apart, not along the two side lengths of the building where the majority of the entrances to the interior spaces are located. The proposed perpendicular parking spaces, if sized to the large parking space dimension of 18.5 feet long, would leave six feet to the property line and an additional 12 feet to the future roadway thickened edge for vehicle backing before entering the roadway northbound travel lane.

In lieu of the variance request for partial vehicle maneuvering off-site, parking parallel to the building was considered. This configuration would result in a left-over space between these parking spaces and the future roadway edge. This would be inconsistent with the street and vicinity's prevailing parking pattern. In consultation with DPD's transportation planner, information in the applicant's submitted Traffic / Parking / Safety Analysis (William Popp Associates, December 20, 2007 and May 6, 2009) and consultation with SDOT, the resultant haphazard entry and exit of vehicles from the subject site to the street from parallel parking could result in an unsafe traffic conditions. These reviewers and the analysis did not find that backing into this low volume street would create an unsafe traffic situation. Additionally, because no curb is required along this frontage, a parallel parking configuration would require either paint striping of curb cuts or the installation of a curb to delineate maximum entry or exit locations, or a variance from the curb cut development standard would be required.

Given the site and vicinity's unusual existing building siting patterns, the existing roadway and parking conditions and the lack of significant traffic safety concerns denial of these variance requests would deprive the property of rights and privileges enjoyed by other properties in the same zone and vicinity.

- 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 variance requests pertain to the approximately 570 foot section of Ohio Avenue that has received preliminary approval from SDOT for the improvements described above. The remaining section of the street along the site is not proposed for improvement and is not included in these requests.

The 60 perpendicular parking spaces along Ohio Avenue are approximately the number of parking spaces that would be "naturally" available (assumed to exist by motorists due to the site and

vicinity's predominate parking pattern) without the proposed establishment by paint striping. Given the possible future conversion of the structure's historical established use of warehouse to other allowed uses, the applicant's are anticipating the need to provide parking along the Ohio Avenue frontage. If approved, the establishment of the proposed parking at the same time as the associated street improvements is the minimum necessary to fit within the goals and scope of the street improvement project.

Because of the existing street frontage parking pattern of most of the other properties along Ohio Avenue and in the immediate vicinity, granting these variance requests will not be inconsistent with these existing limitations or place inconsistent limitations on the subject property.

DPD finds that this criterion is met based on the above findings.

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 requested variances seek to rationalize and improve a parking pattern that is consistent with the character of the site and vicinity's parking pattern. Legally established perpendicular parking in this unusual site condition would result in a more coherent relationship between the parking that exists elsewhere along both sides of Ohio Avenue and would likely continue along the frontage area in question if left un-striped following the roadway improvements. In contrast, parallel parking would leave a "void" of space between this parking and the roadway edge that could be mistaken as a part of the roadway traffic lane or available for additional parallel parking; both of these situations could lead to confusion on the part of drivers and a decrease in traffic safety.

Pedestrian safety has been considered in this request. The proposed change of use would not itself trigger any pedestrian facilities along the Ohio Avenue frontage. However, because of the proposed street improvements a paved pedestrian walkway is required along the area of improvement. In consultation with SDOT, DPD determined that the applicant's proposal to use the existing sidewalk abutting the warehouse structure, connected to the ROW edge by a striped walkway where there is no building and sidewalk, is a safe location for a pedestrian facility due to the low through-pedestrian usage along this street and the anticipated pedestrian usage directly related to the building's existing and future uses. This on-site pedestrian walkway will be open to public usage and assured through a recorded pedestrian access easement. The submittal to review and approval by DPD will be a **Condition** of this variance.

Based on the above findings, granting the requested variances in conjunction with the future Ohio Avenue ROW re-grading and paving will be beneficial to the property and improvements in the subject property's zone and vicinity while not being detrimental to the public welfare.

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

The strict application of the applicable Land Use Code provisions (SMC 23.54.030.E.3, which requires all parking space maneuvering to be on-site and SMC 23.54.030.F.3, which limits curb cuts to a maximum of 30 feet in width) would either preclude the perpendicular parking that is

characteristic of the site and vicinity or require parallel parking. The only remaining locations for on-site parking are the building's north and south ends, approximately 1,560 feet apart. A prohibition against continuing the predominant perpendicular parking pattern, but configured to substantially improve the safety of this parking pattern, or requiring parallel parking that is likely to create associated traffic movement and safety limitations discussed in the preceding variance criteria, would cause practical difficulties for the applicant.

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

The Land Use Code establishes optimal but generalized development standards for properties, buildings, and uses in a particular zone. Consequently application of these standards might not always produce the intended optimal results for a project with unusual conditions. The variance process is in place to allow these types of projects to occur within the spirit of the Land Use Code regulations in question.

A primary purpose of the *maximum curb cut width* and requirement for *on-site vehicle maneuvering* requirements is to assure orderly and safe movement of vehicles between on-site parking and the right of way for both pedestrian and traffic safety. The information and analysis throughout this document demonstrate that the project's proposed parking arrangement in conjunction with the associated street improvements will achieve the purpose of the development standards in question and therefore the variance requests should be **Granted**.

DECISION – VARIANCE

Variances to allow partial parking space maneuvering to be off site (in the right-of-way) (SMC 23.54.030.E.3), and to allow a curb cut wider than allowed (SMC 23.54.030.F.3) are **Approved with Conditions**.

ANALYSIS - SEPA

The initial disclosure of the potential impacts of this project was made in the environmental checklist submitted by the applicant dated September 27, 2008 and annotated by the Department. The information in the checklist, supporting documents, project plans, and the experience of the lead agency with review of similar projects forms the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans and other policies explicitly referenced may serve as the basis for exercising SEPA authority. The Overview Policy states in part: "*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 some limitations). Under certain limitations or circumstances mitigation can be considered (SMC 25.05.665 D 1-7). Thus, a more detailed discussion of some of the impacts is appropriate.

Short-term Construction Impacts

Grading and construction activities could result in the following temporary or construction-related adverse impacts:

- Erosion from excavation and storm water impacts from ground clearing,
- Increased noise levels,
- Decreased air quality due to suspended particulates (dust) from excavation and construction, hydrocarbon emissions and greenhouse gas emissions from construction vehicles, equipment, and the manufacture of the construction materials,
- Construction traffic impacts.

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts: The Stormwater Grading and Drainage Control Code, the Noise Ordinance, the Street Use Ordinance, and the air pollution standards of the Puget Sound Clean Air Agency (PSCAA). The Stormwater, Grading and Drainage Control Code regulates site excavation, requires that soil erosion control techniques be initiated for the duration of construction, and regulates the capture and treatment of on-site ground and storm water. The Noise Ordinance regulates the time and amount of construction noise that is permitted in the City. The Street Use Ordinance regulates use of the right of way for temporary construction purposes and regulates obstruction of the pedestrian right-of-way. Closure of this portion of Ohio Avenue during street construction will occur. However, the low traffic volumes here and traffic to surrounding properties can easily be routed to South Alaska and Hudson Streets, Diagonal Avenue South, or East Marginal Way South as appropriate. The Puget Sound Clean Air Agency regulations require control of fugitive dust and construction machinery emissions in order to protect air quality. Compliance with these applicable codes and ordinances will reduce or eliminate most short-term impacts to the environment. Therefore no conditioning for these short term impacts is required. However, some impacts may not be entirely mitigated by existing codes and ordinance, such as the greenhouse gas affects on air quality and therefore warrants further analysis.

Air Quality

On-site construction activities themselves will generate minimal direct impacts. However the indirect impact of construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of paving materials themselves will result in increases in carbon dioxide and other greenhouse gas emissions that adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant due to the relatively minor contribution of greenhouse gas emissions from this project. No potential short term adverse impact to air is anticipated and therefore no air quality mitigation is necessary.

Long-term Impacts

Long-term or use-related impacts are anticipated as a result of approval of this proposal including: adverse effects on traffic safety and increased carbon dioxide and other greenhouse gas emissions primarily from increased vehicle trips and increased area traffic. These impacts may not be mitigated by existing codes and ordinances and therefore warrants further analysis.

Transportation

A *Traffic/Parking/Safety Analysis Memorandum*, dated December 20, 2007 and supplemented with a full report dated May 6, 2009, by William Popp Associates, were submitted for review by the project planner and DPD's transportation planner. The report described existing traffic conditions in the study area, estimated the amount of new traffic to be generated by the project, and evaluated the impact of these new trips parking and the proposed parking on traffic safety. Copies of both reports are in the project file at DPD.

The report found no significant increases in site generated traffic or impacts on traffic and parking movement or safety. Regarding the safety of pedestrians and vehicles from the proposed perpendicular parking, the report found that perpendicular parking is the norm along Ohio Avenue and the street experiences slow speeds and low traffic volumes, and will continue to do so with the change of use proposed. Also, the small number of pedestrians along the street frontage was employees or customers of the building and predominately used the existing sidewalk / loading dock ringing the building. In conjunction with the proposed on-site sidewalk, access to which will be assured by the required pedestrian access easement, the report found that the formal designation / establishment of the proposed perpendicular parking will pose no increased impact on traffic, pedestrian or bicycle safety.

The report was reviewed by DPD's transportation planner, who concurs with the updated report's findings; therefore no mitigation for transportation impacts is warranted.

Air Quality

The number of employee and customer vehicular trips associated with the change of use and project may increase from the amount currently generated by the site's current use. This is likely to result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant due to the relatively minor contribution of greenhouse gas emissions from this project.

DECISION - STATE ENVIRONMENTAL POLICY ACT

This decision was made after review by the responsible official on behalf of the lead agency of 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 requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public agency decisions pursuant to SEPA.

- 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.030.2C.
- Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21.030 2C.

CONDITIONS – SEPA

None.

CONDITIONS- VARIANCE

The owner(s) and/or responsible party(s) shall:

Prior to MUP Permit Issuance

1. Update Sheet A 1.1, Site Plan, in MUP plan sets 1 and 2 to show the final approved parking layout, the parking quantities cited in this document, the north and south end pedestrian walkway connections from the on-site walk way to the right of way, and label all on-site walkway areas “Subject to Public Pedestrian Access Easement” (include the recording number of easement).

Prior to Final Approval of the Building Permit

2. Submit a draft pedestrian access easement allowing public access to all portions of the SDOT / DPD approved pedestrian walkway along Ohio Avenue located on the project site. The easement shall allow public access of similar kind and degree provided by a public sidewalk in the ROW for the life of the parking established by these variances. The easement must be approved by DPD and recorded with King County. A copy of the recorded easement must be returned to DPD.

For the Life of the Project

3. The required pedestrian easement will allow public access of similar kind and degree provided by a public walkway / sidewalk in the ROW to all portions of the on-site striped walkway and sidewalk (former loading dock along the building’s west exterior wall) for the life of the parking established by these variances. If the parking configuration allowed by these variances is discontinued and the owner wishes to discontinue public access to the on-site striped walkway and / or sidewalk, this must be replaced with a pedestrian walkway meeting DPD and SDOT approval.
4. The two requested variances are granted under the condition that the associated street improvement plans in the MUP plan set (Sheets C1 through C8 and Sheets “1” through “10”, all dated July 16, 2009) and proposed under SDOT Project # 41109 are completed substantially in conformance with the discussion, analysis and conclusions in this decision.

Signature: _____ (signature on file) Date: August 13, 2009
Art Pederson, Land Use Planner
Department of Planning and Development

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