



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
Diane M. Sugimura, Director

**CITY OF SEATTLE
REPORT AND RECOMMENDATION TO THE HEARING EXAMINER
FROM THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Numbers: 3009199 (Full Unit Lot Subdivision)

Applicant Name: Kelly Byrne

Address of Proposal: 422 Malden Avenue East

SUMMARY OF PROPOSED ACTIONS

Council Land Use Action to subdivide two parcels into 10 unit lots (unit lot subdivision). Review of townhouse construction is under Project #6120522. This subdivision is only for the purpose of allowing sale or lease of the unit lots. Development standards will be applied to the original parcel and not to each of the new unit lots.

The following approvals are required:

Full Unit Lot Subdivision – Subdivide two parcels into 10 parcels of land (SMC 23.22)

SEPA - Environmental Determination pursuant to SMC 25.05

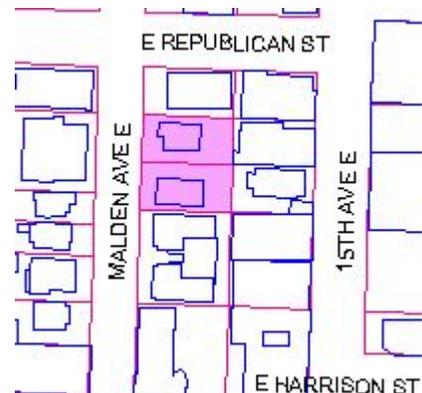
SEPA DETERMINATION: [] Exempt [X] DNS [] MDNS [] EIS

[] DNS with conditions

[] DNS involving non-exempt grading or demolition or involving another agency with jurisdiction

PROJECT AND SITE DESCRIPTION

The project proposes to Unit Lot Subdivide a 10 unit townhouse development into separate unit lots to allow their fee simple sale for individual ownership. The Land Use approval to allow construction was done under Master Use Permit (MUP) 3006284. This MUP approval included review under the Design Review Program and SEPA Environmental review for the number of units in a Lowrise 3 (L3) zone.



The site consists of two parcels, 422 and 428 Malden Avenue East. The surrounding zoning and land uses are as follows: The site's east (rear) property boundary coincides with the north to south zone boundary between the Lowrise 3 Zone of the site and block and the Neighborhood Commercial 2 - 40 foot height limit (NC 2-40) zone to the east. The L-3 zone extends to the north, south, and across Malden Avenue to the west from the subject site. The NC 2-40 zone extends to the north and south along both sides of the 15th Avenue East commercial area.

Public Comments

No comments were received during or after the comment period ending July 30, 2008.

DIRECTOR'S ANALYSIS - SUBDIVISION

The Land Use Code (Section 23.76.023) requires the Director of DPD to prepare a written report for a proposed preliminary plat. The Code calls for the Director's report to include the following:

1. The written recommendations or comments of any affected City departments and other governmental agencies having an interest in the application;
2. Responses to written comments submitted by interested citizens;
3. An evaluation of the proposal based on the standards and criteria for subdivisions contained in SMC Chapter 23.22;
4. All environmental documentation, including any checklist, EIS or DNS; and
5. The Director's recommendations to approve, approve with conditions, or deny the application.

The Director's report is submitted to the Hearing Examiner and made available for public inspection for at least thirty (30) days prior to the Hearing Examiner's public hearing.

Hearing Examiner Findings and Conclusions. The Land Use Code Section 23.76.024 requires that the Hearing Examiner conduct a public hearing on the unit subdivision application. At the same hearing, the Hearing Examiner would hear any appeals of the Director's environmental decision (SMC 23.76.052 A). The Hearing Examiner can approve the proposal if it is determined that the proposed plat makes appropriate provision for the public health; safety and general welfare; open spaces; drainage ways; streets, alleys, other public ways; water supplies; sanitary waste disposal; fire protection; parks; playgrounds; sites for schools and school grounds; and that the public use and interest will be served by the platting of the subdivision. If the Hearing Examiner determines that the proposed plat does not provide the appropriate elements or that the public use and interest will not be served, the proposed plat may be denied. After the hearing, the Hearing Examiner will make a decision that is final on the preliminary subdivision.

Council Action. A formal action to approve the final plat is the responsibility of the City Council as provided by RCW 58.17. However, the Council does not hold a public hearing for the purpose

of accepting testimony. After the Hearing Examiner approves the preliminary plat, the Council reviews it for final plat approval.

DIRECTOR'S Analysis – Subdivision

1. Recommendations and Comments by City Departments and Other Government Agencies Having an Interest in the Application

The following represent a summary of the comments received from the City Agencies indicated. Information and documentation from each review agency is available in the DPD project file. Review by the Seattle Department of Transportation and seven other departments are required per SMC 23.22.024, following the distribution of plans and supporting information to each department.

Seattle Department of Transportation

The SDOT reviewer, Project Analyst Yohannes Minas, indicated that if the existing curb height is less than three inches, it shall be adjusted to six inches in order to do curb discharge. This will be determined during building permit review and approval. No other comments were given.

Other Departments

A. Director of Public Health:

Public Health – Seattle and King County has offered the comment that the addition of trees to this project is important for lessening storm water flows, reducing urban heating (heat islands), and for enhancing the pedestrian environment. Also, it advises that the area of impervious surfaces not be increased due to possible negative stormwater impacts to Lake Union (this site is within the Lake Union drainage basin) and connecting waters.

Director's Response: Trees: The addition of on-site trees is a zoning requirement and is included in the associated building permit plans (DPD # 6120522). Street trees are typically required for new construction. However, because the existing planting strip is inadequate for the addition of trees (per the City arborist), they are not required. Nevertheless, the applicant's landscape plan includes "street" trees that will be on-site but along the sidewalk.

Stormwater (Drainage) and Sanitary Sewer: As a unit lot subdivision, this project is being reviewed for these stormwater impacts under the associated building permit and can be presumed to comply with City regulations. Impervious surfaces area will increase from the amount resulting from the previous single-family structures. However, because increases in impervious surface were expected under Lowrise development standards, the City Stormwater and Drainage Ordinance has been written to adequately address possible negative development impacts.

DPD's stormwater and sanitary sewer reviewer has approved this project with the **Condition** that the provided Joint Use and Maintenance Agreement include these utilities as part of that agreement's obligations.

B. Superintendent of City Light:

City Light approved this proposal subject to the *Condition* to expand the provided easement to state it is “over the entire area” of the plat, “except any portion of proposed building within said full subdivision”, or as revised by City Light.

C. Director (Office) of Housing:

The Office of Housing approved this proposal without comments.

D. Superintendent of Parks and Recreation:

The Parks Department responded and has no comments.

E. Director of Seattle Public Utilities Department (SPU):

Water Availability Certificate Number 20080995, dated August 21, 2008, gave approval of this proposal subject to typical hook-up and easement requirements at the time of application for individual water meters for any approved unit lots.

F. Chief of the Fire Department:

The Fire Department approved the subdivision plans on August 12, 2008.

G. Metropolitan Services Department (King County Metro):

Metro approved without comments.

2. **Responses to Comments of Interested Citizens**

No comments were received.

3. **Evaluation of the Proposal Pursuant to the Standards and Criteria for Subdivisions Contained in SMC Chapter 23.22.**

SMC 23.22.062, Unit Lot Subdivision.

SMC 23.22.062.A lists townhouses as eligible for unit lot subdivision in zones where this housing form is permitted. Townhouses are allowed in the L-3 zone.

SMC 23.22.062.B states: “The development as a whole shall meet development standards applicable at the time the permit application is vested. As a result of the subdivision, development on individual unit lots may be nonconforming as to some or all of the development standards based on analysis of the individual unit lot...except that any private, usable open space for each dwelling unit shall be provided on the same lot at the dwelling unit it serves.”

As stated above, the applicable zoning and land use codes were reviewed under Construction Application 6120522. All townhouse units have been or will be conforming to the applicable Codes prior to construction permit issuance and final certificate of occupancy.

The required private usable open space for each dwelling unit is provided on the same lot as the dwelling unit it serves. The open space requirements for Lowrise 3 zones requires an average of 300 square feet of private usable open space at ground level and directly accessible to each unit, with no unit having less than 200 square feet of such open space. The proposed Unit Lot Subdivision meets this criterion.

SMC 23.22.062.D requires easements for access and joint use and maintenance agreements for access to and the use of common garage or parking areas, common open space and other similar features. This proposal provides such easements and joint use and maintenance agreements for vehicular and pedestrian access to the common garage, pedestrian access ways, and utilities (as **Conditioned**) across all individual unit lots that will be recorded with the King County Department of Records and Elections with the final plat.

DPD addressing review approves this proposal with the recommended **Condition** that this additional language be added to the second line of the legal description: “plat of Capitol addition to the City of Seattle, Unit Lots A-J, Full Unit Lot Subdivision #3009199”.

To ensure locations for address signage visible from the right of way for the five rear unit lots, DPD recommends this proposal be **Conditioned** to include joint easements for these rights on the plat.

DPD Planner review of the preliminary plat requires the following plat corrections:

- Sheet 2, remove “Utility” from “Ingress, Egress, Pedestrian, and Utility Easement”. This does not describe the required utility easements and a separate “Utility Easement” is already included on this same sheet.
- Change the scale from “1” = 20” to “1” = 10” on all sheets except the original site survey.

SMC 23.22.062.E allows required parking for a dwelling unit to be provided on a different unit lot as long as the right to use that parking is formalized by an easement on the plat. The proposed unit lot subdivision provides most parking for each individual unit lot on that individual unit lot but in one 19-vehicle garage (small portions of some spaces may extend onto the “footprint” of an adjacent unit lot). An access easement has been provided over the entire garage parking area and driveway, therefore this proposal meets this criterion.

SMC 23.22.062.F. The fact that the unit lot is not a separate buildable lot and that additional development of the individual unit lots may be limited as a result of the application of development standards to the parent lot shall be noted on the plat, as recorded with the King County Department of Records and Elections. The face of the plat contains the following: *“the unit lots are not separate buildable lots and additional development of the individual unit lots may be limited as a result of the application of development standards to the parent lot.”*

In the interest of ensuring that the structures constructed according to the associated building permits conform to this unit lot subdivision the Director also recommends the **Condition** that unit lot subdivisions include the following language: *“This subdivision has unit lot boundaries that are based on the location of the residential development as proposed on the permit application numbers referenced on this sheet, filed at the City of Seattle Department of Planning and Development. This development may include structures that cross unit lot lines and may have other development aspects of common interest to unit lot owners.”*

SMC 23.22.054, Public Use and Interest.

Pursuant to SMC 23.22.054, the decision maker must consider all relevant facts to determine whether the public use and interest will be served by the proposed full unit lot subdivision. Additionally, the proposed plat must make appropriate provision for the public health, safety and general welfare by providing for open spaces, drainage ways, streets, alleys, sidewalks, other public ways, water supplies, sanitary waste disposal, fire protection, parks, playgrounds, safe access to and sites for schools, and is designed to maximize the retention of existing trees. .

Unit Lot Subdivision allows for the subdivision of common wall (attached) ground related townhouse structures. This process therefore makes possible separate ownership of individual units in one structure that otherwise would be owned by one party and might otherwise be available on a rental only basis or as condominium units. The public interest is served by this increase in the supply and availability of owner occupied housing.

Open space, drainage, water supply, sanitary waste disposal and access to fire protection are provided. Ordinance review (building code) reviewed this proposal and noted:

“Where a unit lot property line is created at or near the face of a building, an access and maintenance easement of three feet minimum (five feet preferable) is required. This easement is to allow for emergency egress from rooms adjacent to the unit lot property line across the adjoining unit lot/s and for maintenance of the exterior of the building, so it is not required where there are common walls between structures. Also, if a yard is created (with unit lot lines) that has no access to a public right-of-way or access easement, an easement must be defined to allow the inhabitant of the unit which abuts this “landlocked” yard access to the public right-of-way. This easement will be either a pedestrian access easement or an emergency egress easement, depending upon the nature of the access to the yard from within the unit. If the yard is greater than 50’ deep, no easement will be required.”

Based on this analysis and the project conditions, the ordinance reviewer approved this proposal with the **Condition** that emergency egress easements from the east sides of Unit Lots G, H, and I, with a minimum width of 44 inches are provided by showing on the plans and including in the easement language.

No street or sidewalk improvements are required by this subdivision since they are being provided through the associated construction permitting process. No parks, playgrounds, or school sites are required.

This unit lot subdivision does not propose the removal of any trees. Removal of the site's trees was reviewed under MUP 3006284. All trees, including a possible Exceptional Western White Pine, were found to be damaged and eligible for removal.

The public use and interests are thereby served by permitting the proposed division of land.

SMC 23.22.052 Dedications Required

Every subdivision shall include adequate provision for dedication of drainage ways, streets, alleys, easements, slope rights, parks and other public open spaces for general purposes as may be required to protect the public health, safety and welfare.

Drainage review by DPD indicates that dedication of drainage ways is not required; both sanitary sewer and storm sewer lines exist beneath Malden Avenue East and are available to the project.

No dedication is required for street or alley right of way. The subject site fronts on an existing fully developed street (it has curb, gutter, and sidewalk). Street improvements (re-paving, new curb and or sidewalk, and street trees) are being required as appropriate per SMC 23.53.015 under the construction permit.

Easements for all utilities will be provided as outlined in *Recommendations and Comments by City Departments and Other Government Agencies Having an Interest in the Application* above.

No parks or public open spaces are proposed or required or are impacts anticipated to existing parks facilities by this proposal. On site open space for occupants of each dwelling unit will be provided as outlined above and allowed by Code for Lowrise zoned areas.

23.22.060 Transportation Concurrency Level of Service Standards

Proposed subdivisions must meet the transportation concurrency level-of-service (LOS) standards of SMC 23.52. This section states that a proposed use or development must demonstrate that the forecasted traffic to be generated by the use or development will not cause the LOS at an applicable screenline, and measured as the volume-to-capacity ratio (v/c), to exceed the LOS standard for that screenline.

The amount of traffic anticipated from a 10 unit development with 19 parking spaces would have no LOS affect on any related screen lines.

Project traffic impacts were examined in the SEPA review for the related MUP 3006284 and found to not pose any adverse impacts. Consequently they were not discussed in that SEPA analysis. The analysis of the traffic impacts was provided for the SEPA appeal of MUP 3006284. However, this element was withdrawn from the appeal at the time of the hearing.

4. All environmental documentation, including any checklist, EIS or DNS

A SEPA checklist, dated June 30, 2008 was submitted with this application and reviewed by DPD. This document disclosed the environmental impacts associated with the project. Please see the SEPA section below for an analysis of these impacts.

5. *The Director's recommendation to approve, approve with conditions, or denies the application*

DPD Recommends *Conditional Approval* of the preliminary subdivision.

ANALYSIS - SEPA

The initial disclosure of the potential impacts of this Unit Lot Subdivision proposal was made in the environmental checklist submitted by the applicant dated June 30, 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.

SEPA environmental review previously occurred for the Design Review MUP approving the demolition of the existing structure and construction of the ten units now proposed for unit lot subdivision (MUP 3006284). Although *full unit lot subdivision* was anticipated at the time of application for that MUP, it was not analyzed in that project decision. Anticipated short-term and long-term environmental impacts from the addition of 10 new townhouse units were analyzed (short-term impacts: construction noise and parking; long-term impacts: height, bulk, and scale; plants; and historic preservation). The project was Conditioned through that review to mitigate short term impacts.

Short-Term Impacts

Because the proposal only establishes boundaries for fee-simple ownership, no short term impacts are anticipated from this action. Conditions to mitigate short-term construction noise and parking impacts are in effect for the demolition of the existing structure and the construction of the proposed structures. Short-term impacts from increased carbon dioxide and other greenhouse gas (GHG) emissions, primarily from increased greenhouse gas emissions from construction vehicles, equipment, and the manufacture of the construction materials, were not analyzed during the previous SEPA review. However, no GHG impacts can be anticipated from the subdivision of these townhouses.

Long-Term Impacts

The townhouse units to be unit lot subdivided comply with the Land Use Code and other relevant City Codes as outlined in the Subdivision Analysis above. No long term impacts are anticipated from the establishment of boundaries for fee-simple ownership. Long-term or use-related impacts from increased carbon dioxide and other greenhouse gas (GHG) emissions, primarily from increased project related vehicle trips and energy consumption, were not analyzed during the previous SEPA review. However, no GHG impacts can be anticipated from the subdivision of these townhouses and not mitigation is warranted.

DECISION - SEPA

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 requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance without Conditions. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030.C.2.c...
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21.030.C.2.c.

RECOMMENDED CONDITIONS - SUBDIVISION

Conditions of Approval Prior to Recording of the Final Subdivision Plat:

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

1. Include on-site sanitary sewer and drainage utilities in the "Joint Use and Maintenance Agreement" on the face of the plat.
2. Update the utility easement for City Light to include the entire area of the two lots except any portion of proposed building within the subdivision.
3. Add the following language to the second line of the legal description: "plat of Capitol addition to the City of Seattle, Unit Lots A-J, Full Unit Lot Subdivision #3009199".
4. Include emergency egress easements along the east sides of Unit Lots G, H, and I, with a minimum width of 44 inches. These are to be included in the plats easement language and shown on the face of the plat.
5. Include the easement language and a location for joint benefit address signage for the five rear Unit Lots.
6. Update all easements and scale references as outlined on page 5 above.
7. Update the "Unit Subdivision Note" on Sheet 1 of the plat to include the following: "*This subdivision has unit lot boundaries that are based on the location of the residential development as proposed on the permit application numbers referenced on this sheet, filed at the City of Seattle Department of Planning and Development. This development may include structures that cross unit lot lines and may have other development aspects of common interest to unit lot owners.*"

CONDITIONS – SEPA

None.

Signature: _____ (signature on file) Date: December 18, 2008
Art Pederson, Land Use Planner
Department of Planning and Development

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