



## City of Seattle

Gregory J. Nickels, Mayor

### Department of Planning and Development

Diane M. Sugimura, Director

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

**Application Number:** 3009941  
**Applicant Name:** Chris Pickering  
**Address of Proposal:** 9223 Linden Ave N

### SUMMARY OF PROPOSED ACTION

Land Use Application to subdivide one parcel into two parcels of land. Proposed parcel sizes are: A) 7,009.40 sq. ft. and B) 2,570.40 sq. ft. Existing structure on Parcel A to remain.

The following approvals are required:

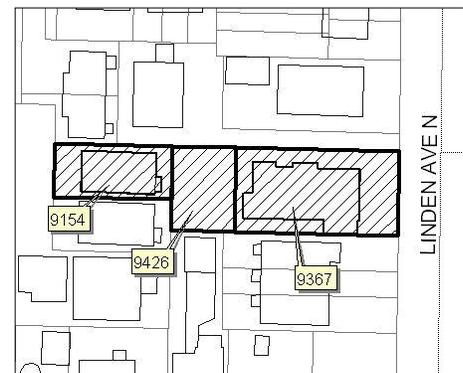
**Short Subdivision** – to create two parcels of land pursuant to Seattle Municipal Code 23.24.040.

**Conformance** with the provisions of SMC 23.40.004 A & C.

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

### BACKGROUND

This short subdivision application relates to two existing tax parcels: King County Assessor's Parcel Nos. 312604-9426 and 312604-9367. For convenience, these are referred to in this analysis as Parcels 99426 and 9367, respectively. Parcel 9367 fronts on Linden Avenue North; Parcel 9426 is to the west and abutting Parcel 9367. Both parcels are in an L1 (Lowrise-1 Multifamily Residential) zone.



Parcel 9367 was formerly under common ownership with Parcel 9426, and both were shown on the permit and plans as the site for Seattle Building Permit No. BN-23320, which authorized construction of a multifamily structure containing three legal dwelling units, addressed 9217 Linden Avenue North. This triplex was built in 1965 on Parcel 9367 facing Linden Avenue, with Parcel 9426 to the rear of the triplex.

In 1999, Chris Pickering, owner of Parcel 9154, the western-most parcel which is developed with a duplex, acquired Parcel 9426 (the middle parcel) as a result of an adverse possession suit. (King County Cause No. 99-2-18508-1 SEA.) The City was not a party to that suit.

The current short subdivision application is premised on the assumption that Parcel 9426 became a lot as a result of that acquisition. The applicant seeks to have Parcel 9426 recognized as a lot that is eligible for development. Parcel 9367 is included as a part of this short subdivision application, and the owner of that property is participating as an applicant in this matter.

#### Site Description and Area Development

Both tax parcels are in an L1 (Lowrise-1 Multifamily Residential) zone. Parcel 9426 (the middle property acquired through adverse possession) has an east-to-west dimension of 45 feet, a north-to-south dimension of 60 feet, and an area of 2700 square feet. Parcel 9367 (location of the triplex fronting Linden Avenue North, not a part of this application) has an east-to-west dimension of 114.63 feet, a north-to-south dimension of 60.01 feet, and an area of 6,878.95 square feet. A 20-foot-wide easement and driveway immediately north of Parcels 9426 and 9367 provides access from Linden Avenue North to the duplex on Parcel 9154 and a number of other structures. Adjacent to the easement and to Parcel 9367, Linden Avenue North is a 60-foot-wide right-of-way developed with a 25-foot roadway, curbs, gutters and sidewalks on both sides of the street pavement. Based on City maps and the observations of City staff, no part of any of these properties is within an Environmentally Critical Area, as defined by City code.

The existing triplex structure on Parcel 9367 is approximately seven feet from the east line of Parcel 9426. The triplex structure covers approximately 48 percent of Parcel 9367. It covers approximately 34 percent of Parcels 9367 and 9426, combined.

#### Public Comment

During the public comment period, which ended February 25, 2009, DPD received no written comments from the public related to the application.

#### **ANALYSIS - SHORT SUBDIVISION**

Pursuant to SMC 23.24.040, the Director shall, after conferring with appropriate officials, use the following criteria to determine whether to grant, condition or deny a short plat. The findings which follow are based upon information provided by the applicant; review of access, drainage and zoning within the Department of Planning and Development (DPD); review from Seattle Public Utilities, Seattle Fire Department and Seattle City Light; and, review by the Land Use Planner.

*1. Conformance to the applicable Land Use Code provisions;*

*The following are the requirements of the provisions of SMC 23.40.004 Reduction of Required Spaces, subsection A & C:*

- A. *No minimum lot area, yard, setback, modulation, open space, landscaping, access, screening or other element of development existing on or after July 24, 1957, shall be reduced in area, number or dimension below the minimum development standard required by this Land Use Code, nor shall any existing lot area, yard, setback, modulation, open space, landscaping, access, screening or other element of development less than the minimum required by this Land Use Code be further reduced, except as specifically provided in this Code.*

This application appears to be premised on an assumption that, as a result of the adverse possession, Parcel 9426 ceased to be a part of the site of the triplex to the east, and became a part of the lot that is the site of the duplex to the west. The Department disagrees: Although the ownership of parcels of property may be modified through adverse possession, the change of ownership does not and cannot modify the permit standards of the City's zoning or building codes.

Building code standards protect the public health and welfare by regulating how close to lot lines structures may be located, and what sorts of construction materials are required and what sorts of openings are permitted close to lot lines. The Land Use Code standards promote orderly development and public well-being, and ensure that the level of development of property is consistent with the infrastructure provided. Some of the standards used to achieve this include minimum setback requirements, lot coverage limits, open space requirements, and density limits.

A court considering an adverse possession suit presumably resolves the matter on the basis of which of the two neighboring owners actually possesses the disputed property (trimming hedges, parking cars) during the statutory period, and without regard for the general public purposes served by the Building and Land Use Codes. The only issue resolved in such a quiet title suit is legal title. Nothing in the City's codes bars different owners of properties from jointly applying for a permit to develop their properties as one site; thus, ownership does not affect permit requirements at the time of application or at any other time. A change in ownership of one of those parcels after development does not abrogate City permits associated with those parcels. Otherwise, there would be considerable concern that neighboring owners could circumvent the applicable standards by filing then settling and an adverse possession claim and circumvent the legitimate public purpose served by these codes.

- C. *No minimum lot area, yard, setback, open space, landscaping, access, screening or other element of a development used to meet a development standard for one (1) use or structure may be used to meet the development standards of another use or structure except as specifically provided in this Code.*

As noted above, the existing structure on Parcel 9367, the eastern site addressed as 9217 Linden Avenue North, was permitted (permit #BN23320) as a triplex in 1965 on a site which is described as being 60'-0" north-to-south x 156'-0" east-to-west, which necessarily includes Parcel 9426.

Pursuant to SMC 23.40.004, no minimum lot area or other required development standards can be reduced below the minimum requirement for purposes of additional development. By removing a portion of Parcel 9426 from 9217 Linden Avenue North, the resulting lot coverage on that site would be 38.85%, less than the allowable 40% lot coverage by approximately 1.15%. In addition, the existing structure currently has a code conforming rear setback of 20-feet; with the proposal a

25-foot rear setback would be created, which complies with the code. Thus, the proposed short plat would increase the rear setback and increase lot coverage for the site at 9217 Linden Avenue North in a manner that would be code compliant.

On the basis of subsections A and C, the zoning review has been approved.

2. *Adequacy of access for pedestrians, vehicles, utilities and fire protection, as provided in SMC 23.53.005, Access to lots, and SMC 23.53.006, Pedestrian access and circulation;*

Both parcels would be provided with access to street frontage via an ingress/egress/utility easement to Linden Ave N.

The Seattle Fire Department has reviewed and approved the proposed short plat for emergency vehicle access.

All private utilities are available in this area. Seattle City Light provides electrical service to the proposed short plat. City Light may require an electrical service easement for the proposed lots prior to the issuance of a building permit.

3. *Adequacy of drainage, water supply, and sanitary sewage disposal;*

This area is served with domestic water and sanitary sewer facilities by the City of Seattle.

Seattle Public Utilities reviewed the short plat application, and Water Availability Certificate # 20090073 was issued on February 6, 2009.

**Sanitary Sewer:** A sanitary-only public sewer is available to serve new construction on proposed Parcel 312604-9426 by way of the ingress/egress/utility easement included in the legal description. Connection to any existing sidesewer by new construction on proposed Parcel 312604-9426 will require a connection agreement with the existing users.

**Drainage:** There are no apparent storm drains, ditches, culverts, or natural drainage courses near the proposed short plat. Recent nearby construction appears to use infiltration as the means of stormwater control. It is likely that new construction on proposed Parcel 312604-9426 may also use infiltration as a means of stormwater control.

4. *Whether the public use and interests are served by permitting the proposed division of land;*

An objective of the short subdivision process is to increase opportunities for new housing development to ensure adequate capacity for future housing needs. As noted above, the proposed short subdivision would meet applicable Land Use Code provisions for existing development. Thus, the public use and interest would be served by this proposal.

5. *Conformance to the applicable provisions of SMC 25.09.240, short subdivision and subdivisions, in environmentally critical areas;*

The site is not located in any mapped or observed environmentally critical area as defined in SMC 25.09. Therefore, this section is not applicable to the short plat application.

6. *Is designed to maximize the retention of existing trees;*

While this criterion is applicable to the proposal, a review of the submittal materials indicates that this information was not provided. Given the decisions recommendation of denial, this information has not been requested.

Future development would be subject to the developments standards in effect at the time.

7. *Conformance to the provisions of Section 23.24.045, Unit lot subdivisions, when the short subdivision is for the purpose of creating separate lots of record for the construction and/or transfer of title of townhouses, cottage housing, clustered housing, or single-family housing.*

This criterion is not applicable to the proposed short subdivision because no unit lots are proposed.

8. *Conformance to the provisions of SMC 23.24.046, Multiple single-family dwelling units on a single-family lot, when the short subdivision if for the purpose of creating two (2) or more lots from one (1) lot with more than one (1) existing single-family dwelling unit.*

This section is not applicable to the short plat application.

**DECISION - SHORT SUBDIVISION**

The proposed short plat is **CONDITIONALLY GRANTED.**

**CONDITIONS – SUBDIVISION**

**Conditions of Approval Prior to Recording**

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

1. Have final recording documents prepared by or under the supervision of a Washington State licensed land surveyor. Each lot, parcel, or tract created by the short subdivision shall be surveyed in accordance with appropriate State statutes. The property corners set shall be identified on the plat and encroachments such as side yard easements, fences or structures shall be shown. Lot areas shall be shown on the plat. The lot areas of each parcel shall be shown on the recording documents.
2. Submit the recording fee and final recording forms for approval.

Signature: \_\_\_\_\_ (signature on file) Date: March 23, 2009  
Colin R. Vasquez, Senior Land Use Planner

CRV:bg