



City of Seattle

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: 3012821
Applicant Name: Deborah Shields for Randy Breiwick
Address of Proposal: 3446 – 22nd Avenue West

SUMMARY OF PROPOSED ACTION

Land Use Application to allow a 1,570 sq. ft. 2-unit townhouse structure with parking for two vehicles located within the structure.

The following approvals are required¹:

Variance – to allow gross floor area to exceed the maximum allowed.
(Seattle Municipal Code Section 23.45.510.B)

Variance – to allow access to parking from a street.
(Seattle Municipal Code Section 23.45.536.C.1)

Variance – to allow vehicle access by backing into a street.
(Seattle Municipal Code Section 23.54.030.D.1.f)

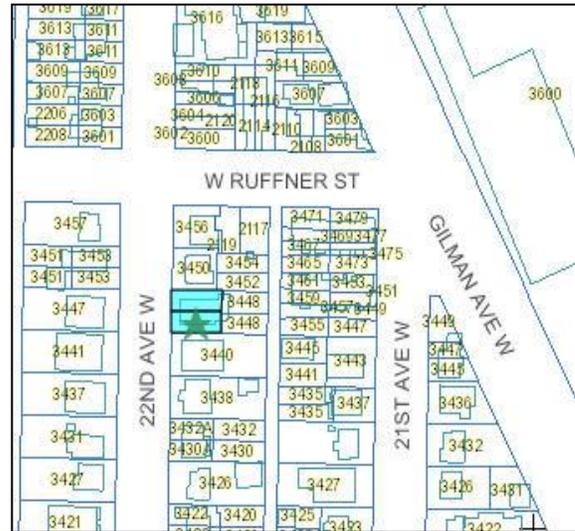
SEPA DETERMINATION: Exempt DNS MDNS EIS
 DNS with conditions
 DNS involving non-exempt grading or demolition, or
involving another agency with jurisdiction.

¹ A fourth variance approval, to allow less than required amenity space, SMC Section 23.45.522, was originally noted as part of the application, but the applicant was able to demonstrate that sufficient amenity area is provided for the proposed development.

BACKGROUND DATA

Site Description

The property subject to this variance application consists of unit lots A and B of short subdivision number 3007520 recorded under King County Auditor's File No. 20081204900005 (originally platted as Lot 3, Block 13, Gilman's Addition). Unit lots A and B are presently undeveloped. The subject properties are part of a parent lot that contains four unit lots. The property is located on the east side of the Magnolia neighborhood immediately west and uphill from the Interbay industrial area and is zoned Lowrise 1 (LR1). The two unit lots and the parent lot are rectangular in shape and slope moderately downhill from west to east across the parent lot. The parent lot is bounded by 22nd Avenue West (a collector arterial street) on the west, an improved alley to the east, and existing duplex residences to the north and south. Unit lots A and B do not have any direct frontage on the alley. As originally proposed, short subdivision number 3007520 was to be developed with four townhouse structures, with direct alley frontage and alley access for two of the four units (unit lots C and D) and access to unit lots A and B from the alley over an easement burdening the property to the south (Lot 4, Block 13, Gilman's Addition), which was also proposed to be redeveloped as a unit lot subdivision with four new townhouse units. As discussed in detail below, Lot 4 was never replatted or redeveloped, and only unit Lots C and D of short subdivision 3007520 were developed with new townhouses. Unit lots A and B were sold separately from unit lots C and D as part of bankruptcy and mortgage foreclosure proceedings in the recent economic downturn. Similarly, Lot 4 was sold to a new owner in foreclosure proceedings, and the existing duplex on that site is developed on the access easement proposed for unit lots A and B. Thus, unit lots A and B now lack access to the alley, unless the existing duplex on Lot 4 was to be demolished.



Area Development

The immediate vicinity of the subject property, between West Ruffner Street on the north and West Bertona Street to the south, is all zoned LR1 and is a mix of various small multifamily structures, including older duplex and triplex developments and more recently developed townhouse type structures. There are also a few single family residences mixed in with the multifamily structures. To the west of the property, along 21st Avenue West and uphill from Gilman Avenue West, the zoning is Lowrise 3 (LR3), which also includes more townhouse and small apartment development. Further to the west, along 24th Avenue West and to the north and south of West Ruffner and West Bertona Streets, the zoning is SF-5000 (Single Family Residential, with a minimum lot size of 5000 square feet). In the Lowrise 1-zoned areas paralleling 22nd Avenue and 21st Avenue, there are at least 28 unit lot subdivisions similar to or larger than short subdivision 3007520.

Proposal

The variance request is to allow access to vehicle parking from the street, 22nd Avenue West, instead of the alley, as well as to allow vehicles to back onto the arterial street, for the two

townhouses proposed on unit lots A and B. In addition, the variance is to allow gross floor area of the two proposed townhouses to exceed the maximum floor area allowed by current Code on the existing parent lot of short subdivision 3007520. The additional floor area requested would allow the two proposed townhouses to be constructed to a size similar to the existing townhouse units built on unit lots C and D under the Land Use Code provisions applicable to the property prior to the effective date of Seattle City Ordinance 123495 on April 19, 2011, which adopted the current multifamily regulations for the Lowrise residential zones.

Public Comments

No comment letters were received during the public comment period which ended August 15, 2012. A letter was provided at the time of application by representatives of the property owner of the duplex to the south, located on Lot 4, explaining the ownership situation that has resulted in lack of access to the alley for unit lots A and B, and supporting a grant of the requested variances.

ANALYSIS - VARIANCE

As provided in SMC 23.40.020, variances from the provisions or requirements of Seattle Municipal Code Title 23 shall be authorized only when all of the facts and conditions stated in the numbered paragraphs below are found to exist:

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

The unusual conditions applicable to the subject property result from the recent history of ownership of the property, from the changes to the regulations in 2011 under Ordinance 123495, and from the regulatory analysis required for unit lot subdivisions, which are a special type of plat designed to encourage “zero lot line” development. These conditions, which were not created by the applicant, essentially create a physical limitation for the proposed development in that vehicle access to the adjacent alley to the east is precluded and considerable limits are placed on the development rights to unit lots A and B as a result of the existing construction on unit lots C and D.

Short subdivision 3007520 was originally platted as Lot 3, Block 13, Gilman’s Addition. Lots 3, 4, and 5 were all purchased by a single developer to be developed as a single 12-unit townhouse development. Only one of three proposed unit lot subdivisions, 3007520, was approved by DPD, and two of the four unit lots, lots C and D, were developed with townhouses. As noted previously, the developer recorded an easement over Lot 4 to provide access to the townhouses proposed for development on unit lots A and B of short subdivision 3007520. This was done to meet Land Use Code standards requiring access to the proposed townhouses to be provided from the improved alley instead of the adjacent street to the west. The easement area was occupied by the existing duplex structure on Lot 4, which the developer intended to demolish. However, the entire proposed development failed as a consequence of the recession beginning in 2008. The lender foreclosed the mortgages and assumed title to the unit lots comprising unit lot subdivision 3007520, as well as Lots 4 and 5, and then sold the various properties separately to new owners. Lot 4 was sold to a

new owner who assumed title to the existing duplex on that lot and then received permits from DPD to repair and improve the duplex structure, apparently unaware of the access easement or the history of the property to the north. Unit lots A and B were purchased by the current owner, Randy Breiwick, who believed that he was purchasing two approved unit lots that could be developed with townhouses similar to the existing ones on unit lots C and D. A strict application of the Code, requiring alley access, would preclude development of unit lots A and B. Neither property owner created the condition in which the access easement is essentially unusable due to the presence of the existing duplex on Lot 4.

The Land Use Code requires that development standards for unit lot subdivisions be applied to the original “parent lot” rather than the individual unit lots. Thus, in the case of short subdivision 3007520, all development standards, such as setbacks, floor area limits, amenity area, and structure height limits, are applied as if the development were all on original platted Lot 3. This regulatory scheme works well if the unit lots are all developed according to single building permit or series of permits issued prior to changes in ownership of the unit lots. In this case, however, the ownership of short subdivision 3007520 was divided by mortgage foreclosure after only two of the unit lots were developed. To complicate matters further, the Land Use Code development standards changed after the first two units were constructed, with the adoption of Ordinance 123495 in 2011. Ordinance 123495 imposed floor area limits not previously required. The structures on unit lots C and D, built to prior standards, have floor areas of about 1550 square feet each, plus additional garage space. Since unit lots are analyzed as part of the larger parent lot, and the Code now has more restrictive floor area limits, new townhouses on unit lots A and B would be limited to about 950 square feet of floor area minus the garage space. Effectively, the existing townhouses on unit lots C and D have used up much of the allowed floor area, which would considerably limit the size of the townhouses on unit lots A and B if the Code were strictly applied. If the lots were treated separately for floor area purposes, instead of as part of a unit lot subdivision, the permitted floor area could be greater. As with the access situation, the current owner of unit lots A and B did not create this restrictive condition.

Strict application of the Code would deprive the owner of unit lots A and B of both the right to access his property and to build townhouses of similar size to the ones developed on unit lots C and D, as well as elsewhere in the immediate vicinity and within the same LR1 zone. For example, townhouses at 3430 and 3432 22nd Avenue West, on a similar site, have floor areas of about 1930 square feet each. Townhouses at 3451-3453 22nd Avenue West, also a similar site, have floor areas of about 1500 square feet each. Other similar properties are at 3440-3446 23rd Avenue West, with floor areas of about 1600 square feet each, and 3452-3454 23rd Avenue West, with floor areas of about 1600 square feet each. Also, while many of the townhouses are developed with alley access where that is feasible, a significant number of lots in the immediate vicinity along 22nd Avenue West have street access. More of these, about eight lots between West Ruffner and West Bertona, have access to the street on the west side of the street, since the block on that side lacks an improved alley, but there are other lots with street access on the east side as well, such as the townhouses at 3422 22nd Avenue West and the property at 3456 22nd Avenue West, which accesses from West Ruffner Street.

A reasonable number of other properties have the same rights and privileges as proposed for the two subject townhouses, with similar street access, including street access off of the arterial street, and comparable floor areas, while it is clear that strict application of the Code would preclude

access to unit lots A and B, and limit the development potential to a size well below the typical size of similar townhouses in the immediate vicinity. The first criterion is met.

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;***

Based on a comparison with other similar townhouse properties in the same zone and a comparison of properties with street access, the variances are the minimum necessary to allow for development of these proposed townhouses. Townhouse development is allowed in this zone, and therefore development of these townhouses will not go beyond the minimum necessary to afford relief. Further, as explained under the analysis of the first criterion, the subject property is configured and located such that access from 22nd Avenue West is the only possible means of access, and this will not impact any other property. Any alternative would involve the impractical demolition and reconfiguration of portions of the neighboring duplex. Further, many townhouses of similar size are developed within the same vicinity and zone, while the constraints of the unit lot subdivision and Code changes since the date of short subdivision 3007520 would limit the floor area of the proposed townhouses to a much smaller size than typical for the neighborhood or consistent with the market for townhouse units.

Other properties in the zone and vicinity are not subject to the unique limitations of lack of easement access from an alley or the constraints imposed by a unit lot subdivision approved under prior Code standards but not completely developed due to unforeseen economic downturn and mortgage foreclosure. Given the neighborhood pattern of townhouse development and a mix of both street access and alley access, variance relief would 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 second criterion is met.

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;***

Neighboring properties and future improvements would not be affected by approval of the proposed variances. The factual circumstances are unique and not likely to recur. A traffic and safety analysis of 22nd Avenue West has been submitted and demonstrates that backing onto the arterial from the two proposed parking spaces can be done in a safe manner. Traffic volume data taken in front of the site shows the availability of sufficient traffic gaps along 22nd Avenue West. The volumes on the roadway, despite its definition as a collector arterial, are low with approximately 500 vehicles a day using the street. The project itself is a low generator of traffic with 19 daily trips and two trips during the PM peak hour. The proposed operations from the site are also similar at numerous other properties along 22nd Avenue West.² In the same zone and area, there are numerous examples of similar townhouses or rowhouses built to approximately the same size or smaller, particularly the existing townhouses on unit lots C and D. The proposed units are therefore consistent with the development pattern in the neighborhood. No property or improvement, nor the general public welfare, will be detrimentally affected by granting these variances. The third criterion is met.

² See Access Analysis for 3446 A and B 22nd Avenue W, Heath and Associates, Inc. , October 4, 2012.

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

Denial of the variance would likely preclude legal vehicle access to unit lots A and B, as the structure to the south blocks the approved access easement. Further, the floor area requirements, as applied to the parent lot, create an undue hardship inconsistent with similar development in the same vicinity and zone, by limiting the units to less than 1000 square feet of living space on multiple floors compared to similar lots developed with units of 1500 square feet or more. These limits are imposed due to a sequence of events including economic downturn and Code amendment, coupled with restrictions on separate development of unit lots that could not have been reasonably anticipated by the property owner and could result in development that could not practicably be constructed and sold at cost. The literal interpretation and strict application of the floor area and access requirements of the Land Use Code would cause undue hardship and practical difficulties to the applicant. The fourth criterion is met.

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

The Land Use Code provides for a variance process for relief from unusual conditions and situations that the rules of the Code could not anticipate. At the same time, the intent and purpose of the Code is to assure compatibility of uses within a zone and preservation of neighborhood character. The spirit and purpose of the Land Use Code regulations for Lowrise 1 zones such as this includes the promotion of townhouse development and other multifamily uses. Allowing street access and floor area of 1500 square feet for each townhouse unit allows development of units similar to existing structures in the immediate vicinity and zone. Creating additional reasonably sized housing within a relatively dense area of mixed housing and uses is consistent with the zone criteria and fulfills the goal of the State Growth Management Act to create additional density in urban areas. Granting this variance, which would allow the construction and occupancy of the townhouses on unit lots A and B, would therefore be consistent with the spirit and purpose of the Land Use Code and adopted Land Use regulations for the area. The fifth criterion is met.

DECISION - VARIANCE

Based on the above findings and analysis all of the facts and conditions stated in the numbered criteria of SMC 23.40.020, *Variances*, are found to exist. The requested variance is **APPROVED**.

CONDITIONS – VARIANCE

None.

Signature: _____ (signature on file) Date: January 28, 2012
William K. Mills, Senior Land Use Planner
Department of Planning and Development

WKM:bg