



Legislative Department
Seattle City Council
Memorandum

Date: December 1, 2011
To: Councilmembers
From: Ketil Freeman, Central Staff
Subject: Approval of the "Plat of Maple Leaf Cottages"

The Council has been asked to grant final approval of the "Plat of Maple Leaf Cottages" full unit lot subdivision. This subdivision would divide a site located at 2114 N.E. 89th Street into 12 unit lots. The site has been developed with twelve townhouses in two triplex and three duplex structures.

The Seattle Department of Transportation (SDOT), the Department of Planning and Development (DPD), and Council Central Staff have confirmed that the plat meets all applicable requirements and recommend that the Council grant final plat approval (this requires a "do pass" vote on Council Bill 117354 and also a vote to "place on file" Clerk File 309678).

The following is an overview of the subdivision process and a description of the subdivision. The Hearing Examiner's *Findings and Decision* on the preliminary plat approval are attached and a vicinity map is provided for informational purposes.

Overview of Process

The Land Use Code requires that Council grant final plat approval for subdivisions within thirty days of filing of the final plat by the owner. See Seattle Municipal Code (S.M.C.) § 23.22.064(A)(2). Generally, such approval is granted after the following steps:

1. Issuance of a Master Use Permit and other project approvals;
2. Preliminary plat approval, which is granted by the Hearing Examiner, usually subject to conditions (the Hearing Examiner holds a public hearing prior to issuing a decision);
3. Development of site infrastructure by the property owner (this includes construction of roadways and installation of utilities);
4. Review of the final plat by the Seattle Department of Transportation (SDOT) and the Department of Planning and Development (DPD) to confirm that all of the applicable requirements have been met; and
5. Council determination that applicable requirements have been met.

Final plat approval requires votes on both a Council Bill and a Clerk File. These were both referred directly to full Council because of the Land Use Code's short deadline for approval.

When reviewing final plats, S.M.C. § 23.22.074(A) requires the Council to determine:

1. Whether the final plat is in substantial conformance with the approved preliminary plat;
2. Whether the requirements imposed when the preliminary plat was approved have been met;
3. Whether a bond, if required by the City, is sufficient to assure completion of improvements; and
4. Whether the requirements of State law and the Seattle Municipal Code that were in effect at the time of preliminary plat approval have been satisfied by the applicant.

The Directors of SDOT and DPD have confirmed that the plat meets all of the requirements of preliminary plat approval, as well as the requirements of state platting law and the Seattle Municipal Code. SDOT prepared the Council Bill for Council review and action. Central Staff has reviewed the final plat and legislation and **recommends that the Council grant final plat approval.**

Description of Final Plat

The "Plat of Maple Leaf Cottages" subdivision is located on an approximately 15,140 square foot site at the northwest corner of the intersection of NE 89th Street and the unopened right-of-way for 23rd Avenue NE.

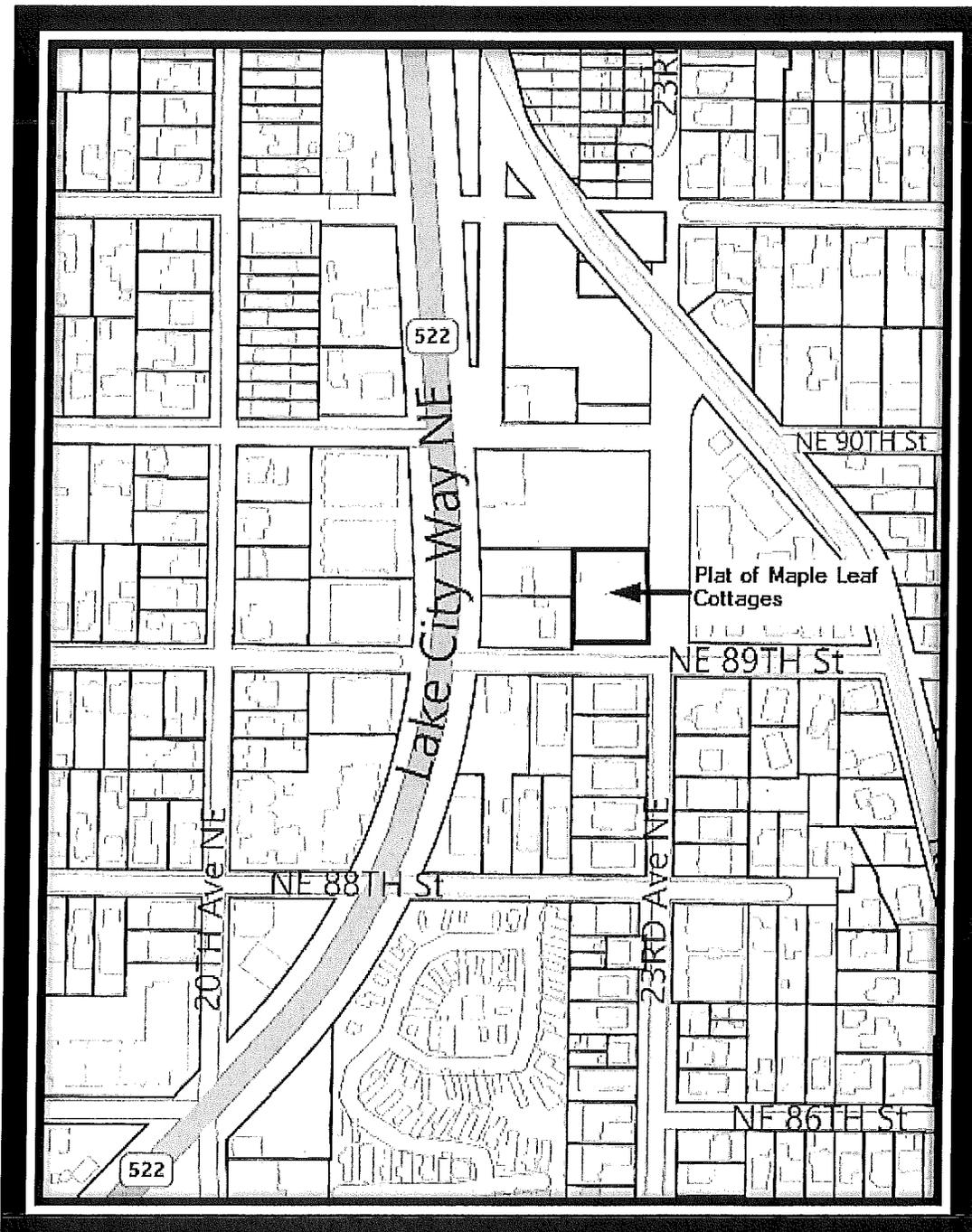
The site is zoned Lowrise 2 (LR2) multifamily residential. LR2 zoning continues to the south, north and east of the site. Zoning to the west of the site along Lake City Way NE is Commercial 1 with a 65 foot height limit. Development in the vicinity consists primarily of older multifamily, single family, and commercial structures. The site is developed with 12 townhouses in five structures. The applicant proposes to subdivide one existing parcel into 12 unit lots.

On June 23, 2011, DPD recommended approval of the proposed subdivision. The Hearing Examiner held a public hearing on July 27, 2011 and granted preliminary plat approval, subject to conditions (see attached Hearing Examiner *Findings and Decision*). The Hearing Examiner's conditions have been met.

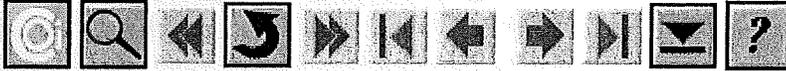
Attachment

- Vicinity Map
- Findings and Decision of the Hearing Examiner on Preliminary Plat Approval, August 2, 2011 (Blue Paper)

Vicinity Map



- [Election Code Administration](#)
- [Seattle Hearing Examiner](#)
- [Business Tax Rules](#)
- [Taxicab and For-Hire Vehicles](#)
- [Public Corporations](#)



City of Seattle Hearing Examiner Decision

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FINDINGS AND DECISION OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Application of VITALIY AFICHUCK, for LINDEN AVENUE, LLC for approval of a preliminary subdivision.

Hearing Examiner File: MUP-11-009 (SD)

Department Reference Numbers: 3009815

Date: August 2, 2011

Type: Subdivision

Examiner: Sue A. Tanner

Introduction

The Applicant seeks preliminary approval of a 12-unit lot subdivision of property located in the Maple Leaf neighborhood. The Director, Department of Planning and Development (Director or Department) recommended approval of the subdivision. There were no requests for further consideration of the Director's recommendation.

A public hearing on the subdivision application was held before the Examiner on July 27, 2011. The Applicant, Linden Avenue, LLC, was represented by Vitaliy Afichuk, *pro se*, and the Director was represented by Stephanie Haines, Senior Land Use Planner. No members of the public attended the hearing. The record was held open following the hearing for the Examiner's site visit, which occurred on July 30, 2011.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. After considering the evidence in the record and visiting the site, the Examiner enters the following findings of fact, conclusions and decision.

Findings of Fact

Site and Vicinity

1. The proposal site is addressed as 2114 Northeast 89th Street and is located at the northwest corner of the intersection of Northeast 89th Street and the heavily vegetated unopened 23rd Avenue Northeast right-of-way. The site is approximately 15,140 square feet in size, rectangular in shape, and has gentle to moderate slopes at the east, west and north property lines.
2. The site is zoned Multifamily Lowrise 2 (LR2). To the west, property is zoned Commercial 1 with a 65-foot height limit and developed with a storage facility. Property to the north is zoned LR2 and is undeveloped. To the east is one block of LR2-zoned property improved with a condominium development. Further east, across Ravenna Avenue Northeast, is Single-Family 5000 zoning. To the south is LR1 zoning developed with a mix of multifamily and single-family residences.
3. The site is mapped as an environmentally critical area (ECA) for steep slopes and liquefaction-prone soils. However, the steep slope is actually located on an adjacent site to the northwest, with only the 15

-foot steep slope buffer located on the subject property. Following geotechnical review, the Department granted an ECA exemption for the project because proposed development will be located outside the ECA buffer. The applicant recorded an ECA covenant for liquefaction, per Code.

4. Contaminated soils were found on the far north and west portions of the site. They are believed to have resulted from contamination on a property northwest of the site that is included on the Washington State Department of Ecology's contaminated sites lists. According to a geotechnical report and subsurface investigation report submitted in conjunction with MUP 3009134, excavation for the proposed development is not expected to reach the level of the contaminated soils, and remediation will be required only if contaminated soils are encountered during construction. The Director imposed SEPA conditions in MUP 3009134 to address the potential impacts of the contaminated soils.

Proposal

5. On August 3, 2009, the Director issued a decision conditionally approving MUP 3009134 to establish use for construction of three duplex and two triplex townhouse structures on the site, along with four parking spaces located within four of the townhouse units and eight additional parking spaces. The decision noted that a 12 unit lot full subdivision was anticipated as part of the project, Exhibit 5 at 1, and evaluated the long-term impacts of the subdivision on drainage, transportation and the demand for public services as part of the SEPA review for MUP 3009134. Exhibit 5 at 6-8. The SEPA Determination of Nonsignificance issued for the proposal was not appealed.

6. The Applicant now seeks to subdivide the property into the anticipated 12 unit lots, with vehicle access provided from Northeast 89th Street.

7. No dedications are required. Street improvements were required conjunction with MUP 3009134, and SDOT has issued a street improvement permit for construction of the improvements, which will include sidewalks within Northeast 89th Street adjacent to the site. *See* Exhibit 20. SDOT indicates that both the security bond and construction phase deposit have been received for that permit. Exhibit 11. There are stops for multiple transit routes nearby.

8. Private easements are shown on the preliminary plat for vehicular ingress and egress, pedestrian access and access to all parking. Exhibit 1.

9. Private usable open space will be provided for each unit on the same lot that it serves, and will be directly accessible to the unit. Exhibit 1.

10. The preliminary plat includes a mailbox/address sign easement and a private utility easement. It also includes a notation that the unit lots are not separate buildable lots 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. Exhibit 1.

11. The Applicant has submitted a draft "Declaration of Covenants and Easements" that allocates responsibilities for maintenance and repair of common areas, including easements. Exhibit 2.

Director's Review of Unit Lot Subdivision

12. The Director received one written comment on the subdivision application from a member of the public. The comment expressed concern about the removal of several mature trees on the site.

13. The Director circulated a request for comment on the subdivision to agencies and City departments and received the following responses:

- a. The Fire Department recommended approval of the preliminary subdivision;
- b. Seattle City Light recommended approval of the subdivision subject to an easement for electrical facilities to provide power to the proposed unit lots, and supplied the language for the easement;
- c. The area is served with domestic water. Seattle Public Utilities issued a Water Availability Certificate for the project on January 6, 2009. However the Certificate is valid for "no more than 18 months from the date of certification," and therefore needs to be renewed. Exhibit 14 at 1.
- d. DPD Drainage and Sewer Review indicated that the subject property is connected to the public sanitary sewer and served by the public drainage system, and recommended no conditions for the

project;

- e. DPD Structural and Ordinance Review approved the project with no conditions;
- f. Seattle Department of Transportation required street improvements, the plans for which have been approved and bonded as noted above;
- g. The Director of Housing recommended approval of the project; and
- h. The Superintendent of Parks and Recreation, Director of Public Health and King County-METRO had no comment on the project.

14. As part of the Department's zoning review for the associated MUP application it was determined that the subdivision as a whole will meet all minimum development standards for the zone.

15. The Director recommends approval of the subdivision.

Applicable Code Provisions

16. SMC 23.22.054, entitled "Public use and interest," lists some of the factors the Hearing Examiner must consider in determining whether to approve a subdivision:

The Hearing Examiner shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. The Hearing Examiner shall consider all relevant facts to determine whether the public interest will be served by the subdivision and dedication, and if it finds that the proposed plat makes appropriate provision for the public health, safety and general welfare and for open spaces, drainage ways, streets, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, fire protection facilities, parks, playgrounds, sites for school and schoolgrounds, sidewalks and other planning features that assure safe walking conditions for students who walk to and from school, and that the public use and interest will be served by the platting of the subdivision, then it shall be approved. If the Hearing Examiner finds that the proposed plat does not provide the appropriate elements, or that the public use and interest will not be served, then the Hearing Examiner may disapprove the proposed plat.

17. SMC 23.22.052 provides that:

- A. Every subdivision shall include adequate provision for dedication of drainage ways, streets, alleys, pedestrian access and circulation, easements, slope rights, parks and other public open spaces for general purposes as may be required to protect the public health, safety and welfare.
- B. Protective improvements and easements to maintain the improvements shall be dedicated at the discretion of the City.
- C. Sidewalks shall be provided on dedicated streets, and must be convenient for pedestrians and contiguous to each other and to any private sidewalks within the subdivision and to existing sidewalks contiguous to the subdivision.
- D. Vehicular access to every lot shall be from a dedicated street

18. SMC 25.09.240.A excludes unit lot subdivisions from the requirements of that section for subdivisions located within environmentally critical areas.

19. SMC 23.22.062 provides for unit lot subdivision of townhouse development as follows:

. . . .

B. [S]ites developed or proposed to be developed . . . may be subdivided into individual unit lots. 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 as the dwelling unit it serves.

C. Subsequent platting actions, additions or modifications to the structure (s) may not create or increase any nonconformity of the parent lot.

D. Access easements and joint use and maintenance agreements shall be executed for use of common garage or parking areas, common open space (such as common courtyard open spaces for cottage housing), and other similar features, as recorded with the Director of the King County Department of Records and Elections.

E. Within the parent lot, required parking for a dwelling unit may be provided on a different unit lot than the lot with the dwelling unit, as long as the right to use that parking is formalized by an easement on the plat, as recorded with the Director of the King County Department of Records and Elections.

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.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to Chapters 23.76 and 23.22 SMC.
2. The public comment concerning removal of trees from the site is addressed to actions taken as part of the townhouse construction under MUP 3009134, issued in August of 2009, and is not relevant to the present application for subdivision approval.
3. The proposal requires no dedications, takes vehicular access from a dedicated street, and will provide sidewalks along Northeast 89th Street. It meets the requirements of SMC 23.22.052.
4. The proposal also meets the requirements of SMC 23.22.062 for unit lot subdivisions. The development as a whole will meet the development standards applicable to the parent lot; the required parking, easements and private, usable open space are provided; and the required disclosures and joint use and maintenance agreements will be provided as part of the final plat.
5. As conditioned, the subdivision makes appropriate provision for the public health, safety and general welfare. It complies with Code requirements for ECA steep slopes and liquefaction prone soils, and required measures are in place to deal with the contaminated soils on the northwest part of the site. The record shows that the subdivision also makes appropriate provision for open spaces, drainage ways, streets, transit stops, potable water, sanitary wastes, fire protection facilities, parks and playgrounds, and sidewalks that assure safe walking conditions for students who walk to and from school.
6. The proposal will promote individual ownership of the 12 residential units which will be constructed in a configuration that is compatible with the surrounding neighborhood. As conditioned, the subdivision will serve the public use and interest.

Decision

The application of Vitaliy Afichuk on behalf of Linden Avenue, LLC for the unit lot subdivision is **APPROVED**, subject to the following conditions:

Conditions of Approval Prior to Recording Final Subdivision Plat:

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

1. Obtain a valid Water Availability Certificate from Seattle Public Utilities;
2. Note on the face of the final plat map the following: " Each unit lot is not a separate buildable lot, and additional development of the individual unit lots may be limited as a result of the application of development standards to the parent lot."
3. Note on the final plat map the location of any and all easements for infrastructure improvement and private and public utilities, including the Seattle City Light utility easement language specified in Exhibit 12.
4. Include on the final plat map for recording easements for the joint use and access by tenants/owners of all common areas. The easements must be approved by DPD prior to recording.
5. Include with the final plat map final covenants that allocate responsibility for maintenance and repair of common walls built on the unit lot lines; the portions of the utility systems serving more than one unit lot; the exterior siding, trim, windows and doors on the buildings that cross unit lot lines; and the ingress and egress easement, parking easement, pedestrian easement and mailbox/address signage easement shown on the plat.. The covenants must be approved by DPD prior to recording.
6. Note in the final covenants that under the Seattle Land Use Code "subsequent platting actions, additions or modifications to the structure(s) may not create or increase any non-conformity of the parent lot" (SMC 23.22.062.C), and "the unit lot is not a separate buildable lot, and additional development of the individual unit may be limited as a result of the application of development standards to the parent lot" (SMC 23.22.062.F).
7. Prior to final plat approval, record the approved covenants with the King County Department of Records and Elections and provide the recording number on the final plat documents.

