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**INTERPRETATION OF THE DIRECTOR OFFICE OF
PURSUANT TO TITLE 23 OF SEATTLE MUNICIPAL CODE HEARING EXAMINER**

In the Matter of the Use of the Property at

3078 – SW Avalon Way

Hearing Examiner File:
**MUP-13-007(DR, W)
S-14-001**

**LAND USE CODE
INTERPRETATION
No. 14-005
SUPPLEMENTAL**

DPD Project No. 3017787

Related DPD Master Use Permit
(MUP) Project 3013303

Following further review of the applicant's plans for Project 3017787, DPD has concluded that additional analysis is required of the first issues raised in Interpretation No. 14-005, concerning floor area ratio (FAR) and accordingly this supplemental interpretation is provided. Changes made in the existing interpretation wording are shown by strikethrough, and additional wording is shown as underlined. The additional analysis changes the decision in the interpretation.

Introduction

On behalf of his client Neighbors Encouraging Reasonable Development (NERD), attorney Peter J. Eglick has requested this interpretation in conjunction with an appeal of Project 3013303, an application for a Master Use Permit (MUP); including review under the State Environmental Policy Act (SEPA) and Design Review to construct a seven-story structure containing 102 residential units. Parking for 59 vehicles is proposed to be provided below grade, with one level accessed from SW Avalon Way (30 spaces) and a separate level accessed from the alley to the west of the site (29 spaces). The request for interpretation raises six issues:

- 1) Whether the proposed project exceeds the allowable floor area ratio (FAR) limits established by Seattle Municipal Code (SMC) Section 23.45.510 and as measured in Section 23.86.007;

- 2) Whether the project exceeds the height limits established by Section 23.45.514 and as measured in Section 23.86.006;
- 3) Whether the project application is incomplete or otherwise does not comply with the requirements of Section 23.76.010.A.1 in that it includes property not owned by the application or, referencing Section 22.170.200, it does not address how adjacent property will be impacted;
- 4) Whether the project complies with the application submittal requirements of the Regulations for Environmentally Critical Areas in Section 25.09.330;
- 5) Whether the project is based on an application that does not correctly depict steep slope areas in project plans and a topographic survey and whether the project includes a current geotechnical report and current temporary shoring plan;
- 6) Whether the proposed development meets the criteria in Section 25.09.180.B.2 for relief from the general standard in Section 25.09.180.B.1 prohibiting development on steep slope areas.

Background

The basic facts of the proposed development in Project 3013303 are summarized by the DPD land use decision in Project 3013303. Pages 1-3 of the land use decision, prior to the heading "Analysis – Design Review" are incorporated by reference into this interpretation as findings of fact.

According to records maintained by DPD in its Electronic Data Management System (EDMS), three different sets of application plans have been submitted by the project applicants. The most recent of these were received by DPD on February 10, 2014, according to DPD's Hansen project tracking system and to the DPD receipt stamp on the face of the project plans submitted for DPD review¹.

Following publication of the SEPA and Design Review decision for the project on May 15, 2014, an appeal of the decision was filed by NERD. This interpretation was requested together with the appeal of the SEPA and Design Review decision, in accordance with the Seattle Land Use Code process for request of formal Code interpretation as part of the land use decision appeal process (see Seattle Municipal Code (SMC) Section 23.88.020).

¹ Not all plan sheets in the set are stamped February 1, 2014. Only new plan sheets added to the set containing responses to DPD correction requests are updated from the prior plans sets. Thus, the most recent plan set cover sheet is stamped February 12, 2013 but, for example, plan sheet A0.02 containing the architects' responses to Design Guidelines and listed design departures is stamped February 10, 2014.

Analysis

Each issue raised by the request for interpretation, as summarized in the introduction, is discussed below. After the introductory summary for each issue, the facts necessary to support the conclusions for each issue are summarized first, followed by the conclusions.

1. **The proposed project ~~complies with~~ exceeds the allowable floor area ratio (FAR) limits established by SMC Section 23.45.510 and as measured in Section 23.86.007, ~~but~~ and revision of the FAR calculations on sheet A0.04 is required, to account for additional non-exempt floor area on Level 1 and Level 2 of the proposed structure.**

SMC Section 23.45.510 establishes floor area ratio (FAR) limits for the multifamily zones. It provides in part as follows:

"A. General provisions

1. All gross floor area not exempt under subsection 23.45.510.E counts toward the maximum gross floor area allowed under the FAR limits.
2. The applicable FAR limit applies to the total non-exempt gross floor area of all structures on the lot.

D. FAR limits in MR and HR zones. FAR limits apply to all structures and lots in MR and HR zones as shown in Table B for 23.45.510, provided that if the MR and HR zone designations include an incentive zoning suffix, then the applicant shall comply with Chapter 23.58A, Incentive provisions, to obtain gross floor area exceeding that allowed by the FAR shown in the suffix designation.

**Table B for 23.45.510
Floor Area Ratios in MR and HR zones**

	MR	HR
Base FAR	3.2	8 on lots 15,000 square feet or less in size; 7 on lots larger than 15,000 square feet
Maximum FAR, allowed pursuant to Chapter 23.58A and Section 23.45.516	4.25	13 for structures 240 feet or less in height; 14 for structures over 240 feet

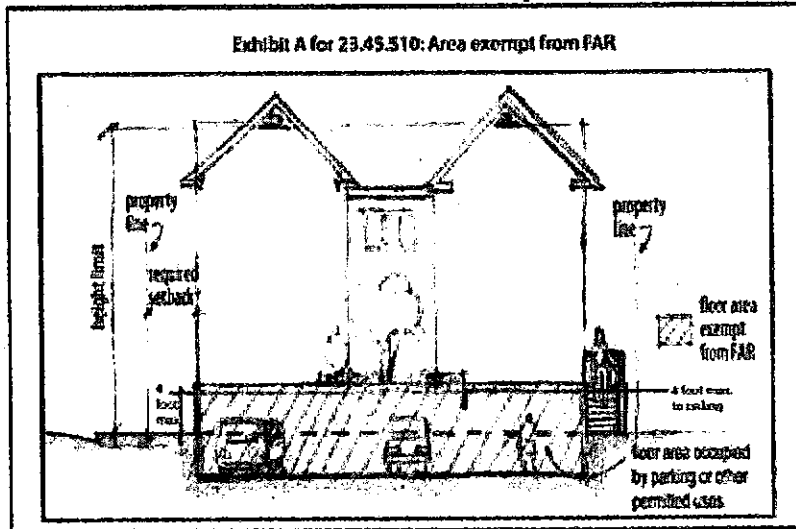
E. The following floor area is exempt from FAR limits:

1. All underground stories.

4. Portions of a story that extend no more than 4 feet above existing or finished grade, whichever is lower, excluding access, (see Exhibit A for 23.45.510), in the following circumstances:

c. all multifamily structures in MR and HR zones.”

**Exhibit A for 23.45.510
Area exempt from FAR**



Section 23.86.007 establishes regulations for measurement of gross floor area and floor area ratio and provides in part as follows:

“A. Certain items may be exempted from calculation of gross floor area of a structure. Except as otherwise expressly provided in this Title 23, if gross floor area of underground stories or portions of stories is exempted, the amount of below-grade gross floor area is measured as follows:

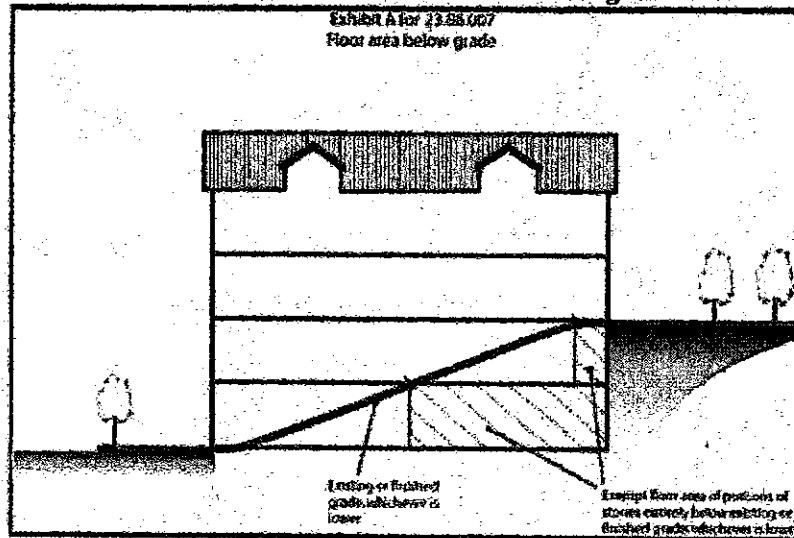
1. An underground story is that story or portion of a story for which the ceiling above, or the roof surface if there is no next floor above, is at or below the abutting existing or finished grade, whichever is lower (See Exhibit A for 23.86.007).

2. To determine the amount of gross floor area that is below grade:

- a. determine the elevation of the ceiling of the underground story, or the roof surface if there is no next floor above the underground story;
- b. determine the points along the exterior wall of the story where the ceiling elevation or roof surface elevation above intersects the abutting corresponding existing or finished grade elevation, whichever is lower;
- c. draw a straight line across the story connecting the two points on the exterior walls;

d. the gross floor area of an underground story or portion of an underground story is the area that is at or below the straight line drawn in step 23.86.007.A.2.c above.

**Exhibit A for 23.86.007
Floor area below grade**

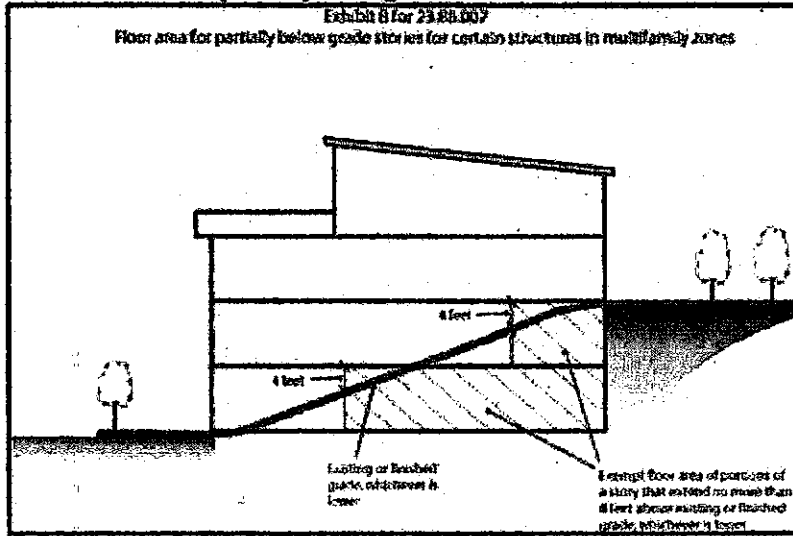


B. Pursuant to subsection 23.45.510.E, for certain structures in multifamily zones, portions of a story that extend no more than 4 feet above existing or finished grade, whichever is lower, are exempt from calculation of gross floor area. The exempt gross floor area of such partially below-grade stories is measured as follows:

1. determine the elevation 4 feet below the ceiling of the partially below-grade story, or 4 feet below the roof surface if there is no next floor above the partially below-grade story;
2. determine the points along the exterior wall of the story where the elevation determined in subsection 23.86.007.B.1 above intersects the abutting corresponding existing or finished grade elevation, whichever is lower;
3. draw a straight line across the story connecting the two points on the exterior walls;
4. the gross floor area of the partially below-grade story or portion of a partially below-grade story is the area of the story that is at or below the straight line drawn in subsection 23.86.007.B.3 above, excluding openings required by the Building Code for egress. (See Exhibit B for 23.86.007)."

Exhibit B for 23.86.007

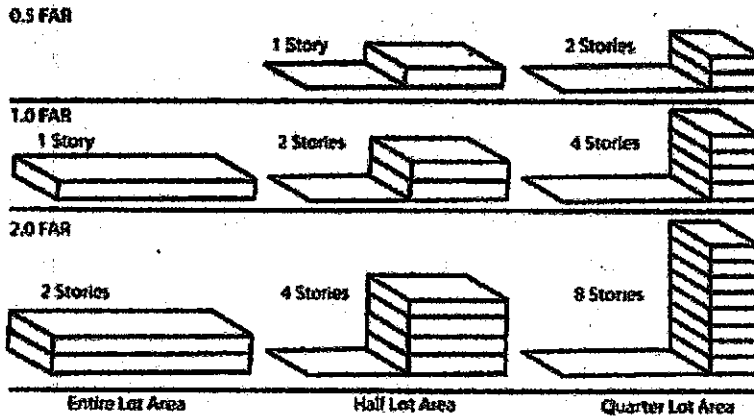
Floor area for partially below grade stories for certain structures in multifamily zones



Section 23.84A.012 provides the following definition:

“‘Floor area ratio’ means a ratio expressing the relationship between the amount of gross floor area or chargeable floor area permitted in one or more structures and the area of the lot on which the structure is, or structures are, located, as depicted in Exhibit 23.84A.012 A.

**Exhibit 23.84A.012 A
Floor Area Ratio**



Section 23.84A.014 provides the following definition:

“‘Gross floor area’ means the number of square feet of total floor area bounded by the inside surface of the exterior wall of the structure as measured at the floor line.”

Section 23.84A.040 provides the following definition:

“‘Underground’ means entirely below the surface of the earth, measured from existing or finished grade, whichever is lower, excluding access.”

According to the land use analysis plan sheet A0.03 of the most recent set of plans, submitted by the applicant to DPD on February 10, 2014, the floor area for the proposed development is compliant with the base FAR limit of 3.2 for the Midrise zone per Table B for 23.45.510. According to the definition of floor area ratio in Section 23.84A.012 and Exhibit 23.84A.012A, the base FAR limit of 3.2 means that the total floor area allowed is 3.2 times the total lot area of 19,196 square feet.² This calculation results in a total of 61,427 square feet of allowed floor area for the proposed structure. The project proposes a total floor area of 58,884 square feet, according to plan sheet A0.03, and based on the information provided by the applicant is therefore in compliance with the FAR limits of the Land Use Code. The FAR limits are further depicted in FAR diagrams on plan sheet A0.04.³ The areas within the proposed building that are included in the FAR calculation are shown by diagonal shading. Dimensions of specific areas on each floor are shown surrounded by dashed lines and added together for each floor in calculations of “FAR Total” provided on Sheet A0.04. The dimensions for these areas on the FAR diagrams match the dimensions of the floor plans presented on sheets A2.00 through A2.06.

Sections 23.45.510.A.1 and 23.45.510.E further provide that certain floor area within a structure is exempt from the FAR limits. The exempt portions of the floor area of the proposed structure, pursuant to Section 23.45.510.E.1 and E.4.c, are “all underground stories” and “portions of a story that extend no more than 4 feet above existing or finished grade, whichever is lower, excluding access.” Section 23.45.510.E.1 applies to multifamily structures in all the multifamily zones and Section 23.45.510.E.4.c applies to all multifamily structures in MR zones. Thus, both exemptions apply to the subject proposal, as it is a multifamily structure in a MR zone. The floor area claimed as exempt from FAR limits is shown as unshaded space, primarily on levels 1 and 2 of the proposed structure.⁴ Based on these exemptions, some floor area is not included by the applicant in the calculation of the total floor area for purposes of the floor area maximum limit.

Section 23.86.007.A and 23.86.007.B explain how to measure the portions of a story that are either entirely underground or are no more than 4 feet above existing or finished grade, whichever is lower. In either case, the floor area of these underground stories or

² See the site survey with topography shown at one-foot intervals that is provided in the plans, signed and stamped by Robert H. Winters, a Professional Land Surveyor.

³ A comparison of the measurements provided in the FAR diagrams with the floor plan sheets A2.00 through A2.06 indicates that the measurements are the same and that all measurements are to the inside surface of the exterior wall of the proposed structure as measured at the floor line, consistent with the definition of gross floor area in Section 23.84A.014.

⁴ Other unshaded areas, for example on level 3 or on the roof, represent areas outside the structure. The third level includes an outdoor plaza on the westerly side of the building, and other areas on the upper levels are outside decks that are not counted in floor area limits.

partially below-grade stories is exempt from calculation of gross floor area. In both cases, the location of the underground areas or partially below-grade areas is determined by drawing a straight line across the story connecting two points on the exterior walls. These two points, for an underground story, are the points at the exterior wall of the story where the ceiling elevation of the underground story intersects the abutting corresponding existing or finished grade elevation. Similarly, for the partially below grade story, they are the points 4 feet below the ceiling at the exterior wall of the partially below grade story that intersect the abutting corresponding existing or finished grade elevation. Areas of the stories that are at or below the straight line represent the gross floor area below grade. The project applicant has shown this line drawn diagonally northwest to southeast across level 2 of the proposed building from the north to the south side, approximately 35 feet east of the northwesterly corner of the proposed building and 20 feet west of the southeasterly corner, according to the FAR diagram on page A0.04 of the plans. Areas above the straight line, or east of it, are included in the calculation of the floor area limit and areas below or to the west are exempt.

All of level 1 is shown as exempt as below existing grade (and below the elevation determined by the line on level 2), except for some small areas exposed at street grade on the east side of level 1. Review of the elevation drawing for the north side of the proposed building, plan sheet A3.01, shows that more of level 1 is above grade than is depicted on sheet A0.04. Thus, more of the floor area on level 1 must be included in floor area calculations. The north elevation drawing shows parking level 1 at elevation 158, and parking level 2 at elevation 169.5. To qualify as exempt floor area under Section 23.45.510.E, the first story must either be underground or no more than 4 feet above the lower of existing or finished grade at elevation 165.5. Plan sheet A0.04 shows finished grade lower than existing grade and depicted as a gentle slope from elevation 158 at the northeast corner of the proposed structure westward to an elevation of about 162.5 at a proposed retaining wall, labeled "driveway ramp retaining wall on site plan sheet A1.00."⁵ At the top of this retaining wall, existing grade is lower and the elevation is at about 168, so the floor west of the retaining wall line is below grade or partially below grade, and is exempt. However, floor area to the east of this line, from the base of the retaining wall east, is more than four feet above finished grade and is therefore not exempt from FAR calculations.

Based on the above analysis, the FAR diagram for level 1 is incorrect. The line required by Section 23.86.007.B for a partially below-grade story must be drawn not from 5.39 feet west of the northeasterly corner of the building but rather from about 37 feet west of the northeasterly corner, from the location of the proposed driveway ramp retaining wall. The line must then be extended to a point 2.55 feet west of the southeast corner of the building. Excluding a small area at the southeast corner of level 1 that is within the

⁵ Note: The site plan sheet A1.00 shows a five-foot retaining wall extending north of the northeast corner of the building and a two-foot retaining wall approximately 15 feet to the west, but neither of these features is shown on north elevation drawing sheet A3.01. If such walls are in fact proposed, they could change the analysis of existing and finished grade along the north side of the building, but the site plan and elevation drawing should be corrected so that the elevations and features shown on them are the same.

triangle formed by drawing this line but is already counted in the floor area calculation, the remaining area within the triangle is about 2,470 square feet.⁶ This area is shown as exempt but must be counted toward FAR under the Code.

With respect to level 2, the applicant appears to have located the line about 16 feet to the east of where the line should be drawn based on where the points 4 feet below the ceiling of level 2 actually intersect the exterior wall at the lower of existing or finished grade elevation. This conclusion is based on comparing the location of the line on sheet A0.04 with the applicant's depiction of the floor levels and grades on the north and south elevation drawings sheets A3.01 and A3.03 and further comparing to the floor plan for level 2 on sheet A2.01. It appears that existing and finished grade are very close at approximately cross section line 4.9 on plan sheet A3.01 for the north wall and that the intersection line is at that point, rather than further west as depicted on sheet A0.04.⁷ Compare also to floor plan sheet A2.01 at cross section line 4.9. Similarly, the 4-foot intersection for the south wall appears to be at cross section line C rather than further east. The result is that about 2,320 square feet of additional floor area should be included as chargeable or non-exempt floor area on level 2.

Accordingly, the total floor area counted as exempt by the applicant but non-exempt under the above analysis is about 4,790 square feet. Even assuming revision of the floor area calculations based on the above analysis, however, theThe project plans on sheet A0.04 reflect that overall floor area is about 2,543 square feet less than the maximum allowed. If 2,543 is subtracted from 4,790, the proposal exceeds the maximum FAR by about 2,247 square feet. These figures are estimates based on scaling of a drawing that is very small, at a scale of 1 inch equals 30 feet. The measurements and additional area of non-exempt FAR are shown on a portion of plan sheet A0.04 attached to this interpretation. The applicant must recalculate the FAR and demonstrate by either further calculations or revisions to the plans that Code requirements for FAR limits are met by the Project 3013303. Even if an additional 2,320 square feet is included in the non-exempt floor area, the proposal remains in compliance with floor area limits.

- 2. The project as depicted in the plans submitted to DPD on February 10, 2014 complies with the height standards for the Midrise (MR) zone in Section 23.45.514 and as measured in Section 23.86.006 and DPD Directors' Rule 4-2012.**

Table B for 23.45.514 provides a base height limit of 60 feet for principal structures in the MR zone. Sections 23.45.514.J.5 and J.6 provide in part as follows:

"J. Rooftop features

⁶ The distance along the east side of level 1 behind the non-exempt area shown on the worksheet is about 133.5 feet. If this is multiplied by 37 and divided by 2, the total area is about 2,470 square feet.

⁷ The determination is complicated as the applicant did not locate any reference points for determination of the measurement line on either the floor plan or the elevation drawings.

5. In MR and HR zones, the following rooftop features may extend 15 feet above the applicable height limit set in subsections 23.45.514.B, and F, if the combined total coverage of all features does not exceed 20 percent of the roof area, or 25 percent of the roof area if the total includes screened mechanical equipment:

a. Stair penthouses, except as provided in subsection 23.45.514.J.6;

6. Subject to the roof coverage limits in subsections 23.45.514.J.4 and 5, elevator penthouses may extend above the applicable height limit up to 16 feet. If additional height is needed to accommodate energy-efficient elevators in HR zones, elevator penthouses may extend the minimum amount necessary to accommodate energy-efficient elevators, up to 25 feet above the applicable height limit. Energy-efficient elevators are defined by Director's Rule. Stair penthouses may be the same height as an elevator penthouse if the elevator and stairs are co-located within a common penthouse structure."

Section 23.86.006.A.1 provides as follows::

"A. In all zones except downtown zones, and except for the Living Building Pilot Program authorized by Section 23.40.060, unless otherwise specified, the height of structures shall be measured according to this subsection 23.86.006.A.

1. General rule. Except as otherwise specified, the height of a structure is the difference between the elevation of the highest point of the structure not excepted from applicable height limits and the average grade level. In this subsection 23.86.006.A, "average grade level" means the average of the elevation of existing lot grades. Except as provided in subsection 23.86.006.A.2, average grade level is calculated, at the discretion of the applicant, as follows:

- a. at the midpoint, measured horizontally, of each exterior wall of the structure,
- or
- b. at the midpoint of each side of the smallest rectangle that can be drawn to enclose the structure."

DPD Director's Rule (DR) 4-2012, Height Measurement: Calculating Average Grade Level, effective 4-18-2012, provides in part on page 3 as follows:

"**Formula 2: Enclosing Rectangle.** Under this formula, the average grade level is calculated by first drawing the smallest rectangle that encloses the entire structure, including all occupied floor area. The average grade level is calculated as the average of the elevation of existing lot grades at the midpoints, measured horizontally, of each side of this rectangle. For irregular lots, if the rectangle enclosing the proposed structure would extend beyond the lot property lines, the Director will determine how to treat the irregularity to most closely approximate the smallest enclosing rectangle.

Formula 2: $\frac{(\text{midpoint grade elevations}) \times (\text{rectangle side lengths})}{(\text{total length of rectangle sides})}$ "

Director's Rule 4-2012 is a more complete description of the measurement method described in Section 23.86.006.A.1.b of the Code.

Referring to the plans submitted by the applicant to DPD on February 10, 2014, plan sheet A0.03 depicts the height limit calculation, showing an average grade of 175.10 and

height limit of 250.10. Calculations are provided next to the site drawing. The site drawing shows property lines and topographic lines at one-foot intervals, and the proposed structure outline is superimposed on the site.⁸ The calculations use algebraic symbols instead of Arabic numbers in some instances and require reference to the adjacent site drawing. A separate sheet dated November 21, 2013 and submitted to DPD Land Use Planner Garry Papers provides Arabic numbers in place of algebraic symbols and also notes that the height calculation formula used is the average grade calculation per Director's Rule 4-2012 Formula 2. A small elevation drawing above the site plan on sheet A0.03 shows the base height limit at an elevation of 235.10, actual roof height at 230.83, and elevator penthouse height limit of 251.10.

Elevation drawings provided in the plans on sheets A3.00 through A3.03 all consistently depict the same average grade level and overall height measurements for the proposed structure used on sheet A0.03.

The average grade calculation in Formula 2 of DR 4-2012 requires drawing a rectangle that encloses the structure, locating the existing lot grade at each midpoint, multiplying each midpoint elevation by the length of the respective side of the rectangle, adding all four calculations together, and then dividing by the total length of all rectangle sides. As shown by the applicant on sheet A0.03 and on their calculation of November 21, 2013, the formula yields the average grade of 175.10. The maximum base height of the proposed structure per Table B for Section 23.45.514 is therefore at an elevation of 235.10, or 60 feet more than average grade. Per Sections 23.45.514.J.5 and J.6, stair penthouses may extend to 250.10 feet, or an additional 15 feet above the base height limit, and elevator penthouses or a penthouse containing both elevator and stairs may extend up to 16 feet above the base height limit, or to an elevation of 251.10 feet.

On sheet A0.03, the applicant shows a maximum overall height limit of 250.10 feet, but in the separate elevation drawing on sheet A0.03 and on the elevation drawings sheets A3.00 through A3.03, the plans clearly distinguish the base height at elevation 235.10 and the elevator penthouse height of 251.10. The proposed structure, measured from average grade on site of 175.10, actually measures slightly less than 55 feet 9 inches to the rooftop.⁹ The stair and elevator penthouses do extend above the base height limit of 235.10 but the elevation drawings show them well below the maximum heights of 250.10 or 251.10.

The proposed development complies with the height standards of the Land Use Code.

⁸ Compare to the site survey with topography shown at one-foot intervals. Comparison of the survey topography with the topographic lines used in the height calculation on sheet A0.03 indicates that the survey lines were used in determining average grade height measurement as depicted on sheet A0.03.

⁹ Section 23.45.514.J.2 also provides: "Open railings, planters, skylights, clerestories, greenhouses not dedicated to food production, parapets and firewalls on the roofs of principal structures may extend 4 feet above the maximum height limit set in subsections A, B, E, and F of this Section 23.45.514." The applicants' plans do show parapets extending 4 feet above the roof, as permitted by Section 23.45.514.J.2.

- 3. Whether the project applicant Northlake Group LLC has provided sufficient information that it has an ownership interest in the property and whether the project proposal includes sufficient information to show that the proposed development will not impact adjacent property are not questions subject to formal interpretation under Section 23.88.020.A of the Seattle Land Use Code.**

SMC Section 23.88.020.A provides as follows:

“A. Interpretations generally. A decision by the Director as to the meaning, application or intent of any development regulation in Title 23 or in Chapter 25.09, Regulations for Environmentally Critical Areas, as it relates to a specific property, or a decision by the Director upon review of a determination of consistency of a proposed project with a planned action ordinance, is known as an “interpretation.” An interpretation may be requested in writing by any person or may be initiated by the Director. Procedural provisions and statements of policy are not subject to the interpretation process. A decision by the Director that an issue is not subject to an interpretation request is final and not subject to administrative appeal. A request for an interpretation, and a subsequent appeal to the Hearing Examiner if available, are administrative remedies that must be exhausted before judicial review of a decision subject to interpretation may be sought. An interpretation decision by the Director may affirm, reverse, or modify all or any portion of a Type I or Type II land use decision.”

Section 23.76.010.A.1 of the Land Use Code provides as follows:

“A.1. Applications for Master Use Permits shall be made by the property owner, lessee, contract purchaser, a City agency, or other public agency proposing a project the location of which has been approved by the City Council by ordinance or resolution, or by an authorized agent thereof. A Master Use Permit applicant shall designate a single person or entity to receive determinations and notices from the Director.”

Chapter 23.76 is part of Title 23, Title IV governing administration and specifically regulates procedures for MUPs and Council Land Use Decisions. The regulations in Chapter 23.76 are therefore not “development regulations” of either Title 23 or Chapter 25.09, Regulations for Environmentally Critical Areas that are subject to formal interpretation.

DPD requires project applicants to file a “Statement of Financial Responsibility/Agent Authorization” form. The primary purpose of this form is to identify the party that is legally responsible for payment of project fees assessed by DPD. Several of these forms are in the project file, including one that was filed January 2, 2013 showing the property owner as The Northlake Group LLC, with the signature of its Manager James W. Thorpe, and designating the agent as Radim Blazej, who signed and dated the form January 7, 2013.¹⁰ There is nothing in the record to indicate that the proposed development will impact adjacent property. Such details are subject to review at the building permit stage.

¹⁰ The DPD Hansen tracking system records show Northlake Group LLC as the owner and financially responsible party and Radim Blazej, an architect with Caron Architecture, as the primary applicant.

Regardless, this issue does not pose a question of the meaning, application or intent of a development regulation and is therefore beyond the scope of a formal interpretation.

- 4. Whether the project complies with the application submittal requirements of the Regulations for Environmentally Critical Areas in SMC Section 25.09.330 is not a question subject to formal interpretation under Section 23.88.020.A of the Land Use Code.**

Similar to issue 3 above, Section 25.09.330 is a procedural regulation concerning application submittal requirements. It is not a “development regulation” of either Title 23 or Chapter 25.09 that is subject to formal interpretation under Section 23.88.020.A.

Section 25.09.330 requires three main items to be submitted as part of an application for a site that is within an environmentally critical area: (1) a topographic survey, (2) additional site plan information including location and boundaries of all critical areas on the site and on adjacent lands within 25 feet of the site, and (3) technical reports, such as a soils report or geotechnical engineering study. All three items have been provided by the project applicant. Additional detail is typically required at the building permit stage of review.

- 5. Whether the project application correctly depicts steep slope critical areas on the topographic survey or includes a current geotechnical report and current conceptual shoring plan are questions about submittal requirements that are not subject to formal interpretation under Section 23.88.020.A of the Land Use Code.**

The accuracy of the survey, geotechnical report, or concept shoring plan are not questions about the meaning, application or intent of any development regulation under Title 23 or Chapter 25.09. Instead, these questions are about submittal requirements and are therefore beyond the scope of a formal interpretation under Section 23.88.020.A. There is no evidence in the record of this project to suggest that the survey is inaccurate or insufficient, and the grades depicted on the project plans appear to be based on that survey. No documentation has been provided, such as a different survey or any professional reports, reflecting that the documentation relied on for the project review was incomplete, inaccurate, or outdated.

- 6. The property and proposed development meet the criteria in SMC Section 25.09.180.B.2 for relief from the standard in Section 25.09.180.B.1 prohibiting development on steep slope critical areas, as the steep slope areas were created by previous legal grading for right-of-way improvement.**

SMC Section 25.09.180.B provides in part as follows:

“B. Impacts on Steep Slope Areas.

1. Development is prohibited on steep slope areas, unless the applicant demonstrates that the provisions of subsections 25.09.180.B.2 or 25.09.180.E apply.

2. Provided that all the provisions of this Chapter and all applicable provisions of Title 23 and Chapters 22.800 through 22.808 are met, subsection 25.09.180.B.1 does not apply when the applicant demonstrates the development meets one of the following criteria. In determining whether these criteria are met, the Director may require a geotechnical report to verify site conditions and to evaluate the impacts of the development in the steep slope area and shall require such a report for criteria in subsections 25.09.180.B.2.c and 25.09.180.B.2.d. The geotechnical report is subject to the provisions for third party review in Section 25.09.080.C.

a. Development is located where existing development is located, if the impact on the steep slope area is not altered or increased; or

b. Development is located on steep slope areas that have been created through previous legal grading activities, including rockeries or retaining walls resulting from rights of way improvements, if no adverse impact on the steep slope area will result; or

c. Development is located on steep slope areas that are less than 20 feet in vertical rise and that are 30 feet or more from other steep slope areas, if no adverse impact on the steep slope area will result; or

* * *

Under Section 25.09.180.B.1, development on steep slope areas is generally prohibited, but an applicant is allowed to develop steep slope areas if one or more of the provisions of subsection 25.09.180.B.2 applies. To facilitate requests for review of property to determine if subsection B.2 applies, DPD has a process for submittal of a "Request for Relief from Prohibition on Steep Slope Development or Modification to ECA Submittal Requirements," and there is a DPD form to fill out for this process. DPD records show that the applicant's representative Scott Jeffries of Caron Architecture submitted such a request for the 3078 SW Avalon Way site on August 2, 2012 under DPD Project No. 6315205. A similar application for property immediately adjacent to the 3078 SW Avalon Way site, at 3062 SW Avalon Way, was submitted on February 22, 2013 under Project No. 3014100. Project 6315205 was reviewed on August 7, 2012 by DPD Geotechnical Engineer Rob McIntosh. DPD Geotechnical Engineer Dean Griswold reviewed the similar application under Project 3014100.¹¹

While differing slightly in their wording, both decisions state that the steep slopes were "created by previous legal grading" for right-of-way or street improvements. Information submitted as part of each application included street grading profiles obtained from records maintained by Seattle Department of Transportation (SDOT). The record for Project 3014100 also includes a copy of portions of pages 1 and 2 of the Geotechnical Engineering Study prepared by Geotech Consultants Inc. dated September 10, 2012 that was filed as part of the application for Project 3013303 which states in part as follows:

"Based on the City of Seattle GIS Mapping, the far eastern-most portion of the eastern slope on the southern property has been mapped as a Steep Slope – Environmentally Critical Area (ECA). No additional geotechnical related ECAs or known landslides have been mapped on the subject site.

We have also obtained copies of historic street grading profiles on file in the City of Seattle engineering vault for Southwest Avalon Way in the area of the subject site. Based on the street

¹¹ The Hansen information shows that Mr. Griswold also reviewed the 3078 site Request for Relief from Prohibition on Steep Slope Development on February 22, 2013.

profile, it appears that up to approximately 8 feet of soil was cut from the western side of Avalon Way in the area of the site for the construction of the roadway.”

The grading pattern for Avalon Way is also apparent from the DPD Geographic Information Service (GIS) map for the vicinity that is attached to this interpretation. The record of the two Requests for Relief from Prohibition on Steep Slope Development for the property along Avalon Way shows that DPD's Geotechnical Engineers made a reasonable determination based on factual information available and using their professional expertise that the steep slopes along the edge of the subject property were created by grading for street improvements and are therefore eligible to be developed as part of the proposed project. There is no information in the record that contradicts this assessment. Further, these steep slopes, based on both the site survey and the GIS map, are less than 20 feet in height and not located within 30 feet of other steep slope areas. Thus, they qualify for relief from prohibition on development under Section 25.09.180.B.2.c, as well.

Decision

The proposed project exceeds maximum floor area limits of the Land Use Code as currently configured on the project plans, but it meets floor-area-ratio-and-height standards of the Land Use Code. The property and proposed development qualify for relief from the standard prohibiting development on steep slope critical areas. Other issues raised by the request for interpretation are beyond the scope of a formal interpretation.

Entered this 11th 17th day of July, 2014.



William K. Mills, Land Use Planner Supervisor
Department of Planning and Development

WKM/14-005 Supplemental

cc. Peter J. Eglick, for appellant NERD
G. Richard Hill, for applicant Northlake Group LLC



3078 SW Avalon Way



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