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**Interpretation of the Director
Under Seattle Municipal Code Title 23**

Regarding the Use of the

Property at

3050 SW Avalon Way

DPD Interpretation No. 13-005

(DPD Project No. 3015697)

Background

This interpretation was requested by Paul Haury on behalf of Neighbors Encouraging Reasonable Development, a group of neighbors living in the vicinity of 32nd Avenue SW. It relates to a multifamily development proposed at 3050 SW Avalon Way under DPD Project Nos. 3014342 and 6327295. The project, as described on the plans, consists of fourteen apartments with five to eight bedrooms apiece, for a total of 104 bedrooms. Each bedroom has a private bathroom. The question raised for interpretation is whether these individual bedrooms should be counted as separate dwelling units for purposes of Land Use Code standards, including the threshold for Design Review, or whether the suites of rooms should be regulated as individual dwelling units instead.

The request for interpretation also raises the question whether the rooms should be counted as separate dwelling units for purposes of determining whether categorical exemptions from SEPA review should apply. However, the application of categorical exemptions from SEPA review is not properly subject to the Land Use Code interpretation process according to Section 23.88.020.

Findings of Fact

1. The property at 3050 SW Avalon Way is a 7,200-square-foot lot in an MR (Midrise Multifamily Residential) zone in the West Seattle Junction Hub Urban Village. The lot is situated on the west side of SW Avalon Way, between Southwest Genesee and Andover Streets. It consists of Lot 13 and the southerly half of Lot 12, Block 8, Westholme Addition, King County Assessor's Parcel No. 929730-0885.
2. Applications for a Master Use Permit (Project No. 3014342) and a building permit (No. 6327295) have been submitted for the proposed project. The MUP application describes the project as "Land Use Application to allow a seven-story (two of the seven floors contain mezzanines), 14-unit apartment building containing 104 bedrooms in an environmentally critical area. No parking proposed."

3. In the approved development, the rooms are arranged in 14 suites, each including a kitchen in a separate room, with a range and a counter with a sink. Eleven of these range in area from 120 square feet to 122 square feet in area, and the other three are 193, 212 and 250 square feet in area.
4. Each of the "units" includes from five to eight bedrooms, in most cases eight. Each bedroom has a private bathroom including a toilet, a shower, and a sink. The approved plan set does not show sinks or built-in counters or cabinetry outside of the bathrooms. Counters and sinks outside the bathrooms were shown on earlier versions of the plans, but the plans were later modified to remove these features.
5. No parking is proposed on the site. Sheet A1.00 in the plans for Project No. 3014342 indicates that four bike racks are to be provided. Sheet A1.00 also shows an open 207-square-foot area designated for garbage and recycling storage.
6. According to SMC 23.76.026.A.3, a project may vest to Land Use Code provisions in effect on the date a complete building permit application is filed. The building permit application for this project, No. 6327295, was accepted on May 14, 2013.
7. Under the Land Use Code provisions in effect on May 14, 2013, "dwelling unit" was defined in SMC Section 23.84A.008 as "a room or rooms located within a structure, designed, arranged, occupied or intended to be occupied by not more than one household as living accommodations independent from any other household. The existence of a food preparation area with the room or rooms shall be evidence of the existence of a dwelling unit."¹
8. "Household" is defined at Section 23.84A.016 as "a housekeeping unit consisting of any number of related persons; eight or fewer non-related, non-transient persons; eight or fewer related and non-related non-transient persons, unless a grant of special or reasonable accommodation allows an additional number of persons."
9. "Food preparation area" is defined at Section 23.84A.012 as "a room or portion of a room designed, arranged, intended or used for cooking or otherwise making food ready for consumption."
10. Director's Rule 7-83, "Determining the Existence of a Dwelling Unit for the Purpose of Code Enforcement," adopted in 1983, elaborates on what is to be considered in determining whether an area should be regulated as a separate dwelling unit for the purpose of Land Use Code standards. The rule lists 14 elements, "a" through "n", and states that "[e]xistence of one and/or several of these elements shall be considered evidence of the existence of more than one dwelling unit." The rule addresses one factor, a separate food preparation area (element j), in

¹ This definition was later modified by Ordinance 124608, which took effect in October 2014. The current definition of "dwelling unit" is "a room or rooms located within a structure that are configured to meet the standards of Section 23.42.048 and that are occupied or intended to be occupied by not more than one household as living accommodations independent from any other household." Ordinance 124608 also defined and adopted standards for small efficiency dwelling units, which are provided in Section 23.42.048, referenced in the new "dwelling unit" definition.

particular detail. In addition to food preparation areas, Director's Rule 7-83 identifies 13 other factors that may be considered in determining whether an area should be regulated as a separate dwelling unit, including element m, "additional complete bathroom facilities in a separable part of the structure." A copy of DR 7-83 is appended and incorporated into this interpretation.

11. According to SMC Section 23.41.004, in an MR zone new development including more than 20 dwelling units triggers design review.²
12. According to SMC Section 23.54.015 Table E, for multifamily structures one bicycle space is required for every four units.³
13. According to Section 23.54.040 Table A, for a residential development with nine to fifteen units, the minimum shared storage area for solid waste containers is 150 square feet. The general requirement for a 104-unit building would be 591 square feet. These standards may be modified under some circumstances in consultation with Seattle Public Utilities, according to Section 23.54.040.I, if workable alternative measures are proposed.
14. An earlier Land Use Code interpretation, issued in 1988, addressed a similar question. Interpretation No. 87-024 related to a proposed development, a three-story building described by the applicant as a triplex, at 1126 - 10th Avenue East. Each floor had five rooms accessed from a single corridor. Each of these five rooms had a private bathroom with a toilet, sink, and shower or bathtub. Four of the rooms were designated as bedrooms, and one as a living room. The bedrooms each included a counter with a "hobby sink" outside the bathroom. The room designated as a living room included a more complete kitchen, with a range. The Department concluded, based on the plans, that this building was configured as a 15-unit building rather than a triplex. On appeal, the Hearing Examiner concluded that it could be regulated as a triplex if the hobby sinks were eliminated. (Hearing Examiner File No. S-88-001.) The matter was further appealed to King County Superior Court, which concluded that the proposed structure should be regulated as a triplex even if the hobby sinks were not eliminated. (*Jacob L. Greenberg v. City of Seattle*, Case No. 88-2-14456-7.) The case was further appealed, to the Court of Appeals (Case No. 23171-5-1), which reinstated the Hearing Examiner's decision: The suites rather than the individual rooms should be regulated as dwelling units, provided that sinks were not provided in the individual rooms, outside their bathrooms.
15. More recently, a similar question was raised about a proposed development at 741 Harvard Avenue East. In that case, the individual bedrooms as depicted on the plans each had a private bathroom and counter outside the bathroom that included a sink. The shared kitchens within each suite were initially on average about 40 square feet in area. The Department initially concluded, based on these facts, that the individual rooms rather than the suites should be regulated as separate dwelling units. The proposed development was then substantially modified so that the common areas within each suite, including the shared kitchen facilities, ranged in area from 152 to 255 square feet, however sinks outside the bathrooms continued to be shown in each bedroom. On the basis of that change, the Department concluded that the suites rather than the individual rooms should be regulated as separate dwelling units, even

² Ordinance 124608 included a new design review threshold specifically for small efficiency dwelling units.

³ Ordinance 124608 added a specific requirement of 0.75 bicycle parking spaces per small efficiency dwelling unit.

though the individual rooms continued to include counters with sinks outside the bathrooms. The Department's approval of that project was overturned by the Superior Court.

16. In light of the court decision, the Department advised applicants for other similar projects then under review, specifically those in which each bedroom had both a private bathroom and a sink outside the bathroom capable of being used as a part of a food preparation area, that bedrooms configured in that manner must be counted as separate dwelling units. Project applicants, including the applicant in this case, were told that modifications were necessary in order for the rooms not to count as separate dwelling units, and that one acceptable modification would be the elimination of the sinks outside the bathrooms. In response, the applicant in this case revised the project to eliminate the sinks and counters outside the bathrooms.

Conclusions

1. This project is vested to the Land Use Code provisions in effect on May 14, 2013 when the building permit application was accepted. The project is not subject to code provisions that took effect after that date, including amendments made by Ordinance No. 124608. The core question presented by the request for interpretation is whether the fourteen multi-room portions of the structure, referred to as "units" in the application materials, or the 104 individual bedrooms, each with a private bathroom, should be regulated as dwelling units for purposes of the Land Use Code, based on the standards in effect when the permit application was submitted.
2. The definitions in the Land Use Code support a flexible approach, recognizing that different sorts of groups, of varying sizes and relationships, may live together as a single "household." Members of a single household might be unrelated, and might have a significant degree of autonomy, while still qualifying as a single household. Nothing in the definitions suggests that individual household members cannot have private bathrooms off of their bedrooms, not shared with other household members. However, in this case, every bedroom has a private bathroom, and common areas within each suite are limited to a single kitchen and the hallways that provide access to the rooms. On the other hand, nothing in the plans for the bedrooms reflects the presence of a food preparation area. There are no sinks outside the bathrooms, and no cooking facilities such as ranges or microwave ovens are shown.
3. Director's Rule 7-83, elaborates on the definitions of "dwelling unit" and "food preparation area." The definitions the rule relies on have not changed significantly since 1983. The rule identifies 14 features that may be evidence that an area is a separate dwelling unit. Because the rule was adopted for the purpose of code enforcement, some of the listed features, such as a "lockable interior doors that can exclude a portion of the dwelling unit from access to the entire dwelling unit" or "existence of rental agreements or leases for a portion of the permitted single family dwelling" cannot be detected at the plans review stage, but may provide a basis for later code enforcement efforts.
4. The Department has not read this rule as meaning that the existence of any one of the identified features automatically leads to a conclusion that a separate dwelling unit exists. Rather, the presence of one of the listed features is viewed as evidence that a separate unit might exist, but further analysis of the features and configuration is necessary before reaching a conclusion. For

example, one of the items listed is “number of door signaling devices,” but we would not conclude that a building otherwise configured as a single-family house must be regulated as a duplex if doorbells are provided at both the front and back door. In this case, of the 14 features listed in the rule to be considered in determining whether there is a separate dwelling unit, the only one that arguably might be said to be reflected in the individual rooms, based on the plans, is item *m*, “additional complete bathroom facilities in a separable portion of the structure.” The individual rooms in the proposed building do have complete bathroom facilities. However, the individual rooms are not “separable portions” of the structure, as it is necessary to go through the common area of the suite to reach them. We conclude that the private bathrooms, on their own, do not provide a basis for regulating the individual bedrooms as separate dwelling units.

5. Although the Director’s rule lists a number of features that may be seen as evidence of a separate dwelling unit, the existence of a food preparation area is given particular prominence. It is also the only one of the 14 indicators that is specifically mentioned in the code definition for dwelling unit, as a basis for concluding that an area qualifies as a separate dwelling unit. The Director’s rule distinguishes between food preparation areas and “wet bars” within larger rooms, which have facilities for mixing drinks and serving previously prepared or packaged foods, but lack ranges or the necessary outlets for ranges. However, the approved plans do not even reflect wet bars in the individual bedrooms.
6. Although a bedroom with a private bathroom would be capable of use as an independent dwelling unit, and portable equipment such as a microwave oven or hot plate could be used to prepare food, the plans reflect nothing in the way of food preparation facilities in the individual bedrooms, and each is a part of a suite that includes a fully-equipped common kitchen. Although the arrangement allows for a high degree of independence and privacy for the occupant of each room, on balance we are not able to conclude that the individual rooms, rather than the larger suites, are designed or arranged as living accommodations for separate households. The common spaces provided within each cluster, though not expansive, are sufficient to allow the cluster to function as living accommodations for an interactive household. There is no requirement in the Land Use Code that households be close-knit. On balance, we conclude that each cluster of rooms is “designed and arranged” as a single dwelling unit, and that the individual rooms within the clusters should be regulated as bedrooms rather than separate dwelling units.
7. This conclusion is consistent with the appellate court’s ultimate ruling in *Greenberg v. Seattle*, in 1988. That decision was based on the same Director’s rule, 7-83, and substantially similar code provisions. In that case, the courts ultimately concluded that individual bedrooms within a larger suite including a shared kitchen should not be regulated as separate dwelling units, even though those bedrooms had private bathrooms, provided that sinks in the bedrooms, outside the bathrooms, were eliminated.
8. Because the 14 suites, rather than the 104 individual rooms, qualify as dwelling units, the project did not require design review under the standards in effect when the project vested, and the bicycle parking and trash storage area standards were appropriately applied based on the requirements for a 14-unit building.

Decision

The development proposed at 3050 SW Avalon Way, under Project Nos. 3014342 and 6327295, based on how it is designed and arranged, is appropriately regulated as a 14-unit apartment building rather than a 104-unit building.

Entered this 6th day of August, 2015.

signature on file

Andrew S. McKim

Land Use Planner – Supervisor