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8 BEFORE THE HEARING EXAMINER
9 CITY OF SEATTLE

10 In the Matter of the Appeal of
11 NEIGHBORS ENCOURAGING
12 REASONABLE DEVELOPMENT
13 from a Decision and Interpretation issued by the
14 Director, Department of Planning and
15 Development

Hearing Examiner File:
MUP-15-022(W)
S-15-003

(DPD File: 3014342
Interpretation No. 13-005)

**DECLARATION OF JESSICA M.
CLAWSON**

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17
18 I, JESSICA M. CLAWSON, under penalty of perjury under the laws of the State of
19 Washington, declare as follows:

20 1. I am an attorney with McCullough Hill, PS, attorneys for Paul
21 LaBellarte/Columbia Buildings, Applicant. I am competent to make this declaration based on
22 my personal knowledge. Attached to this Declaration are true and correct copies of the following
23 documents:
24

25 2. Attached as Exhibit 1 is the City of Seattle's ("City's") Interpretation No. 13-005.
26
27
28

McCULLOUGH HILL LEARY, P.S.

701 Fifth Avenue, Suite 6600
Seattle, WA 98104
206.812.3388
206.812.3389 fax

1 3. Attached as Exhibit 2 is a print out from DPD's website showing the Project site
2 as zoned MR and located in the West Seattle Hub Urban Village.

3 4. Attached as Exhibit 3 is the SEPA determination made for the Project

4
5 5. Attached as Exhibit 4 is the Appellant's interpretation request related to the
6 Project.

7 6. Attached as Exhibit 5 is the Appellant's Appeal of the Project.

8 7. Attached as Exhibit 6 is the Appellant's previous appeal of the Project.

9 8. I declare under penalty of perjury under the laws of the state of Washington that
10 the foregoing is true and correct.

11
12 DATED this 29th day of September, at Seattle, Washington.

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14 
15 JESSICA M. CLAWSON

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28 **McCULLOUGH HILL LEARY, P.S.**

701 Fifth Avenue, Suite 6600

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Exhibit 1

**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-I), 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

Exhibit 2



SEARCH: Go

Seattle Parcel Data

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Parcel #9297300885

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

























This report was generated Thursday, September 24, 2015

Addresses Located on this Parcel								
Address		Status		Permit/Complaint Status				
3050 SW AVALON WAY		ACTIVE		View Permit & Complaint Status				
Zoning and District Info								
Base Zone	MR <input checked="" type="checkbox"/>	Shoreline Zone		Pedestrian Area		Airport Height Overlay		
Detached Accessory Dwelling Units	No	Contract		Light Rail		Urban Village Overlay	West Seattle Junction(Hub Urban Village) <input type="checkbox"/>	
Alki Parking District	No	Downtown Fire District	No	Historic District	No	Historic Landmark	No	
Northgate District	No	Pike/Pine District	No	Rainier/Genesee Business District	No	Sand Point Park	No	
Sand Point District	No	SE Seattle Reinvestment Area	No	Stadium Area Transition District	No	Est. Tree Canopy Coverage (2007)	48.7% <input type="checkbox"/>	
Frequent Transit	Yes <input type="checkbox"/>							
ECA								
40% Steep Slope	No	Potential Slide Area	No	Riparian Corridor	No	Wetlands	No	
Liquefaction Zone	No	Abandoned Landfill	No	Known Slide Area	No	Wildlife Pres. Area	No	
Shoreline Hab. Buffer	No	Heritage Tree	No	Heron Habitat	No	Peat Settlement Prone	No	
Archaeological Buffer	No					Salmon Watershed	Yes <input type="checkbox"/>	
King County Assessor Data								
Property Name	VACANT			Plat Name	WESTHOLME ADD			
Property Zip Code	98126			Taxpayer	AVALON II MICROS I L C			
Present Use	Vacant(Multi-family)			Taxpayer Address	13920 92ND ST SE STE A SNOHOMISH WA 98290			
Lot Sq Ft	7,200							
King County Assessed Value Data								
Tax Year	2015						Levy Code	0010

Tax Status T						
Appraised Land Value			576,000	Appraised Improvement Value		0
Taxable Land Value			576,000	Taxable Improvement Value		0
King County Assessor Sales Data						
Sale Date	Price	Instrument	Record No.	Seller	Buyer	
8/30/2013	550,000.00	Statutory Warranty Deed	20130909001481	3050 AVALON L L C	AVALON II MICROS L L C	
9/14/2006	455,000.00	Warranty Deed	20060915002540	TUGGLE SANDRA L	3050 AVALON LLC	
2/11/1994	30,000.00	Quit Claim Deed	199402151017	AISAN INC	TUGGLE SANDRA L	



Detailed Zoning

-  SF 5000
-  SF 7200
-  SF 9600
-  Residential Small Lot/
Tandem/Cottage
-  Lowrise 1
-  Lowrise 2
-  Lowrise 3
-  Midrise
-  Highrise
-  Seattle Mixed
-  Neighborhood
Commercial 1
-  Neighborhood
Commercial 2
-  Neighborhood
Commercial 3
-  Commercial 1
-  Commercial 2
-  Downtown Office Core
-  Downtown Retail Core
-  Downtown Mixed
-  Downtown Harborfront
-  International District
-  Pioneer Square
-  Industrial Buffer
-  Industrial Commercial
-  Industrial General 1
-  Industrial General 2
-  Major Institution
-  Master Planned
Community

Parcel Outlines



Department of Planning and Development (DPD)

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App v3.3.1



City of Seattle
Edward B. Murray, Mayor

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: 3014342
Applicant Name: Jay Jannette
Address of Proposal: 3050 SW Avalon Way

SUMMARY OF PROPOSED ACTION

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.

The following approval is required:

SEPA – Environmental Determination (SMC Chapter 25.05)

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

BACKGROUND INFORMATION

Site Description

The site is located at 3050 Avalon Way SW on a currently vacant lot. Previously, there was a single family residence on the lot, but this was demolished in 2008. The lot is vegetated predominantly non-native blackberry and herbaceous weeds. The western portion of the lot contains eight big leaf maple trees and one common apple tree. Five of these trees fall within a

steep slope or steep slope buffer regulated by the City of Seattle's Regulations for Environmentally Critical Areas. The lot slopes up gently from Avalon Way to the west. In the eastern third of the site the slope steepens to a grade that exceeds 40 percent. Therefore, it is regulated as a steep slope environmentally critical area (ECA) under the City of Seattle's Regulations for Environmentally Critical Areas.

The site is bounded by developed multi-family properties to north and south, and alley right-of-way and developed single-family properties to the west. The site is rectangular, with 60 feet of frontage along Avalon Way SW., a depth of 120 feet, and a total combined lot area of 7,198 square feet. The site is zoned Midrise (MR), as are the lots to the north and south. Lots to the west are zoned Single-Family 5000 (SF5000).

Public Comment

Notice of the proposal was provided on June 6, 2013. Numerous public comments were received.

SEPA DETERMINATION

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated February 25th, 2013. A revised SEPA checklist correcting several errors was provided to DPD by the applicant on May 22nd, 2013. The information in the checklist, supplemental information provided by the applicant, project plans, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The project site is located in an environmentally critical area (landslide-prone area) and, therefore, the application is not exempt from SEPA review. However, SMC 25.05.908.B provides that the scope of environmental review of projects within environmentally critical areas shall be limited to: 1) Documenting whether the proposal is consistent with The City of Seattle Regulations for Environmentally Critical Areas, SMC Chapter 25.09; and 2) Evaluating potentially significant impacts on the environmentally critical area resources not adequately addressed in The City of Seattle Environmentally Critical Areas Policies or the requirements of SMC Chapter 25.09, Regulations for Environmentally Critical Areas, including any additional mitigation measures needed to protect the environmentally critical areas in order to achieve consistency with SEPA and other applicable environmental review laws.

The Department of Planning and Development has reviewed and analyzed the environmental checklist submitted by the project applicant, the accompanying project plans, and geotechnical report, and determined that this action will not result in significant adverse impacts to the environment. Codes and development regulations applicable to this proposed project will provide sufficient mitigation and no further conditioning or mitigation is warranted pursuant to the SEPA Overview Policy (SMC 25.05.665). The following summarizes anticipated short and long term impacts and identifies regulations in place that will mitigate these impacts.

Short-term Impacts

Site grading and preparation for the foundation of the proposed addition will expose soil, leading to increased potential for soil erosion during construction until the site is permanently stabilized by establishment of new vegetation and landscaping. Several adopted codes and/or ordinances provide mitigation for the identified impact. The Grading Code (SMC Chapter 22.170) requires that soil erosion control techniques be in place for the duration of the land disturbing activities. The Regulations for Environmentally Critical Areas (SMC Chapter 25.09) have a stated purpose of avoiding adverse environmental impacts and regulate all activities on sites with ECAs. The plans provided by the applicant demonstrate that the proposal complies with development restrictions for steep slopes. The applicant submitted a geotechnical engineering study prepared by Robert M. Pride, LLC, dated August 21st, 2012. The geotechnical report and construction/grading plans have been reviewed by the DPD geotechnical engineer and found to be in compliance city's standards for development on sites with geologic hazard areas provided in the City's ECA regulations. This report concluded that the proposed development on the steep slope will not result in any adverse impacts from construction. While typical temporary construction-related impacts are expected, these impacts are not considered significant because they are temporary and/or minor in scope (SMC 25.05.794). Therefore, no further conditioning pursuant to SEPA policies is warranted.

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant due to the relatively minor contribution of greenhouse gas emissions from this project.

Long-term Impacts

Long-term or use-related impacts are anticipated as a result of approval of this proposal including: increased surface water runoff due to greater site coverage by impervious surfaces; increased demand for public services and utilities; loss of plant and animal habitat; and increased light and glare. Long-term impacts resulting from development of the landslide-prone area are not anticipated if construction proceeds as recommended by the applicant's consulting geotechnical engineer.

Several adopted City codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Environmentally Critical Areas Regulations; the Stormwater Code, Grading Code; the City Energy Code; and the Land Use Code, which controls site coverage, setbacks, building height and use and contains other development and use regulations to assure compatible development. Compliance with these applicable codes and ordinances is adequate to achieve sufficient mitigation of long-term impacts and no further conditioning is warranted by SEPA policies.

Operational activities, primarily vehicular trips associated with the project and the projects' energy consumption, are expected to result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global

warming. While these impacts are adverse, they are not expected to be significant due to the relatively minor contribution of greenhouse gas emissions from this project.

DECISION

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

[X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2) (c).

CONDITIONS

None required.

Signature: Betty Galarosa for Date: August 6 2015
Jerry Suder
Land Use Planning Supervisor
Department of Planning and Development

JS:bg

IMPORTANT INFORMATION FOR ISSUANCE OF YOUR MASTER USE PERMIT

Master Use Permit Expiration and Issuance

The appealable land use decision on your Master Use Permit (MUP) application has now been published. At the conclusion of the appeal period, your permit will be considered “approved for issuance”. (If your decision is appealed, your permit will be considered “approved for issuance” on the fourth day following the City Hearing Examiner’s decision.) Projects requiring a Council land use action shall be considered “approved for issuance” following the Council’s decision.

The “approved for issuance” date marks the beginning of the **three year life** of the MUP approval, whether or not there are outstanding corrections to be made or pre-issuance conditions to be met. The permit must be issued by DPD within that three years or it will expire and be cancelled. (SMC 23-76-028) (Projects with a shoreline component have a **two year life**. Additional information regarding the effective date of shoreline permits may be found at 23.60.074.)

All outstanding corrections must be made, any pre-issuance conditions met and all outstanding fees paid before the permit is issued. You will be notified when your permit has issued.

Questions regarding the issuance and expiration of your permit may be addressed to the Public Resource Center at prc@seattle.gov or to our message line at 206-684-8467.

Exhibit 4

Interp 13-005
3015697

RFI 3014342

Hand Delivered to:

DPD Code Interpretation and Implementation Group
700 Fifth Avenue, Suite 2000
PO Box 34019
Seattle, WA 98124-4019

Dept. of Planning & Development
Public Resource Center

Re: Request for Interpretation

03 2013

Project #3014342
3050 SW Avalon Way

RECEIVED

Dear Andrew S. McKim and the Code Interpretation Group:

On behalf of the residents who reside in the 32nd Ave SW Neighborhood (Neighbors Encouraging Reasonable Development), Paul Haury is submitting this Request for Interpretation for project 3014342/6327295, 3050 SW Avalon Way, that is currently being viewed as 14 Unit apodment structure instead of a 102 Unit Apartment in a MR zone that abuts a Single Family 5000 zone. Given existing codes and definitions, and the recent interpretation 13-002 for Project 3014912, we believe that based on the characteristics of the project as revealed by the Project Application, the SEPA Checklist and the submitted plans, that this project should be found to be a 102 Unit Apartment and be recommenced as such through full public Early Design Guidance and full SEPA Review. In short:

- The submitted application for Master Use Permit calls the structure a 14 unit Apartment Building with 102 bedrooms
- MUP application states the project as 7 levels with two levels having mezzanines
- The name for this project is as given by the developer who submitted the SEPA Checklist is appropriately named, "Avalon Apartments"
- The SEPA Checklist states the project as 14 dwelling units to occupy as a boarding house
- The SEPA Checklist states this project is intended to approximately house 102 individuals
- The SEPA Checklist states the maximum height of the structure is 70 feet
- The plans show the maximum height is
- The plans reveal that each individual will rent a small secure living areas within a secure building containing 7 levels with 2 levels having mezzanines
- The plans reveal here are 14 common kitchens
- The plans reveal that each individual bedroom will also contain 1) a food prep area with cabinets, 2) a refrigerator and 3) a sink, and 4) a bathroom that also has a separate sink; further that each room is identified by level and unit number

We too have followed the controversy surrounding the development of apodments like the entity of Harvard District Neighbors LLC, and are aware of the prevailing notion that the number of dwelling units is to be determined by the number of shared kitchen facilities located in the apodment

structure. We are aware of the practice of DPD allowing apartment developers to count only the number of full, shared kitchens as a way of minimizing the number of 'dwelling units' to thereby bring projects below the threshold for mandated SEPA and Design Review for applicable zones. In this case with project 3014342, it places the level below 20 which would have forced Design Review and SEPA Review.

Dept. of Planning & Development
Public Resource Center
M 03 2013
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This practice of understating the actual number of dwelling units has allowed developers to evade oversight and review that would balance proposed development with existing neighborhoods via Design Review and SEPA Review with specific regard to (WAC 197-11-444) (2) Built Environments. Design Review and SEPA Review are intended to promote compatible development and in turn prevent development that would otherwise harm natural and built environments.

We believe that the current approach by the DPD ignores DPD's existing published interpretation of the definition of a dwelling unit. We believe this approach leads to development that is excessive in the area of Height, Bulk and Scale in respect to their proposed environments. We believe that this approach leads to development that is incompatible from a design and fit perspective. We request that DPD confirm the existing SMCs and interpretations and apply the definition to the above mentioned application for the project at address 3050 SW Avalon Way and find it to be a structure with 102 dwelling units and not 14 units with 102 bedrooms.

The Seattle Municipal Code does not define a "kitchen." Rather, reference is made to the definition of a "food preparation area." Food preparation areas are included in the definition of a dwelling as one of a number of factors to be viewed in establishing the existence of a dwelling unit.

SMC 23.84A.008 defines a dwelling unit as follows:

"Dwelling unit" means 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 within the room or rooms shall be evidence of the existence of a dwelling unit.

(Emphasis added.)

The existence of a "food preparation area" is thus evidence of the existence of a dwelling unit but does not, by itself, determine the number of units in a structure.

SMC 23.84A.012 defines a food preparation area as follows:

"Food preparation area" means a room or portion of a room designed, arranged, intended or used for cooking or otherwise making food ready for consumption.

(Emphasis added.)

The code does not contain a definition for a housekeeping unit.

With respect to the above application, the following facts demonstrate the existence of multiple dwelling units as opposed to bedrooms:

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- Each “dwelling unit” (referred to as a bedroom by the applicant) within the overall structure is intended to be occupied by one person who is unrelated to the others;
- Each “dwelling unit” (referred to as a bedroom by the applicant) is intended as a living accommodation independent of the other households. Each room is separately lockable and identifiable;
- While a larger kitchen is available for all, each individual “dwelling unit” has a (probable microwave oven,) a refrigerator, a sink and cabinets (separate from and in addition to the bathroom sink). Thus, each “dwelling unit” contains “a portion of a room ... intended for cooking or otherwise making food ready for consumption.” There is no question that each unit contains its own food preparation area with refrigerator, sink and cabinets.
- The shared kitchens establish the existence of *at least* fourteen dwelling units. The existence of shared kitchens cannot obviate the existence of the food preparation areas within each of the individual units and alone are not dispositive as to the number of dwelling units in the structure.

This analysis finds support in a Official Code Interpretation 1983-7, a copy of which is included herein. This interpretation, which remains in full force and effect, defines a dwelling unit for code enforcement purposes. While some of the definitions have since be modified in insignificant ways, the interpretation remains in place.

Interpretation 1983-7 provides:

“Existence of one and/or several of the following elements shall be considered, evidence of the existence of more than one dwelling unit;

j. Additional food preparation areas, including some combination of the following features: stove, refrigerator, kitchen cabinets, microwave oven, hotplate, sink, dishwasher.

Under the above language, the existence of any one of the factors listed shall be considered as evidence of the existence of a dwelling unit. Three separate indicia confirm the existence of a food preparation area in each room. Other indicia of separate dwelling units listed in the Interpretation include:

- c) Lockable interior doors that can exclude a portion of the dwelling unit from access to the entire building.
- d) Separate lockable entrance to rooms or areas which are so separated from other rooms or areas by key locks . . .
- e) Number of door signaling devices.
- f) Occupancy for the premises by more than one separate family, independent from any other family, and using any of the facilities listed herein.
- g) Existence of rental agreements or leases for a portion of the ... dwelling other than permitted “lodger” agreements.

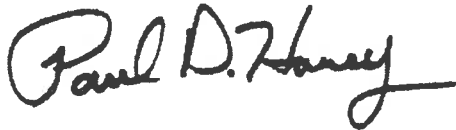
(Emphasis added.)

The above code language and DPD's own controlling Interpretation establish the manner in which the number of dwelling units in an apodment structure is to be determined. This interpretation should be

applied to the above application and this 102 "dwelling unit" structure should be subject to Design Review and SEPA Review.

Sincerely and submitted on July 3rd, 2013,

Paul Haury

A handwritten signature in black ink that reads "Paul D. Haury". The signature is written in a cursive style with a long horizontal stroke at the end.

On behalf of Neighbors Encouraging Reasonable Development
www.SeattleNERD.org
206-714-6113
4115 32nd Ave SW
Seattle WA

Dept. of Planning & Development
Public Resource Center

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Exhibit S

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BEFORE THE CITY OF SEATTLE
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NEIGHBORS ENCOURAGING REASONABLE
DEVELOPMENT

Appellant,

v.

DIRECTOR, SEATTLE DEPARTMENT OF
PLANNING AND DEVELOPMENT, and JAY
JANNETTE, APPLICANT

Respondents.

CASE NO.

NOTICE OF APPEAL OF DPD
DECISIONS FOR 3050 AVALON WAY
PROJECT INCLUDING APPEAL OF DPD
LAND USE CODE INTERPRETATION,
SEPA DECISION, AND FAILURE TO
CONDUCT DESIGN REVIEW

(Project Nos. 3014342, 3015697, and
Interpretation DPD No. 13-005)

1. APPELLANT/AUTHORIZED REPRESENTATIVE INFORMATION

Appellant Neighbors Encouraging Reasonable Development (“NERD”) is a Washington nonprofit corporation whose members include West Seattle property owners and residents impacted by the proposed development at issue in this appeal. NERD’s authorized representatives in this appeal are Paul Haury and Chuck Burkhalter with the following contact information:

Paul Haury
4115 32nd Are SW
Seattle, WA 98126
phaury@seattlenerd.org

Chuck Burkhalter
4031 32nd Are SW
Seattle, WA 98126
cburkhalterjr@yahoo.com

Documents and communications from the examiner’s office and other parties should be by e mail and telephone.

II. DECISION BEING APPEALED

NERD appeals the August 6, 2015 “Analysis and Decision of the Director” (“Decision”) concerning Master Use Permit Application No. 3014342, the August 6, 2015 Code Interpretation (DPD Interpretation No. 13-005) concerning Project Nos. 3014342 and 6327295, and all related and subsidiary decisions, including the failure to conduct Design Review and the failure to conduct SEPA Review beyond critical area components.

III. APPELLANT’S INTERESTS

NERD members’ interests will be immediately and directly impacted by the proposed project through its failure to adequately address and mitigate significant, adverse parking, traffic, and height/bulk/scale impacts, as well as by the Director’s failure to lawfully apply the Land Use Code. The proposed project will be incompatible with immediately adjacent areas, including particularly ones zoned single family. It will burden the neighborhood with additional traffic and unmet parking demand. NERD members have submitted comments on and actively participated in DPD review of the proposed project.

IV. APPEAL GROUNDS

4.1.1 The Director’s Interpretation that the application vested under the Land Use Code provisions in effect on May 14, 2013 is in error because the prerequisites for vesting were not met and the applications were neither complete nor accurate.

4.1.2 The Director’s Interpretation of the number of dwelling units as 14 is based on an application of the Code that is not consistent with its intent and which elevates gamesmanship over common sense application of the Code.

4.1.3 The Director's Interpretation errs in relying on the lack of individual kitchens in units and on expedient erasure from plans of sinks or built in counters or cabinetry.

4.1.4 The Director's Interpretation erroneously fails to acknowledge and take into account prior statements by Applicant concerning the use of the project; is not based on DPD actual inquiry into the projects's pro formas and representations to others concerning the use of the project; and relies on pretenses that are not enforceable and for which no conditions have been imposed.

4.1.5 The Director's Interpretation erroneously fails to conclude that each of what it calls "104 bedrooms" are actually individual "housekeeping units".

4.1.6 The Director's Interpretation ignores the City's concurrent treatment of the project's "bedrooms" in other contexts under the Land Use Code as discrete households.

4.1.7 The Director's Interpretation errs in not construing the project as a congregate residence subject to all MR zone development standards.

4.1.8 The Director's Interpretation errs in construing the project as below the 20 unit Design Review Threshold.

4.1.9 The Director's Interpretation errs in its reliance on Director's Rule 7-83, which was adopted to address enforcement questions under an earlier iteration of the Code, and which goes outside the Director's authority in applying the Code.

4.1.10 The Director's Interpretation's application of Director's Rule 7-83 substitutes sophistry for common sense, for example comparing 104 individual units with individual door signaling devices to a single family house that has a front and back door bell and, as a further example, claiming that each of the 104 separate units with bathrooms behind the door of each unit are not "separable portions" of the structure when they are in fact physically separated.

4.1.11 The Director's Interpretation erroneously relies on an inapplicable Interpretation and court decision (referred to by name) in another matter from three decades ago.

4.1.12 The Director's Interpretation Decision erroneously refers to a "more recent" superior court decision that rejected DPD's approach, but erroneously claims it does not apply here while not identifying the decision by name.

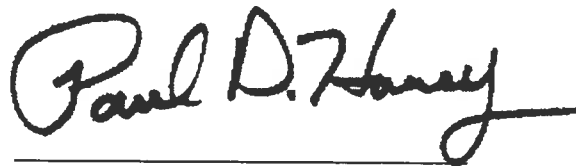
4.1.13 The Director's Interpretation errs in concluding that the "suites" symbolic rather than useable common areas and sub-sized kitchens support the conclusion that only the "suites" rather than the individual units constitute separate households.

4.1.14 The Director erred in determining that the project meets bicycle parking and trash storage area requirements.

4.1.5 The Director erroneously relied on the availability of the Code-required level of transit as a basis for allowing the project to provide no parking.

V. RELIEF REQUESTED

As relief, Appellant requests that the Examiner reverse and vacate the Interpretation and Master Use Permit Decisions and remand the applications for re-start of the process including SEPA and Design Review.



Paul Haury for NERD

August 20, 2015

Exhibit 4



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HEARING EXAMINER

Peter J. Eglick
eglick@ekwlaw.com

May 29, 2014

City of Seattle
Hearing Examiner
700 Fifth Avenue, Suite 4000
PO Box 94729
Seattle WA 98104

RE: Appeal by Neighbors Encouraging Reasonable Development re DPD Application No. 3013303 (3078 SW Avalon Way) and Director's May 15, 2014 Decision

Dear Examiner,

This letter is being submitted concurrently with a Notice of Appeal on behalf of Neighbors Encouraging Reasonable Development ("NERD") in the above matter. We would very much appreciate advance consultation on dates before a prehearing conference and/or hearing dates are set in this appeal.

Additionally, NERD has submitted a concomitant Request for Interpretation to DPD. A copy of the Request is attached to the Notice of Appeal for your convenience. We also ask that DPD provide an estimate of lead time for completion of Interpretations before any Pre-Hearing Conference is scheduled.

Respectfully,

EGLICK KIKER WHITED PLLC

Peter J. Eglick

cc: Client

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BEFORE THE CITY OF SEATTLE
OFFICE OF HEARING EXAMINER

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6 NEIGHBORS ENCOURAGING REASONABLE
DEVELOPMENT,

7 Appellant,

8
9 v.

10 DIRECTOR, SEATTLE DEPARTMENT OF
PLANNING AND DEVELOPMENT, and

11 RADIM BLAZEJ,

12
13 Respondents.

CASE NO.

(DPD Application No. 3013303)

NOTICE OF APPEAL

(Including Design Review, SEPA, and
Request for Land Use Code Interpretation)

14
15 **1. APPELLANT/AUTHORIZED REPRESENTATIVE INFORMATION**

16 Appellant Neighbors Encouraging Reasonable Development ("NERD") is a
17 Washington nonprofit corporation whose members include West Seattle property owners and
18 residents (including on the immediately adjacent alley) impacted by the proposed
19 development at issue in this appeal. NERD's authorized representative in this appeal is its
20 attorney, Peter J. Eglick, with the following contact information:

21 Peter J. Eglick
22 Eglick Kiker Whited PLLC
23 1000 Second Avenue, Suite 3130
24 Seattle, WA 98104
25 (206) 441-1069
26 eglick@ekwlaw.com and schmidt@ekwlaw.com

1 **2. DECISION BEING APPEALED**

2 NERD appeals the May 15, 2014 “Analysis and Decision of the Director”
3 (“Decision”) concerning Master Use Permit Application No. 3013303 and all related and
4 subsidiary decisions, including the Design Review Recommendation decision and the SEPA
5 Determination of Nonsignificance. A copy of the Decision as well as a copy of NERD’s
6 concurrent Request for Interpretation are attached to this appeal.¹

7 **3. APPELLANT’S INTERESTS**

8 NERD members’ interests will be immediately and directly impacted by the proposed
9 project through, *inter alia*, its failure to adequately address and mitigate significant, adverse
10 height/bulk/scale, traffic, parking, and geotechnical impacts. The proposed project will loom
11 above their neighborhood and will be incompatible with immediately adjacent areas,
12 including particularly ones zoned single family. It will burden the neighborhood with
13 additional traffic and unmet parking demand. Further, it is being constructed without proper
14 mitigation of potential adverse geotechnical impacts particularly in light of recently increased
15 excavation depth. NERD members have actively participated at every level of review of the
16 proposed project, including attendance at Design Review Board meetings and submission of
17 comments to DPD. Unfortunately, their well-documented and grounded concerns have been
18 met with indifference. The result is this appeal and its concurrent Request for Interpretation.

19 **4. APPEAL GROUNDS**

20 **A. Director’s Decision Is Based on Incorrect Premises Contrary To Code**

21 The Director’s Decision and the Design Review Board (“DRB”, “Board”)
22 Recommendation it incorporates start from faulty premises. Among these are an incorrect
23
24
25
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¹ The Request for Interpretation and resulting Director’s Interpretations are incorporated by reference in this appeal to the extent that they are inconsistent with the outcomes sought by Appellant.



1 calculation of the project's proposed height and acceptance of the applicant's inaccurate
2 representation that the project is compliant with Code FAR requirements. These premises are
3 incorrect. However, they were improperly utilized as the baseline from which the DRB and
4 the Director considered whether and how and to what extent to mitigate project impacts. As a
5 result the DRB Recommendation and the Director's Decision incorporating it are fatally
6 flawed.

7
8 **B. The Design Review Process Was Conducted and the Board's Guidance
9 and Recommendation Decisions Were Affected With Fundamental
10 Procedural and Substantive Errors**

11 The DRB review and final recommendation concerning the proposed project failed to
12 comply with the Code both procedurally and substantively. The result is a project that is too
13 big, too tall, too overpowering on the zone edge on which it is situated. The DRB Early
14 Design Guidance (EDG) and subsequent Recommendation proceedings were not conducted in
15 accordance with Code and impermissibly precluded effective public participation which
16 focused on raising these concerns. For example, the Board failed to accurately note and
17 identify "guidelines of highest priority to the neighborhood." SMC 23.41.014.C.1. It
18 repeatedly admonished the public not to raise or request mitigations that the Staff and Board
19 erroneously claimed were not within the purview of the design review process. The Board's
20 resulting decisions and guidance were not reached in a legally permissible manner and were
21 not drafted or issued in compliance with Land Use Code or other legal requirements,
22 including requirements for issuing a reviewable decision. The DRB Final Recommendation
23 fails to properly acknowledge or address key concerns identified by the community and
24 validated by applicable guidelines. It focuses on design review guidelines favored by the
25 project applicant while ignoring or shortchanging others. The Design Review process and
26

1 Recommendation decision as a whole fail to comply with SMC 23.41.014 including but not
2 limited to as set out in SMC 23.41.014.F.3.

3 **C. The Director's Decision and the Design Review Board Final**
4 **Recommendation Err in Failing to Mitigate Significant Impacts**

5 The Project as recommended by the DRB and approved by the Director will result in
6 significant adverse impacts including on:

- 7 • single family zones and neighborhoods which are immediately on the edge,
8 adjacent to the proposed project, in light of the project's incompatible height
9 bulk, and scale;
- 10 • traffic and transportation;
- 11 • neighborhood parking (including through acceptance and reliance on an
12 inaccurate parking study);
- 13 • the adjacent single family neighborhood alley, including through granting a
14 departure to allow use of the alley (due to driveway slope in excess of Code
15 limits) when use of the alley will create impacts on the single family
16 neighborhood inconsistent with applicable design guidelines and policy;
- 17 • the neighborhood through precedent or inducement of similar incompatible
18 development and resulting cumulative impacts;
- 19 • neighboring properties' solar access, privacy, and views.

20 The Recommendation and Decision therefore fail to properly implement Seattle SEPA
21 policies, e.g., SMC 25.05.665 et seq. as well as applicable Design Review Guidelines and
22 Policies.

23 **D. The Decision Fails to Address or Mitigate Probable Significant Adverse**
24 **Geotechnical Impacts**

25 At various points in the MUP review process, the applicant was cautioned that
26 potential impacts from construction on neighboring alley properties should be addressed and
mitigation measures proposed (including in an updated excavation shoring plan). However,

1 that has not occurred. Further, the project geotechnical report was, by DPD's own admission,
2 not in DPD's files and not available for public review during the published public comment
3 period on this application. When ultimately received and produced by DPD the report turned
4 out to be superficial and formulaic, apparently based in part (perhaps inadvertently) on reports
5 for other sites. It deferred addressing key issues, and has never since been updated to reflect
6 project changes (including a substantial increase in excavation depth). There is a probability
7 of significant adverse geotechnical impacts on alley properties that has simply not been
8 addressed let alone mitigated.²
9

10 **5. RELIEF REQUESTED**

11 As relief, Appellant requests that the Examiner:

- 12 5.1 Reverse and vacate the Decision and remand this matter for re-commencement
13 of the public notice and Design Review process after all necessary project
14 information, in accurate form, has been submitted to DPD and is available to
15 the public for review;
- 16 5.2 Reverse and vacate the Decision as in error for approving the application based
17 on procedures and substance not in compliance with the Land Use Code for the
18 reasons stated above;
- 19 5.3 Reverse and vacate the DNS with conditions and remand this matter to DPD
20 for preparation of a focused environmental impact statement addressing the
21 issues and impacts associated with the proposal; and/or,
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23
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25
26

² NERD's concurrent Request for Interpretation questions, inter alia, the Department's grant of an exemption from steep slope requirements that would otherwise apply.

- 1 5.4 Reverse and vacate the DNS with conditions and remand this matter to DPD
2 for imposition of SEPA conditions to mitigate the adverse impacts associated
3 with the proposal;
- 4 5.5 Reverse and vacate the Decision as approving a proposal not in compliance
5 with, inter alia, SMC 23.41.014F and applicable Design Review Guidelines, as
6 described above;
- 7 5.6 Reverse and vacate any Interpretation to the effect that the proposal as
8 approved by the Decision complies with and is permitted under the Land Use
9 Code and enter findings and conclusions upholding the Interpretation outcomes
10 proposed by Appellant; and/or
- 11 5.7 Grant such other relief as the Appellant requests above or may further request
12 and/or that is appropriate under the law.
13

14 Respectfully submitted this 29th day of May, 2014.

15 EGLICK KIKER WHITED PLLC

16
17
18
19 By


Peter J. Eglick, WSPA #8809
Attorney for Appellant