

**BEFORE THE HEARING EXAMINER  
City of Seattle**

In the Matter of the Appeal of	)	Hearing Examiner File:
	)	
<b>MARTIN HENRY KAPLAN,</b>	)	<b>W-16-004</b>
<b>ARCHITECT AIA (QUEEN ANNE</b>	)	
<b>COMMUNITY COUNCIL)</b>	)	<b>OPCD CLOSING ARGUMENT</b>
	)	
from a Determination of Non-Significance by	)	
the Director, Office of Planning and	)	
Community Development, regarding	)	
amendments to the Land Use Code	)	

**A. OPCD considered environmental factors, and there is no evidence that the proposal is likely to cause significant adverse effects on the quality of the environment.**

Accessory dwelling units (ADUs) and detached accessory dwelling units (DADUs) are forms of housing already allowed citywide in Seattle's single family zones. The proposal in question is legislation that would remove certain code barriers that have limited the production of ADUs and DADUs with the intent of encouraging greater production of this housing option.

The Office of Planning and Community Development (OPCD) completed an Environmental Checklist on the proposal dated May 16, 2016. The environmental checklist referenced several reports and studies that OPCD relied on, including DPD Report and Analysis (October 2015), Summary of Public Input (March 2016), Director's Report (May 2016), and backyard cottage annual reports from December 2014 and April 2011. A Determination of Non-Significance (DNS) was issued on May 19, 2016. The DNS identified several elements of the environment for which impacts from the proposed legislation could occur. After considering those potential impacts, OPCD determined them to be minor and not significant.

Testimony by Nick Welch, who prepared the environmental checklist, demonstrated consideration of environmental factors supplemental to what was summarized in the checklist document. In his testimony, Mr. Welch described his consultation of numerous documents and studies (e.g., OPCD Exhibits 10-12, 17-19, 21, 22). Together, the

checklist, review of additional documents, and other information and interviews demonstrate consideration of environmental impacts and were sufficient for OPCD to render a decision.

The Hearing Examiner must give substantial weight to the decision and the analysis conducted by the lead agency. The Appellant has not presented evidence to show how OPCD's review of environmental factors was clearly erroneous.

### **B.1. The environmental review was properly conducted**

The primary proponent of the legislation was City Councilmember Mike O'Brien. OPCD provided technical assistance to Councilmember O'Brien, including policy analysis, organization of public involvement processes, and drafting of the legislation. It is common for staff in City departments to prepare legislation on the behalf of elected officials. Mr. Welch and Mr. Wentlandt were staff members involved in providing the technical assistance.

Later, Mr. Welch drafted and signed the environmental checklist. Mr. Wentlandt prepared and signed the DNS on behalf of the OPCD Director. Therefore, different and separate staff members within OPCD prepared and were responsible for the checklist and the decision, respectively. The Appellant claims that staff were somehow biased as they prepared the environmental checklist and the decision. However, the Appellant has not provided any evidence identifying the significant environmental impacts that OPCD disregarded due to alleged bias.

It is customary in City departments, and has been a longstanding practice, for agency staff with in-depth knowledge of a policy issue to prepare the environmental review of legislation on that topic. It is not clear how the environmental review of the proposed legislation would be any different if conducted by other staff within OPCD, as the Appellant requests. The requested remedy is irrelevant to the adequacy of the environmental checklist and the decision. The Examiner previously ruled during the continued hearing on November 1<sup>st</sup> that emails about the involvement of Councilmembers or Council staff would not be considered with respect to any of the issues in this appeal because it is not relevant to them.

### **B.2. Environmental analysis was appropriately contained in Part D of the checklist**

The proposed action is obviously not a project proposal. No specific construction or alteration of the physical environment is proposed. The action is for Land Use Code changes that could over an indefinite period affect the quantity of ADUs and DADUs added in Seattle compared to the rate today.

OPCD acknowledges that, in certain contexts, it would be informative for a Land Use Code amendment to contain information in Part B of the checklist. For example,

information in Part B could be meaningful for a Land Use Code amendment that pertains to a specific development project or could be inferred to have likely effects in a specific physical location. But the proposal in question is completely different from a proposal of that nature. As shown in Figure 1 of the Director's Report (Exhibit 6, page 3), ADU and DADU production has been broadly distributed across the approximately 124,000 single family parcels in Seattle, and there is no information or evidence from the Appellant to suggest the pattern would change to concentrate ADUs and DADUs in a specific area. Other than remote speculation, there is no way to identify where owners will add an ADU or DADU — a prerequisite for a project-level analysis of a neighborhood sub-area or block. Therefore, analysis of the action was correctly contained in Part D.

Furthermore, OPCD conducted a complete analysis of the non-project action in Part D of the checklist. The Appellant claims that abbreviated answers to part B of the checklist exhibit an incomplete analysis of vegetation removal, displacement of people, elimination of housing, aesthetic impacts, parking, and demand for public services and utilities. OPCD analyzed all of these topics in the checklist itself, in consultation of documents during preparation of the checklist, and/or in the DNS. With no project-level impacts available for analysis, OPCD provided a production estimate at page 15 of the checklist (and referenced in paragraph 1 on page 4 of the DNS) to provide for meaningful analysis of possible impacts:

*“For the purposes of analysis and discussion, OPCD considered a scenario in which as many as five percent of the appropriately 75,000 single-family lots eligible for a detached accessory dwelling unit added an attached and/or detached accessory dwelling unit. If produced over a 20-year period, this quantity of new accessory dwelling units would translate to less than a sixfold increase over currently observed annual production rates.”*

The Appellant has sought to obfuscate the basis for this production estimate, but OPCD's rationale is clear, reasonable, and grounded in the experiences of peer cities, as demonstrated in OPCD's exhibits and testimony. As described on pages 6-7 of Exhibit 7, a detailed geospatial analysis identified 74,958 DADU-eligible single family lots. Creation of DADUs on five percent of these lots over 20 years yields a production rate of 188 DADUs per year, 5.5 times more than Seattle's average of 34 per year since 2010 (see Exhibit 1, page 15). The Appellant has incorrectly claimed that Portland's rate of production exceeds OPCD's estimate. Exhibit 11 at page 21 includes permit data on ADU/DADU production in Portland, Oregon. In 2015, Portland received 360 ADU permit applications, a statistic that reflects attached and detached ADUs. For a consistent comparison, OPCD's five-percent estimate yields 310 ADU and DADUs per year — similar to production in Portland, where regulations do not require off-street parking or owner-occupancy.

OPCD analyzed numerous elements of the environment using this estimated increase in production as a touchstone. OPCD considered the incremental impacts that could stem from adjustments to the code standards for hypothetical site-based conditions and then

considered the magnitude of the total impact likely to occur in the aggregate, referencing the five percent citywide estimation.

Examples of where OPCD considered hypothetical individual site-based conditions include:

- **Aesthetic Impacts:** Checklist Page 15 final paragraph discusses the incremental visual impacts of structures built under the proposed standards from neighboring structures.
- **Parking:** DNS at page 4 the third paragraph contemplates minor localized impacts to the availability of on street parking.
- **Vegetation:** Testimony of Nick Welch considered possible loss of vegetation, as well as preservation of vegetation due to removal of the off-street parking requirement.
- **Utilities and Services:** Testimony of Nick Welch regarding utility connection requirements for side sewer service for DADUs.
- **Displacement and Housing Impacts:** (See expanded discussion below)

OPCD considered the environmental impact of each of these topics, and others, in the context of the overall magnitude of increased production that would stem from the legislative proposal. This method follows the intention for part D of the SEPA checklist. Further analysis in Part B of the checklist would not have meaningfully supplemented the analysis provided in Part D.

### **B.3. The proposal was appropriately defined.**

The Appellant claims that SEPA procedures direct OPCD to broadly analyze the potential for the ADU/DADU legislation to create the availability of affordable housing, but that suggestion is incorrect. The analysis was conducted as the review of a defined proposal for several Land Use Code amendments to remove barriers to the creation of accessory dwelling units. The Appellant may dispute the policy of encouraging additional ADU/DADU production as a means to address housing affordability, but that policy debate is not the purpose of the environmental determination on the proposal.

WAC 197-11-060(3)(a)(ii) states that “A proposal by a lead agency or applicant may be put forward as an objective, as several alternative means of accomplishing a goal, or as a particular or preferred course of action.” In this case, the broad objective is to encourage the production of ADUs and DADUs, and the proposal is several discrete Land Use Code changes that could achieve the objective. The environmental review considers the potential impact of the code changes in their totality. It remains the discretion of the City Council when taking final action to approve some or all of the code changes. The environmental review discusses and discloses the potential for significant adverse impacts of the full set of potential code changes to inform this decision making.

The Appellant asserts that the proposed legislation runs counter to a stated objective of producing affordable housing available to low-income populations, specifically citing people earning 60-80% of the area median income (AMI). This assertion is not relevant to the question of whether the proposed legislation has adverse impacts on the environment. Even if the proposed legislation would fail to achieve an increase in housing available at the 60-80% AMI level, it is unclear how this would constitute an adverse impact on housing as an element of the environment.

Neither OPCD, Councilmember O'Brien, nor Resolution 31547 sets the 60-80% AMI level, or any other income level, as the sole objective of the proposal to remove barriers to ADUs/DADUs. Discussed on page 4 of the DPD Report and Analysis, October 2015 (Exhibit 7) paragraphs 1-4, and referenced in Mr. Welch's testimony about the checklist, are the effects on housing that OPCD expects ADU/DADUs would have:

*"Many DADUs are rented at 80 to 120 percent of Area Median Income (AMI). Encouraging DADU production helps provide housing at an income level not available in many single-family neighborhoods. Although this income level does not meet the needs of low – and very-low-income households, DADUs provide additional opportunities for rental housing and income diversity in neighborhoods that are often affordable only to high-income households. Furthermore, the additional income from renting out an accessory unit can help some homeowners afford to remain in their homes."*

As evidenced by this passage, and reflected in Mr. Welch's testimony about on-site interviews with DADU owners, OPCD considered multiple and varied effects that additional ADU/DADUs would have on the housing element of the environment.

#### **B.4. OPCD considered potential housing impacts.**

The Appellant contends that the proposed code changes will increase property values and put sales pressure on lower-value single family lots. Purely economic arguments, including issues of profits and socioeconomics, are outside the scope of SEPA and must be disregarded. Even for a full environmental impact statement (EIS), WAC 197-11-448 states:

*(3) Examples of information that are not required to be discussed in an EIS are: Methods of financing proposals, economic competition, profits and personal income and wages, and social policy analysis (such as fiscal and welfare policies and nonconstruction aspects of education and communications). EISs may include whether housing is low, middle, or high income.*

Much of the Appellant's discussion of this topic pertains to purely economic factors such as returns on investment and potential income streams achievable due to the proposed Land Use Code changes. The Appellant seeks to link increases in property values and adverse impacts to existing housing stock, but evidence for such a connection is missing. Mr. William Reid testified that the code changes would increase the rate of teardowns but

provided no data or evidence to support the claim. Testimony of Mr. Sam Lai acknowledged that a lot with an ADU or a DADU could be more valuable than a lot without one, but he also testified that the proposed code changes would not change the approach of builders seeking to acquire and build housing in Seattle's single family zones. Mr. Lai summarized his review of Multiple Listing Service (MLS) records, where he found that in the past several years only seven of 1,600 sales of newly constructed single family homes included an accessory unit. Since both ADUs and DADUs are already allowed, this suggests that speculative builders have little or no interest in constructing new homes with accessory units. Mr. Lai, a certified appraiser, also testified that it is very unlikely that property appraisers would switch from the currently dominant comparable sales approach to an income-generating approach when appraising single family homes for sale. This opinion is supported in OPCD Exhibit 22 *Understanding and Appraising Properties With Accessory Dwelling Units*, consulted in preparation of the checklist by Mr. Welch. At page 300 the document reads: "on the level of everyday practice... appraisers suggest they appraise properties with ADUs much as they do single-unit residences, using the sales comparison approach to value..." The Appellant has not presented any data to suggest the ability to build an ADU and/or DADU would meaningfully increase demolition of single family houses for new construction beyond the existing phenomenon today of teardowns to build a single family residence.

In preparation of the checklist, Mr. Welch reviewed OPCD Exhibits 17 and 18, which catalogue all DADUs permitted since this housing option was legalized citywide in 2009. Mr. Welch also conducted dozens of interviews with owners of DADUs. In his testimony, Mr. Welch affirmed that, in all of his review, he never encountered a single example of an existing single family home being torn down to create a new home with a DADU. Furthermore, survey results about how DADUs are used (Table 2 of Exhibit 7) that Mr. Welch referred to when preparing the checklist suggest that the most common use of DADUs was as housing for family members or extended family members, not income-generating rental property; testimony from the Appellant's witness Mr. Hill reiterated this finding.

It is true that OPCD's consideration of potential housing impacts focused primarily on aspects of new housing opportunities that could be created with increased production of ADUs and DADUs. This is because evidence suggesting impacts of ADU/DADUs on existing housing stock due to demolition was simply not present. The Appellant's claim that significant elimination of housing would result from the proposed legislation is remote and speculative.

#### **B.5. OPCD considered potential displacement impacts.**

Similar to the discussion of potential housing impacts above, the Appellant's claim that the proposal would increase displacement is remote and speculative. The assertion of displacement impacts hinges on the notion that greater production of ADUs and DADUs would not only increase speculative development but also increase it specifically in lower-value neighborhoods that the Appellant believes are more accessible to

disadvantaged communities and first-time home buyers. The evidence and data do not support this claim. Maps of ADU/DADU production in both Seattle and Portland (see Exhibit 11 page 22) show that production of ADUs/DADUs is distributed widely and evenly throughout both cities. No appreciable concentration exists in any one neighborhood or sector.

Furthermore, OPCD Exhibit at page 22, Table 7 shows that single family parcels with a DADU tend to have a *higher* property value than parcels without a DADU, not a lower value. In his testimony, the Appellant's witness Mr. Hill agreed with this conclusion. Mr Hill referred to the finding that DADUs tend to be built on larger lots (i.e., an average of 6,700-6,800 square feet), even though the current minimum lot size is 4,000 square feet, as evidence that DADUs tend to be constructed by "people with greater wealth."

Ms. Souvanny's anecdotal testimony that her family elected to sell their home in the Rainier Valley to a builder was accompanied by the statement that there was no accessory dwelling unit in the home that was subsequently constructed on the site. The anecdote has no connection to the proposed legislation removing code barriers to ADUs and DADUs. The appellant's claims of displacement impacts are conjecture.

#### **B.6. OPCD considered height, bulk, and scale impacts and determined them not to be significant.**

OPCD correctly reviewed and characterized potential height, bulk, and scale impacts. The review of additional height, bulk, and scale the proposal would allow considers the additional mass that could result from the proposal compared to what can already be built under existing regulations. The Appellant's statement that the proposal would allow 1,200 square feet of additional accessory dwelling unit floor area is incorrect with regard to height, bulk, and scale because an ADU attached to the principal structure must be contained within the development standards for the principal structure. The Appellant also mischaracterizes the proposal in its Exhibit 10 and in the testimony of Mr. Marshall, neither of which distinguished the potential effects of the proposed Land Use Code amendments from the type and scale of development already allowed under existing regulations.

The checklist and the DNS consider that the proposed legislation does not alter the maximum lot coverage limit, whether calculated as 35% of lot area for lots 5,000 square feet and larger or 1,000 square feet plus 15% of lot area for lots smaller than 5,000 square feet. Currently and under the proposal, the lot coverage limit is the same for structures with ADUs and/or DADUs as it is for a single family house without them. The proposed code change would increase allowed coverage of the required rear yard area from 40% to 60% only for single-story DADUs. This rear yard lot coverage increase does not alter the overall lot coverage limit, a fact the Appellant's statement seeks to confuse. The proposed height limit increases for DADUs add no more than 3 feet, and the maximum allowed height limit for DADUs would be 25 feet — 10 feet less than the maximum height limit for a principal single family structure. Contrary to the Appellant's statement,

the proposed code change to allow an ADU and/or DADU on lots as small as 3,200 square feet would result in an effective maximum lot coverage that is exactly the same as what a new single family home can already achieve on the same sized lot under existing regulations, because the same lot coverage formula would apply to a principal single family structure.

The Appellant claims that a decrease in the minimum lot size for a DADU would have significant environmental impacts. Yet, when asked why he thought the average size of lots with a DADU was 6,800 square feet when the current minimum lot size is 4,000 square feet, the Appellant's witness Mr. Kaplan said "because most people that own a single family home want a backyard" and therefore "those with larger lots would be able to accommodate a [DADU] at 6,800 square feet where they wouldn't really be able to do it at 4,000 square feet or [5,000]." Mr. Kaplan's statement suggests changing the minimum lot size would *not* have a significant environmental impact.

OPCD provided descriptions of height, bulk, and scale changes at pages 7-9 of OPCD Exhibit 6, referred to in preparation of the checklist. OPCD considered the height, bulk, scale, and aesthetic impacts associated with these code changes at page 15 of the checklist and at page 3 of the DNS. The potential impacts were determined not to be significant.

#### **B.7. OPCD considered analysis of parking impacts.**

As discussed above, OPCD's consideration of parking impacts is substantially informed in the context of the estimation of overall ADU/DADU production: creation of an ADU and/or DADU on five percent of eligible single family lots. Based on this estimation and the maps evidencing ADU/DADU dispersion throughout Seattle, OPCD acknowledged localized on-street parking impacts and determined them not to be significant when considered in the entirety across the city.

It is not plausible to assume a concentration of ADU/DADUs on any one block or in any one neighborhood. OPCD did consult available studies on the likelihood of ADU/DADU occupants to possess a car and the probable on-street parking impacts from removing the off-street parking requirement. Specifically, OPCD considered an empirical analysis conducted in Portland, Oregon — where no off-street parking is required — that found nearly two-thirds of attached and detached ADUs had zero vehicles parked on the street. Furthermore, only 8 percent of ADUs in Portland had two or more street-parked vehicles (see OPCD Exhibit 10, page 22), a finding inconsistent with the Appellant's assertion of potential parking impacts.

Appellant's Exhibit 10 prepared by Mr. Marshall distorts information to show an overabundance of cars that would be parked on the street. This misleading illustration assumes 1) that all vehicles owned would have to be parked on the street instead of on site, even when space for off-parking is available, 2) that every home on the block would have an ADU and a DADU, and 3) that every ADU and DADU would be associated with



at least one vehicle. The testimony of Appellant's witness Mr. Hill contradicts the illustrations prepared by Mr. Marshall. Mr. Hill asserted that, if speculative developers are allowed to build ADUs and DADUs through this proposal, they will want to advertise that their projects have parking by "bundling parking to attract tenants." Mr. Hill made this point to allege that this parking results in vegetation and tree loss, but the statement contradicts the argument that the proposal will instead have on-street parking impacts.

Instead, a realistic portrayal of on-street parking conditions is more accurately seen in the photos taken from the street of every DADU constructed to date in Seattle in OPCD Exhibits 18 and 19. The photos substantiate statements in the checklist (page 17, paragraph 3) and referenced in the DNS (page 4, paragraph 3) that the availability of on-street parking in Seattle's single family neighborhoods varies and is abundant in many instances.

#### **B.8. Analysis supports OPCD's determination that impacts upon services and utilities are not likely to be significant.**

As discussed above, OPCD's consideration of parking impacts is substantially informed in the context of the estimation of overall ADU/DADU production: creation of an ADU and/or DADU on five percent of eligible single family lots. Based on this estimation and the maps displaying of ADU/DADU dispersion, OPCD determined the potential for service and utility impacts not to be significant.

OPCD did consider available information on how localized or site-specific utility impacts would be addressed, particularly regarding side sewer connection requirements for DADUs (Welch testimony). In the DNS, OPCD considered how household sizes could be incrementally larger for single family lots with an ADU/DADU (page 3, final paragraph) compared to lots without. Importantly, however, the proposal would make no change to the existing maximum household size of eight unrelated persons living on a single family zoned lot. Therefore, the overall use and intensity of activity on a site with an ADU/DADU would not increase significantly compared to what could otherwise occur under existing regulations.

#### **Conclusion**

The proposed code changes are minor adjustments to the Land Use Code intended to encourage more accessory dwelling units, a form of housing already allowed citywide in all single family zones. The burden of proof is on the Appellant to demonstrate how OPCD was clearly erroneous in its determination that the proposed legislation would not be likely to cause significant adverse impacts on the environment. The Appellant has provided no evidence of such error, and so an EIS should not be required. Without any evidence of a significant environmental impacts, the appeal either relies on procedural arguments (B.1-B.3) that should be disregarded or takes issue with the depth of OPCD's analysis to substantiate review (B.4-B.8). It is completely unclear what sort of additional

analysis would be undertaken, or what the value of such analysis would be, if the DNS were vacated as the Appellant requests. The DNS was correctly issued and should be upheld.

Entered this 16th day of November, 2016.



---

Geoff Wentlandt, Strategic Advisor  
Office of Planning and Community Development

cc. Martin Henry Kaplan, appellant  
Jeff Eustis, appellant legal counsel