



**Legislative Department  
Seattle City Council  
Memorandum**

Date: December 13, 2011

To: Councilmember Sally Clark, Chair  
Councilmember Tim Burgess, Vice Chair  
Councilmember Sally Bagshaw, Member  
Committee on the Built Environment (COBE)

From: Michael Jenkins, Council Central Staff

Subject: Council Bill (CB) 117304, Lot Standards

At the November 30, 2011 COBE meeting, I briefed committee members on CB 117304, which would establish lot configuration standards city-wide. The legislation establishes four minimum standards when a new lot is created (platting action) or an existing lot is reconfigured (lot boundary adjustment):

- A minimum street frontage of 10 feet, for lots proposed with street frontage;
- A minimum dimension of 10 feet in any direction, except that a lot may be narrower than 10 feet for a distance of less than 10 feet;
- A maximum of 6 lot lines; and
- Alley access must be provided if the original lot fronts on alley.

Committee members also conducted a public hearing, where testimony was provided by both 1) citizens previously affected by the lack of lot configuration standards and 2) representatives of the development community.

While both groups expressed general support for the legislation, testimony was divided on one provision of the legislation - the proposed special exception process. The special exception process allows the Director of the Department of Planning and Development (DPD) to modify one or more of the four lot configuration standards, when an applicant can demonstrate that 1) one of the following four conditions are present on the lot and 2) that the presence of one or more of the following conditions prevents the applicant from meeting one or more of the four minimum lot configuration standards:

- Natural topographic features or natural obstructions;
- An existing principal structure is retained;
- Existing easements or limited feasibility for vehicular access; or
- Other similar conditions exist that prevent application of the standards.

Testimony came from Northeast Seattle residents who expressed concern that the special exception process was too lenient. Representatives from the development community testified that the special exception process could be misinterpreted by DPD in a way that would limit their ability to create the maximum number of lots anticipated under the Comprehensive Plan in residential zones. The residents also requested that the Council adopt the following language from Resolution 28559, approved in 1992:

*"For subdivisions intersecting Environmentally Critical Areas, modification of the standards shall not be approved solely to maximize the number of lots."*

Following the public hearing, committee members considered three separate amendments to the bill. Two of the amendments – one related to allowed building height of lots of less than 2,500 square feet in single family zones and the other to expand notice requirements for special exception requests – were approved.

The third amendment would have added the following sentence to the special exception criteria for both short plats (creation of 9 lots or less) in Seattle Municipal Code (SMC) 23.24.040B and subdivisions (more than 9 lots), SMC 23.22.100D:

*The standards of this subsection...shall not be applied to limit the maximum number of lots that could be created in the absence of these standards.*

The proposed sentence restates the intent of the ordinance, which is to not reduce an applicant's ability to achieve the maximum number of lots anticipated in the zone because of the presence of one or more of the four lot conditions.

Committee members requested that staff look at clarifying the amendment to balance the two interests – the desire to provide some relief from minimum lot standards for legitimate reasons while strengthening the special exception review process.

Staff comment:

The intent of the special exception process is to allow an applicant that has a site containing one or more of the four lot conditions to request that DPD modify the minimum lot standards to approve the creation of the same number of lots that *could* be created if none of the lot conditions were present.

The special exception process allows an applicant to seek relief from the minimum lot configuration standards without requesting a variance from those standards, a process which can be more difficult for an applicant and can increase permit costs. To approve a variance, DPD must find that because of unusual property conditions, "the literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause *undue hardship* or *practical difficulties* (emphasis added)."

DPD selected the four proposed lot conditions as those that would cause the need for DPD to approve a variance, recognizing that the presence of these conditions should not be the basis for limiting an applicant's ability to subdivide an oversized lot. The special exception process is similar to a variance, in that the request to modify standards can only be the *minimum necessary* to allow platting of lots with building areas meeting the development standards of the zone in which the proposed plat is located.

Following the committee meeting, I consulted with the Law department on the citizen's request to incorporate the excerpt from Resolution 28559 into the code. Concern was expressed about the legality of including such language, which has the effect of specifically limiting development on lots in an Environmentally Critical Area (ECA). These types of limitations are at odds with both statutory law (RCW 82.02) and recent court cases that successfully overturned King County's ECA ordinance.

The intent of CB 117304 is to provide some order to the City's approval of platting actions by establishing new standards and providing a mechanism to seek relief from those standards due to special site conditions. The creation of a new lot does not guarantee corresponding development. The city currently regulates development on lots in both the Land Use Code (setbacks, density, yard requirements, etc) as well as the ECA Ordinance (limitations on or near steep slopes, watercourses, wetlands, etc.) – both of which limit the extent to which *development* can occur on a lot, once the lot is created or reconfigured.

The ECA ordinance already includes many of the controls sought by neighborhoods, including a requirement in SMC 25.09.240 that lots “be divided so that each lot contains an area for the principal structure, all accessory structures, and necessary walkways and for access to this area that are outside all environmentally critical areas and buffers...” If a developer cannot demonstrate that these ECA development standards can be met, a lot may not be eligible for building permits for new structures.

Recommendation:

I am recommending the following amendment to the special exception process. If approved, the amendment would provide two options for requesting the special exception at the time of a platting action - 1) because of the presence of one of the original four lot conditions stated in the original bill; or 2) when the application of the minimum lot standards prevents an applicant from achieving the number of lots anticipated in any zone. The two separate options do not prevent an applicant from requesting relief under both provisions.

By creating these two options, it allows the development community to seek relief from the lot standards on their face, assuming that such relief is warranted. It retains language that allows changes in lot configuration standards when features are present on a lot that were not created by an applicant or property owner.

Note - the underline portion of the text below reflects the original language of CB 117304, as amended by COBE. The double underline section creates the two options for requesting the special exception:

23.22.100 Design standards((=))

C. Lots.

1. Every lot shall be provided with convenient pedestrian and vehicular access to a street or to a permanent appurtenant easement that satisfies the requirements of Sections 23.53.005 and 23.53.006.

2. Lots shall be numbered with reference to blocks.

3. Every lot, except unit lots and lots proposed to be platted for individual live-work units in zones where live-work units are permitted, shall conform to the following standards for lot configuration, unless a special exception is authorized under subsection 23.22.100.D:

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D. Special Exception. The Director's recommendation on a proposed subdivision, as a Type II special exception decision, may modify the standards of subsection 23.22.100.C.3, if the applicant demonstrates that the proposed plat meets the following criteria:

1. Either

a. The property has one of the following conditions not created by the applicant:

1) Natural topographic features or natural obstructions prevent the platting of one or more lots according to the standards of subsection 23.22.100.C.3;

2) Location of existing principal structures that are retained on a lot existing prior to the proposed platting require a platting configuration of one or more lots that cannot reasonably meet the standards of subsection 23.22.100.C.3;

3) Location of existing easements or feasibility of access to portions of the property prevents the configuration of proposed plat lines that meet the standards of subsection 23.22.100.C.3.

4) Other similar conditions that prevent application of the standards of subsection 23.22.100.C.3; or

b. The application of the standards of subsection 23.22.100.C would result in a platting configuration containing less than the maximum number of lots that could be created in the absence of these standards.

2. Modification of the standards of subsection 23.22.100.C.3 shall be the minimum necessary to allow platting of lots that each contain a building area for development meeting the development standards of the zone in which the proposed plat is located.

3. Lots created under the special exception standards of this subsection 23.22.100.D shall not have a configuration that requires a variance from setbacks and yard requirements of the Land Use Code or a variance or exception from the Regulations for Environmentally Critical Areas for any development that may be proposed on the lots.

23.24.040 Criteria for approval((-))

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B. Special Exception. The Director may modify the standards of subsection 23.24.040.A.9, as a Type II special exception decision, if the applicant demonstrates that the proposed plat meets the following criteria:

1. Either

a. The property has one of the following conditions not created by the applicant:

1) Natural topographic features or natural obstructions prevent the platting of one or more lots according to the standards of subsection 23.24.040.A.9;

2) Location of existing principal structures that are retained on a lot existing prior to the proposed platting require a platting configuration of one or more lots that cannot reasonably meet the standards of subsection 23.24.040.A.9;

3) Location of existing easements or feasibility of access to portions of the property prevents the configuration of proposed plat lines that meet the standards of subsection 23.24.040.A.9.;

4) Other similar conditions that prevent application of the standards of subsection 23.24.040.A.9; or

b. The application of the standards of subsection 23.24.040.A.9 would result in a platting configuration containing less than the maximum number of lots that could be created in the absence of these standards.

2. Modification of the standards of subsection 23.24.040.A.9 shall be the minimum necessary to allow platting of lots that each contain a building area for development meeting the development standards of the zone in which the proposed plat is located.

3. Lots created under the special exception standards of this subsection 23.24.040.B shall not have a configuration that requires a variance from setbacks and yard requirements of the Land Use Code or a variance or exception from the Regulations for Environmentally Critical Areas for any development that may be proposed on the lots.

**Options:**

1. Approve bill as introduced;
2. Approve bill as reflected in the proposed amendment; or
3. Amend bill to remove special exception provision.

Removing the special exception provision would require that an applicant request a variance from the minimum lot standards.