

Director's Report and Recommendation - Interim regulations for development of undersized lots in single-family zones

Proposal

The Department of Planning and Development (DPD) generally supports and encourages infill development when consistent with the City's Comprehensive Plan goals and policies. In reviewing Land Use Code provisions governing undersized lots and minimum lot area exceptions,) has determined that development approved under current standards is often out of character with surrounding conditions and inconsistent with the policy intent of allowing infill development on undersized lots. Interim measures are proposed in order to prevent a rush to obtain permits and develop properties in a manner that is not appropriate while this issue is being studied.

The proposed interim measures would:

- Limit application of the lot area exception provided for lots of historic record to those lots with an area of at least 50 percent of the general minimum requirement for the zone.
- End the use of historic tax records as a basis for qualifying for lot area exceptions.
- Continue to allow development of lots with an area of between 50 and 75 percent of the general minimum lot area of the zone (i.e. lots between 2,500 and 3,750 square feet in an SF 5000 zone) by allowing development on such lots to be built to the height and floor area that would be allowed for a detached accessory dwelling unit on a lot of the same dimensions.

Background

Seattle has imposed minimum lot area requirements in single-family zones since the 1950s, and since they were first codified the zoning codes have included exceptions to the requirements. The reasons given for these exceptions have been to allow for infill housing opportunities on lots that otherwise would remain vacant, and to allow property owners who had acquired a parcel prior to the adoption of the minimum lot area requirement with the expectation that it could be developed to have the benefit of that investment. The latter purpose was the chief reason behind the exception in Section 23.44.010.B.1.d, made for certain historic lots of record prior to July 24, 1957. (That was the date when the zoning code of 1957 codified as Title 24, included minimum lot area standards. It has since been superseded by Title 23, the current Land Use Code, which carried forward a lot area exception for certain historic lots of record.

Unlike most of the lot area exceptions in Section 23.44.010.B, the exception for historic lots of record includes no absolute minimum area requirement. (By contrast, exceptions made for lots reduced through adverse possession or condemnation for streets require that the remaining lot area be at least 50 percent of the general minimum requirement for the zone.) In recent years, development of lots under 50 percent of the minimum lot area requirement has been approved

pursuant to the historic lot exception. Development on significantly undersized lots has triggered strong and persistent complaints from neighbors. Typically, the following issues have been raised:

- Development is occurring on lots that are so small that they are out of scale with the surrounding development pattern, and neighbors never would have expected that they could be separately developed.
- In some cases it appears that a lot, although it was technically treated as separate in an historic record, most likely was never held with any intention that it might someday be separately developed.
- The benefit of the development is accruing to developers who are familiar with arcane historic property and tax records, rather than to the owners of parcels the historic lot exception was intended to protect.
- Houses being built on undersized lots are sometimes taller than surrounding homes, or otherwise present imposing façades or inelegant forms, likely due to the desire to maximize potential floor area subject to constraints such as yard requirements that limit the potential building footprint on a small lot.
- Because the development of a house on an undersized lot requires no discretionary review, it triggers no public notice. Neighbors often become aware that the lot is to be separately developed only when construction begins. No administrative appeal is available; the only recourse is to go to court under the Land Use Petition Act, and the opportunity to do that is subject to a very tight deadline.

The lot area exception for historic lots was originally adopted to preserve the investments of property owners who had acquired lots prior to adoption of minimum lot area standards. However, in most single-family zones, the minimum lot area requirements have been in effect since 1957. The exception was broadened in 1982, when the current Land Use Code (Title 23) took effect. Property owners have had three to five decades, or more, to develop these undersized lots.

The code contains additional lot area exceptions for lots reduced as a result of condemnation for streets, or loss of a portion of the property through adverse possession. (SMC Sections 23.44.010.B.1.b and 23.44.010.B.1.c.) Like the exception made for historic lots of record, these exceptions preserve an owner's investment-backed expectation of the ability to separately develop a parcel. These other two exceptions are limited to lots with an area at least 50 percent of the general minimum requirement for the zone. The proposed measure would do the same for lots qualifying under the historic lot provision.

Another lot area exception, known as the 75/80 Rule, (SMC Section 23.44.010.B.1.a), is designed to allow development of slightly undersized lots where it is consistent with the development pattern in the vicinity. To qualify under 75/80 rule, a lot must have an area at least 75 percent of the minimum required in the zone, and at least 80 percent of the other lots

on the same block front. Lots in the 50-to-75 percent range could not qualify for development at all under this exception. The proposed measure would allow them to be separately developed, but would impose strict size limits to ensure that houses on such lots are not out of scale with surrounding homes. The proposed restrictions would not impose additional restrictions on development of lots with at least 75 percent of the minimum lot area, consistent with the allowance of development of lots within that range under the 75/80 Rule.

Analysis

Development of certain lots with areas less than 75 percent of the generally applicable minimum lot area has been incompatible with the character of the surrounding neighborhood, due to the size of the lots and/or the height and bulk of principal structures that have been built on the lots. Four examples are appended to this report, all of which generated multiple complaints from neighbors.

Parcels historically held as separate tax parcels sometimes are not configured in a way that suggests an historic intent that they might be separately developed, or that lends them to separate development that is compatible with neighboring houses. Prior to the late 1930s, the County maintained tax records in the form of a ledger. In cases where a single developed site consisted of portions of multiple platted lots, each of those portions of a lot was listed on a separate line in the ledger, regardless of its size or dimensions. When the County moved to the current system, under which separate tax parcel numbers were assigned to each tax parcel, it was not uncommon for parcels that had been listed on separate ledger lines to receive separate parcel numbers. Also, when a portion of a property was sold from one abutting owner to another, in some cases that portion of a lot had a separate tax parcel number for years before being merged with the property it had joined.

In some instances, these tax parcels had no street frontage, or were of dimensions that would not have allowed separate development. See attached Example #1. The historic tax parcel in that example, at 5435 Kensington Place North, was a sharp triangle with no street frontage and about 28 feet of frontage on an alley, tapering to a point about 76 feet from an alley. In some cases records have included historic tax parcels that were only five feet wide. In cases where historic tax parcels are not suited for separate development based on their dimensions, developers have sometimes performed lot boundary adjustments to achieve more usable properties. However the separate development of such lots does not appear to be justified based on the intent behind the exception made for historic lots, to preserve the opportunity to develop a lot that had been acquired or created with the intent of separate development prior to the adoption of minimum lot area requirements.

The proposed amendments would not affect most single-family development proposals. Based on DPD permit records, 364 building permits were issued for single-family residences in single-family zones during the 18-month period from January of 2011 through June of 2012. Of those, 159, or approximately 44 percent, were for development of lots that qualified under one or

more of the lot area exceptions provided in Land Use Code Section 23.44.010.B. Nine of the permits were for lots that qualified based on historic records with less than 2500 square feet of lot area. Such lots would no longer qualify under the proposed amendments. An additional 47 (13 percent) of the permits were for lots under 75 percent but at least 50 percent of the general minimum lot area requirement. Development of most of these lots would continue to be permitted, but new limits would be imposed on allowable structure height and floor area.

The proposed interim measures would limit development on lots within this 50-to-75 percent lot area range to the height and floor area limits that would apply to detached accessory dwelling units. In preparing a proposal for permanent measures the Department will explore other options to ensure that houses built on lots within this range are of proportions that fit in with surrounding neighborhoods.

DPD often prepares letters reflecting a determination as to whether a particular lot qualifies for a lot area exception. A letter generally is not required in cases where it is relatively clear that a lot qualifies, such as where the proposed building site is a full platted lot, undeveloped and not in a mapped environmentally critical area. However, a letter is typically prepared in cases where more detailed analysis is required, as with lots qualifying on the basis of historic tax records. During the 18-month period from January of 2011 through June of 2012, DPD issued 43 such letters. Of those, ten involved lots that qualified for an exception to minimum lot size due to historic tax records. Under the proposed interim measures, the exception would no longer apply to these parcels, although five of them had areas under 2500 square feet, and would no longer qualify in any case.

Based on this information, and assuming that future single-family development proposals are for a mix of lots similar in size and history to the lots developed in the recent past, this interim measure would have no effect on approximately 85 percent of new single-family homes in single-family zones. About four percent of the lots that would have qualified for separate development in the past would no longer qualify, although in many cases construction of a detached accessory dwelling unit, in conjunction with an adjacent home under common ownership, would be an available alternative. The remainder of the lots, perhaps 10 percent, with areas under 75 percent of the minimum required for their zone, could be separately developed subject to new, more stringent development standards.

The proposed amendments are consistent with policies in the Comprehensive Plan, and bring the provision for historic lots into alignment with the other lot area exceptions provided in the code. The following Comprehensive Plan goals and policies bear on the minimum lot area requirements and exceptions for single-family zones:

LUG9 Preserve the character of single-family residential areas and discourage the demolition of single-family residences and displacement of residents, in a way that encourages rehabilitation and provides housing opportunities throughout the city. The character of single-family areas includes use, development, and density characteristics.

LU58 Use a range of single-family zones to:

- Maintain the current density and character of existing single-family areas;
- Protect areas of the lowest intensity of development that are currently in predominantly single-family residential use, or that have environmental or infrastructure constraints, such as environmentally critical areas; or
- Respond to neighborhood plan policies calling for opportunities for redevelopment or infill development that maintains the single-family character of an area, but allows for a greater range of residential housing types, such as carriage houses, tandem houses, or cottages.

LU66 Use minimum lot size requirements to maintain a low-density residential environment while reflecting differences in development conditions and the densities and scale of housing in various single-family residential areas.

LU67 Permit exceptions to minimum lot size requirements to recognize building sites created in the public records under previous codes, to allow the consolidation of very small lots into larger lots, to adjust lot lines to permit more orderly development patterns, and to provide housing opportunity through the creation of additional buildable sites which are compatible with surrounding lots and do not result in the demolition of existing housing.

LU69 Reflect the character of existing low-density development through the regulation of scale, siting, structure orientation, and setbacks.

These policies reflect the general purpose of limiting density but allowing lot area exceptions in cases where that infill development is compatible with surrounding lots. The proposed amendments are intended to better ensure compatibility of new development in existing neighborhoods.

Recommendation

The current development regulations have allowed incompatible and excessive development to occur on some undersized lots in single-family zones. Interim development regulations should be adopted to prevent such development until permanent provisions can be established. DPD recommends approval of the proposed Code amendments to establish interim controls while permanent provisions are prepared.

Examples of recent developments on undersized lots in SF zones

#1 – 5435 Kensington Place North, Project No. 6304867 (lot size: 1050 square feet)

The boundary between two historic plats was on the diagonal, resulting in a triangular lot in each plat. One of those lots abutted the alley and the other abutted the street. These triangular lots were each under common ownership with adjacent property within the respective plats. The owners swapped portions of the triangular lots in 1939, to create more nearly rectangular properties. The portion of the triangular lot abutting the alley that was traded at that time was held as a separate tax parcel in the King County records from 1939 until 1971. This parcel, with an area of about 1050 square feet, qualified for a lot area exception on that basis. A current Director’s rule allows a lot boundary adjustment between undersized lots, so long as neither is made smaller. The wedge-shaped parcel was modified under that rule to create a more rectangular lot.

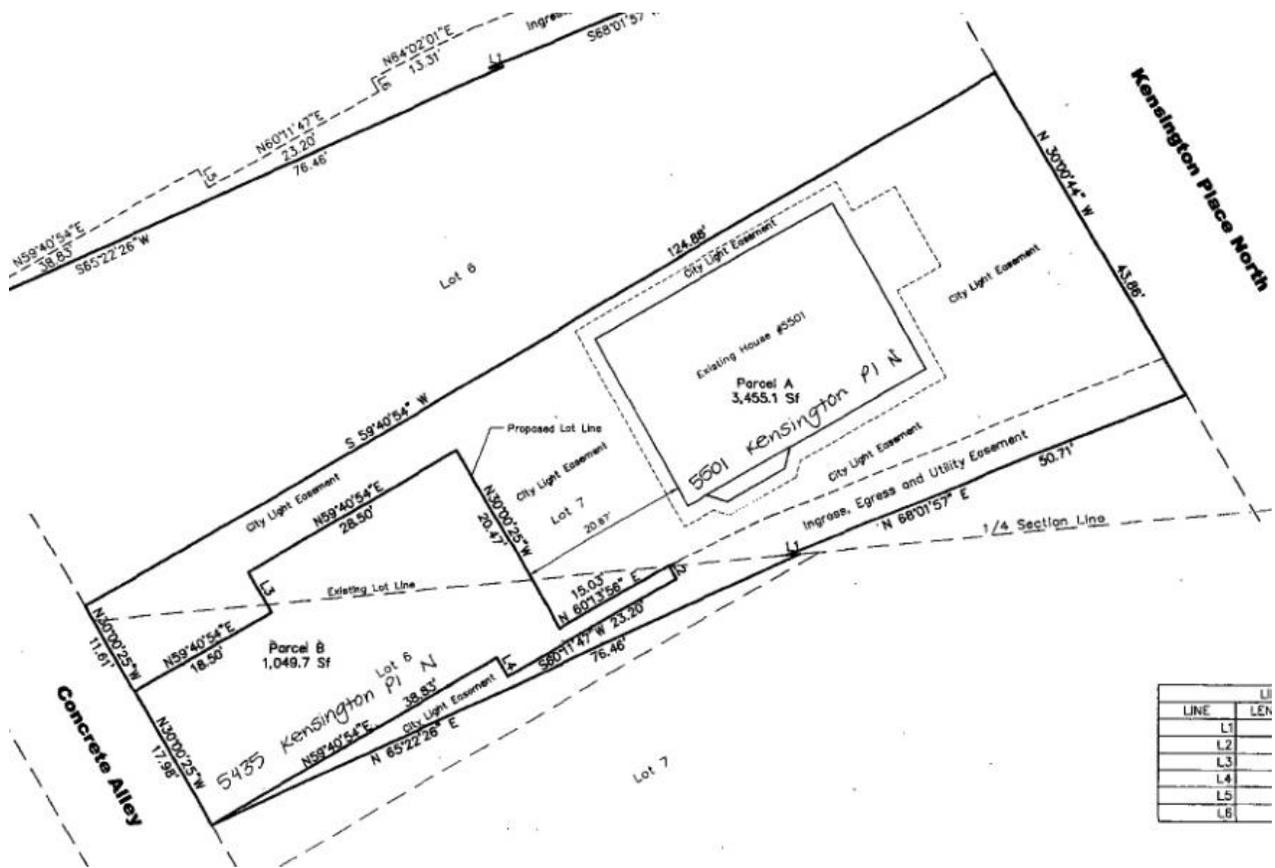
This development triggered some neighborhood discontent and media attention, both because of the nature of the lot and because of the height of the new structure and location abutting the neighbor’s backyard:

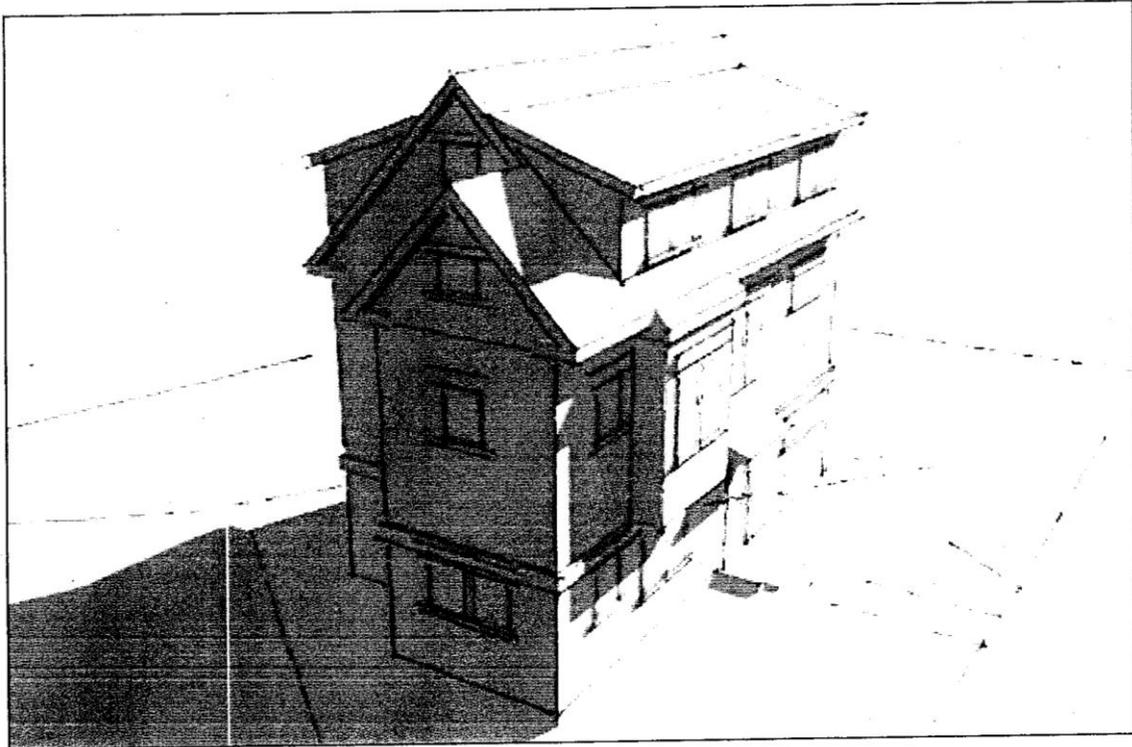
<http://www.seattleweekly.com/2012-07-25/news/dan-duffus-crowded-houses/>
<http://www.wallyhood.org/2012/05/disturbing-development/>

(This project predated Ord. 123809, that took effect in March 2012 and would have limited the height of a house on the lot to 22 feet, as the lot has less than 15 feet of street frontage.)



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 DPD small lot interim controls REP
 August 31, 2012

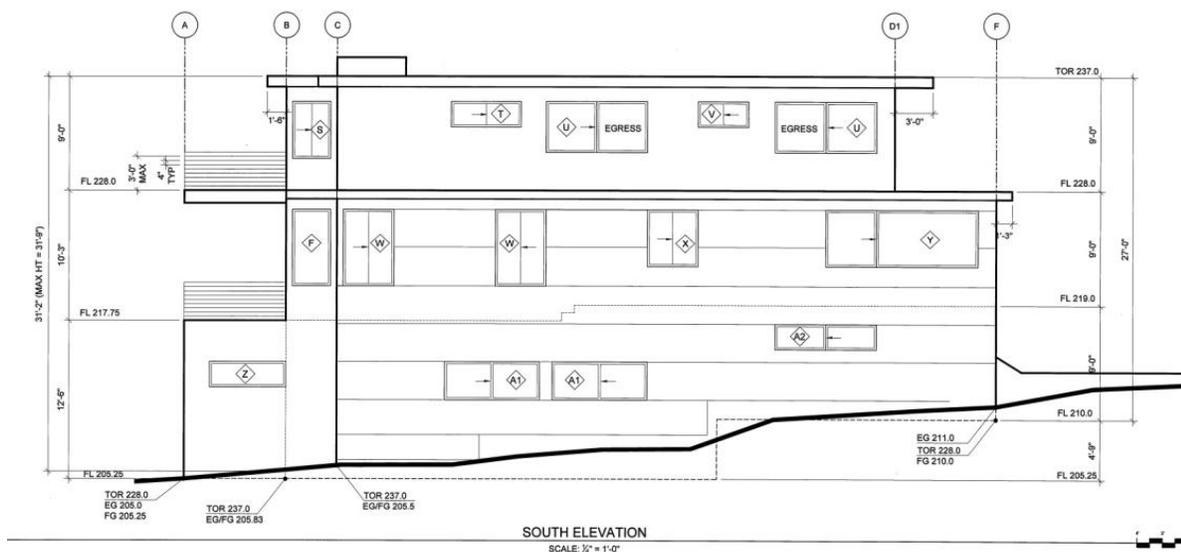
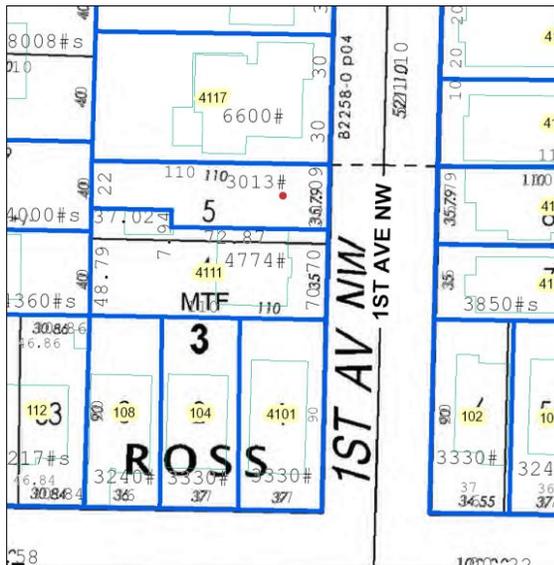




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#3 – 4115 First Avenue NW Project No. 6270517 (lot size: 3013 square feet)

As of 1940, King County held the north 20.79 feet of Lot 5 and a private party owned the south 15 feet of Lot 5 together with the lot to the south. Subsequent property sales lead ultimately to a developer gaining ownership and asserting that the 20.79-foot-wide parcel qualified for the lot area exception. The developer adjusted the lot line between that parcel and the property to the south to allow a more usable building footprint. Neighbors have complained that the resulting house built on Lot 5 is out of scale with the neighborhood.



#4 – 816 NE 83rd Street, Project No. 6314725 (lot size: 3060 square feet)

This property is a 30' by 102' platted lot, Lot 6, formerly held in common with Lots 4 and 5 to the west. It qualified for the lot area exception because it was platted before 1957, and was not required to meet development standards for the house on Lots 4 and 5. A neighbor has complained both about the size of the lot and about the bulk of the house that is under construction there. The approved plans indicate the structure is 25 feet tall, consistent with the height limit for 30-foot wide lots. The garage entrance is three feet below grade from which the structure height was measured, which may contribute to the sense of bulk. A survey showed that the lot is actually 30.005 feet wide, so technically it is not subject to the reduced height limit, and could have been developed with an even taller house.

