

## **Director's Report: Proposed Amendments to Single Family Minimum Lot Area Exceptions**

June 24, 2013 – SEPA review draft

### **Background:**

In 2012, the City started hearing some strong reactions from residents upon learning that tall houses were being developed in their neighborhoods on what had been considered back or side lots, but not anticipated to be a developable lot. In September 2012, City Council adopted Ordinance 123978, interim regulations for small lot development in Single Family zones. The ordinance addressed public concerns that some developments on single-family zoned lots, which were approved through existing lot area exceptions, were incompatible with surrounding neighborhoods. This interim ordinance:

- Eliminated one lot-area exemption that allowed lots to be established through historic County property tax records;
- Established a minimum lot size of at least 50% of the minimum requirement of the zone; and
- Imposed new height restrictions on new houses proposed for lots of less than 3,750 square feet.

The ordinance was adopted on an emergency basis; new standards were to be adopted by September 20, 2013.

The Department of Planning and Development (DPD) then solicited comments and recommendations from the public. The department sponsored a public panel discussion on November 14, 2012, which included neighborhood and developer representatives and a Seattle Planning Commission member. A DPD representative attended a meeting of the Seattle Community Council Federation on November 27, 2012, and met with neighborhood and development representatives at their request. The Department set up a web page with information about the issues under consideration and a mechanism to allow comments to be submitted.

On March 14, staff presented their preliminary recommendations for code revisions to the City Council's Planning, Land Use and Sustainability (PLUS) Committee. Comments reflecting the views of neighbors, developers, planners, and parties interested in buying properties were received from well over 100 individuals. These were considered as this proposed legislation was developed.

The proposed amendments are consistent with the Comprehensive Plan goals and policies; therefore no amendments are needed to Seattle's Comprehensive Plan (see the Appendix to this report).

### **Summary of Recommendations**

These recommendations are comprehensive, addressing issues described below. The proposals generally fall into three categories.

#### **Standards modifying and clarifying exceptions to minimum lot area requirements**

1. Minimum Lot Size: Establish an absolute minimum of 2,500 sf for lots established under various lot area exceptions (Item 4 below)
2. 75/80 Rule: Maintain 75/80 rule; revise/clarify the lot calculation (Item 5)
3. Historic Lots, Deeds or Contracts: Continue not to allow use of old tax records; discontinue use of historic mortgages; clarify use of deed or contract of sale for establishing historic lot exceptions. (Item 6)

4. Development of Abutting Lots in Common Ownership: Require historic lots that average less than 3,200 sf to be developed as a single lot. (Item 8)
5. Lot Line Adjustments: Clarify use of lot boundary adjustments for creating lot area exceptions (Item 10)

Development Standards for Single Family Homes on Undersized Lots

6. Structure Height: Establish maximum height of 22' plus 5' for a pitched roof on lots less than 3,200 sf, including additions to existing houses; allow additional height as a special exception (Type II permit with public notice and opportunity for appeal) (Items 13 and 14)
7. Structure Depth: Limit structure depth to twice the lot width on historic lots less than 3,200 sf. (Item 9)

Minor Code Adjustments and Clarifications

8. Multiple Houses, One Lot Clarifications: Require use of current platting standards; allow separate ownership (unit lot subdivision) only for existing houses (Item 1)
9. Minimum Dimensions Clarified: Clarify measurement for lot coverage purposes – at least 10 feet in all directions, rather than 10 feet in any direction (Item 2)
10. Amend Definitions: Clarify “lot,” “front lot line,” “front yard,” and “rear yard.” (Items 15 and 16)
11. Revise Code Language: Simplify lot area exceptions in Sec. 23.44.010.B.1. (Item 3)
12. Eliminate Exhibits for 23.44.010: Delete graphics that are no longer relevant. (Item 12)

1. **RECOMMENDATION: Modify Section 23.24.045 to clarify that where two houses already exist on a single lot in a Single Family zone, the unit lot subdivision process may be applied to allow them to be separately owned.**

This would allow such a property to be divided solely for the purpose of separate ownership of the existing units, even if the unit lots are under 2,500 square feet, but would restrict further development on the properties based on the development standards of the zone as applied to the combined property as if it were a single lot.

2. **RECOMMENDATION: Modify standards for short plats involving multiple houses on a single lot under Section 23.24.046 to require that new platting standards be met where possible.**

New platting standards adopted last year generally limit new lots to six sides and require all areas within the lots be at least ten feet wide. Short subdivisions dividing single-family-zoned lots already developed with two or more houses were exempt from these standards. The proposed amendment would allow this exemption only when necessary because of existing house configurations. Narrowing the short-subdivision exemption is intended to stop the practice of “gerrymandering” lots in a way that creates unintended yard advantages when the resulting lots are redeveloped.

3. **RECOMMENDATION: Re-write the lot-area exceptions in Section 23.44.010.B.1 to make the wording simpler and more easily understood.**

**4. RECOMMENDATION: Establish a uniform absolute minimum area standard of 2,500 square feet for lots qualifying under various lot area exceptions.**

Currently, under Section 23.44.010.B.1.b and 23.44.010.B.1.c, lots must have an area at least 50 percent of the general minimum requirement for the zone in order to qualify for lot area exceptions when lots have been reduced as a result of adverse possession or street condemnation. Prior to the interim ordinance, there were no absolute minimums for lots qualifying under the historic lot exception. The interim ordinance established a minimum of 50 percent of the general standard for the zone, i.e., 2,500 square feet in an SF 5000 zone. The proposal would establish a uniform minimum area of 2,500 square feet for all of these exceptions. An estimated 78 percent of lots in Single Family zones are in SF 5000 zones. While this modification might allow a few additional lots to qualify for development in SF 7200 or SF 9600 zones, with this package of recommendations, the resulting houses will also be subject to more stringent height limits if they are on lots less than 3,200 square feet in area.

**5. RECOMMENDATION: In calculating the mean area of lots on a block face for purposes of the 75/80 Rule, allow large lots developed with uses other than single-family houses to be excluded.**

The 75/80 Rule allows undersized lots to qualify for separate development if they have an area at least 75 percent of the general minimum lot area for the zone, and at least 80 percent of the mean area of the lots on the same block face and within the same zone. Currently, undeveloped lots that are comparable in area to neighboring properties, lots that would otherwise qualify under the exception, sometimes do not qualify for the exception because there is a large lot on the block front that is developed with a church, school, or park. Under this proposed amendment lots developed with uses other than single-family residences may be excluded from the calculation.

Preparation of a Director's Rule is proposed to provide finer details about how the 75/80 Rule is to be applied, for example in the case of lots with multiple street frontages, irregular block configurations or split-zoned lots.

**6. RECOMMENDATION: For purposes of the Historic Lot Exception, Section 23.44.010.B.1.d; continue not to allow consideration of old tax records and also discontinue consideration of historic mortgages.**

The Historic Lot Exception applies to certain lots established as separate building sites in City or County records prior to 1957. Ever since 1957, when minimum lot area requirements were codified, Seattle's codes have provided an exception from lot area requirements for some lots of record. The original intent was to preserve investment-backed expectations that predated the minimum lot-area requirement. Neighbors have complained that this exception is applied based on arcane records that are difficult to interpret and thus they have no way of knowing which undersized parcels in their neighborhoods might qualify. Further, in some cases the records relied on do not necessarily reflect an historic expectation that a property could be separately developed.

Reliance on historic tax records was discontinued under the interim ordinance, and we recommend that this change be adopted on a permanent basis. Some historic tax parcels were of shapes and sizes that are not suitable for separate development. The proposed ordinance also eliminates reliance on historic

mortgages, as a mortgage for a portion of a lot, alone, may not provide sufficient evidence that the lot was held with the expectation that it would be separately developed.

- 7. RECOMMENDATION: Add standards stating that a property is considered to have been established as a separate building site by a deed or contract of sale only if, as a result of the transaction, the parcel was or would have been held under separate ownership from all abutting properties.**

This language would make explicit a long-standing practice.

- 8. RECOMMENDATION: Add a new limitation on the historic lot exception, so that it cannot be applied to allow separate development of multiple, abutting undeveloped lots with an average area under 3,200 square feet.**

If a property includes multiple, abutting platted lots, this amendment would require that they be consolidated for development rather than separately developed under the historic lot exception if the lots are on average below 3,200 sf. This is comparable to a limitation that was included when a lot area exception for historic lots was first included in the code in 1957.

- 9. RECOMMENDATION: For lots qualifying under the Historic Lot Exception, impose a structure depth limit for development on lots under 3,200 square feet in area.**

Under the proposed legislation structure depth is limited to twice the lot width. This restores a provision that previously applied to lots under 2,500 square feet in area. In most cases, this standard would have no effect, as structure depth will be limited by front and rear yard requirements and possibly lot coverage limits. However, in some cases, where the lot proposed to be developed is narrow but deep, the requirement would prevent a very long "shotgun" style house from being constructed.

- 10. RECOMMENDATION: Clarify that the lot lines of undersized lots may be modified through lot boundary adjustments, and that the resulting lots still qualify for a lot area exception so long as no additional lots are created, and either: 1) no undersized lots are made smaller; or 2) the boundaries between multiple undersized lots are being adjusted in a way that makes them more nearly equal in area. This proposed legislation would replace DR 13-97.**

The allowance for lot boundary adjustments involving lots that qualify for lot area exceptions is currently in Director's Rule 13-97. Currently, a lot qualifying under a lot-area exception would no longer qualify if it is made smaller. Under the current standards, for example, if a 4,000-square-foot parcel and a 2,000-square-foot parcel each qualify for separate development based on historic records, they may be reconfigured through a lot boundary adjustment resulting in a different 4,000-square-foot and 2,000-square-foot lot, and these lots will continue to qualify for separate development. The recommendation is also to allow a lot boundary adjustment that would make the parcels more nearly equal in size. The assumption behind this is that two houses on 3,000-square-foot lots, or one on 3,500 square feet and one on 2,500 square feet, would fit in more gracefully with a neighborhood than a 4,000-square-foot lot and a 2,000-square-foot lot would.

Some citizens have suggested that lots qualifying for a lot area exception based on their historic status should no longer qualify for a lot area exception if they are modified through a lot boundary adjustment.

However, the lot boundary adjustment process is often applied to create lots that are better suited for development compatible with surrounding homes than the original qualifying lots would have been.

**11. RECOMMENDATION: Clarify minimum-dimensional requirement for lot-coverage measurement.**

The platting standards adopted in 2011 discouraged creating lots that included narrow panhandles or tendrils by allowing only portions of lots that are more than ten feet wide to count towards lot area for the purposes of determining allowable lot coverage. The adopted language required that those portions measure at least ten feet "in any direction." The language would be clarified to require that those portions measure at least ten feet "in all directions," which better reflects the intent of the provision.

**12. RECOMMENDATION: Eliminate Exhibits for 23.44.010.**

Existing exhibits are out of date and not useful. If needed, exhibits to clarify how the 75/80 Rule exception applies may be included in the Director's rule to be adopted relating to that exception.

**13. RECOMMENDATION: Impose a structure height of 22 feet with an allowance of up to 5 feet for a pitched roof on all lots under 3,200 square feet. This height would also apply on non-rectangular lots where the area of the largest rectangle or other quadrilateral that can be drawn within the lot lines is less than 3,200 square feet.**

The interim standards applied a height limit of 22 feet with an allowance of 5 feet for a pitched roof on lots under 3,750 square feet. The recommendation is to lower the threshold lot area to 3,200 square feet in light of the fact that lots larger than that have not triggered significant complaints. DPD's initial proposal for permanent measures would have limited the structure height on lots under 3,200 square feet to 18 feet plus a five-foot allowance for pitched roofs, based on the cottage housing standards that apply in Lowrise Multifamily zones and Residential Small Lot zones. However, comments were received from architects pointing out that the 18-foot limit would require cramped ceiling heights for a two-story house, and would require the first floor to be at grade rather than slightly above grade. With a little additional height, the house would be able to sit a few steps above the ground, providing a more comfortable street presence.

Under the interim ordinance, the lower height limits were applied only to new developments, and only to lots that qualified for separate development under the Historic Lot Exception in Section 23.44.010.B.1.d. The recommendation is to apply this limit both to new houses and also to additions to existing houses, on all lots with areas under 3,200 square feet in Single Family zones, regardless of how they qualified for development. This is because the potential impacts on neighbors of a substantial addition to an existing house on a small lot would be no different than the impacts of an identical new house built on a vacant lot of the same size, and no different depending on which lot area exception applied. DPD received a few comments from owners of existing houses. Some owners of existing houses indicated that the 18-foot limit originally proposed would make it difficult to add a second story to their existing house due to the existing configuration. By DPD's analysis, the 22-foot base height limit now proposed would provide the flexibility to allow a second story addition in most cases, but would also limit additions to existing houses.

Considering the area of the largest rectangle or quadrilateral within the lot lines, rather than the total lot area in the case of non-rectangular lots removes the incentive to create irregular lots in order to qualify for larger structures. In cases where a lot is irregularly-shaped, the apparent area of the lot, based on where the development may occur, is typically smaller, and this provision is intended to hold the development to a scale appropriate for the developable portion of the lot. Allowing quadrilaterals to be used rather than rectangles is reasonable as the corners of many lots are not perfect right angles.

**14. RECOMMENDATION: Allow additional height on lots subject to the 22-foot height limit as a special exception (a Type II permit with public notice and an opportunity for appeal).**

This option would allow greater height as a discretionary approval, with the ability to condition or limit the development to better achieve compatibility. This process would include public notice and an opportunity for public comment and for appeals to the Hearing Examiner.

This proposal strikes a compromise: Neighbors have asked for notice of all developments on lots qualifying under the exceptions and developers have complained that notice and discretionary processes add to costs and create uncertainty about potential investments. DPD generally provides public notice for projects involving a discretionary review, including opportunity for appeals, but notice is not provided, as it would serve little purpose in cases where there is little discretion to be applied and no opportunity for administrative appeals. This recommendation would balance the interests of owners seeking to develop and their neighbors, by allowing some basic development of qualifying properties without public process, but allow neighbors the opportunity to weigh in on houses that would potentially be more imposing.

**15. RECOMMENDATION: Amend the definition of "lot" to allow it to mean "building site" in the proper context.**

This would modify the definition so that it is consistent with the way the word is used in the code. Under the current definition, a parcel of land may qualify as a "lot" even though it has been developed in conjunction with adjacent land and does not qualify for separate development on its own. As used in the code, however, the word generally refers to a parcel that is separately developed, or is proposed to be separately developed.

**16. RECOMMENDATION: Amend definitions of "front lot line," "front yard" and "rear yard" in Chapter 23.84A, and the yard measurement provision in Section 23.86.010, to clarify existing code interpretation practices for lots with no street frontage and lots with frontage on multiple streets, and also to discourage the creation of irregular lot configurations intended to minimize front yard requirements.**

This codifies our existing code interpretation practice for determining what orientation should be identified for yard standard purposes for an existing house on a lot capable of multiple orientations because the house and lot has no street frontage or has frontage on multiple streets. It also is intended to limit the practice of using a panhandle-shaped portion of a property to meet the front yard requirement in order to minimize the area of the portion of the lot set aside as a front yard.

In addition to the recommended amendments above, DPD analyzed several other options proposed by developers and design professionals. These options are presented below for the sake of discussion, but are not recommended by DPD at this time.

### **1. OPTION: The 80 Percent Rule or 100 Percent Rule**

An option proposed by Smart Growth Seattle would eliminate the "75 percent" requirement of the 75/80 Rule, and allow lots to qualify for separate development if they have an area at least 80 percent of the mean area of lots on the block front, even if that area is less than 75 percent of the general minimum requirement of the zone. Resulting lots, if smaller than 3,200 sf, would be subject to more stringent height limits. There is support in the Comprehensive Plan for providing "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."

Unlike many of the other lot area exceptions, the 75/80 Rule may be applied to create new undersized lots, and may be applied in cases where existing houses on the property are demolished. There is reason to allow lots as small as 50 percent of the general lot area requirement where the owners had no control over the reduction in the lot's area (as with adverse possession or street condemnation), or where the lots were created before minimum lot area standards applied and acquired with an investment-backed expectation that they could be separately developed. This rationale is not present, however, in the case of new lots being created through the 75/80 Rule, and would not be present in the case of lots created under an 80 Percent Rule. Unbridled application of an "80 Percent Rule" could allow an entire block front of development on lots very much smaller than the norm for the zone, and smaller than development in the surrounding neighborhood, based simply on a single existing undersized lot on that block front.

This option is not included in the recommendation, as it could be applied to create multiple new lots that deviate substantially from the general minimum in a zone. If this option is considered, DPD recommends that it be subject to the following limitations:

- An absolute minimum area of 2,500 square feet should be required.
- The number of new lots on a block front resulting from an application of the rule should not be allowed to exceed the number of existing, remaining lots on the block front that the qualifying calculation is based on.
- Lots resulting from an application of the 80 Percent Rule or the 75/80 Rule should not be allowed to be used as a basis for further lots to qualify under the 80 Percent Rule.
- Demolition of housing to free up land to be divided using the 80 Percent Rule should be prohibited, or limited to demolition of a single house for any one platting action in which the rule is applied.

An alternative would be a "100 Percent Rule" under which an undersized lot could qualify, or new lots could be created, if they are no smaller than the mean area of the other lots on the same block front, even though they have an area less than 75 percent of the lot area generally required in the zone. If this option is considered, DPD would recommend conditions similar to those listed above. If a lot area exception is provided reflecting either the 80 Percent Rule or the 100 Percent Rule, as described above, DPD recommends that it be adopted in addition to, rather than in lieu of, the existing 75/80 Rule.

**2. OPTION: Impose a floor area ratio ("FAR") limit.**

In addition to the height and structure depth limits recommended above, other potential development standards have also been discussed for houses on very small lots, including limits on total floor area or adoption of a floor-area-ratio limit. These options are not recommended based on our conclusion that the existing yard requirements and lot coverage limits, together with proposed structure height and depth limits, will adequately control the bulk of houses on small lots. Further standards would complicate designing and reviewing plans for new houses while adding little size-limiting benefit. A floor area ratio limit would not effectively limit the exterior appearance of bulk of a structure unless ceiling height is limited as well.

One concern that has led design professionals to propose an FAR limit is that absent such a limit, developers will respond to the new height limits by maximizing the volume of the structure within the allowed height, resulting in flat, uninteresting façades, whereas if development were further limited by an FAR limit, they might set buildings back more than required by yard standards, and provide features such as covered porches, adding to the visual interest of the houses. Recognizing that this may be an issue that is not limited to developments on small lots, DPD proposes that modifications to standards such as limitations to features allowed in required yards be deferred and considered in the future when general modifications to Single Family standards are considered.

**3. OPTION: Allow additional development opportunity on block-ends.**

Design professionals have proposed that the City consider creating an opportunity for additional development by allowing new houses to be built facing side streets, in the areas behind existing corner houses. These areas typically are perceived as street-facing rear yards of corner houses, and in some cases, they have a significant amount of street frontage, so that a house placed in such an area would appear less "squeezed in" than some other infill opportunities that are allowed, and would possibly create less of an imposition on the privacy of neighbors' yards than mid-block backyard houses would.

This may be a comparatively attractive way to allow additional density in single-family areas while maintaining well-ordered streetscapes. Many lots have been created in the past, throughout the city, that face side streets, and many of these fit in well with their neighborhoods. The impetus for the current effort was to rein in perceived inappropriate development on lots qualifying for lot area exceptions, and this corner lot proposal, which would create a new lot area exception, appears to be beyond the scope of that mission, so DPD has not included this in this set of recommendations.

Two of the houses that have been controversial and generated much input towards this proposal have been houses on block ends, facing side streets. In both of those cases, however the height of the structure was a significant issue, and the structures would now be subject to additional height restrictions. An amendment to achieve this corner lot change would likely have to modify rear yard requirements, and possibly lot coverage limits, that apply to corner houses.

### **Appendix: Relevant Comprehensive Plan Provisions**

The Comprehensive Plan identifies the following goals for Single Family zones:

**LUG8** Preserve and protect low-density, single-family neighborhoods that provide opportunities for home-ownership, that are attractive to households with children and other residents, that provide residents with privacy and open spaces immediately accessible to residents, and where the amount of impervious surface can be limited.

**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.

**LUG10** Provide for different intensities of single-family areas to reflect differences in the existing and desired character of single-family areas across the city. Allow development that is generally consistent with the levels of infrastructure development and environmental conditions in each area. Include opportunities for low-cost subsidized housing in single-family areas.

Two specific policies relating to lot area requirements and exceptions are provided:

**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.