

**INTERPRETATION OF THE DIRECTOR
PURSUANT TO TITLE 23 OF SEATTLE MUNICIPAL CODE**

In the Matter of)	
the Use of the)	Interpretation No. 09-004
Property at)	DPD Project No. 3010280
901 – Dexter Avenue N)	

Background

This interpretation was requested by attorney J. Richard Aramburu on behalf of his client Alterra Condominium Homeowners Association. The Alterra Condominium development is located to the west and uphill of the property addressed as 901 Dexter Avenue North. A new seven-story mixed use development is proposed by Capstone Partners and Runberg Architecture Group for the 901 Dexter Avenue North property, containing 290 residential units, 13,758 square feet of retail space, and underground parking for 231 vehicles. The request for interpretation raises the following issues: (1) Whether structure height for the proposal should be measured from the finished grade at the parking level of the proposed structure; (2) Whether the 901 Dexter Avenue North property has “unusual topographic conditions” that would be a basis for allowing adjustment of grades for “reasonable development” pursuant to DPD Director’s Rule 12-2005, for purposes of height measurement; (3) Whether DR 12-2005 and the Land Use Code definition of “lot grade, existing” at Seattle Municipal Code (SMC) Section 23.84A.024 allow the use of historic topography in calculating height, or whether height must be measured from the current grade of the lot after the existing building on the site is removed; (4) Whether, assuming the location of existing grade is appropriately determined, the proposed building exceeds the maximum permitted height of 65 feet; and (5) Whether a proposed “solarium” feature on the southerly portion of the project meets standards for a “rooftop feature” permitted to extend above the maximum height limit of the zone.

Findings of Fact

1. The 901 Dexter Avenue North property is located near the southwest side of Lake Union, in the Cascade or South Lake Union neighborhood. The property is described as Lots 1-4, Block 13, Eden Addition #2, and Lots 1 and 2, Block 18, Eden Addition #2, together with portions of vacated Aloha and Ward Streets adjoining, and except the North 17.97 feet of Lot 2, Block 18. For the sake of simplicity, this interpretation will hereafter refer to the subject property as the “901 Dexter Avenue North Project” site.

2. The zoning is SM/65': Seattle Mixed, with a structure height limit of 65 feet. The zoning of the Alterra Condominium development to the west is also SM/65'. Structures including residential and commercial development are permitted in the SM/65' zone. The site is also located within the South Lake Union Hub Urban Village as designated in the Seattle Comprehensive Plan.
3. The 901 Dexter Avenue North project has been assigned DPD Project No. 3009833. According to the Arcview land use map maintained by DPD and to King County Assessor's records, the site has an area of about 52,321 square feet. According to the cover sheet of the plans submitted for Project 3009833, the proposed development is a seven-story mixed use building with one level of parking below grade. The total building area will be approximately 322,171 square feet, including retail uses residential units on the ground floor along Dexter Avenue North. The uses facing Aloha Street to the south will be residential and parking access. All upper floors of the proposed building will contain residential uses, with a total of approximately 290 units. Parking for approximately 231 vehicles would be provided.
4. According to the Arcview maps and Assessor's records, as well as the Application for Early Design Guidance filed as part of Project No. 3009833, the 901 Dexter Avenue North Project site is presently developed with a two-story office building constructed in 1948.
5. The "height compliance" plan sheet for Project 3009833, sheet DR-3, elevation drawings sheets A3.0A through A3.3, and section drawings sheets A4.0 through A4.4, show the proposed structure as having a maximum base height of 65 feet as measured from "grades based on contour revisions per Director's Rule 12-2005. See sheets DR-1 and DR-2." (The specific reference is on plan sheet DR-3.) Additional height is shown for parapets, mechanical equipment, stair penthouses, and a "solarium" rooftop feature. According to Sheet DR-3, the parapet features extend to a maximum of 3.5 feet above the base 65-foot height limit, the mechanical equipment screening and stair penthouses up to 10.5 feet above the base height limit, the solarium feature up to 4.65 feet above the base height limit, and a fireplace chimney up to 2.65 feet above the base height limit. According to plan sheets DR-3, A0.1, and A1.1, the proposed structure would extend from grade at the top of a retaining wall located just south of the north lot line of the property to the south lot line, except for a driveway entrance on the northeast side, where the structure is set back from the east property line about 35 feet and from the north lot line at ground level about 20.5 feet. The building has an elevation of about 18.75 feet above the driveway entrance, according to plan sheets DR-3 and A3.0B.
6. As shown on elevation drawings sheets A3.2 and A3.3, as well as section drawings sheets A4.0 through A4.3B, one floor of the parking garage for the proposed development is shown entirely below grade. This lowest floor of the parking garage is not included in height measurement calculations.
7. SMC Section 23.48.010 provides in part as follows:

“A. Maximum Height. Maximum structure height is 40 feet, 55 feet, 65 feet, 75 feet, 85 feet or feet as designated on the Official Land Use Map, Chapter 23.32, except as provided in this Section or in Section 23.48.016.

* * *

E. Rooftop Features.

1. Smokestacks; chimneys; flagpoles; and religious symbols for religious institutions are exempt from height controls, except as regulated in Chapter 23.64, Airport Height Overlay District, provided they are a minimum of ten (10) feet from any side or rear lot line.
2. Open railings, planters, skylights, clerestories, greenhouses, parapets and firewalls may extend up to four (4) feet above the maximum height limit with unlimited rooftop coverage.
3. Solar collectors may extend up to seven (7) feet above the maximum height limit, with unlimited rooftop coverage.
4. The following rooftop features may extend up to fifteen (15) feet above the maximum height limit, so long as the combined total coverage of all features listed in this subsection E4 does not exceed twenty (20) percent of the roof area, or twenty-five (25) percent of the roof area if the total includes stair or elevator penthouses or screened mechanical equipment:
 - a. Solar collectors;
 - b. Stair and elevator penthouses;
 - c. Mechanical equipment;
 - d. Atriums, greenhouses, and solariums;
 - e. Play equipment and open-mesh fencing which encloses it, as long as the fencing is at least fifteen (15) feet from the roof edge; and
 - f. Minor communication utilities and accessory communication devices, except that height is regulated according to the provisions of Section 23.57.012.
5. At the applicant's option, the combined total coverage of all features listed in subsection E4 above may be increased to sixty-five (65) percent of the roof area, provided that all of the following are satisfied:
 - a. All mechanical equipment is screened; and
 - b. No rooftop features are located closer than ten (10) feet to the roof edge.
6. In order to protect solar access for property to the north, the applicant shall either locate the rooftop features listed in this subsection E5 at least ten (10) feet from the north edge of the roof, or provide shadow diagrams to demonstrate that the proposed location of such rooftop features would shade property to the north on January 21st at noon no more than would a structure built to maximum permitted bulk:
 - a. Solar collectors;
 - b. Planters;
 - c. Clerestories;
 - d. Atriums, greenhouses and solariums;
 - e. Minor communication utilities and accessory communication devices according to the provisions of Section 23.57.012;
 - f. Nonfirewall parapets;
 - g. Play equipment.
7. Screening Rooftop mechanical equipment and elevator penthouses shall be screened with fencing, wall enclosures, or other structures.
8. For height limits and exceptions for communication utilities and accessory communication devices, see Section 23.57.012.”

8. On plan sheets DR-1 through DR-3, as well as elsewhere in the plans, the proposed development references DPD Director’s Rule (DR) 12-2005, “Clarifying measurement techniques regarding structure height on lots with unusual topographic conditions in all zones, except downtown zones and the shoreline district,” effective March 22, 2005. (See also Finding of Fact No. 6 above.) DR 12-2005 is attached to this interpretation and incorporated by reference as a Finding of Fact.

9. According to plan sheet DR-2 and to a site survey prepared by R. L. Hillebrand, Professional Land Surveyor, and dated July 22, 2009, the existing grade of the site adjacent to Dexter Avenue North is at an elevation of approximately 60 feet. When the site was developed in 1948, according to plan sheet DR-1, it was graded level at approximately 60 feet and the existing building was then built on the leveled site. Aloha Street to the south rises above the existing building and follows more closely the original topography of the ridge that existed on the site prior to its development. This ridge also continued north of the site. As depicted on plan sheets DR-1 and DR-3, the grade of Aloha Street adjacent to the site on the south side ranges from approximately elevation 60 at the intersection of Aloha and Dexter Avenue North to about elevation 80 at the southwest corner of the property.
10. The site to the north, addressed as 1101 Dexter Avenue North, was most recently reviewed by DPD under Project No. 3006945, which was also a proposal by Capstone Partners, to develop a six-story building with retail space at ground level and offices above. In the land use decision dated May 29, 2008, it was noted at page 3 as follows:

“Much of the site is level subject to historic grading associated with the adjacent rights of way. A topographic break of roughly 60' bisects the site N-S (See Figure 1). The site's “anomalous topography” is eligible for consideration under Director's Rule 12-2005.”

According to the DPD Hansen computerized permit tracking system, Project No. 3006945 was not appealed and Master Use Permit 3006945 was issued November 4, 2008. The approved plans for Project No. 3006945 establish the topography on the north lot line of the subject property, ranging from approximately elevation 61.60 at the northeast corner (southeast corner of the 1101 site) to approximately elevation 120 at the northwest corner (or southwest corner of the 1101 site). The referenced elevations are depicted on plan sheet A 101, “Zoning Envelope Site Plan,” for Project No. 3006945. These grades have also been referenced for the current application on plan sheets DR-1 and DR-3.

11. The applicants for the 901 Dexter Avenue North project have provided several historic records that document the existence of a steep slope on the 901 Dexter Avenue North site that existed prior to development there and once ran from Dexter Avenue North on the downhill side uphill and west to Aurora Avenue North. The documents include an 1899 Treasury Department topographic map that appears to show topography at 20-foot intervals and indicating a rise of approximately 40-50 feet from the southeast corner to northwest corner of the 901 Dexter Avenue North site.¹ The 1899 topographic map also shows the same ridge lines running north across the 1101 Dexter Avenue North site, with a similar elevation difference. A second document is a map from the Sanborn Map Company dated 1917. The

¹ This estimate is made by comparing the 1899 map against the Hillebrand survey and assumes the 1899 topographic line nearest Dexter Avenue North is at approximately 60 feet and that the 1899 topo line in the northwest corner of the site is at approximately 100-110 feet by comparison to the current topo lines in the northwest corner as shown on the survey.

Sanborn map shows a “line of steep bank” running north to south near the westerly line of the 901 Dexter Avenue North site and extending to the north onto the 1101 site, as well. A photo from the Seattle Municipal Archives dated October 9, 1944 and including the description “Dexter Avenue North and South from Aloha” shows an undeveloped ridge rising just to the west of the curb along the west side of Dexter. A second photo dated April 1, 1949 with the address 905 Dexter shows the existing building and a parking lot to the north of it (later developed with a building addition), and behind the parking lot and building is a clear view of the elevated bank to the west.

12. On plan sheet DR-2, the applicant has provided a comparison between the proposed development and a similar development that could be constructed on a level lot. The comparison shows that the proposed development is approximately 43,600 square feet smaller than the total floor area that could be designed on a level property.
13. According to the site plan sheet A0.1, the proposed development will extend across the entire site from north to south, except for the northeast corner of the site. At the northeast corner, a 20-foot-wide curbcut and driveway is proposed for access to the parking garage. The east elevation drawings sheets A3.0A and A3.0B also show how the proposed structure will extend from the south lot line to the north lot line, except for the driveway access to the parking garage in the northeast corner. Plan sheet DR-3 includes a drawing entitled “existing grades for height measurement” that shows each contour elevation across the site extending northeast to southwest from the established grades on the 1101 Dexter Avenue North site to the established grades at the Aloha Street right of way. When the grades depicted on the drawing of “existing grades for height measurement” are compared to the elevations for the proposed structure on the “height compliance plan” also drawn on sheet DR-3, it is clear that the elevations for all parts of the proposed structure are based on the grades depicted on the “existing grades for height measurement” drawing.
14. SMC Section 23.86.006 provides in part as follows:
 - “23.86.006 Structure height.
 - A. Height Measurement Technique in All Zones Except Downtown Zones and Within the South Lake Union Hub Urban Village.
 1. The height shall be measured at the exterior walls of the structure. Measurement shall be taken at each exterior wall from the existing or finished grade, whichever is lower, up to a plane essentially parallel to the existing or finished grade. For determining structure height, the exterior wall shall include a plane between supporting members and between the roof and the ground. The vertical distance between the existing grade, or finished grade, if lower, and the parallel plane above it shall not exceed the maximum height of the zone.
 2. When finished grade is lower than existing grade, in order for an upper portion of an exterior wall to avoid being considered on the same vertical plane as a lower portion, it must be set back from the lower portion a distance equal to two (2) times the difference between existing and finished grade on the lower portion of the wall (Exhibit 23.86.006 A1).
 3. Depressions such as window wells, stairwells for exits required by other codes, “barrier free” ramps on grade, and vehicle access driveways into garages shall be disregarded in determining structure height when in combination they comprise less than fifty percent (50%) of the facade on which they are located. In such cases, the grade for height measurement purposes shall be a line between the grade on either side of the depression.

4. No part of the structure, other than those specifically exempted or accepted under the provisions of the zone, shall extend beyond the plane of the maximum height limit.
 5. Underground portions of structures are not included in height calculations. The height of structures shall be calculated from the point at which the sides meet the surface of the ground.
- B. Within the South Lake Union Hub Urban Village, structure height shall be measured for all portions of the structure. All measurements shall be taken vertically from existing or finished grade, whichever is lower, to the highest point of the structure located directly above each point of measurement.
- Existing or finished grade shall be established by drawing straight lines between the corresponding elevations at the perimeter of the structure. The straight lines will be existing or finished grade for the purpose of height measurement. When a contour line crosses a facade more than once, that contour line will be disregarded when establishing existing or finished grade.”

15. SMC Section 23.84A.024 provides in part as follows:

* * *

“ ‘Lot grade, existing’ means the natural surface contour of a lot, as modified by minor adjustments to the surface of the lot in preparation for construction.”

16. The term “solarium” is not defined in the Land Use Code. It is defined in Webster’s New Collegiate Dictionary (1975) as follows:

“ . . . a room (as in a hospital) exposed to the sun and used esp. for treatment of illness by administration of sunbaths or therapeutic light.”

The term is also defined at Dictionary.com as follows:

“ . . . a glass-enclosed room, porch, or the like, exposed to the sun's rays, as at a seaside hotel or for convalescents in a hospital.”

Conclusions

1. Mixed use development such as the 901 Dexter Avenue North Project, including retail and residential space, is permitted in the SM/65' zone, subject to review under the State Environmental Policy Act (SEPA), the City’s Design Review process, and compliance with applicable City codes. Mixed use development is also permitted in the South Lake Union Hub Urban Village (South Lake Union Urban Center)².
2. Although the applicant has referenced Director’s Rule 12-2005 and offered documentation to demonstrate that the 901 Dexter Avenue North Project will comply with the rule, the project actually complies with Land Use Code measurement requirements without using the rule. Since the site is within the South Lake Union Hub Urban Village (South Lake Union Urban Center), it is subject to SMC Section 23.86.006.B (see Findings of Fact Nos. 2 and 14). While Section 23.86.006.B requires height to be measured from existing or finished grade, whichever is lower,

² The name has been changed to South Lake Union Urban Center, and various amendments are under way to change the name in the Code wherever it is referenced. The name change does not otherwise affect the existing language of the Code sections referenced in this interpretation.

the same as the general measurement standard in Section 23.86.006.A.1, the *second paragraph* of Section 23.86.006.B, applicable only in the South Lake Union Hub Urban Village (South Lake Union Urban Center), specifically says that existing or finished grade is established by drawing straight lines between the corresponding elevations at the perimeter of the proposed structure. The proposed structure extends from existing grade at a retaining wall near the north lot line to existing grade at the south lot line. SMC Section 23.86.006.B allows the applicant to connect these existing grades at the perimeter of the proposed structure.³ The project applicant has correctly depicted these grades as required by Section 23.86.006.B on the “existing grades for height measurement” drawing on plan sheet DR-3 (Finding of Fact No. 13).

3. Since the height of the proposed structure is measured based on grades connecting from the north lot line to south lot line, there is no need to determine whether the site has unusual topographic conditions that justify adjusting grades within the site. Section 23.86.006.B sets up an alternative method for interpolating grades that is unique to the South Lake Union Hub Urban Village. The grades on the south end of the site, at Aloha Street, have been established for many years by the improved street at the end of the property. The determination of grades on the north end of the site, adjacent to the 1101 Dexter Avenue North property, was made by DPD in its analysis of Project No. 3006945, which was not appealed and now stands as a final decision of the applicable grades on that site to the north of the 901 Dexter Avenue North property. (See Finding of Fact No. 10.) These grades, just like the ones on the Aloha Street site, establish the elevations “at the perimeter” of the proposed structure to be used for height measurement in Section 23.86.006.B.
4. However, if Director’s Rule 12-2005 were applied to the 901 Dexter Avenue North property, the applicant has made a persuasive case for its use. The rule allows adjustment of grades used to measure structure height for “reasonable development” on lots that have “unusual topographic conditions.” The rule defines “unusual topographic conditions” to include “previous excavation” and “previous site or street grading” that would reduce allowable development potential on a lot. The 901 Dexter Avenue North property was originally a steep hillside, as described in Finding of Fact No. 11. The hillside was leveled, initially near the street right of way by development of Dexter Avenue North and then by creation of a deep cut to make a level construction site adjacent to Dexter Avenue North for the existing two-story commercial building built on the site in 1948 (Finding of Fact No. 4). Thus, what was once a fairly steep slope on the 901 Dexter Avenue North property was excavated to the street level at Dexter, and the remainder of the slope was “pushed up” even more steeply to the west. The effect of the 1948 grading was to create an unusual condition in which a multi-story building allowed in the current SM zone would have to be built at the bottom of an artificial cut in the hillside, with the west side of the building up against an unnatural wall of dirt, if the current existing grade was used to measure height. Given the artificial nature of the existing grade, it is

³ The existing grade at the retaining wall on the north side of the property is determined by reference to the grades established for the 1101 Dexter Avenue North property (see Finding of Fact No. 10) and the existing grade at the south end of the property is based on the established grades of the Aloha Street right of way (Finding of Fact No. 9).

- reasonable to allow adjustment of the grades on the property to better reflect the original sloping condition of the property and allow the proposed structure to be measured in relation to the slope that was once present on the property as contemplated by the current Code measurement techniques for a sloping lot.
5. Assuming that the 901 Dexter Avenue North property has the unusual topographic conditions required by DR 12-2005, the applicant for Project 3009833 has made a strong case that the proposed development is “reasonable,” as further required by the rule. As described on plan sheet DR-2 (Finding of Fact No. 12), the proposed development is actually smaller than the total area that could be designed on a “flat” lot. While it could be argued that the proposed structure will be taller on the west side using adjusted grades than it would be if built on grade at the Dexter Avenue North street level, the reality is that the SM zoning potentially allows a much taller structure than the building proposed, if the applicant were to use the height option of Section 23.48.010.B, for example, or if the applicant chose to maximize the coverage for rooftop features under Section 23.48.010.E.
 6. The definition of “lot grade, existing,” at Section 23.84A.024 (Finding of Fact No. 15) does not compel measurement from the lowest possible existing grade once a lot is cleared for construction, and all previous structures have been removed. The definition defines “existing grade” as the “natural surface contour of lot,” not the lowest possible “existing” grade. It is not consistent with DPD practice to require construction of new structures at the lowest grade left by construction of the last structure on a parcel of property. If that were the case, construction of new buildings would be required to observe progressively lower maximum heights, as each new structure on a lot were successively measured from the bottom of the last foundation hole. This approach, apparently advocated in the request for this interpretation, makes no sense. Instead, DR 12-2005 is a reasonable attempt to resolve anomalies created by development and redevelopment of a site, and it is reasonably applied to the 901 Dexter Avenue North site (assuming it is even necessary to apply it given Conclusions 2 and 3 above). By this same rationale, it is unreasonable to measure grade from the bottom level parking garage of the proposed new structure, which is below the existing street grade, as described in Finding of Fact No. 6. In any case, Section 23.86.006.A.5 says that underground portions of structures, such as a below-grade garage, are not included in height calculations. While the heading of subsection 23.86.006.A states in part that this subsection is for height measurement in all zones “except Downtown zones and within the South Lake Union Hub Urban Village,” the specific techniques set forth for the South Lake Union Hub Urban Village in Section 23.86.006.B do not give any guidance as to height measurement for underground portions of structures. There is no indication that the drafters of Section 23.86.006.B intended to preclude the exception of underground portions of structures from height measurement in the South Lake Union Hub Urban Village or from Downtown zones. Otherwise, as noted above, the measurement for a new structure would always begin from the bottom of the last hole dug for a new structure on a redeveloped site.

