

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

In the Matter of)	
the Use of the)	Interpretation
Property at)	No. 08-005
501 – North 72 nd Street)	DPD Project No. 3009287

Background

This interpretation was requested by Boyd Morrison and Tracy Weber, who are neighbors of the subject property. The property is located at the corner of Dayton Avenue North and North 72nd Street in the Green Lake neighborhood of north Seattle, about three blocks west of Green Lake Park. The property is developed with a single family residence. A business named the Nurturing Knowledge Preschool, Green Lake Campus, is operated within the existing single family structure. The question for interpretation is whether the preschool business is being operated within the regulatory standards of the Land Use Code for a “home occupation” child care program.

Findings of Fact

1. The subject property is legally described as Parcel A of City of Seattle Lot Boundary Adjustment No. 9906283 (also described as Lot 21, Block 5, Hillman’s Lake Front Addition Division No. 3, except the South 16 feet of the North 34.70 feet of the East 7 feet; together with the South 34.78 feet of the West 3.22 feet of Lot 20 of said Block 5; subject to an easement for ingress and egress over, along and across the East 7 feet of the North 18.70 feet conveyed to Parcel B). This interpretation will hereafter refer to the property as Parcel A or as 501 North 72nd Street.
2. According to the Arcview land use map maintained by the Department of Planning and Development (DPD), Parcel A is zoned SF-5000: Single-Family Residential, with a minimum lot area of 5000 square feet. The property is developed with a single family residence constructed under Seattle Building Permit No. 736630, issued July 21, 2003.
3. According to plans filed as part of the application for Permit No. 736630, and approved by DPD, the house is constructed on three levels. The garage level has a parking space for one vehicle, as well as two bedrooms and a bathroom. The main floor has a dining/living area, family room, kitchen, and a second small bathroom. The top level has two more bedrooms and two additional bathrooms. All three floors are accessible by a staircase in

the center of the structure. The main entry is on the west side, facing Dayton Avenue North, and the garage entrance faces north onto North 72nd Street.

4. According to records of the King County Assessor's Office accessible through the Arcview system, the property was sold to Joyce and Karsten Maudslien on July 10, 2007. According to neighbors of the property and to information in the DPD Code Compliance Program file on the property, Joyce Maudslien is the owner and operator of a preschool business known as "Nurturing Knowledge."

5. The Internet website for Nurturing Knowledge shows that the business has three "campus" locations. There are no addresses listed on the website, but the "Green Lake Campus" pictured on the website appears to be the structure located on Parcel A. There is a school curriculum that appears to be aimed at "preschool" and "pre-Kindergarten" children. According to the tuition schedule presented on the website, the schools are open Monday through Friday with a "Main Program" that runs from 9:00 a.m. to 1:00 p.m. The "Bryant-Ravenna" and "Phinney-Fremont" campuses also have an "enrichment program" from 1:00 p.m. to 3:00 p.m. Monday through Friday, but this program is not offered at the Green Lake campus.

6. On September 18, 2007, a complaint was filed with the DPD Code Compliance Program. The comments section of the complaint form notes that the complaints were that a preschool for 16 children was being operated from a single family home, that major remodeling had been done to accommodate a school and a living area on the top floor, that the preschool use was not incidental to the use of the property as a dwelling unit, and that traffic and parking had increased in the neighborhood.

7. The complaint was assigned to Housing and Zoning Inspector Kevin Hou on October 19, 2007 and given the case number 1014057. Mr. Hou made his initial inspection of the property on October 29, 2007. According to notes written by Mr. Hou in the Code Compliance Program inspection file, he met with Lisa Chilson, the "resident/teacher," and was given a tour of the house. Mr. Hou states in his report that he "did not observe major remodel as noted by the complainant." At his request, Mr. Hou was given a copy of the student roster and observed that the roster listed eleven children on Mondays, Wednesdays, and Fridays, and thirteen on Tuesdays and Thursdays. He informed Ms. Chilson that the maximum permitted number of children was twelve and that having a thirteenth child on Tuesdays and Thursdays would be a violation of the "home occupation standards." Ms. Chilson responded that she would "work on making arrangements to move the child to a different date" to address Mr. Hou's concerns.

8. On November 6, 2007, Mr. Hou issued a "citation warning" to Ms. Chilson for "violation of the home occupation standards requiring that she remove the address that was listed and available online and to reduce the number of children in excess of the 12 allowed at any given day." A copy of the citation warning appears in the inspection file. It informs the recipient of the Land Use Code violation items to be corrected and specifies that a citation carrying penalties of \$150.00 to \$500.00 will be issued if the violations listed are not corrected by November 16, 2007.

9. According to the documentation in the inspection file, Mr. Hou reinspected the property twice, on November 27, 2007, and on December 11, 2007. Ms. Chilson supplied Mr. Hou with copies of various documents to demonstrate that she was a legal resident of 501 North 72nd Street. The documents, which are also included in the inspection file, include vehicle license information obtained online from the State of Washington Department of Licensing, Washington State voter registration database obtained online, a lease agreement for rental of the structure from JnK Properties as the landlord and Ms. Chilson as the tenant, signed August 2, 2007, an application form for driver's license change of address (showing 501 North 72nd Street), and copies of mailings from five different companies that are apparently bills from those companies (such as telephone, insurance, and credit card), all showing the mailing address for Ms. Chilson as 501 North 72nd Street.

10. According to his notes, Mr. Hou also observed, as of his December 11, 2007 inspection, that twelve parents arrived at the site and left with twelve children. He also observed rosters "dating back two weeks with 12 parent's signatures." On the basis of this information and the information detailed in Finding of Fact No. 9, Mr. Hou determined that the property at 501 North 72nd Street was in "voluntary compliance" with all items of Code violation listed in case number 1014057, and he therefore noted that the property "passed inspection" on December 11, 2007, and the case was closed on December 13, 2007.

12. On May 5, 2008, the request for formal interpretation of the Land Use Code was filed. In the request, the parties assert that they have conducted subsequent research and observations since Mr. Hou's investigation, and they raise several issues. In summary, the request suggests: (1) that a majority of the home's floor space, based on the Nurturing Knowledge website, is set aside for preschool facilities and therefore appears not incidental to the home's use as a dwelling; (2) the primary homeowner or business owner does not live in the subject house, and the employee who does allegedly live there also lived at the "Phinney Ridge campus in September 2007" and "also owns a condo in Bellevue"; (3) the resident is "frequently not on site during business hours, so that the business is operated primarily by non-residents."

13. While the request asserts that the Nurturing Knowledge employee, presumably Ms. Chilson, who lives at 501 North 72nd Street, also lived elsewhere and owns a condo elsewhere, no information has been submitted to or discovered by DPD indicating that the current resident of 501 North 72nd Street is living elsewhere at the time this interpretation was prepared.

14. The Nurturing Knowledge Preschool website includes multiple pictures, including some photos of the first floor and garage area of the 501 North 72nd Street structure, showing furnishings and decoration consistent with a preschool or daycare use. Mr. Hou indicates that the garage door is operable.

15. Seattle Municipal Code (SMC) Section 23.42.050 provides as follows:

“A home occupation of a person residing in a dwelling unit is permitted outright in that dwelling unit in all zones as an accessory use to any residential use permitted outright or to a permitted residential conditional use, in each case subject to the standards of this Section.

A. The occupation shall be clearly incidental to the use of the dwelling unit as a dwelling.

B. Commercial deliveries and pickups to the dwelling unit shall be limited to one (1) per day Monday through Friday. No commercial deliveries or pickups shall be permitted on Saturday, Sunday or federal holidays.

C. To discourage drop-in traffic, the address of the home occupation shall not be given in any advertisement, including but not limited to commercial telephone directories, newspapers, magazines, signs, flyers, radio, television or other media. Addresses may be listed on business cards, but a statement must be included to the effect that business is by appointment only.

D. The occupation shall be conducted only within the principal structure or in an accessory dwelling unit. Parking of vehicles associated with the home occupation shall be permitted anywhere that parking is permitted on the lot.

E. To preserve the residential appearance of the dwelling unit, there shall be no evidence of the occupation from the exterior of the structure; provided that outdoor play areas for child care programs and outdoor activities customarily incidental to the residential use shall be permitted. No outdoor storage shall be permitted in connection with a home occupation.

F. To preserve the residential character and use of the dwelling unit, only internal alterations customary to residential use shall be permitted, and no external alterations shall be permitted to accommodate a home occupation, except as required by licensing or construction codes for child care programs.

G. Except for child care programs, not more than one (1) person, whether full-time or part-time, who is not a resident of the dwelling unit may work in the dwelling unit of the home occupation whether or not compensated. This includes persons working off-site who come to the site for business purposes at any time as well as persons working on site.

H. The home occupation shall not cause or add to on-street parking congestion or cause a substantial increase in traffic through residential areas.

I. A maximum of two (2) passenger vehicles, vans and similar vehicles each not exceeding a gross vehicle weight of ten thousand (10,000) pounds shall be permitted to operate in connection with the home occupation.

J. The home occupation shall be conducted so that odor, dust, light and glare, and electrical interference and other similar impacts are not detectable by sensory perception at or beyond the property line of the lot where the home occupation is located.

K. Signs shall be regulated by Section 23.55.020.

L. Child care programs in the home of the operator shall be limited to twelve (12) children per day including the children of the operator.”

16. The term “home occupation” is defined in SMC Section 23.84A.016 as follows:

“‘Home occupation’ means a nonresidential use that is clearly incidental and secondary to the use of a dwelling for residential purposes and does not change the character of the dwelling.”

17. The terms “institution” and “child care center” are defined in part in SMC Section 23.84A.018 as follows:

“‘Institution’ means structure(s) and related grounds used by organizations for the provision of educational, medical, cultural, social and/or recreational services to the community, including but not limited to the following uses:

* * *

4. 'Child care center' means an institution that regularly provides care to a group of children for less than twenty-four (24) hours a day, whether for compensation or not. Preschools shall be considered to be child care centers."

18. Section 23.84A.040 defines "use" as ". . . the purpose for which land or a structure is designed, built, arranged, intended, occupied, maintained, let or leased."

19. Section 23.84A.040 also defines "use, principal" as ". . . a use that is not incidental to another use."

20. Section 23.84A.040 further defines "use, accessory" as "a use that is incidental to a principal use."

23. SMC Section 23.42.020 provides, in part:

"23.42.020 Accessory Uses.

"A. Any accessory use not permitted by Title 23, either expressly or by the Director, shall be prohibited. The Director shall determine whether any accessory use on the lot is incidental to the principal use on the same lot, and shall also determine whether uses not listed as accessory uses are customarily incidental to a principal use.

Unless Title 23 expressly permits an accessory use as a principal use, a use permitted only as an accessory use shall not be permitted as a principal use."

24. The Land Use Code does not define the phrases "clearly incidental" or "customarily incidental" used in Section 23.42.020 A and 23.42.050 A. However, the following partial definitions are found in Webster's Ninth New Collegiate Dictionary (1984):

"'clear': . . . free from obscurity or ambiguity: easily understood: free from doubt . . ."

"'custom': . . . a usage or practice common to many or to a particular place . . ."

"'incidental': . . . being likely to ensue as a chance or minor consequence . . ."

Conclusions

1. The established use of the Parcel A property is as a single family dwelling unit. The single family dwelling unit on the property was built under permit and, according to approved plans, it is designed and arranged as a single family residence. According to the approved plans, the top floor of the house is not closed off or separate from the rest of the structure. The only kitchen is located on the main floor. (See Findings of Fact Nos. 2 and 3.) Any person living on the top floor of the house must use the kitchen on the main floor to prepare food. There is no evidence that an occupant or resident of the house could live only on the upper floor or, in fact, lives only on the upper floor and does not use or inhabit the main floor as well. SMC Section 23.42.050 allows child care programs in single family

residences as an accessory home occupation if limited to twelve children per day and conducted “in the home of the operator.” (Finding of Fact No. 15.) DPD has specific authority to determine whether an accessory use is incidental to the principal use of the property as a dwelling unit, per Section 23.42.020 (Finding of Fact No. 23).

2. While photographs of the interior of the 501 North 72nd Street residence appearing on the Nurturing Knowledge Preschool website show that the main floor is furnished and decorated in a manner suitable for a child care operation (Finding of Fact No. 14), there is no evidence that the structure has had any internal or external alterations inconsistent with single family residential use. The Land Use Code does not regulate how a structure is to be furnished or decorated. According to the Nurturing Knowledge website, the child care operation occurs only four hours per day Monday through Friday. (Finding of Fact No. 5.) There is no indication that the resident of the house is prevented from using the main floor as she wishes during the other 20 hours of each weekday or at any time on weekends. Accordingly, and consistent with site inspection by Housing and Zoning Inspector Kevin Hou, there is no evidence in the record to show that operation of a child care business within the structure violates SMC Section 23.42.050 F, which prohibits any internal alterations not customary to single family use or external structural alterations to accommodate a home occupation. (Finding of Fact No. 15.)

3. Based on investigation by Mr. Hou, as summarized in Findings of Fact Nos. 7-10, the operators of the child care in the 510 North 72nd Street structure have complied with SMC Section 23.42.050 L, which limits the number of children in a home occupation child care to twelve per day. While Mr. Hou observed a violation of this regulation in his first inspection of the property, the violation was corrected, and it appears that the child care operators have since complied with the Land Use Code limit to the number of children allowed per day.

4. It is undisputed that the property owner of Parcel A, who is also the owner of the Nurturing Knowledge Preschool business, does not live in the 501 North 72nd Street residence. (Finding of Fact No. 4.) An employee of the Nurturing Knowledge business, Lisa Chilson, lists the house as her residence. The request for interpretation suggests that Ms. Chilson was living elsewhere at the same time that she claimed to be living in the subject residence and that she also owns other residential property. (Finding of Fact No. 12.) However, the evidence in the available record suggests that Ms. Chilson is in fact the legal resident of 501 North 72nd Street. She has voluntarily provided numerous documents to DPD indicating the property as her legal address, as summarized in Finding of Fact No. 9. The Land Use Code does not regulate the number of residential properties that a person may own or visit, and they do not dictate how many days or nights a person must reside in a dwelling unit in order to be considered the “resident” of that dwelling unit. Absent a preponderance of reasonably persuasive evidence suggesting that Ms. Chilson lives at some other property, it is reasonable to conclude that she lives at 501 North 72nd Street.

5. The request further suggests that Ms. Chilson is frequently absent from the site during business hours, and thus leaves the child care business to be operated by non-resident employees of Nurturing Knowledge. Again, as with the allegations that Ms. Chilson does

not actually live at 501 North 72nd Street, there is little evidence of her absence from the site during business hours, except for anecdotal accounts. Even if true, however, Section 23.42.050 L does not specifically require the “operator” of a child care program “in the home of the operator” to be continuously present during business hours. In fact, as set forth in Section 23.42.050 G, it is clear that a child care program may have multiple non-resident employees, whereas other home occupations are limited to only one non-resident employee. Accordingly, based on the available information, the Nurturing Knowledge Preschool at 501 North 72nd Street appears to meet the Land Use Code standards for a home occupation in Sections 23.42.050 G and L.

6. The request for interpretation further suggests that the Nurturing Knowledge Preschool does not comply with a basic standard for home occupations, set forth in Section 23.42.050 A and in the definition of “home occupation” at 23.84A.016 (Finding of Fact No. 16), that the home occupation be “clearly incidental to the use of the dwelling unit as a dwelling” and “clearly incidental and secondary to the use of a dwelling for residential purposes and does not change the character of the dwelling.” While most home occupations are not separately described or defined in the Code, and there is no clear guidance as to what would make them “incidental” or “secondary” to the principal use as a dwelling, SMC Section 23.42.050 actually does provide specific standards for home occupation child care centers in Sections 23.42.050 G and L. As noted previously, the standards limit the number of children to twelve and allow more than one non-resident employee. A further standard in Section 23.42.050 E specifically allows an outdoor play area for child care programs. These standards provide specific guidelines to determine whether a child care program is incidental and secondary to the residential use. Based on the record as summarized in Findings of Fact Nos. 7-10, it is reasonable to conclude that the standards for a home occupation child care center are met at 501 North 72nd Street, and therefore the use is incidental and secondary to the residential use.

7. Even if the terms “incidental” and “secondary” do mean something more, in the case of a home occupation, than mere compliance with Code standards, Mr. Hou’s inspections did not uncover any other violations of the remaining standards for home occupations in Section 23.42.050. Further, the Nurturing Knowledge Preschool is limited to four hours of operation daily, which it is fair to say is incidental and secondary, in temporal terms, to the overall use of the subject structure over a 24-hour day. As noted previously, there is no language in the Land Use Code allowing DPD to regulate interior furnishing of a residence, or arrangement of a yard for play purposes, and thus the arrangement of the structure and its yard to facilitate child care use cannot be said to alter the character of the structure for residential use or to change the child care use from incidental or secondary to the principal use of the property. The building still conforms to the approved plans establishing the residential use, including a functioning garage door, according to Mr. Hou, and therefore the principal use of the structure remains as a single family residence.

DECISION

The use of the property addressed as 501 North 72nd Street is as a single family dwelling. There is an accessory child care program in the single family residence that is operated within the guidelines for a home occupation as set forth in SMC Section 23.42.050. The record available to DPD indicates that no more than twelve children participate in the child care program per day, and the child care business is operated by a legal resident of the dwelling unit on the property. While the owner of the property is not the resident, there is no Code requirement that a property owner also reside in a house on his or her property for a home occupation on the property to meet Code standards. As the house remains designed and arranged as a single family residence and all Code standards for a home occupation child care program are met, the child care program is a “clearly incidental and secondary” use of the property within the definition of a home occupation.

Entered this 14th day of August, 2008.

(signature on file)
William K. Mills, Senior Land Use Planner
Department of Planning and Development

WKM/08-005