



City of Seattle

Gregory J. Nickels, Mayor

**Department of Planning and Development**

D. M. Sugimura, Director

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

In the Matter of	)	
the Use of the	)	Interpretation
Property at	)	No. 08-005A
501 – North 72 <sup>nd</sup> 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 72<sup>nd</sup> 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 was whether the preschool business is being operated within the regulatory standards of the Land Use Code for a “home occupation” child care program. Interpretation No. 08-005 was remanded to the Department of Planning and Development (DPD) for further analysis by order of the City of Seattle Deputy Hearing Examine Anne Watanabe, in her decision S-08-004 and S-08-005, dated October 30, 2008. Interpretation No. 08-005A is the DPD revision in response to the Hearing Examiner order. On remand of the original interpretation, the Hearing Examiner has asked that DPD consider further whether the child care program is “clearly incidental” to the principal use of the structure as a single family residence under Seattle Municipal Code (SMC) Section 23.42.050 A, including how the floor space dedicated to the child care program relates to the “clearly incidental” standard, whether the hours of operation are customary for in-home child care, and whether the child care program occurs “in the home of the operator” as specified by SMC Section 23.42.050 L.

**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 72<sup>nd</sup> 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 72<sup>nd</sup> 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 72<sup>nd</sup> 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 72<sup>nd</sup> 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 72<sup>nd</sup> Street.

10. In a written statement submitted to DPD and dated December 4, 2008, Ms. Chilson says, in part:

“ . . . I live at 501 N. 72<sup>nd</sup> Street, Seattle, WA 98103. I am also the Operator of Nurturing Knowledge School Green Lake Campus. I have worked with Joyce Maudslien and Nurturing Knowledge School for many years. I rented out my Bellevue town home and moved to the above address to be closer to my work. This is a great neighborhood to live and work in and I have really enjoyed the change. Living at 501 N 72<sup>nd</sup> Street lessened my commuting time and has also provided me with lots of additional opportunities both personally and professionally. I enjoy supporting the local neighborhood restaurants and shops, I can walk to Ken’s Market to do my grocery shopping, up the hill to my Pilates class and round green lake for fresh air and exercise.”

The property owner, Ms. Maudslien, also submitted to DPD a copy of a lease agreement between her company, JnK properties, and Lisa Chilson, dated August 2, 2008, for rental of the 501 North 72<sup>nd</sup> Street residence by Ms. Chilson for a term of one year from August 2008 to August 2009.

11. 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 72<sup>nd</sup> 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 72<sup>nd</sup> 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 72<sup>nd</sup> Street is living elsewhere either at the time the original interpretation No. 08-005 was prepared or at the time the present 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 72<sup>nd</sup> Street structure, showing furnishings and decoration consistent with a preschool or daycare use. Mr. Hou indicates that the garage door is operable.

15. In her statement of December 4, 2008, Ms. Chilson further says, in part:

"My house has three floors. My living room (photo #1) and bedroom (photo #2) as well as bathroom, powder room and laundry room are on the top floor. On the main floor is the dining room, (photo #3) kitchen, (photo #4) office (photo #5) and an additional bathroom. During the school day I share the kitchen and after school I use the dining room, kitchen and office. Downstairs there is a bonus room, bathroom and indoor studio. I use the indoor studio as a workout room (photo #6). Both the bonus room and indoor studio work really well for entertaining. I use and live in all areas of the house. For the last two years I have held my annual pumpkin carving party in my home. This is a great house to live and entertain in, sharing the great location and views."

The six photographs referenced in Ms. Chilson's statement are attached to this interpretation as Attachment A.

16. Ms. Maudslien also submitted a statement to DPD dated December 4, 2008, in which she says:

"My name is Joyce Maudslien, I am the owner of Nurturing Knowledge School. My role as the owner consists of business and legal matters. My background and working experience is in business settings. That being my background, I have hired others, including Lisa Chilson, with early childhood education experience to operate the preschool program. I do not personally know the parents or students at the Green Lake campus and I am not involved in the day-to-day operations of the school. Lisa Chilson is responsible for all aspects of the overall daily operations of the Green Lake campus and is its operator. She has the following responsibilities:

- Responsible for the overall daily operations and program development to create a high-quality learning environment for children and their families
- Responsible for early childhood curriculum development and teaching
- Management/support of teachers and program quality assurance
- Oversee finances including tuition collection and budgets
- Oversee the acquisition of all snack, school and teaching supplies
- Plan and prepare all social events for children and their families
- Ensure that all safety systems, policies and procedures are followed

As relevant experience and education Lisa has over 5 years teaching and operating preschool programs and she has a B.A. in Arts and Humanities, including 43 credits of Early Childhood education from North Seattle Community College -On the Presidents and Vice Presidents/Deans List.”

17. 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.”

18. The language in Section 23.42.050 has been amended several times. The current Section 23.42.050 was created in 2006 with the adoption of Seattle City Ordinance No. 122311, effective January 20, 2007. As discussed in the DPD Director’s Report analyzing the proposed Code changes in this ordinance, known as the Neighborhood Business District Strategy, the sole purpose of 23.42.050 was as a “new centralized location for home occupation standards.” (See DPD Director’s Report, *Neighborhood Business District Strategy*, Appendix 3, page 87 (May 17, 2005)).

19. Prior to the adoption of Ordinance 122311, home occupation standards were set forth in Code sections that were part of the development standards for each zone. For Single Family zones, the relevant section was SMC Section 23.44.050. As last amended by Ordinance 122190 in 2006, the language of this section was substantially identical to current section 23.42.050. Following the adoption of Section 23.42.050, Section 23.44.050 was reduced to a one sentence cross reference to Section 23.42.050. Among the prior amendments to 23.44.050 were two amendments in the 1980’s under Seattle City Ordinances 113387 and 114875.

20. Ordinance 113387, effective May 23, 1987, added the current specific standards to home occupations found in current subsections 23.42.050 C, D, E, F, G, H, I, J, and K. In particular, the ordinance added the language to former Section 23.44.050 F (now 23.42.050 F), which limits internal and external alterations to those consistent with residential use, and 23.44.050 G (now 23.42.050 G) that excepts child care programs from the limit for home occupations to one employee “who is not a resident of the dwelling unit.” However, the history of Ordinance 113387 shows that other regulatory concepts were considered for adoption but not included. In particular, the March 1986 draft Director’s Report notes, on page 6, in part as follows:

“One of the proposed standards is that ‘no more than thirty percent of the habitable space of the dwelling unit may be used exclusively for the home occupation.’ This standard intends to clarify the status of the home occupation as ‘clearly incidental’ to the principal use. It also provides a standard for enforcement purposes.”

As further described on page 7 of the March 1986 draft report, the above standard would have been added as a second sentence to Section 23.44.050 A (now 23.42.050 A). A second draft Director’s Report, dated October 1986, proposed ordinance language limiting the home occupation use to twenty-five percent of the habitable space of the dwelling unit. The final Director’s Report, dated December 1986, however, provides as follows at pages 5 and 6:

“The Code does not currently state how much area of a dwelling unit can be used by a home occupation before the business is no longer considered incidental to the residential use. DCLU’s draft report proposed a 25 percent limit on the habitable area of the house that could be used exclusively for a home occupation. However, this raised questions about how ‘exclusive use’ and ‘habitable’ would be defined, and could have been more permissive than the current language, since it did not state that the other 75 percent could not be ‘partially used.’ Therefore, this provision has been deleted.”

21. Ordinance 114875, effective January 26, 1990, further amended the Land Use Code to address issues raised in siting child care facilities in Seattle. Among the amendments was a change to former Section 23.44.050 that added subsection 23.44.050 L to the Code, which limited “child care programs in the home of the operator . . . to 12 children . . . .” The Director’s Report for Ordinance 114875 provides as follows, on page 1:

“The proposed amendment recognizes a growing citywide concern for child care facilities by providing more siting opportunities for child care centers. The substantive changes proposed in this amendment would reduce certain locational and procedural limitations on child care centers.”

The Director’s Report further provides, at pages 6 and 7, in part as follows:

“Child care programs in the home of the operator are permitted outright as home occupations in both single and multi-family areas provided they meet the accessory use standards of the applicable zone. However, the current code provisions are silent on the number of children allowed to be cared for in a family child care home. In the past, the number of children was limited by reference to definitions in the Land Use Code and Department of Social and Health Services (DSHS) requirements. Because of code amendments to the home occupation section of the code and changes to DSHS definitions it is now unclear how many children can be cared for in the home of the operator. The Seattle Building Code frequently requires structural changes to a residence to accommodate more than 12 children. Such alterations could conflict with the home occupation requirement in the Land Use Code which prohibits alterations not customary to residential use. DCLU therefore recommends that the home occupations sections of the single and multi-family Land Use Code limit child care programs in the home of the operator to a total of 12 children, including any children who may reside there.”

In a memorandum to the Seattle City Council’s Land Use and Community Development Committee regarding the proposed legislation that became Ordinance 114875 (Council Bill 107099) Frank Kirk, who was a legislative assistant to former City Councilmember Jim Street, stated in part on page 1 as follows:

“The general thrust of the proposed amendments is to expedite the establishment of child care facilities in residential zones. The Director’s report (attached), makes the point that local government regulations have been identified nationwide as obstacles to the proliferation of badly needed child care facilities. Since profit margins are generally low due to the need to charge affordable fees, the lower cost of properties in residential as against commercial zones is deemed an important advantage. The proposed amendments would ease regulations in a number of ways to facilitate the development of child care centers in residential zones.”

Mr. Kirk then discusses the specific purpose of proposed Sections 23.44.050 L and 23.45.152 L, on page 2 of the memorandum, summarizing the discussion from the Director’s Report as quoted above. There is no discussion of the specific meaning of the phrase “home of the operator” or the word “operator” as used in this subsection of the legislation.

22. Information about preschool and child day care services is available on the Internet. The sites include the “Savvy Source,” which includes an extensive list of preschools and child care centers including two of the three Nurturing Knowledge operations, and the “Seattle Waldorf Preschools” website, which lists several preschools affiliated with the “Waldorf Early Childhood Association of North America,” which practices a specific type of early childhood education methodology. By cross-checking website listings that give an address against the City’s Arcview land use mapping system, several preschool operations other than Nurturing Knowledge were identified that also appear to operate as home occupation child care centers. These sites include “Rainbow Bridge Preschool” at 8921 26<sup>th</sup> Avenue Northeast, “Enchanted Garden” at 10002 17<sup>th</sup> Avenue Northeast, and “Ragamuffins and Scallywags,” which does not list a specific address but is in the Licton Springs neighborhood of North Seattle. The website information for Rainbow Bridge Preschool shows operating hours as Tuesday through Thursday from 8:45 a.m. to 12:45 p.m., from August through mid-June. The number of children is not listed. The Arcview information and DPD permit records for 8921 26<sup>th</sup> Avenue Northeast show a single family residence at this site. Enchanted Garden lists its hours of operation as Tuesday and Wednesday from 9:15 a.m. to 12:30 p.m. or Thursday and Friday with those same hours, September through June. “Optional care” is available until 1:00 p.m. for a small additional cost. The maximum enrollment is listed as eight children. The Arcview and DPD permit records for 10002 17<sup>th</sup> Avenue Northeast show a single family residence. The “Ragamuffins and Scallywags” website shows hours of operation as Monday through Wednesday 9:15 a.m. through 12:45 p.m. September through June for the “Ragamuffins” group and Thursday and Friday 9:15 a.m. through 12:45 p.m. for the “Scallywags” group. There are eight or nine children in the Ragamuffins group and a “smaller” number in the Scallywags group.

23. Another source of information about preschool services is the record for other Nurturing Knowledge sites, which have similar operations to the 501 North 72<sup>nd</sup> Street property. In particular, there is a DPD Code Compliance (Housing and Zoning) enforcement file on the property addressed as 5514 33<sup>rd</sup> Avenue Northeast. While this Nurturing Knowledge site was eventually approved as an institutional child care use by DPD, the child care use was not established until 2006 with the approval of Permit No. 753883, issued June 15, 2006. On September 20, 2004, a letter was sent by former DPD Code Compliance Manager Thomas Campbell to attorney Ross Radley, who represented a complaining neighbor or neighbors. In his letter, Mr. Campbell says, in part:

“As of September 7, 2004, the Nurturing Knowledge School is operating as a home daycare (12 or fewer children) in compliance with the Home Occupation standards set forth at SMC 23.44.050. No permit is required to operate a home daycare under the Home Occupation standards.

Neighbors expressed a desire that the Nurturing Knowledge School be prevented from opening in the first place. While brochures and an Internet website indicated that a preschool was contemplated as early as April 2004, if there was no actual preschool or daycare operation, then there would not have been any violation under the Municipal Code. Since the school started taking care of children in June 2004, the owner and staff have readily allowed inspections and responded to the specific corrections ordered by both DPD and the Fire Department.

With respect to the question of a person conducting a home occupation having to reside in the dwelling unit: the registration address for Lindsay Kremmel’s car is 5514 – 33<sup>rd</sup> Ave. N.E.; Ms. Kremmel is listed on the articles of incorporation as a co-owner of the business; and Ms. Kremmel makes use of the upper floor for her sleeping quarters, as well as using the kitchen and dining area.

. . .”

24. Site visits have not been made by DPD staff to the preschools discussed in Findings of Fact Nos. 22 and 23, but there are photographs from the Internet for the schools discussed in Finding of Fact No. 22 and photos from the DPD enforcement file for the Nurturing Knowledge School at 5514 33<sup>rd</sup> Avenue Northeast that date to July 2004. The photos all show that a room or rooms in each structure have been furnished and decorated for use by the preschool students. Child size furniture, including tables, chairs, and play equipment, is arranged in the rooms shown in these photographs. There are also photos depicting outdoor play and use of play equipment.

25. 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.”

26. 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.”

27. 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.”

28. Section 23.84A.040 also defines “use, principal” as “. . . a use that is not incidental to another use.”

29. Section 23.84A.040 further defines “use, accessory” as “a use that is incidental to a principal use.”

30. 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.”

31. 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 . . .”

32. The Land Use Code does not define the term “operator” used in Section 23.42.050 L. The Webster’s Ninth New Collegiate Dictionary (1984) defines “operation” and “operator” in part as follows:

“operation’: . . . **1:** performance of a practical work or of something involving the practical application of principles or processes **2** . . . **b:** the quality or state of being functional or operative <the plant is now in operation>”

“operator’: **1:** one that operates: as . . . **b:** one that operates a business . . .”

## **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. To the contrary, the resident of the house, Ms. Chilson, has provided detailed information about how she uses all

three floors of the structure for her personal living space. (Finding of Fact No. 15.) 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 72<sup>nd</sup> 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. As described in Finding of Fact No. 15 and as shown in the photographs in Attachment A, the available information about the use of the residence suggests that the resident, Ms. Chilson, occupies the upper floor of the structure exclusively as a personal living area but also makes extensive use of the main floor and the lower floor for personal use, when the preschool is not in session.

3. Consistent with site inspection by Housing and Zoning Inspector Kevin Hou, no evidence shows 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. (See Finding of Fact No. 17.) Based on investigation by Mr. Hou, as summarized in Findings of Fact Nos. 7-9 and 11, the operators of the child care in the 510 North 72<sup>nd</sup> Street structure have complied with the requirement in SMC Section 23.42.050 L that 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 72<sup>nd</sup> Street residence. (Findings of Fact Nos. 4 and 16.) 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. 13.) However, the available record suggests that Ms. Chilson is in fact the legal resident of 501 North 72<sup>nd</sup> Street. She has voluntarily provided numerous documents to DPD indicating the property as her legal address, as summarized in Finding of Fact No. 9. She has further specifically stated that she is the resident of the structure and provided details about her life while residing there, as well as a copy of her current lease with JnK Properties effective in August 2008. (Finding of Fact No. 10.) The Land Use Code does not regulate the number of residential properties that a person may own or visit, and it does 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. There is no persuasive evidence that Ms. Chilson lives anywhere except at 501 North 72<sup>nd</sup> Street. Absent a preponderance of reasonably persuasive evidence suggesting that Ms. Chilson lives at some other property, it is reasonable to conclude that her residence is 501 North 72<sup>nd</sup> Street and that she makes use of the entire structure for living purposes.

5. The request for interpretation further suggests that Ms. Chilson is frequently absent from the site during business hours and thus is not the actual “operator” of the business as required by Section 23.42.050 L. Further, the request suggests that Ms. Chilson leaves the child care business to be “operated” by non-resident employees of Nurturing Knowledge or that the actual “operator” of the preschool is the Nurturing Knowledge business entity, and not the resident of the house. Again, as with the allegations that Ms. Chilson does not actually live at 501 North 72<sup>nd</sup> 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 72<sup>nd</sup> Street appears to meet the Land Use Code standards for a home occupation in Sections 23.42.050 G and L.

6. To further support Conclusion 5, Ms. Maudslien has provided specific information about her business relationship to both the property and to Ms. Chilson, as described in Finding of Fact No. 16. While it is undisputed that the preschool “operation” at 501 North 72<sup>nd</sup> Street is a branch of the Nurturing Knowledge business enterprise, it is clear from the information summarized in Finding of Fact No. 16 that Joyce Maudslien directs her overall business at a high management level and neither Ms. Maudslien nor the Nurturing Knowledge corporate entity can be said to “operate” the preschool directly. Instead, Ms. Maudslien specifically describes how Lisa Chilson directly manages the Nurturing Knowledge Green Lake campus on a daily basis. Assuming the description is accurate, and again no specific evidence has been submitted to DPD to dispute the accuracy of the information Ms. Maudslien has provided, it is most reasonable to conclude that Lisa Chilson is not only the resident of 501 North 72<sup>nd</sup> Street but is also the “operator” of the preschool at that location. Ms. Chilson is the person who makes the school function every day and directly manages it as a business within the meaning of the dictionary definitions of “operation” and “operator” set forth in Finding of Fact No. 32. From the description that Ms. Maudslien provided and other facts developed in the record about Nurturing Knowledge, the company purchases real estate and structures for use at least in part as preschools, and hires employees to directly manage those preschools. If the company then chooses to configure some of these enterprises so that they meet the Land Use Code standards for home occupation child care facilities, it has the right to do so, and this choice will still conform to home occupations standards consistent with the intent of the Code, which was intended to be liberal with respect to home occupation child care facilities, as further developed below.

7. 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 72<sup>nd</sup> Street, and therefore the use is incidental and secondary to the residential use.

8. 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.

9. Conclusions 7 and 8 are further supported by a more detailed evaluation of both the legislative history of the general home occupation standards and the specific standards for home child care facilities in the Land Use Code, and also by comparing the Nurturing Knowledge operation at 501 North 72<sup>nd</sup> Street with other home child care operations, including other Nurturing Knowledge sites previously approved as home occupations by DPD. The legislative history of the Code standards now set forth in Section 23.42.050 is described in detail in Findings of Fact Nos. 18-21. The history is particularly useful in that it provides insight into the principal question raised by the Hearing Examiner in her remand of the first DPD interpretation for the subject property, which is whether the 501 North 72<sup>nd</sup> Street preschool is “clearly incidental” to the residential use of the property, including whether the amount of floor space used for the school is consistent with accessory use. As described in Finding of Fact No. 20, the Department of Construction and Land Use, or DCLU (the predecessor agency of DPD) and the City Council considered whether specific limits should be placed on the amount of space within a dwelling unit to be used for a home occupation, and in the end decided not to impose such limits, in part because of the difficulties in evaluating concepts such as “habitable” space and “exclusive” use.

10. It is most reasonable to conclude that the Council intent in adopting the home occupation amendment in Ordinance 122311 was to leave the evaluation of compliance to the specific facts of each case and to the analysis in the field by a code compliance inspector such as Kevin Hou. Based on the legislative history, as well as the representations of the property owner and her tenant, and on inspection by Mr. Hou, DPD stands by its previous conclusion that the Nurturing Knowledge preschool is a use that is “clearly incidental” to the use of the 501 North 72<sup>nd</sup> Street structure as a single family residence. The specific amount of habitable space used exclusively for the home occupation is not to be considered, according to the December 1986 Director’s Report, and “partial use” for both home occupation and residential use was contemplated. Further, the amendments to child care regulations in Ordinance 114875, as discussed in Finding of Fact No. 21, were intended to provide more siting opportunities for child care and to reduce locational and procedural limits on child care centers, in order “to expedite the establishment of child care facilities in residential zones.” The primary purpose of the limitation to 12 children in a home occupation child care was to address Building Code issues involving greater numbers of children, rather than to impose specific limits on incidental use as a home occupation. Based on the information previously described for the 501 North 72<sup>nd</sup> Street property, it is clear that most of the house is used in part for residential purposes. The top floor is used exclusively as a residence, and the rest of the house is also used as a residence except in the four hours in which school is in session. When considered in light of the undisputed evidence that the house has not been modified for school use and that the school is operated by a resident of the house and does not exceed the numerical limits for children allowed at the school, the conclusion is that the preschool use is clearly incidental to the residential use of the structure. Concluding that the Nurturing Knowledge preschool is accessory to the house is most consistent with the legislative goal of expediting establishment of child care facilities in residential zones.<sup>1</sup>

11. Further support for the conclusion that the Nurturing Knowledge preschool is clearly incidental to the use of the 501 North 72<sup>nd</sup> Street structure as a residence, and that the interior arrangement of the structure is consistent with residential use, is found by comparing the preschool to other similar schools, as summarized in Findings of Fact Nos. 22 through 24. The operation of the preschool from 9:00 a.m. to 1:00 p.m. is similar to other schools not operated by Nurturing Knowledge, such as the Rainbow Bridge Preschool or Enchanted Garden preschool, which as noted in Finding of Fact No. 21 appear to be home occupation preschools. While the hours are not exactly the same, it appears reasonable to conclude that approximately four hours is a standard time for preschool operations by a variety of different small business enterprises.<sup>2</sup> It is also apparent that furnishing houses with child size furniture, school equipment, and both

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<sup>1</sup> While it may be argued that times have changed, and the proliferation of child care facilities in residential zones has gone beyond what is needed or acceptable, the existing Code must be evaluated in terms of what the intent was at the time of its adoption, rather than to strain to reach a different result. To reach a different outcome requires amendment of the current Code language instead of a site-specific determination that a home child care facility in clear compliance with all home occupation standards is somehow not a clearly incidental accessory use to the principal use of the 501 North 72<sup>nd</sup> Street structure as a residence.

<sup>2</sup> This interpretation does not attempt to evaluate whether the hours of operation for Nurturing Knowledge or any of the preschools compared to it are consistent with any State requirements for home occupation preschools versus an institutional child care use, or whether the Nurturing Knowledge business is properly licensed as a day care or preschool. Such questions are beyond the scope of this interpretation, which is limited to determining whether Seattle Land Use Code standards are met.

indoor and outdoor play facilities is common (Finding of Fact No. 24). It stands to reason that such furnishing must be done for child safety, as well as proper management and instruction of the children. While it is unclear how much area is devoted to child care in the various preschools compared, DPD has previously concluded that City regulations do not mandate specific limits to the areas of structures devoted to home occupation use, including home occupation child care. The DPD approach to regulating child care facilities has been consistent, as seen by its previous conclusion, following neighborhood complaints and enforcement investigation, with respect to the similar Nurturing Knowledge property at 5514 33<sup>rd</sup> Avenue Northeast, summarized in Finding of Fact No. 23. The similar preschool use at the 5514 property was determined to be an incidental home occupation, and it would now be unreasonable to conclude that the same business, operating in similar fashion at 501 North 72<sup>nd</sup> Street, should be treated differently under the same regulations applied to the 5514 site. DPD therefore declines to take a different view in this interpretation than its previous, albeit less formal, opinion regarding the Nurturing Knowledge business.

### **DECISION**

The use of the property addressed as 501 North 72<sup>nd</sup> 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. The house remains designed and arranged as a single family residence and all Code standards for a home occupation child care program are met. Based on both a factual evaluation of the property and comparison to other similar properties, as well as an evaluation of the purpose and intent of the home occupation and child care regulations in the Land Use Code, the child care program at 501 North 72<sup>nd</sup> Street is a “clearly incidental and secondary” use of the property within the definition of a home occupation.

Entered this 26<sup>th</sup> day of January, 2009.

(signature on file)

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William K. Mills, Senior Land Use Planner  
Department of Planning and Development

WKM/08-005A

Interpretation 08-005A  
Attachment A

Living Room



Bedroom



Dining Room



Kitchen Bar



Office



Studio (garage)

