

**Interpretation of the Director
Under Seattle Municipal Code Title 23**

Regarding the Use of the

Property at

2035 – 15th Avenue West

**DPD Interpretation No. 14-011
(DPD Project No. 3019321)**

Background

This interpretation was requested by private land use planner David Van Skike on behalf of a client that has proposed a short subdivision and development of property in the Interbay area of Seattle at the base of the west side of Queen Anne Hill. The lots to be created by the short subdivision would be developed with retail sales uses. One proposed lot, in particular, is proposed to be developed with a hardware store that would include an outdoor sales area for garden supplies. The questions for interpretation are: 1) whether maximum size of use limits established in the Land Use Code for non-industrial uses apply to uses accessory to the retail use, such as offices or storage areas; and 2) whether outdoor uses on the site, such as a seasonal garden area, are exempt from size of use limits since the size of use limit is based on floor area.

Findings of Fact

1. The subject property is addressed in Department of Planning and Development (DPD) records as 2035 – 15th Avenue West. According to the Geocortex land use map maintained by DPD, as well as the survey provided for DPD short subdivision application No. 3014806, the property is described as Parcel C of Seattle LBA No. 3007838.
2. The property is zoned IG2 U/45': General Industrial 2, with an unlimited height for most structures and a structure height limit of 45 feet for structures containing the uses described in Seattle Municipal Code (SMC) Section 23.50.022.B.
3. Parcel C is presently undeveloped. According to the notice of application for Project 3014806, the proposed short subdivision would subdivide existing Parcel C into four new lots (W, X, Y and Z). According to drawings provided with the request for this interpretation, the southeasterly two lots, W and X (or Lots 1 and 2 on the site plan provided with the short plat application) would be combined into a single development site.
4. While no application to develop proposed Lots W and X has been submitted, the request for interpretation and the drawings provided with it indicate that future development

- would be a hardware store, a type of retail sales use. The drawings show a floor plan of a one-story structure with a “sales” area of 25,000 square feet. In addition, at least two other rooms are depicted on the floor plan, with an additional area of about 5,000 square feet. The request for interpretation indicates that proposed uses of this additional 5,000-square-foot area may include offices, break rooms, restrooms, mechanical or electrical rooms, loading and staging areas, and warehouse space.
5. The second page of drawings provided with the request for interpretation shows an open roof deck area to be accessed by a ramp on the northwesterly side of the structure. Most of the roof would be developed with parking, but about 6,200 square feet would be an outdoor sales area for garden supplies, according to the request for interpretation.
 6. According to Table A for SMC Section 23.50.012, Line C.10, general sales and service uses are permitted outright in the IG2 zones. Section 23.84A.036 includes the following definition:

“Sales and services, general’ means one of the uses listed below, in which goods are rented or sold or services are provided primarily for household and personal use rather than for business establishments, institutions, or government agencies, but excluding medical services and uses in which goods are sold that primarily need to be delivered by truck, such as building materials, major durables and/or heating fuel.

 1. ‘Retail sales and services, general’ means a general sales and service use that is not a multi-purpose retail sales use. General retail sales and services include general retail sales uses, general services uses, and customer service office uses. Examples of general retail sales include but are not limited to bookstores, florists, and clothing stores. Examples of general services include but are not limited to shoe repair, hair cutting salons, pet grooming, pet daycare centers and dry cleaning. Customer service offices are uses in which services are provided to individuals and households in an office setting in a manner that encourages walk-in clientele and in which generally an appointment is not needed to conduct business, including but not limited to uses such as branch banks, travel agencies, brokerage firms, real estate offices, and government agencies that provide direct services to clients.
 2. ‘Retail sales, multipurpose’ means a general sales and service use in which a wide range of items frequently purchased for household use are rented or sold. Examples of multipurpose retail sales include but are not limited to grocery, hardware, drug, and variety stores, and farmers' markets.”
 7. Maximum size limits for certain nonindustrial uses are established by SMC Section 23.50.027, which provides in part as follows:

“A. Applicability

 1. Except as otherwise provided in this Section 23.50.027, the maximum size of use limits on gross floor area specified in Table A for 23.50.027 apply to principal uses on a lot, and apply separately to the categories of uses. The

total gross floor area occupied by uses limited under Table A for 23.50.027 shall not exceed 2.5 times the area of the lot in an IG1, IG2, IB, or IC zone.”

* * *

Under Table A for 23.50.027, general sales and service uses in the IG2 zone are limited to 25,000 square feet.

8. The term “gross floor area” is defined in Section 23.84A.014 as follows:

“‘Gross floor area’ means the number of square feet of total floor area bounded by the inside surface of the exterior wall of the structure as measured at the floor line.”

9. The current 25,000-square-foot maximum size of use limit for general sales and service uses in Industrial zones was established by Seattle City Ordinance No. 122601, effective January 2008. Ordinance 122601 also changed the language of Section 23.40.027.A to specifically say that the size limitations applied to the “principal uses” in “Chart A,” now Table A for 23.50.027, while deleting language that applied the maximum size of use limits to accessory uses. The recitals on the first page of Ordinance 122601, sometimes referred to as “whereas clauses,” provide in part as follows:

“WHEREAS the City's policy, as expressed in the Comprehensive Plan, directs the City to ‘(p)reserve industrial land for industrial uses...’; and

WHEREAS, the City has conducted studies indicating a continuing high demand for industrial businesses to locate in the city; and

WHEREAS, the City's studies further indicate that development of retail and office uses in industrial zones reduces the amount of land available for industrial uses and inhibits the ability of industrial businesses to locate, remain or expand in the city; and

WHEREAS, the City's current regulations allow new office uses of 50,000 square feet in the general industrial 1 (IG1) zone and 100,000 square feet in the general industrial 2 (IG2) zone and retail uses of 30,000 square feet and 75,000 square feet, respectively, in these zones; and

WHEREAS, a series of reports on Seattle's Industrial Lands indicate that stricter limits on office and retail uses could better fulfill the intent of the City's adopted policy of preserving industrial land for industrial uses and discourage competition for industrial land by nonindustrial uses;”

10. Section 23.84A.040 provides the following definitions:

“‘Use’ means the purpose for which land or a structure is designed, built, arranged, intended, occupied, maintained, let or leased.

‘Use, accessory’ means a use that is incidental to a principal use.

* * *

‘Use, principal’ means a use that is not incidental to another use.”

11. In November 2013, DPD published a policy document entitled Duwamish M/IC Policy and Land Use Study. On page 32 of this document, the following discussion appears:

“The Seattle Municipal Code permits some non-industrial uses, subject to size of use limits. Currently, two sets of size of use limits apply to industrial zones. The first set applies to all of the industrial zones while the second set applies to IG1 and IG2 zones in the Duwamish M/IC. Size of use limits for all industrial zones apply to office and retail uses. In the Duwamish a different set of size of use limits apply to retail, restaurants, drinking establishments and meeting halls.

* * *

Size limits on non-industrial uses in industrial zones do not apply if these uses are accessory to a principal use that is not restricted. This means that if the principal use is unrestricted, then an accessory use can be unlimited in size. Where there are multiple uses on a site, it may not always be clear which use or uses should be recognized as a principal use, and which qualify as accessory uses.”

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Conclusions

1. The proposed hardware store is classified as a multipurpose retail sales use, a subset of general sales and service use, under Section 23.84A.036 (Finding of Fact No. 6). General sales and service uses are permitted outright in the IG2 zone in which the development site is located.
2. While permitted outright, general sales and service uses are listed in Table A for 23.50.027 as subject to the maximum size of use limits for certain nonindustrial uses. This limit is 25,000 square feet of gross floor area in the IG2 zone. The gross floor area of the proposed hardware store is approximately 30,000 square feet (Finding of Fact No. 4), so the structure as proposed exceeds the maximum size of use limit.
3. Given that the gross floor area of the proposed store exceeds the total square footage allowed by the maximum size of use limit, the question is whether that limit applies to all of the gross floor area or only to the gross floor area that is designated as actual floor space for sales. Section 23.50.027 states that the maximum size of use limits apply to “principal uses on a lot.” (Finding of Fact No. 7.) If Section 23.50.027.A.1 is read to apply only to areas occupied by general sales and service, as the “principal use,” then certain areas such as employee offices, break rooms, restrooms, and other support areas could be considered exempt from the size of use limits as accessory uses. A further question is whether the outdoor garden center proposed for the roof could also be considered an accessory use and thus not subject to the maximum size of use limit.

4. While Section 23.50.027 states that the size of use limits apply to principal uses on a lot, it is silent about accessory uses. The legislative history of Section 23.50.027 shows that references to accessory uses were deleted from the Code section by Seattle City Ordinance 122601, which also substantially reduced the permitted maximum size of several non-industrial uses permitted in the Industrial zones, including general retail sales and services and offices. The recitals at the beginning of Ordinance 122601 clearly state policy intent to preserve industrial land for industrial uses and find that development of retail and office uses reduces the amount of land available for industrial uses and inhibits the ability of industrial uses to locate, remain or expand in the city. (See Finding of Fact No. 9.) These statements of intent suggest that the current Code language must be read narrowly to limit non-industrial uses as much as possible. There is no support in the history of Section 23.50.027 to read into it an implied exemption from maximum size of use limits for gross floor area that is not directly devoted to sales space. This additional floor area in the proposed hardware store, including employee break areas, offices, and loading or stock areas, is all devoted to support for that sales use and must all be counted toward maximum size of use limits. The gross floor area of the proposed store, including areas devoted to ancillary activities such as break rooms, restrooms and offices accessory to the store, should be revised to a maximum size of 25,000 square feet of gross floor area rather than 30,000 square feet.
5. Conclusion 4 is supported by a careful reading of the recent DPD policy document entitled Duwamish M/IC Policy and Land Use Study (Finding of Fact No. 11). In the discussion of accessory uses on page 32, the document says that “[s]ize limits on non-industrial uses do not apply if these uses are accessory to a principal use that is not restricted.” [Emphasis added.] It further says that “if the principal use is unrestricted, then an accessory use can be unlimited in size.” What this discussion means is that a use that is not subject to maximum size of use limits, such as a factory or a warehouse, can have accessory offices or perhaps even retail space without size of use restrictions for those incidental uses. This is reasonable given the policy intent to promote industrial uses on industrial land. However, this discussion does not address uses that are accessory to a principal use that is restricted to maximum size of use limits. There is no intent expressed to give uses accessory to a restricted principal use an exemption from those same restrictions. If the City Council had intended such an exemption, it would have been specifically written into Section 23.50.027.
6. While the total gross floor area of the hardware store is limited by the size limits of Section 23.50.027, the outdoor sales area proposed for the roof is not “gross floor area” as defined in Section 23.84A.014 (Finding of Fact No. 8), as this roof space is not “bounded by the inside surface of the exterior wall of the structure.” Accordingly, the area proposed for outdoor use is not subject to the maximum size of use limits in Section 23.50.027, which apply only to gross floor area, per subsection 23.50.027.A.1. Since the outdoor sales area is not gross floor area, it is unnecessary to decide whether it is an accessory use to the principal general sales and services use or simply part of that principal use.

DECISION

The proposed general retail sales and service use (hardware store) is a use permitted outright in the IG2 zone but is subject to a maximum size of use limit of 25,000 square feet of gross floor area under SMC Section 23.50.027. Floor area in excess of this 25,000-square-foot limit is not exempt from the limit even if designated for uses other than sales area, as there is no exemption set forth in Section 23.50.027 for uses accessory to the principal use. To read such an exemption into the Code is contrary to the express legislative intent of City Council to preserve industrial land for industrial uses. Additional outdoor retail space, however, is not subject to the size of use limit as it is not defined as gross floor area.

Entered this 5th day of March, 2015.

Signature on File

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