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Reply to: Seattle Office

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[VIA E-MAIL TO Margaret.glowacki@seattle.gov](mailto:Margaret.glowacki@seattle.gov)

Maggie Glowacki
Seattle Department of Planning and Development
P.O. Box 34019
Seattle, WA 98124-4019

Re: Comments on Draft Shoreline Master Program Regulations

Dear Ms. Glowacki:

I am writing on behalf of Sharon Bloome to comment on the non-conforming structure provisions of the proposed Shoreline Master Program (SMP) regulations. Ms. Bloome has followed this issue because ambiguities in the current SMP have caused her delay and expense in determining whether her reconstruction plans comply with the existing SMP. We had hoped, if not for our own sake then for others, that the new version of the SMP would eliminate the existing ambiguities. Our review of the current proposal leaves substantial doubt in that regard. It appears that the new version retains significant ambiguity that the City would be wise to eliminate before the rules are adopted in final form.

The proposed rules on non-conforming structures are found in proposed SMP 23.60.124. With regard to non-conforming structures that are over water or within the required shoreline setback or within the residential shoreline setback, the draft rules allow structural alteration which increases the extent of non-conformity or creates additional non-conformity if the criteria in subsection D.1 or .2 (or 23.60.122.E) are satisfied. The ambiguity which frustrated Ms. Bloome's efforts in the past was that the code lacks a definition of what constitutes an increase in non-conformity when the proposed alteration changes the roofline of a structure that is non-conforming for height. In Ms. Bloome's situation, the proposed roofline revision would have reduced the volume of the structure that exceeded the height limitation. However, the reduction in volume was accomplished by reducing the roofline in some areas and increasing it in others. The issue was whether the non-conformity would be judged by reference to volume (in which case the non-conformity was reduced) or by reference to examining every square foot of the roof structure (in which case, because some portions of the roof were higher, it could be said that the non-conformity had increased).

This ambiguity in the existing code has not been addressed in the proposed revisions. I encourage you to do so.

I recognize that subparagraph D.2 applies to reconfigurations and allows them if four conditions are satisfied. But this subparagraph applies only if a determination has first been made that the structural modifications constitutes an increase in the non-conformity. Because the code remains ambiguous as to that standard, it remains unclear whether subparagraph D.2 applies or not.

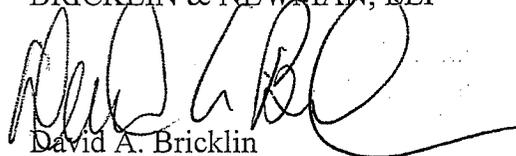
The proposed revisions also are ambiguous because of a disconnect between the terms used in subparagraph C and those used in subparagraph D. Subparagraph C calls out three types of structural alterations that are potentially subject to the criteria in subparagraph D: "substantially improved;" "replaced;" or "expanded."

In subparagraph D, the first two of those terms ("replacement" and "substantial improvement") are carried forward in subsection D.1. But the third term, "expanded," is not carried over into subparagraph D. Instead, subparagraph D.2 makes reference to "reconfiguration." It is not clear how "reconfiguration" relates to the three terms used in subparagraph C (substantial improvement, replacement, and expansion). It is unclear how the City will distinguish between a "substantial improvement" and a structural alteration which constitutes a "reconfiguration." Many structural alterations would easily fit within each of those categories. If the code is attempting to draw a distinction between those two types of structural alterations, it should do so more clearly. And the code should explain where in the subparagraph D rubric the "expansions" referenced in subparagraph C fit in.

Thank you for your attention to this matter. I would be happy to discuss any of these issues with you further if you think that would be helpful.

Very truly yours,

BRICKLIN & NEWMAN, LLP



David A. Bricklin

DAB:psc

cc: Sharon Bloome