



FORMAL DIRECTOR'S INTERPRETATION

Date: March 31, 2020

Location: Applicable to development within Kitsap County

Permit: Directors Interpretation-Formal

Subject of Interpretation

The subject of this interpretation is the relationship of density requirements of Kitsap County Code (KCC) and Footnote 25 of the Zoning Density, Dimensions, and Design Table and it answers the question of whether the footnote exempts density requirements for residential development in certain zones.

KCC 17.420.020(A), under the heading of *Density, Dimensions, and Design; Measurement Methods*, sets forth how density is to be calculated in zones where density is prescribed. It states in full:

Density. Except as provided in Section 17.420.060(A)(18),¹ density shall be calculated as follows: In all zones where a maximum or base density is identified, maximum or base density is calculated on gross acreage of the site. In all zones where a minimum density is required, minimum density is calculated on net developable acreage. If a calculation results in a partial dwelling unit, the partial dwelling unit shall be rounded to the nearest whole number. Less than one-half shall be rounded down. Greater than or equal to one-half shall be rounded up.

KCC 17.420.052 is the *Rural, resource, and urban residential zones density and dimensions table* and the first two rows of the table identify the minimum and maximum densities required in each of the subject zones. In the Urban Low (UL) and Urban Cluster Residential (UCR) zones a minimum density of 5 dwelling units per acre and a maximum density of 9 dwelling units per acre is required. There are no footnotes to the UL or UCR density requirements that identify limitations or other requirements.

KCC 17.420.060(A)(25), under the heading of *Density, Dimensions, and Design; Footnotes for Tables*, is a footnote to the 9,000 square foot maximum lot size requirement for the Urban Low (UL) and Urban Cluster Residential (UCR) zones and requires, with limited exceptions, that vacant lots over 18,000 square feet be subdivided. It states in full:

For new building permit applications on vacant lots over eighteen thousand square feet located in urban low residential (ULR) and urban cluster residential (UCR) zones, the maximum lot size shall not exceed nine thousand square feet. This restriction shall not apply if:

- a. The net developable area of the existing parcel is less than eighteen thousand square feet; or

¹ Footnote 18 calculates all densities in the Urban Restricted and Greenbelt zones on net density.

- b. The project application will meet minimum density requirements as established by this chapter.

KCC 17.100.030 is a general section requiring compliance for all buildings, structures, and uses of buildings and structures with Title 17. It states in full:

No building or other structure shall be constructed, improved, altered, enlarged, or moved; nor shall any use or occupancy of premises within the county be commenced or changed; nor shall any condition of or upon real property be caused or maintained, after the effective date of this title, except in conformity with conditions prescribed for each of the several zones established hereunder. It shall be unlawful for any person, firm, or corporation to erect, construct, establish, move into, alter, enlarge, use or cause to be used, any buildings, structures, improvements, or use of premises contrary to the provisions of this title; provided, however, conditions of approval as referred to in the changes to zones, amendments and alterations section, and the existing uses referred to in the interpretations and exceptions section, shall be allowed to continue in the manner and extent provided for therein. Where this title imposes greater restrictions than those imposed or required by other rules, regulations, or ordinances, the provisions of this title shall control.

Cause for Interpretation

This interpretation is prompted by concerns about determining density in residential zones and the 2016 requirement, adopted as a reasonable measure by Ord. 538-2016 and modified in 2018 by Ord. 559-2018, that Footnote 25 imposes on the ULR and UCR zones to divide ‘parent parcels’ that are over 18,000 sf once net developable area is removed from the area calculation. Some have urged that the usual density requirements of chapter 17.420 do not apply if Footnote 25 is met, but this is not the intent nor the department’s interpretation of the code.

This interpretation re-iterates the codified requirements of ensuring density is met in zones where density is prescribed and harmonizes the understanding between the code references noted above. This interpretation is solely related to density requirements under chapter 17.420 under Kitsap County Code and does not modify legalities under state law. Furthermore, this interpretation may not be construed as an authorization to circumvent or violate state or federal laws.

Interpretation

Title 17 *Zoning* guides development within Kitsap County. It discusses density ranges, both minimum and maximum, that are based on original parcel size (maximum) and a reduced developable size based on net developable area (minimum). There is no demonstrated confusion that land use and building permits must comply with the density of the relevant zone described in the density rows of the Density and Dimension Tables of chapter 17.420 KCC. All uses must meet the density proscribed for the relevant zone, unless exempted by a specific density footnote. However, there is confusion about meeting density as it relates to Footnote 25 for the UL and UCR zones because subdivision is not required when density can otherwise be met. *This Footnote, however, does not and cannot provide a waiver to usual density requirements.*

First, Footnote 25 is specifically and solely a footnote associated with the maximum lot size requirements of KCC 17.420.052. It thus does not affect the usual maximum and minimum density requirements of the first two rows of the table. These density tables contain only one exception to the application of minimum density, and it is in the Urban Restricted and Greenbelt zones and only for limited circumstances. There is no other density exception.

Second, the 2018 exception to the subdivision requirement was intended to recognize and reduce the potential or perceived hardship of subdividing urban properties when the intended benefit of subdividing would not be realized. This was found to occur when environmental constraints of the parcel were such that subdivision would result in a smaller lot than the maximum that could be required. It was also found to occur when the property owner sought to develop the parcel at densities already required (i.e., 5-9 du). These exceptions were not intended to generally exempt permits from usual density requirements.

Third, all buildings and structures must comply with all of Title 17 requirements. While specific types of residences, such as single-family residences, may be allowed in a particular zone, this allowance does not negate the requirement to meet all applicable requirements, including density. Many of the questions from the public regarding Footnote 25 arose from building permits for single-family residences. There is no specific exception for building permits that would allow a building permit to be issued where the project does not comply with the density requirements.

Conclusion

When proposing residential development of any kind, density, as prescribed by KCC 17.420 *Density, Dimensions, and Design*, must be met. The requirement of KCC 17.420.060.A.25 to divide parcels in certain circumstances, does not dismiss density requirements, nor override density requirements of Kitsap County Code.

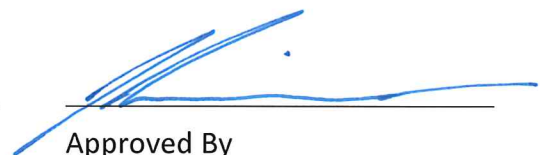
This decision is a final Type 1 decision of DCD and may be appealed within 14 days of the mailing date noted above pursuant to KCC 21.04.290.



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Date



Approved By
Jeff Rimack
Director, DCD