



Code Interpretation

File #: COD2023-00333

Sammamish Development Code (SDC) 21.03.020.H.2.c.

Interpretation Request:

What criteria is used to determine the home size and maximum developable area for lots requiring Reasonable Use Exception in R-zones?

Context, Finding, Facts:

Cairncross & Hempelmann, PS, on behalf of Metrica Architects, filed a code interpretation request with the Department of Community Development on April 18, 2023. Metrica is providing architecture services to Lorena and Raymond Balint who own a parcel of land (King County parcel number 357530-2645) in the City of Sammamish ("City"). The property is approximately 13,000 square feet in area, zoned R-4, and undeveloped.

The Balints desire to build a single family residence on their property. Metrica's geotechnical report documentation submitted with the Pre-Application Conference (PRA2021-00346) and Pre-Development Services (PDS2022-00344) indicates that the entire site is heavily encumbered by Landslide Hazard Areas and associated buffers. The Balints believe that the application of Chapter 21.03 SDC would deny them all reasonable use of the property and therefore intend to submit for a Reasonable Use Exception¹.

The request asks for interpretation of Sammamish Development Code 21.03.020.H.2.c, which provides as follows:

*In the R- zones where no other permitted uses allow for reasonable use of the property the City **may allow** up to a 2,250 square foot single-family home inclusive of accessory structures. Maximum developable area may not exceed 2,500 square feet inclusive of all structures and impervious surfaces, pursuant to an approved RUE, with applicable mitigation.*

Question 1: When a proposed single-family development meets the size limitations and other requirements in SDC 21.03.020(H)(2)(c), is it permitted outright, provided they meet the City's other development standards?

Question 2: If the answer to Question 1 is no, then what criteria does the City use to reduce the size of the single-family home that will be permitted pursuant to an approved RUE?

Question 3: If the Neighborhood Land Analysis (NLA) is part of the criteria the City uses per Question 2, then how does the City apply the NLA to a specific project to achieve the purposes of the City's Environmental Critical Areas regulations?

Question 4: If the City reduces the size of the single-family home that will be permitted pursuant to an approved RUE based on the NLA, does the City take into account the type of home (e.g., mobile home,

¹ Note that the Balints have not yet filed a Reasonable Use Exception application; therefore, this request for an interpretation is not related to any specific permit application.

tiny home, or traditional home) and era in which it was built (e.g., 1950s, 1970s, 2000s) as a part of its determination of whether constructing a home of similar size today is reasonable?

Interpretation:

The Department of Community Development Director may approve alterations to critical areas, critical area buffers and setbacks to allow a reasonable use not otherwise allowed by this chapter when the following criteria are met (SDC 21.03.020.H.2.a):

1.	The application of Chapter 21.03.020 would <u>deny all reasonable use</u> of the property;
2.	There is no other <u>reasonable economic use</u> with less impact on the critical area;
3.	The proposed development <u>does not pose an unreasonable threat</u> to the environment or public health, safety, or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest; and
4.	Any alterations permitted to the critical area or buffer shall be the <u>minimum necessary</u> to allow for <u>reasonable use of the property</u> and the <u>project design must follow mitigation sequencing</u> as outlined in SDC 21.03.020.M. and achieve no net loss of ecological functions; and any authorized alteration of a critical area under this subsection shall be <u>subject to conditions</u> established by the department including, but not limited to, mitigation under an approved mitigation plan.
5.	The lack of a reasonable economic use alternative is not the result of actions taken by the applicant after December 31, 2021.

Reasonable Use Exception is a Type 2 Land Use Decision (SDC 21.09.010.B) that allows property owners to seek exceptions to SDC 21.03.020 if they can demonstrate that strict adherence to those regulations would result in an unreasonable limitation on the use of their property. To determine the property's reasonable economic use in relation to surrounding properties (see Figure 1), information regarding the pattern of land development within near proximity to the subject property is necessary for such analysis (SDC 21.03.020.H.2.b.4). This is referred to by staff as Neighborhood Land Analysis, although the term is not specifically defined within the Sammamish Development Code.

	Parcel #	Lot Size (square feet)	House Footprint (square feet)	Home Size (square feet)	Impervious Surface (square feet)	Year Built	Presence of Critical Areas
	1						
	2						
	3						
	4						
	5						
	6						
	7						
	8						
	9						
	10						
	Total						
	Average						
	Median						
House Footprint:	means the perimeter of a building at the outer edge of the outside walls of the building, including cantilevered portions of a building.						
Home Size:	for the purpose of this analysis, it includes all the square footage of a house, including garage and any lower floor areas where the exterior wall is more than three feet above the existing grade.						
Impervious Surface:	means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions before development.						
Critical Areas:	those areas in the City that are erosion hazard areas, frequently flooded areas, landslide hazard areas, seismic hazard areas, critical aquifer recharge areas, wetlands, streams, and fish and wildlife habitat conservation areas.						
Please contact the city project manager to determine the radius of the neighborhood analysis. A copy of the neighborhood analysis map must be submitted along with the application for reasonable use exception.							

Figure 1: Neighborhood Land Analysis

As an example, if the median home size in the neighborhood is 1,800 square feet and the total developable area (inclusive of all structures and impervious surfaces) is 2,000 square feet, then the maximum allowed home size would be 1,800 square feet and 2,000 square feet for the entire developable area. As such, in response to Question 1 and Question 2, a Reasonable Use Exception in this example does not allow the maximum home size of “up to” 2,250 square feet and 2,500 square feet of impervious surface if those amounts exceed the existing pattern of development within the immediate neighborhood. The Reasonable Use Exception does not guarantee a home size of 2,250 square feet and 2,500 square feet of impervious surface; rather, it is an exception that grants "up to" this maximum in limited circumstances when demonstrated through Neighborhood Land Analysis. In response to Question 4, the Neighborhood Land Analysis does not exclude properties due to the age or type of buildings developed thereon, and these criteria may support approval of a home size that is less than the maximum home size of 2,250 square feet consistent with SDC 21.03.020.H.2.c, which contemplates that not all RUE approvals will be for the maximum home size of 2,250 square feet.

Additionally, the development proposal must follow the mitigation sequencing as outlined in SDC 21.03.020.M. Mitigation sequencing is required to ensure that development within critical areas does not result in a net loss of ecological function. In response to Question 3, the applicant must document and implement the following sequential measures in order of preference to avoid, minimize, and mitigate impacts to environmentally sensitive areas and buffers:

- ➔ **Avoid:** The applicant should first try to avoid the impact by not taking a certain action, or redesigning the proposal to eliminate the impact. Reasonable affirmative steps and best efforts must be considered to avoid critical area impacts. However, avoidance shall not be construed to mean mandatory withdrawal or denial of the development proposal or activity if the proposal or activity is an allowed, permitted, conditional, or special use in the SDC.

In determining the extent to which the proposal should be redesigned to avoid the impact, the department may consider the purpose, effectiveness, engineering feasibility, commercial availability of technology, best management practices, safety and cost of the proposal and identified modifications to the proposal.

- ➔ **Minimize:** If it is not possible to avoid an impact, applicant should measures take to reduce the duration, intensity and/or extent of impacts (including direct, indirect and cumulative impacts) that cannot be completely avoided, as far as is practically feasible.
- ➔ **Mitigate:** If it is not possible to avoid or minimize an impact, the applicant will be required to compensate for adverse impact by enhancing critical areas and their buffers.

Applicable Code Sections:

[21.03.020.H.2. Exceptions.](#)

Reasonable Use Exception. If the application of this chapter would deny all reasonable use of the property, the applicant may apply for an exception pursuant to this subsection:

- a. The director may approve alterations to critical areas, critical area buffers and setbacks to allow a reasonable use not otherwise allowed by this chapter when the following criteria are met:

- i. The application of this chapter would deny all reasonable use of the property;
 - ii. There is no other reasonable economic use with less impact on the critical area;
 - iii. The proposed development does not pose an unreasonable threat to the environment or public health, safety, or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest; and
 - iv. Any alterations permitted to the critical area or buffer shall be the minimum necessary to allow for reasonable use of the property and the project design must follow mitigation sequencing as outlined in SDC 21.03.020M. and achieve no net loss of ecological functions; and any authorized alteration of a critical area under this subsection shall be subject to conditions established by the department including, but not limited to, mitigation under an approved mitigation plan.
 - v. The lack of a reasonable economic use alternative is not the result of actions taken by the applicant after December 31, 2021.
- b. The following must be submitted with a request for a reasonable use exception:
- i. A critical area report from a qualified professional detailing how the project has been designed to avoid and minimize impacts to the critical area and buffer. The report shall detail the anticipated impact on the critical area and buffer along with specific mitigation measures that may include restoration of previously impacted critical area.
 - ii. A site plan showing the critical area, buffer, natural features, topography, and proposed development area.
 - iii. A proposed monitoring plan for a minimum of five years including submittal of an annual report the City outlining how proposed mitigation measures are functioning such as plantings.
 - iv. The applicant shall submit a detailed review of the permitted uses allowed in the underlying zoning district with supporting information explaining why all other permitted uses that may have less impact on the critical area and buffer are not feasible.

c. Development Limitations in R- zones.

In the R- zones where no other permitted uses allow for reasonable use of the property the City may allow up to a 2,250 square foot single-family home inclusive of accessory structures. Maximum developable area may not exceed 2,500 square feet inclusive of all structures and impervious surfaces, pursuant to an approved RUE, with applicable mitigation.

21.03.020.M. Avoiding impacts to critical areas.

1. Except as otherwise provided in SDC 21.03.020G, an applicant for a development proposal, activity, or alteration shall document the consideration of and subsequently shall implement the following sequential measures, which appear in order of preference, to avoid, minimize, and mitigate impacts to environmentally critical areas and associated buffers:

- a. Avoiding the impact or hazard by not taking a certain action, or redesigning the proposal to eliminate the impact. The applicant shall consider reasonable, affirmative steps and make best efforts to avoid critical area impacts. However, avoidance shall not be construed to mean mandatory withdrawal or denial of the development proposal or activity if the proposal or activity is an allowed, permitted, conditional, or special use in the SDC. In determining the extent to which the proposal should be redesigned to avoid the impact, the department may consider the purpose, effectiveness, engineering feasibility, commercial availability of technology, best management practices, safety and cost of the proposal and identified modifications to the proposal.

The department may also consider the extent to which the avoidance of one type or location of an environmentally critical area could require or lead to impacts to other types or locations of nearby or adjacent environmentally critical areas. The department should seek to avoid, minimize and mitigate overall impacts based on the functions and values of all of the relevant environmentally critical areas and based on the recommendations of a critical areas study. If impacts cannot be avoided through redesign, or because of site conditions or project requirements, the applicant shall then proceed with the sequence of steps in subsections 1.b. through g. of this section.

- b. Minimizing the impact or hazard by limiting the degree or magnitude of the action or impact with appropriate technology or by changing the timing of the action.
 - c. Restoring the impacted critical areas by repairing, rehabilitating or restoring the affected critical area or its buffer.
 - d. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through plantings, engineering or other methods.
 - e. Reducing or eliminating the impact or hazard over time by preservation or maintenance operations during the life of the development proposal, activity or alteration.
 - f. Compensating for the adverse impact by enhancing critical areas and their buffers or creating substitute critical areas and their buffers as required in the SDC.
 - g. Monitoring the impact, hazard or success of required mitigation and taking remedial action based upon findings over time.
2. In addition to the above steps, the specific development standards, permitted alteration requirements, and mitigation requirements of this chapter and elsewhere in the SDC apply.
 3. The department shall document the decision-making process used under this section as a part of the critical areas review conducted pursuant to SDC 21.03.020K.1.

[21.04.040.B.94. Dwelling unit.](#)

One or more rooms designed for occupancy by a person or family for living and sleeping purposes, containing kitchen facilities and rooms with internal accessibility, for use solely by the dwelling’s occupants; dwelling units include but are not limited to bachelor, efficiency and studio apartments, factory-built housing, and **mobile homes**.

[21.04.040.B.146. Floor to area ratio.](#)

A measure of development intensity which is determined by dividing gross floor area by lot area. Gross square footage for the purpose of calculating floor to area ratio includes all gross square footage that is above grade including garages. Any visible wall height of more than 3’ shall count towards the gross building square footage.

[21.04.040.B.177. Impervious surface.](#)

For purposes of this Chapter, means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions before development; or that causes water to run off the surface in greater quantities or at an increased rate of flow.

[21.04.040.B.282. Reasonable use.](#)

A legal concept articulated by federal and state courts in regulatory taking cases.

[21.05.010.C. Residential land uses.](#)

Table of Residential Land Uses.

KEY: P = Permitted Use C = Conditional Use S = Special Use X = Prohibited Use

RESIDENTIAL LAND USES						
Zones	Residential	Commercial			Office	SIC #
		Urban Residential	Neighborhood Business	Community Business		
SPECIFIC LAND USE	R-1 to R-8	R-12 to R-18	NB	CB	O	
Dwelling Units, Types						
* Single detached	P, C (9)	P, C (9)	X	X		X
* Townhouse	P (10)	P	P (2)	P (2)		P (2)
* Apartment	P (3)	P	P (2)	P (2)		P (2)
* Mobile home park	C (6)	P	X	X		X
* Duplex (17)	P (16)	P	X	X		X

[21.05.010.N. Recreational/cultural land uses.](#)

Table of Recreational/Cultural Land Uses.

KEY: P = Permitted Use C = Conditional Use S = Special Use X = Prohibited Use

RECREATIONAL / CULTURAL LAND USES						
Zones	Residential	Commercial			Office	SIC #
		Urban Residential	Neighborhood Business	Community Business		
SPECIFIC LAND USE	R-1 to R-8	R-12 to R-18	NB	CB	O	
Park / Recreation						
* Park	P (1)	P (1) (10)	P	P		P
* Trails	P	P	P	P		P
* Marina	C (2)	C (2)	P (4)	P		P
* Sports club (9)	C (3)	C (3)	C	P		X

21.05.010.N. Resource land uses.

Table of Resource Land Uses.

KEY: P = Permitted Use C = Conditional Use S = Special Use X = Prohibited Use

RESOURCE LAND USES						
SIC #	Zones	Residential		Neighborhood Business	Commercial	
		Urban Residential			Community Business	Office
	SPECIFIC LAND USE	R-1 TO R-8	R-12 TO R-18	NB	CB	O
	Agriculture					
01	Growing and harvesting crops	P	X	X	X	X
02	Raising livestock and small animals	P (2)	X	X	X	X
	Forestry					
08	Growing and harvesting products	P	X	X	X	X
*	Forest research	P (2)	X	X	X	X
	Fish and Wildlife Management					
0921	Hatchery / fish preserve	C	X	X	X	X
0273	Aquaculture	C	X	X	X	X

21.09.010.B. Classifications of land use decision processes.

LAND USE DECISION TYPE		
Type	Process	Project Type
Type 1	Decision by director, no administrative appeal	Building; clearing and grading; boundary line adjustment; temporary use; TDR sending site certification; accessory structures over 200 sq ft or with electricity and plumbing; right-of-way; road variance except those rendered in conjunction with a subdivision or short plat decision1.; variance from the requirements of Chapter 9.04 KCC as adopted by SDC 21.03.050; shoreline exemption; approval of a conversion harvest plan; temporary homeless encampment permit2.; wireless communication facility exemption; expedited wireless use permit; standard wireless use permit
Type 2	Decision by director appealable to hearing examiner, no further administrative appeal	Short plat; road variance decisions rendered in conjunction with a short plat decision; zoning variance; conditional use permit; procedural and substantive SEPA decision; Commercial Site Development Permit pursuant to SDC 21.09.050; approval of residential density incentives; new or reuse of public or private schools; reasonable use exceptions under SDC 21.03.020H.2.; preliminary determinations under SDC 21.09.010C.3.; critical areas exceptions and decisions to require studies or to approve, condition or deny a development proposal based on the requirements of SDC 21.03.020; binding site plan; unified zone development plan under SDC 21.07.120 3.; drainage adjustment applications for projects subject to full or large project drainage review5. under SMC Chapter 13.206. if not already considered with another underlying project permitting process; drainage adjustment applications for any project requiring drainage review located in a critical drainage area under SMC Chapter 13.20 if not already considered with another underlying project permitting process.

Applicable Comprehensive Plan Goals and Policies:

Goal LU.1	Build community character and identity on a Citywide basis to enhance the high quality of family life established in Sammamish.
Policy LU.1.3	Recognize and preserve the natural environment as an important element of the City's identity.
Policy LU.1.4	Where appropriate, develop design guidelines and development regulations to support the following: <ul style="list-style-type: none"> a <u>Compatibility with natural site features</u> b <u>Retention of trees and native vegetation</u> c Low impact development d <u>Development at a scale and character appropriate to the site</u> e Design that supports the human scale

	<p>f <u>Design that reflects community character</u> g Landscaping to enhance building and site appearance and function h Integrated and connected access for bicycles, pedestrians and vehicles i Balanced consideration of automobile and pedestrian/bicycle mobility and safety j Usable passive and active open space, including community gathering places k Cohesive design character that minimizes visual clutter l Sense of personal safety</p>
Goal LU.2	Preserve and enhance the natural features, quality, character and function of the City’s residential neighborhoods.
Policy LU.2.1	Promote a variety of housing types to meet all housing needs.
Goal LU.6	Promote development design that maintains a harmonious relationship with the natural environment.
Policy LU.6.1	Encourage design flexibility, such as lot clustering, to preserve existing site features, including clusters of trees, wetlands, streams, native topography and similar features.
Policy LU.6.2	Maximize tree retention and assure replacement where tree retention is not feasible
Policy LU.6.3	Promote retention of existing landscaping and native vegetation to the maximum extent practicable in development.
Goal EC.2	Protect people, property and the environment in areas of natural hazards.
Policy EC.2.3	Promote soil stability through retention of existing vegetation and the addition or replacement of plants promoting such.
Policy EC.2.4	<u>Avoid or minimize impacts</u> from new development to erosion hazard areas, Erosion Hazard Near Sensitive Water Body Overlays (and those areas that drain to them), wetland management areas and <u>landslide hazard areas</u> subject to provisions in the Sammamish development code and its rules and regulations.
Policy EC.2.6	<u>Avoid potential impacts to life and property by strictly limiting land disturbance and development in landslide hazard</u> , steep slopes, and Erosion Hazard Near Sensitive Water Body Overlays.
Goal H.1	Neighborhood Vitality and Character Promote safe, attractive, and vibrant residential and mixed-use neighborhoods. Encourage housing design that is sensitive to quality, design, and intensity within neighborhoods and with surrounding land uses. Land use policies and regulations should emphasize compatibility with existing neighborhood character. In areas where the existing character is in transition, new development should be designed to incorporate the qualities of well-designed neighborhoods.
Policy H.1.1	Ensure new development and redevelopment is sensitive to the context of existing and planned neighborhood character.
Goal H.2	Housing Supply and Variety Ensure that Sammamish has a sufficient quantity and variety of housing to meet projected needs, preferences, and growth of the community.
Policy H.2.2	Support a variety of residential densities and housing types to meet the needs and preferences of all Sammamish residents

Policy H.2.7	Permit manufactured homes in residential zones in accordance with the provisions of state and federal law.
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General Authority:

As described in Chapter 21.04.010 SDC, and SDC 21.09.070, Administrative Policy and Code Interpretations are binding interpretations concerning land use codes administered by the City's Community Development Department. It is the intent of this chapter to establish the procedure by which the City of Sammamish will render a formal interpretation of a development regulation.

Applicant: Cairncross & Hempelmann, PS

Site Location: King County parcel number 357530-2645

Appeal Period: June 21, 2023, through July 12, 2023. Pursuant to SDC 21.09.070(I), this interpretation may be appealed within 21 days from the date of issuance, on or before July 12, 2023, at 5:00 PM. Appeals are heard by the Hearing Examiner.

Staff Member Assigned: Jasvir Singh, Senior Land Use Planner
jsingh@sammamish.us
425-295-0506

David Pyle

David Pyle, Director of Community Development

6/21/2023

Date