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**CODE INTERPRETATION  
LU23–INTERPRETATION-01**

**“INTERPRETATION OF POMC 20.40.050 (2)”  
ISSUED PURSUANT TO POMC 20.02.015 (2) (a), POMC 20.02.030 AND POMC 20.10**

Pursuant to Subsection 20.10.005(2) of the Port Orchard Municipal Code (POMC), the Director is authorized to interpret the meaning, application, or intent of the regulations of Title 20 POMC by reviewing the applicable goals and policies of the comprehensive plan, POMC, and applicable state and local planning policies and regulations. The official interpretation issued by the Director in this Director’s Interpretation is issued pursuant to the foregoing authority.

**Administrative Interpretation Request:**

The Applicant’s request is as follows:

***Regulation: 20.40.050 (2):***

(2) Height Encroachments. Any height encroachment not listed below is prohibited except where the director determines that the encroachment is similar to a permitted encroachment listed below.

(a) The maximum height limits of the district do not apply to a spire, belfry, cupola, dome, or other similar feature that does not contain conditioned space and is not intended for human occupancy, or public utility facilities which by design or function must exceed the established height limits.

(b) The following may exceed the established height limit of the district provided they do not exceed the maximum height by more than six feet:

- (i) Chimney, flue or vent stack;
- (ii) Rooftop deck, patio, shade structure;
- (iii) Flagpole;
- (iv) Vegetation associated with a rooftop garden or landscaping;
- (v) Skylights;
- (vi) Parapet wall; and

(vii) Solar panels, wind turbines and rainwater collection systems.

**Proposed:** Clarify code section 20.40.050(2), that the proposed rectilinear Architectural clerestory pop-up element is sufficiently similar to the architectural elements listed in the code that are not intended for human occupancy.

**Analysis:** The proposed building design includes an Architectural clerestory element at the northeast corner that is proposed to extend above the allowable base building height of 48 feet. While not explicitly listed in 20.40.050 (2) the "clerestory window pop-up" at the northeast building corner is sufficiently similar in function as an Architectural element to permitted encroachments such as cupolas, domes, and skylight structures to meet the standard allowed as a director's determination. Consistent with the referenced code exceptions, the clerestory does not include occupiable space, rather it is an architectural design feature that also provides additional light access.

The proposed clerestory element also functions to screen proposed rooftop mechanical equipment consistent with POMC section 20.127.360(5), which notes that all rooftop screening devices, "must be well integrated into the architectural design through such elements as parapet walls, false roofs, roof wells, clerestories, or equipment rooms." The proposed Architectural element will provide views towards the entry of Sinclair inlet and to act as a beacon or landmark for those arriving to Port Orchard by ferry. The Architectural feature is consistent with the Downtown Subarea Plan Goal CAP-03, which encourages development to face both the Waterfront and Bay Street. The proposed feature will act as a landmark anchoring the west end of the envisioned new pedestrian scaled waterfront street.

#### **Staff Analysis:**

The application seeks a code interpretation to make a determination that a "architectural clerestory popup" is similar to a spire, belfry, cupola, or dome is provided in POMC 20.40.040(2)(a). As proposed, the "architectural clerestory popup" is an elevated section of roof that increases the interior volume but not square footage of the space below this roof. Of the 4 terms provided in this section as height exceptions, and based on a review of the renderings and plans submitted with the code interpretation request, an "architectural clerestory popup" is most similar to a dome. When constructed, the interior of a dome is typically open to the interior floor below and typically creates a grand interior space with expanded room volume. An "architectural clerestory popup" does the same, though as described in the application, the main difference is that the roof and walls are constructed in a linear fashion with rectilinear shapes and 90-degree angles as opposed to a dome which uses arcing or parabolic forms with a round or polygonal footprint. Moreover, domes in most applications are both a taller and more narrow form compared to the "architectural clerestory popup", which is short and squat. This means that cumulative view impacts created by either structure are likely to be comparable.

POMC 20.40.040(2) provides explicit direction to the Director to determine whether other unlisted height encroachments are similar to those listed in POMC 20.40.040(2)(a). This authority makes this requested interpretation ripe for consideration. POMC 20.10.005(1) states that:

*"A decision by the director as to the meaning, application, or intent of any development regulation or procedure in this title is known as an "interpretation." An interpretation of the provisions of this title clarifies conflicting or ambiguous application, wording, scope, or intent of the provisions of this title. The purpose of this chapter is to establish the procedure and criteria*

*that the city will use in deciding upon a written request to interpret the provisions of this title and in issuing any other written interpretation of this title.”*

The Director has the authority to liberally interpret or construe the provisions in Title 20 to secure the public health, safety and welfare, and the rule of strict construction has no applicability in the decision making per POMC 20.02.030. The code provisions referenced by the applicant do create ambiguity in and warrant an interpretation by the Director.

**Findings:**

1. Height limits within the city are established in the Port Orchard Municipal Code and are not established in the Comprehensive Plan.
2. The Comprehensive Plan includes generic references to height in designated centers and in overlay districts but does not address “architectural clerestory popups” or other architectural height projections beyond established district limits.
3. Subarea plans are adopted in appendices to the Comprehensive Plan including the Downtown Subarea Plan.
4. The Downtown Subarea Plan includes specific recommendations for amending the development regulations to establish more generous maximum heights in Downtown Port Orchard but does not address “architectural clerestory popups” or other architectural height projections beyond established district limits.
5. A Downtown Height Overlay District is adopted in POMC 20.38.640 and establishes a 3-story 48-foot height limit for the property at 625 Bay Street.
6. POMC 20.40.040(2) provides for allowed height encroachments beyond district limits under certain circumstances.
7. Kitsap Bank has applied for a code interpretation to determine whether an “architectural clerestory popup” is allowed at 625 Bay Street under the authority granted to the Director in POMC 20.40.040(2) so that they can complete architectural plans and prepare a building permit application for submittal.
8. POMC 20.40.040(2) provides the Director with the explicit authority to determine whether a height encroachment is similar to a spire, belfry, cupola, or dome.
9. Pursuant to POMC 20.40.040(2), when determining similarity, the feature may not include conditioned space or be intended for human occupancy.
10. “Conditioned Space” is not a defined term in the City’s codes.
11. Domes typically create volumetric interior air space, but this volumetric space is not occupied by humans.
12. Domes are not subject to the height limits of the city’s district(s).

13. An “architectural clerestory popup” as described in the application (LU23-Interpretation-01) is similar to a “dome” in the type, human occupancy, and the condition of the interior space created.

**Official Interpretation:** Barring City Council action that supersedes this official interpretation, the following administrative policy is adopted:

An “architectural clerestory popup” as described in application (LU23-Interpretation-01) is similar to a dome and is therefore an allowed height encroachment that is not subject to the height limits of the district, including but not limited to the Downtown Mixed-Use District or the Downtown Height Overlay District.

*Nicholas Bond*

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Nicholas Bond, AICP  
Community Development Director

06/07/2023

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Date of Decision