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8 BEFORE THE HEARING EXAMINER
9 FOR THE CITY OF SEATTLE

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11 In the Matter of the Appeal by
12 NAOMI E. RUDEN
13 of a Decision by the Director of the Seattle
14 Department of Construction and Inspections

Hearing Examiner File:
MUP-20-026

Department Reference
Project 3035728-LU

APPELLANT'S RESPONSE TO APPLICANT'S
MOTION FOR PARTIAL DISMISSAL

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16 I. INTRODUCTION

17 The Appellant pro se, Naomi Ruden, interested in the preservation of Seattle
18 historic buildings and the preservation of accessible housing for the disabled, appealed the
19 Master Use Permit decision ("MUP") granted for the Applicant Ian Maples's ("Applicant")
20 application to construct an 8-story, 125 unit apartment building with retail ("Project") in
21 the City of Seattle ("City"). The Appellant appeals the Analysis and Decision made by the
22 Director of the Seattle Department of Construction and Inspections for Project Number
23 3035728-LU, specific elements including: The Adequacy of Conditions, Design Review and
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27 APPELLANT'S RESPONSE TO APPLICANT'S
28 MOTION FOR PARTIAL DISMISSAL - 1

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Departure, the SEPA Determination of Non-Significance, the Adequacy of EIS, Conditional Use, EIS not Required, Rezone, Impacts to National Register of Historic Places Property, Disabled Access, and Low-Income Housing Tax Credit Program Agreements and Covenants.

The Appellant raises multiple claims related to the Seattle Municipal Code (“SMC” or the “Code”), Seattle Comprehensive Plan policies, the Revised Code of Washington (“RCW”), Washington State Housing Finance Commission’s Low-Income Housing Tax Credit Program Agreements and Covenants, the National Historic Preservation Act of 1966, the National Environmental Policy Act of 1970, the Rehabilitation Act of 1973, and the Code of Federal Regulations. Applicant Ian Maples suggests that issues raised are not properly before the Examiner pursuant to the City of Seattle Hearing Examiner Rules of Practice and Procedure (“HER”) 3.02 (a). The Appellant pro se, Naomi E. Ruden, asserts that most issues raised are properly before the Examiner.

II. FACTS

The Project is a proposed 8-story, mixed use building with 125 apartment units and retail.¹ The Project’s address is 1323 East Union Street, and it will be located on a parcel (the “Project Site”) at the northeast corner of a block bounded by 14th Avenue, East Spring Street, 13th Avenue, and East Union Street in the First Hill/Capitol Hill Urban Center of the City of Seattle. It is located in the Central Area Neighborhood of the City of Seattle. The parcel (the “Project Site”) is currently developed with a multifamily residential structure built in 1909 which will remain and a surface parking lot.

The multifamily residential structure built in 1909 is called the Helen V Apartments (the “Helen V”) and is located on the southern portion of the “Project Site,” and is addressed as 1319 East Union Street and 1321 East Union Street. The Helen V’s principal entrance faces

¹ This statement of facts is drawn from the MUP decision.

1 East Union Street. The parking lot to the north of the Helen V is functionally related to and
2 subordinate to the Helen V and serves the disabled residents of the Helen V.

3 The Helen V is identified by the City of Seattle's Department of Neighborhoods Seattle
4 Historical Sites Inventory as meeting the criteria of the National Register of Historic Places.²
5 This fact is acknowledged by the Property owner, Community Roots Housing, in the SEPA
6 Environmental Checklist submitted for evaluation of the Project 3035728-LU.³ The Helen V is
7 also identified in the National Register of Historic Places document: "Washington MPS
8 Seattle Apartment Buildings 1900-1957", which describes the historical contexts and
9 significance of apartment buildings indicated within the scope of the document.⁴
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11 The parcel itself (the "Project Site") is considered as one Property (the "Helen V
12 Property") under agreements administered by the Washington State Housing Finance
13 Commission ("WSHFC"): the Low Income Housing Tax Credit Program Extended Use
14 Regulatory Agreement #20021217000384 and the Low Income Housing Covenant Agreement
15 #2001100300526.⁵ The Helen V Property receives Project-Based Section 8 Funding from the
16 U.S. Department of Housing and Urban Development ("HUD")⁶, and The Helen V Property
17 serves primarily Extremely Low-Income, Area Median Income ("AMI") 30% tenants who are
18 disabled.⁷
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20 ² City of Seattle's Department of Neighborhoods Seattle Historical
21 Sites Inventory.

22 ³ SEPA Environmental Checklist for Project 3035728-LU, prepared by
23 Capitol Hill Housing (now known as Community Roots Housing),
24 property owner.

25 ⁴ National Archives Identifier 75611176, Washington MPS Seattle
26 Apartment Buildings 1900-1957, National Register of Historic Places
27 and National Historic Landmarks Program Records: Washington
28 1/1/1964-12/30/2013.

⁵ King County Recorder's Office, Recorded Documents.

⁶ HUD Records, Portfolio of Active Section 8 Contracts, Contract
#WA19L000040.

⁷ City of Seattle and Seattle Housing Authority Joint Assessment of
Fair Housing 2017 Report.

III. EVIDENCE

This response is based on the pleadings and papers on file in this action with the Hearing Examiner, and public records.

IV. ARGUMENT

A. The Examiner may dismiss an appeal over which the Examiner lacks jurisdiction or that is without merit on its face.

The Applicant states that pursuant to Hearing Examiner Rule ("HER") 3.02(a) "an appeal may be dismissed without a hearing if the Hearing Examiner determines that it fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief or is without merit on its face, frivolous, or brought merely to secure delay." HER 3.02(b) allows any party to request dismissal of all or part of an appeal by motion. "Once challenged, the party asserting subject matter jurisdiction bears the burden of proof on its existence."

While the Appellant, Naomi E. Ruden, recognizes that some issues are not within the Hearing Examiner's jurisdiction, the Appellant has stated her claims according to ("HER") 3.01(d) Contents. An appeal must be in writing and contain the following: (1) Identification of the matter being appealed, including the number of the application or departmental action, and the applicant name and property address where applicable; (2) A brief statement as to how the appellant is significantly affected by or interested in the matter appealed; (3) A brief statement of the appellant's issues on appeal, noting appellant's specific objections to the decision or action being appealed; (4) The relief requested, such as reversal or modification; (5) Signature, address, telephone and facsimile numbers, and electronic mail

address of the appellant and the appellant's designated representative, if any.

The Appellant will provide further Clarification of issues ("HER") 3.04.

B. The Examiner lacks jurisdiction over Appellant's claims.

1. The Examiner lacks jurisdiction over Appellant's claims related to federal statutes and regulations.

The Appellant agrees that on points 2.1, and 2.2, the National Historic Preservation Act ("NHPA"), the National Environmental Protection Act ("NEPA"), and their corresponding regulations are not within the Hearing Examiner's Jurisdiction.

However, in knowing that this Project involves the Helen V Property, which is an Eligible National Register of Historic Places Property, the City of Seattle's Director of the Seattle Department of Construction and Inspections must consider this historic resource in the Analysis and Decision made for this Project, and correct the corresponding Determination of Non-Significance, point 2.3. This Project will have probable significant adverse impacts to the Helen V Property, and should be evaluated properly. Furthermore, the Hearing Examiner's Findings and Decision of the FEIS of the MHA, found that the FEIS of the MHA was adequate except for the historic resources analysis which was remanded.⁸ Considering that this project is being evaluated under the MHA, it is logical to assume that the Determination of Non-Significance would also be inadequate in its identification and evaluation of a historic resource, the Helen V Property. These historic preservation issues need to be addressed.

The Appellant agrees that on points 2.5 and 2.7 bullet two that the Hearing Examiner also does not have jurisdiction over laws "HUD Basic Laws" the property owner, Community Roots Housing, must abide by, including non-discrimination laws, in being a recipient of Project

⁸ In the Matter of the Appeals of Wallingford Community Council, Et. Al, of the Adequacy of the FEIS issued by the Director, Seattle Office of Planning and Community Development. Hearing Examiner Files W-17-006 through W-17-014.

Based Section 8 Subsidy from the U.S. Department of Housing and Urban Development (“HUD”).

These issues will be brought to the attention of the proper jurisdiction.

2. The Examiner lacks jurisdiction over Appellant’s claims relating to the Revised Code of Washington and Washington State Agency Program Agreements.

The Appellant agrees that on point 2.4 the “Removal of Existing Handicapped Accessible Parking from buildings designated for the aged and handicapped” under Washington state law Chapter 70.92 RCW is a matter for state jurisdiction. However, the Seattle MHA Zoning Ordinance No. 125791, and under SMC 23.54.015 that eliminates parking requirements from rent and income restricted housing, and housing located within MHA Zones is discriminatory as it removes parking altogether from properties which are the most likely to have a high number of disabled tenants living in them. This is an Unfair Practice under SMC 14.06.020.

On point 2.6, the Appellant continues to contend that the Project does not comply with the Low Income Housing Tax Credit Program Extended Regulatory Agreement #20021217000384 and the Low Income Housing Covenant Agreement #20001100300526, administered by the Washington State Housing Finance Commission. These agreements directly relate to the parcel in question, and specify the terms and conditions applicable for the housing and land located upon this parcel. The Project does not comply with these Agreements and Covenants, as it removes the required parking from the Helen V Property, as well as does not meet the AMI of 50% required of housing located on the Helen V

Property. In essence, ignoring these agreements allows the owners to build more expensive rental property on land that is designated for the poor and disabled.

3. The Examiner lacks jurisdiction over Appellant's claims regarding the Seattle Municipal Code and the Seattle Comprehensive Plan.

i. Seattle Municipal Code.

As described in above Section 2, Appellant believes claim 2.4 regarding the MHA to be discriminatory and is under the jurisdiction of the Hearing Examiner.

Both claims 2.7 bullet 3 and 2.8 regarding the Seattle Fire Code are related to the inadequacy of the Administrative Design Review with Departures SMC 23.41 that is being contested in this Appeal.

ii. Seattle Comprehensive Plan

The Helen V Property was subject to a legislative rezone, which changed its designation from a Lowrise 3 Zone to a Midrise MHA 1 zone. As such, the Project set forth by the Applicant, has caused and will cause further displacement of existing Helen V residents, who are primarily disabled and considered a marginalized population. The loss of Handicapped Accessible parking which is currently on the property has not been mitigated or even considered by the City of Seattle. The development regulations are inadequate in protecting the disabled from such discriminatory effect.

C. Appellant failed to file an interpretation of Type I decision; therefore Type I decisions are not properly before the Examiner.

The Appellant's Appeal included the Adequacy of the Administrative Design Review with Departures (SMC 23.41) This challenge does not require an interpretation, and items listed are clearly stated as reasons for the inadequacy. Point 2.7 bullet one, the Nonconformity that is created is not mitigated in any way. Point 2.7 bullet four, the new building, the Project, will block all public views of the Helen V building from E. Union St and 14th Avenue, creating substantial safety issues for the Helen V residents, as well as blocking the significant historical features of the Helen V building. The Applicant in the Design Review documents has consistently blocked Helen V building access in their Project drawings (access to laundry room, placement of trash storage directly blocking windows of Helen V building) and have demonstrated a complete lack of understanding of the Helen V's paths of egress. Point 2.9 related to compliance with building width and depth standards (SMC 23.45.528.B.1) also should not be dismissed as it is mathematically inaccurate. Point 2.10 regarding the FAR in use by the Helen V is also mathematically inaccurate and misrepresented in the Design Review documents. For all of these clearly stated small points, the Administrative Design Review with Departures is based on inadequate information.

D. The Hearing Examiner should dismiss claims that are not stated with specificity.

As previously stated, The Appellant stated her claims according to ("HER") 3.01(d) Contents. An appeal must be in writing and contain the following: (1) Identification of the matter being appealed, including the number of the application or departmental action, and the applicant name and property address where applicable; (2) A brief statement as to how

1 the appellant is significantly affected by or interested in the matter appealed; (3) A brief
2 statement of the appellant's issues on appeal, noting appellant's specific objections to the
3 decision or action being appealed; (4) The relief requested, such as reversal or modification;
4 (5) Signature, address, telephone and facsimile numbers, and electronic mail address of the
5 appellant and the appellant's designated representative, if any.

6
7 The Applicant asserts that point 2.7 is ambiguous. The Appellant disagrees that lot
8 nonconformity, height nonconformity, blocking exit egress of the Helen V, and blocking
9 views to the Helen V are ambiguous in any way, and are in fact quite specific. These are
10 issues that concern the public regarding health, safety, and welfare that are involved in this
11 proposed Project.

12 **V. CONCLUSION**

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14 The Appellant requests that the Hearing Examiner review the Appellant's Response
15 to Applicant's Motion for Partial Dismissal, and clarify what issues are still present in the
16 appeal, so that all parties may properly prepare for the hearing. The Appellant believes the
17 following issues remain:

- 18 • Issue 2.3 SEPA- Determination of Non-Significance, Conditioned. Impacts to Helen
19 V historic resource.
- 20 • Issue 2.4 Unfair Practices/ Disability Discrimination
- 21 • Issue 2.6 Land Use Agreements and Covenants in Effect
- 22 • Issue 2.7 Bullet 1 SEPA-Nonconformity of Lot Boundary Adjustments/Creation of
23 Additional Parcel

- Issue 2.7 Bullet 4 SEPA- Public Views
- Issue 2.7 Bullet 5 SEPA- Height Nonconformity
- Issue 2.8 Administrative Design Review with Departures- Adequacy- Access to a Public Way
- Issue 2.9 Administrative Design Review with Departures- Adequacy- Maximum Structure Width and Depth
- Issue 2.10 Administrative Design Review with Departures- Adequacy- FAR in use
- Issue 2.11 Administrative Design Review with Departures- Adequacy- Solid Waste
- Issue 2.12 Administrative Design Review with Departures- Adequacy- Applicant's Use of Addresses not assigned to Project
- Issue 2.13 Administrative Design Review with Departures- Adequacy- Landscaping Standards
- Issue 2.14 SEPA- Construction Impacts

DATED this 30th day of December, 2020.

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