

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeals of)	Hearing Examiner Files:
)	MUP-21-016 (CU)
Magnolia Community Council and Others)	
)	Department Reference:
from a decision issued by the Director, Seattle)	3028072-LU
Department of Construction and Inspections)	
)	SDCI CLOSING STATEMENT
)	
)	

Summary

The subject appeal is of Seattle Department of Construction and Inspections (SDCI) Project 3028072-LU (“the project”), which is an application for a Master Use Permit (MUP) to allow 2, 3-story single-family residences. Parking for 13 vehicles is proposed. As shown on page 1 of the SDCI MUP decision (Exhibit 1), the sole discretionary (or “Type II”) land use approval required for the proposal is an Environmentally Critical Areas Administrative Conditional Use (SMC 25.09.260).

Two appeals of the MUP decision were filed. One of the appeals was withdrawn, and the appeal of the Magnolia Community Council and Others remains. The appeal raised various issues with respect to the analysis and conclusions in the SDCI decision. SDCI’s closing statement will address the issues raised by the appellant and the scope of conditional use mitigation for the subject permit that is required due to the presence of environmentally critical areas (ECAs). The conditions requested by appellants go beyond the scope of mitigation that can be applied to a single-family use that is permitted outright in this zone. The appellants alleged that the Director (of SDCI) erred in concluding that the project does not require additional mitigation pursuant to SMC 23.42.042 related to tree heights, views from Ursula Judkins Viewpoint Park, private stair access to Park property, and the Admiral’s House.

SDCI’s position is that the appellants have failed to present sufficient evidence at hearing on any of the appeal issues to demonstrate that the SDCI has erred in its decision. Specifically, the appellants have not provided sufficient evidence to demonstrate that SDCI failed to “impose conditions to mitigate adverse impacts on the public interest and other properties in the zone or vicinity”.¹ Instead, the clear evidence presented by SDCI and the project applicant shows that the Director’s decision should be affirmed in all respects and the appeal should be rejected. The

¹ SMC 23.42.042.B

SDCI decision is well supported by the evidence in the record that the project was properly reviewed and conditioned pursuant to SMC 25.09.260.

Burden of Proof

SMC Section 23.76.022.C.7 sets forth the standard of review for administrative appeals of “Type II” Master Use Permit approvals, such as the subject ECA Administrative Conditional Use (ACU) decision. SDCI must make a *prima facie* showing that its grant of the conditional use approval is in compliance with SMC 25.09.260, which authorizes an ECA ACU in single-family zones for the purpose of development of single-family residences that meet certain development standards.

The remedy sought by appellants is a remand for further review and imposition of additional conditions allegedly required to mitigate adverse impacts to public views and the Admiral’s House. However, the record at hearing shows that the appellants have failed to offer sufficient information about either substantive issues or procedural matters to justify a remand of the SDCI decision. SDCI’s position is explained in further detail below.

Argument

The appellants presented the following arguments:

a. The Project is not exempt from SEPA

The appellant correctly stated that, “. . .the Hearings Examiner may not have jurisdiction to reverse the Department’s decision that the Project is SEPA exempt. . .” (Appeal of Analysis, Recommendation and Decision of the Director, p. 2). The Department determined the project is exempt and the appellant has not provided sufficient evidence to support that this decision is in error.

Issues involving the Admiral’s House have no bearing on the SEPA exemption determination. The ownership and use of the Admiral House is beyond the scope of review of this project. The decision that the project is exempt from SEPA was correct.

b. The Decision fails to consider specific deed restrictions, conditions, and view covenants related to the Property

The appellant claims the Director failed to take appropriate actions to protect the public view corridor available at Ursula Judkins Viewpoint.

View covenants and other measures meant to protect views are not enforced by the Department and the City and are not a subject of review. The city does not enforce conditions on development made between private parties, such as view corridor protection covenants. The only views protected by the Department and the City are those expressly laid out in the Land Use Code, including those in SMC 23.47A.012.A.1.c in commercial zones and SMC 23.60A, the

Shoreline Master Program. This project is not located in either of these zones and does not require view protection.

The Director did not review specific deed restrictions, conditions, and view covenants on this property because they are not enforced by the City are beyond the scope of review of this project.

c. The Decision fails to impose conditions to mitigate adverse impacts

The impacts raised by the appellant are beyond the impacts that require mitigation pursuant to SMC 25.09.260.C.1. This section requires mitigation when authorizing an administrative conditional use to, “protect and mitigate negative impacts to biodiversity areas and corridors, priority habitat and setbacks, riparian corridors, wetlands, wetland buffers, and steep slope erosion hazard areas and buffers.” The issues raised by the appellant are not related to impact on any of these areas.

However, mitigation was required to mitigate impacts on the area identified in the code. The mitigation plan (City Exhibit 7) on page 1 states, “To compensate for ECA impacts resulting from the proposed development activities, the site landscape plan includes a mitigation planting plan, which proposes restoration through removal of non-native and invasive plant species, and installation of native vegetation on the steep slope, buffer, and adjacent areas.”

The Decision requires the mitigation described in the code. The impacts raised by the appellant are beyond the scope of the review of this project.

Conclusion

SMC 25.09.260.A states “In Single-Family zones the Director is authorized to approve an environmentally critical areas administrative conditional use pursuant to Section 23.42.042 and this Section 25.09.260.” As stated on page 5 of the SDCI MUP decision (Exhibit 1), the “Director may deny or recommend denial of a conditional use if the Director determines that adverse impacts cannot be mitigated satisfactorily, or that the proposed use is materially detrimental to the public welfare or injurious to property in the zone of vicinity in which the property is located.”

SMC 25.09.260.C provides conditioning for ECAs. Specifically, it requires mitigation pursuant to SMC 25.09.065. The applicant provided an ECA mitigation plan (City Exhibit 7) meeting the standards of SMC 25.09.065.

SMC 25.09.260.C also provides that the Director may impose additional conditions to protect other properties that could be adversely affected. As conditioned, the ECA Covenant (Exhibit 8) delineates the non-disturbance areas on the site to protect potential negative impacts on the steep slope critical areas and its associated buffer.

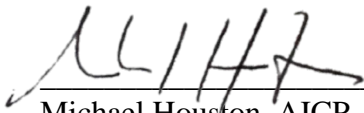
Furthermore, the issues raised by the appellants were beyond the scope of the code authority provided under SMC 25.09.260. The code authority under SMC 25.09.260 does not enable the

SDCI Closing Statement
October 5, 2021

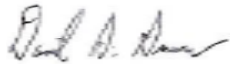
Director to impose additional mitigation pursuant to SMC 23.42.042 related to tree heights, views from Ursula Judkins Viewpoint Park, private stair access to Park property, and the Admiral's House. These concerns are not and cannot be addressed as part of the Director's review of the project.

The applicants of SDCI record no. 3028072-LU have satisfied the Environmentally Critical Areas Administrative Conditional Use criteria as conditioned in the SDCI Decision. Other issues raised by appellants were beyond the scope of review and were correctly not addressed in the decision. The Hearing Examiner should affirm SDCI's approval of the Administrative Conditional Use permit.

Entered this 5th day of October 2021.



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