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Peter J. Eglick
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May 29, 2014

City of Seattle
Hearing Examiner
700 Fifth Avenue, Suite 4000
PO Box 94729
Seattle WA 98104

RE: Appeal by Neighbors Encouraging Reasonable Development re DPD Application No. 3013303 (3078 SW Avalon Way) and Director's May 15, 2014 Decision

Dear Examiner,

This letter is being submitted concurrently with a Notice of Appeal on behalf of Neighbors Encouraging Reasonable Development ("NERD") in the above matter. We would very much appreciate advance consultation on dates before a prehearing conference and/or hearing dates are set in this appeal.

Additionally, NERD has submitted a concomitant Request for Interpretation to DPD. A copy of the Request is attached to the Notice of Appeal for your convenience. We also ask that DPD provide an estimate of lead time for completion of Interpretations before any Pre-Hearing Conference is scheduled.

Respectfully,

EGLUCK KIKER WHITED PLLC



Peter J. Eglick

cc: Client

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BEFORE THE CITY OF SEATTLE
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NEIGHBORS ENCOURAGING REASONABLE
DEVELOPMENT,

Appellant,

v.

DIRECTOR, SEATTLE DEPARTMENT OF
PLANNING AND DEVELOPMENT, and

RADIM BLAZEJ,

Respondents.

CASE NO.

(DPD Application No. 3013303)

NOTICE OF APPEAL

(Including Design Review, SEPA, and
Request for Land Use Code Interpretation)

1. **APPELLANT/AUTHORIZED REPRESENTATIVE INFORMATION**

Appellant Neighbors Encouraging Reasonable Development ("NERD") is a Washington nonprofit corporation whose members include West Seattle property owners and residents (including on the immediately adjacent alley) impacted by the proposed development at issue in this appeal. NERD's authorized representative in this appeal is its attorney, Peter J. Eglick, with the following contact information:

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2. DECISION BEING APPEALED

NERD appeals the May 15, 2014 "Analysis and Decision of the Director" ("Decision") concerning Master Use Permit Application No. 3013303 and all related and subsidiary decisions, including the Design Review Recommendation decision and the SEPA Determination of Nonsignificance. A copy of the Decision as well as a copy of NERD's concurrent Request for Interpretation are attached to this appeal.¹

3. APPELLANT'S INTERESTS

NERD members' interests will be immediately and directly impacted by the proposed project through, *inter alia*, its failure to adequately address and mitigate significant, adverse height/bulk/scale, traffic, parking, and geotechnical impacts. The proposed project will loom above their neighborhood and will be incompatible with immediately adjacent areas, including particularly ones zoned single family. It will burden the neighborhood with additional traffic and unmet parking demand. Further, it is being constructed without proper mitigation of potential adverse geotechnical impacts particularly in light of recently increased excavation depth. NERD members have actively participated at every level of review of the proposed project, including attendance at Design Review Board meetings and submission of comments to DPD. Unfortunately, their well-documented and grounded concerns have been met with indifference. The result is this appeal and its concurrent Request for Interpretation.

4. APPEAL GROUNDS

A. Director's Decision Is Based on Incorrect Premises Contrary To Code

The Director's Decision and the Design Review Board ("DRB", "Board") Recommendation it incorporates start from faulty premises. Among these are an incorrect

¹ The Request for Interpretation and resulting Director's Interpretations are incorporated by reference in this appeal to the extent that they are inconsistent with the outcomes sought by Appellant.

1 calculation of the project's proposed height and acceptance of the applicant's inaccurate
2 representation that the project is compliant with Code FAR requirements. These premises are
3 incorrect. However, they were improperly utilized as the baseline from which the DRB and
4 the Director considered whether and how and to what extent to mitigate project impacts. As a
5 result the DRB Recommendation and the Director's Decision incorporating it are fatally
6 flawed.

7 **B. The Design Review Process Was Conducted and the Board's Guidance**
8 **and Recommendation Decisions Were Affected With Fundamental**
9 **Procedural and Substantive Errors**

10 The DRB review and final recommendation concerning the proposed project failed to
11 comply with the Code both procedurally and substantively. The result is a project that is too
12 big, too tall, too overpowering on the zone edge on which it is situated. The DRB Early
13 Design Guidance (EDG) and subsequent Recommendation proceedings were not conducted in
14 accordance with Code and impermissibly precluded effective public participation which
15 focused on raising these concerns. For example, the Board failed to accurately note and
16 identify "guidelines of highest priority to the neighborhood." SMC 23.41.014.C.1. It
17 repeatedly admonished the public not to raise or request mitigations that the Staff and Board
18 erroneously claimed were not within the purview of the design review process. The Board's
19 resulting decisions and guidance were not reached in a legally permissible manner and were
20 not drafted or issued in compliance with Land Use Code or other legal requirements,
21 including requirements for issuing a reviewable decision. The DRB Final Recommendation
22 fails to properly acknowledge or address key concerns identified by the community and
23 validated by applicable guidelines. It focuses on design review guidelines favored by the
24 project applicant while ignoring or shortchanging others. The Design Review process and
25
26

1 Recommendation decision as a whole fail to comply with SMC 23.41.014 including but not
2 limited to as set out in SMC 23.41.014.F.3.

3 **C. The Director's Decision and the Design Review Board Final**
4 **Recommendation Err in Failing to Mitigate Significant Impacts**

5 The Project as recommended by the DRB and approved by the Director will result in
6 significant adverse impacts including on:

- 7 • single family zones and neighborhoods which are immediately on the edge,
8 adjacent to the proposed project, in light of the project's incompatible height
9 bulk, and scale;
- 10 • traffic and transportation;
- 11 • neighborhood parking (including through acceptance and reliance on an
12 inaccurate parking study);
- 13 • the adjacent single family neighborhood alley, including through granting a
14 departure to allow use of the alley (due to driveway slope in excess of Code
15 limits) when use of the alley will create impacts on the single family
16 neighborhood inconsistent with applicable design guidelines and policy;
- 17 • the neighborhood through precedent or inducement of similar incompatible
18 development and resulting cumulative impacts;
- 19 • neighboring properties' solar access, privacy, and views.

20 The Recommendation and Decision therefore fail to properly implement Seattle SEPA
21 policies, e.g., SMC 25.05.665 et seq. as well as applicable Design Review Guidelines and
22 Policies.

23 **D. The Decision Fails to Address or Mitigate Probable Significant Adverse**
24 **Geotechnical Impacts**

25 At various points in the MUP review process, the applicant was cautioned that
26 potential impacts from construction on neighboring alley properties should be addressed and
mitigation measures proposed (including in an updated excavation shoring plan). However,

1 that has not occurred. Further, the project geotechnical report was, by DPD's own admission,
2 not in DPD's files and not available for public review during the published public comment
3 period on this application. When ultimately received and produced by DPD the report turned
4 out to be superficial and formulaic, apparently based in part (perhaps inadvertently) on reports
5 for other sites. It deferred addressing key issues, and has never since been updated to reflect
6 project changes (including a substantial increase in excavation depth). There is a probability
7 of significant adverse geotechnical impacts on alley properties that has simply not been
8 addressed let alone mitigated.²
9

10 **5. RELIEF REQUESTED**

11 As relief, Appellant requests that the Examiner:

- 12 5.1 Reverse and vacate the Decision and remand this matter for re-commencement
13 of the public notice and Design Review process after all necessary project
14 information, in accurate form, has been submitted to DPD and is available to
15 the public for review;
- 16 5.2 Reverse and vacate the Decision as in error for approving the application based
17 on procedures and substance not in compliance with the Land Use Code for the
18 reasons stated above;
- 19 5.3 Reverse and vacate the DNS with conditions and remand this matter to DPD
20 for preparation of a focused environmental impact statement addressing the
21 issues and impacts associated with the proposal; and/or,
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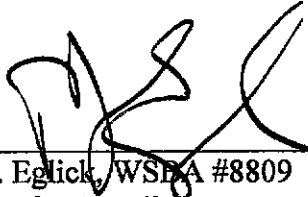
² NERD's concurrent Request for Interpretation questions, inter alia, the Department's grant of an exemption from steep slope requirements that would otherwise apply.

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- 5.4 Reverse and vacate the DNS with conditions and remand this matter to DPD for imposition of SEPA conditions to mitigate the adverse impacts associated with the proposal;
- 5.5 Reverse and vacate the Decision as approving a proposal not in compliance with, inter alia, SMC 23.41.014F and applicable Design Review Guidelines, as described above;
- 5.6 Reverse and vacate any Interpretation to the effect that the proposal as approved by the Decision complies with and is permitted under the Land Use Code and enter findings and conclusions upholding the Interpretation outcomes proposed by Appellant; and/or
- 5.7 Grant such other relief as the Appellant requests above or may further request and/or that is appropriate under the law.

Respectfully submitted this 29th day of May, 2014.

EGLICK KIKER WHITED PLLC

By



Peter J. Eglick, WSPA #8809
Attorney for Appellant