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8 **BEFORE THE HEARING EXAMINER**
9 **FOR THE CITY OF SEATTLE**

10 In the Matter of the Appeal of:

11 **NEIGHBORS ENCOURAGING**
12 **RESPONSIBLE DEVELOPMENT**

13 From a Decision of the Director, Department of
14 Planning and Development Regarding a Master
15 Use Permit

HEARING EXAMINER FILE:
MUP-14-006

Department Reference:
3013303

CORRECTED APPLICANT'S RESPONSE
TO MOTION FOR CONTINUANCE

16
17 **INTRODUCTION**

18 NERD asks the Hearing Examiner to amend the prehearing order. NERD proposes that
19 the prehearing order be amended to suspend all deadlines and dates. See email transmittal from
20 counsel for NERD to Sue Tanner, Hearing Examiner, dated July 18, 2014.

21 As the Examiner knows, indefinite suspension of deadlines and dates is discouraged by
22 the Hearing Examiner Rules. See HER 2.06.

23
24 Fortunately, such a drastic outcome is not required in this case. The hearing date
25 assigned by the Examiner – September 7 – is still seven weeks away. Applicant suggests that the
26 dates for submittal of final witness and exhibit lists be postponed by two weeks in each case – to
27 August 15 for NERD, and to August 22 for Applicant and DPD.

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1 **FACTS**

2 NERD has raised four grounds for MUP appeal. Only one of the four relates to FAR.
3 NERD has asked for six code interpretations. Only one of the six relates to FAR. To date,
4 NERD has not identified any specific objections to the Project FAR.
5

6 DPD issued a code interpretation on July 11, 2014, in accordance with the schedule
7 identified in the Prehearing Order. The interpretation addressed all six issues raised by NERD.
8 As to the issue of FAR, the interpretation concluded that the proposed structure was allowed a
9 total of 61,427 sf. At p. 7. The project architect had identified a total project of 58,884 sf, well
10 below the allowed maximum. Id. DPD, in reviewing the work of the DPD Plans Examiner for
11 the purpose of the code interpretation, identified an additional 2,320 sf that should have been
12 allocated to the project. At p. 8. Even adding that to the previous total, the project was below
13 the FAR limit. The new total was 61,204 sf. The allowable total is 61,247 sf.
14

15 Subsequently, DPD elected to conduct additional review. A supplemental interpretation
16 was issued on July 17, 2014. In that supplemental interpretation, DPD revised its July 11
17 interpretation and concluded that an additional 4,790 sf should have been allocated to the project,
18 rather than the 2,320 sf identified on July 11. Accordingly, under the supplemental DPD
19 analysis, the project is 2,427 sf over the FAR limit (this is less than 4 percent of the entire
20 project). Supplement at p. 9.
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22 To resolve the slight discrepancy identified in the supplemental interpretation, the project
23 architect will identify slight revisions. They have already been identified. The architect expects
24 to submit them to DPD promptly. It is understood DPD would also intend to review them
25 promptly.
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1 **DISCUSSION**

2 The scheduling of hearings is of course a matter wholly within the Examiner's discretion,
3 and the Applicant fully appreciates the scope of that discretion. With that said, the Applicant
4 respectfully asks the Examiner to retain the existing September 8 hearing date, which is seven
5 weeks in the future. When the hearing date was initially set at September 8, the Applicant noted
6 that it was over three months from the date the appeal was filed, but was willing to accept the
7 delay to accommodate the vacation schedules of the Appellants. To delay it even further,
8 however, would be inconsistent with HER 2.06.
9

10 Under Applicant's proposal, NERD will have a full two weeks to review the slightly
11 revised plans as approved by DPD. We understand that DPD will be able to review the revised
12 plans by August 1. Moreover, as indicated above, NERD will have almost three months entirely
13 to prepare its appeal as to its other three MUP issues and its five other code interpretation issues.
14

15 The revised plans, as indicated, will be only slightly different from the current plans. It
16 should not in any event be a major undertaking to evaluate the differences between the two, since
17 they involve only a few thousand square feet. Applicant understands from the prehearing
18 conference that NERD believes the architect's FAR calculations as approved by DPD are
19 drastically miscalculated. To the extent that is NERD's theory, the minor revisions outlined in
20 the first and the supplemental code interpretations should be of little moment to NERD's appeal.
21

22 Accordingly, Applicant respectfully suggests that the prehearing order be revised to allow
23 Appellant until August 15, 2014 to file its final witness and exhibit lists, and to allow Applicant
24 and DPD until August 28, 2014 to file its final witness and exhibit lists.
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1 **CONCLUSION**

2 The applicant respectfully asks the Examiner to extend the dates for filing final witness
3 and exhibit lists by two weeks, but to otherwise retain the current case schedule.
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5 Dated this 21st day of July, 2014.
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7 Respectfully submitted,

8 McCULLOUGH HILL LEARY, P.S.
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12 Attorneys for Applicant
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