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5 BEFORE THE CITY OF SEATTLE
6 OFFICE OF HEARING EXAMINER

7 NEIGHBORS ENCOURAGING
8 REASONABLE DEVELOPMENT,

9 Appellant,

10 v.

11 DIRECTOR, SEATTLE DEPARTMENT OF
12 PLANNING AND DEVELOPMENT, and

13 RADIM BLAZEJ,

14 Respondents.
15

**Hearing Examiner File No. MUP-14-006
(DR,W)
S-14-001**

(DPD Application No. 3013303)

**SUPPLEMENTAL RESPONSE TO
REQUEST FOR MORE DEFINITE
STATEMENT**

16 On June 24, 2014 Appellant Neighbors Encouraging Reasonable Development
17 (“NERD”) filed its Response to Request for More Definite Statement, reserving the right to
18 supplement that Response. Since then, DPD has successively issued three Interpretation
19 documents on July 11, 2014, July 17, 2014, and August 1, 2014: the latter two effectively
20 approve a new design without returning to the Design Review Board or publishing a notice
21 for public comment. In addition, DPD and the applicant have provided discovery responses
22 which, inter alia, disclose that the applicant and DPD have an unpublished agreement on
23 further changes to the project design without review by the public or the Design Review
24 Board. Appellant NERD therefore now submits the following Supplemental Response to the
25
26

**SUPPLEMENTAL RESPONSE TO REQUEST FOR
MORE DEFINITE STATEMENT - 1**



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1 applicant's Request for More Definite Statement:

2 Applicant's Request: "Paragraph 4(A). This claim states that the Design Review
3 decision is based on faulty premises. It identifies two: Height and FAR calculations. Please
4 identify whether Appellant claims that there are any other faulty premises that were
5 improperly utilized."

6 Initial Response: The request does not fully quote or accurately characterize Notice of
7 Appeal section 4(A) which is incorporated here by reference. Without waiver, in response to
8 this specific question asked concerning Notice of Appeal section 4(A) and the Design Review
9 decision, additional faulty premises include those identified in NERD's Request for
10 Interpretation Nos. 3, 4, 5, and 6 as well as those identified in Notice of Appeal sections 4B,
11 4C, and 4D. Subsumed in these is the faulty DPD/DRB premise that the project had satisfied
12 the shortfalls under the Code specifically identified in DPD Correction Notices, including but
13 not limited to Nos. 1 (April 01, 2013), 2 (October 15, 2013), and 3 (October 31, 2013).
14 Appellant reserves the right to supplement this response when the applicant and DPD finally
15 respond to Appellant's discovery, which has been pending since June 3, 2014.
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18 Applicant's Request: "Paragraph 4(B). Please identify all code provisions upon which
19 Appellant relies for the proposition that the DRB proceedings were not conducted in
20 compliance with Code, were not reached in a legally permissible manner, and were not
21 drafted or issued in compliance with Land Use Code requirements."
22

23 Initial Response: This request specifically for "code provisions" does not fully quote
24 or accurately characterize Notice of Appeal section 4(B) which is incorporated here by
25 reference. Without waiver, and in response to the request for "code provisions," implicated
26

1 code sections include SMC 23.41.010; 23.41.012; SMC 23.41.014 including B2, B3, C1, C2,
2 D, E, F. Appellant reserves the right to supplement this response when the applicant and DPD
3 finally respond to Appellant's discovery, which has been pending since June 3, 2014.

4 Supplemental Response: As noted in NERD's initial response, this request
5 specifically for "code provisions" does not fully quote or accurately characterize Notice of
6 Appeal section 4(B) which is incorporated here by reference. Without waiver, additional
7 implicated code sections include SMC 23.41.002; SMC 23.41.008.A; and SMC 23.76.020.A.
8

9 Applicant's Request: "Paragraph 4(C). Please identify all design review guidelines
10 and policies which Appellant claims the Decision fails to properly implement."

11 Initial Response: These have been identified in Appellant's members' submissions on
12 the record in this matter including but not limited to "Neighborhood Design Counterproposal"
13 January 16, 2014 submitted to DPD, DRB, and the applicant, a copy of which is attached and
14 incorporated by reference. The Seattle Design Guidelines, including current and prior versions
15 of CS2 D, and CS3A also apply. Appellant reserves the right to supplement this response
16 when the applicant and DPD finally respond to Appellant's discovery, which has been
17 pending since June 3, 2014.
18

19 Supplemental Response: NERD supplements its previous response to this request by
20 identifying the following additional design review guidelines:

21 Seattle Design Review Guidelines For Multifamily and Commercial Buildings
22 (November 1998, amended 2006):

- 23 A-1 (Responding to Site Characteristics);
- 24 A-2 (Streetscape Compatibility);
- 25 A-4 (Human Activity);
- 26 A-5 (Respect for Adjacent Sites);
- A-6 (Transition Between Residence and Street);
- A-8 (Parking and Vehicle Access);

1 B-1 (Height Bulk and Scale Compatibility);
2 C-1 (Architectural Context);
3 C-3 (Human Scale);
4 C-5 (Structured Parking Entrances);
5 D-1 (Pedestrian Open Spaces and Entrances);
6 D-8 (Treatment of Alleys)

7 West Seattle Junction Urban Village Design Guidelines (2001):

8 B-1 (Height, Bulk and Scale Compatibility)
9 D-1 (Pedestrian Open Spaces and Entrances)

10 Seattle Design Guidelines (2013):

11 CS1 C (Land Form);
12 CS2 B (Adjacent sites, Streets and Open Spaces);
13 DC2 A (Massing) and C (Secondary Architectural Features)

14 West Seattle Junction Neighborhood Design Guidelines (2013):

15 CS2 III (Height Bulk and Scale)
16 DC1 I (Visual Impacts of Parking Structures)

17 Applicant's Request: "Paragraph 4(D). It is unclear what if any Code provision
18 Appellant claims was violated with respect to the issue of geotechnical impacts. Please
19 identify any Code provisions upon which Appellant relies in making its claim.

20 Initial Response: The request does not fully quote or accurately characterize
21 Notice of Appeal section 4(D) which is incorporated here by reference. Without waiver, the
22 applicable Code provisions include SMC 22.170.200; 23.76.010 including A, D; 25.05.675D;
23 SMC 25.09.010 et seq including but not limited to .020, .040, .015, .060, .180, .330, .360,
24 .380 as well as the citations in Appellant's Request for Interpretation. See also, e.g., DPD
25 Correction Notice #1 (February 22, 2013) and citations therein. Appellant reserves the right to
26 supplement this response when the applicant and DPD finally respond to Appellant's

1 discovery, which has been pending since June 3, 2014.

2 Dated this 8th day of August, 2014.

3 EGLICK KIKER WHITED PLLC

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5 By _____
6 Peter J. Eglick, WSBA #8809
7 Attorney for Appellant

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MEETING

Date: Thursday, January 16, 2014

Time: 8:00 p.m. (Now 6:30)

Location: West Seattle Senior Center 4217 SW Oregon St
Hatten Hall

Design Proposal: Neighborhood Design Counter Proposal

Statement of Incompatibility

This proposal, 3013303, with a 4+ foot reduction still exceeds what is compatible with the neighborhood of 32nd Ave SW in the area Guideline B-1: Height, Bulk, and Scale Compatibility.

- **We restate our highest concern:** The Height, Bulk and Scale of project 3013303 is incompatible with the neighborhood it would abut, a much less intensive the Single Family 5000 zone, the neighborhood of 32nd Ave SW. This project threatens our neighborhood with severe unmitigated adverse impacts. SMC 23.41.014 Design review process, Guideline priorities and Community consensus- that the DRB is to incorporate
 - The proposed project is of substantially different scale, along its long axis where 100 percent of it abuts single-family residences that are one or two-story on 5000 sf. lots.
 - There is no structure built in the MR zone abutting 32nd Ave SW to provide a precedent for creating a continuous barrier up against single family homes that spans 4 lots
 - The circumstances of this particular site require the actual reduction of height, bulk and scale to mitigate the adverse effects of the proposed project as previously noted and addressed again below.
- **This project is incompatible by Neighborhood Specific Guidelines: West Seattle Junction Design Guidelines** We are explicitly a neighborhood to be protected from the urban village during its development as noted in the "[West Seattle Junction Neighborhood Plan](#)" (page 40). This living public document is the basis for the intent of the adopted design guidelines for the West Seattle Junction and states that "The *guidelines help to reinforce existing character and protect the qualities that the neighborhood values most* in the face of change." (Page i in the Introduction).
- **This project, by definition, is incompatible by Seattle Municipal Codes** (by SMCs SW Avalon Way as abutted to 32nd Ave SW cannot be rezoned to MR)
SMC 23.34.009 Height limits of the proposed rezone. (as applicable to Avalon) to put MR next to Single Family would not be allowed
 - 2. A gradual transition in height and scale and level of activity between zones (MR and SF5000) shall be provided unless major physical buffers, as described in [Subsection 23.34.008 E2](#), are present. ***None are present.***
- **This incompatibility is acknowledged and reinforced by the recent legislation that was passed the City Council, Ordinance 124307**
Thank you City Council!

Request to the SWDRB adjust the design of Project 3013303:

- To meet neighborhood objectives, and to provide for effective mitigation of a proposed project's impact and influence on a neighborhood according to the purposes of SMC 23.41.002
- To fulfill their role to synthesize community input on design concerns and provide early design guidance to the developer and a recommendation with specific conditions of approval which are consistent with the design guidelines applicable to the development to the director that ensures fair and consistent application of Citywide or neighborhood-specific design guidelines according to SMC 23.41.008
- To identify those guidelines of highest priority to the neighborhood and incorporate any community consensus regarding design and expressed at the meeting into its guideline priorities according to SMC 23.41.014
- To apply the Mid Rise Design Guideline B-1: Height, Bulk, and Scale Compatibility in its stated intent where the analysis and mitigation of height, bulk and scale impacts will be accomplished through the Design Review process and use the applicable measures stated in the guideline that are necessary in order to mitigate adverse impacts and achieve an acceptable level of compatibility of the proposed project
- DRB has the authority and obligation to recommend to reduce the *actual* Height, Bulk and Scale of this project as it abuts a Single Family 5000 neighborhood and is incompatible.
Guideline B-1: Height, Bulk, and Scale Compatibility

This guideline restates the City's SEPA (State Environmental Policy Act) Policy on Height, Bulk and Scale. Development projects in multifamily and commercial zones may create substantial adverse impacts resulting from incongruous height, bulk and scale. For projects undergoing Design Review, the analysis and mitigation of height, bulk and scale impacts will be accomplished through the Design Review process. Careful siting and design treatment based on the technique described in this and other design guidelines will help to mitigate some height, bulk and scale impacts; ***in other cases, actual reduction in the height, bulk and scale of a project may be necessary to adequately mitigate impacts.*** Design Review should not result in significant reductions in a project's actual height, bulk and scale unless necessary to comply with this guideline...
... In some cases, reductions in the actual height, bulk and scale of the proposed structure may be necessary in order to mitigate adverse impacts and achieve an acceptable level of compatibility.

- Under this context we raise the issues of this project 3013303 as incompatible by SEPA standards, WAC 197-11-444 Built Environment, so that the SW DRB can take measures to meet neighborhood objectives by reducing the Height, Bulk and Scale to provide for effective mitigation of the proposed project's (3013303) impact and influence on a neighborhood (32nd Ave SW) (Part I Design Review- 23.41.002 Purpose and intent point B.)...

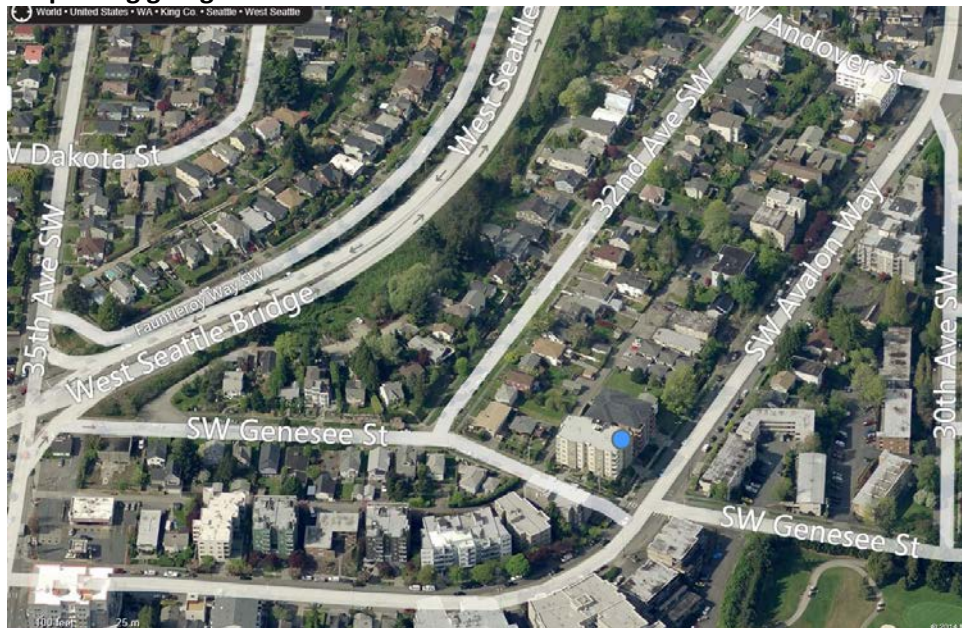
In the negatively impacting areas of:

- Privacy
- Vehicular Traffic
- Parking
- Loss of single family neighborhood character
- Traffic hazards
- Transportation systems

As a general rule we are not opposed to the development of the properties enveloped in the Project 3013303. We are opposed to the proposal with its current Height, Bulk and Scale as it is incompatible with and threatens our neighborhood with adverse impacts.

Neighborhood Design Comments of Recommendation

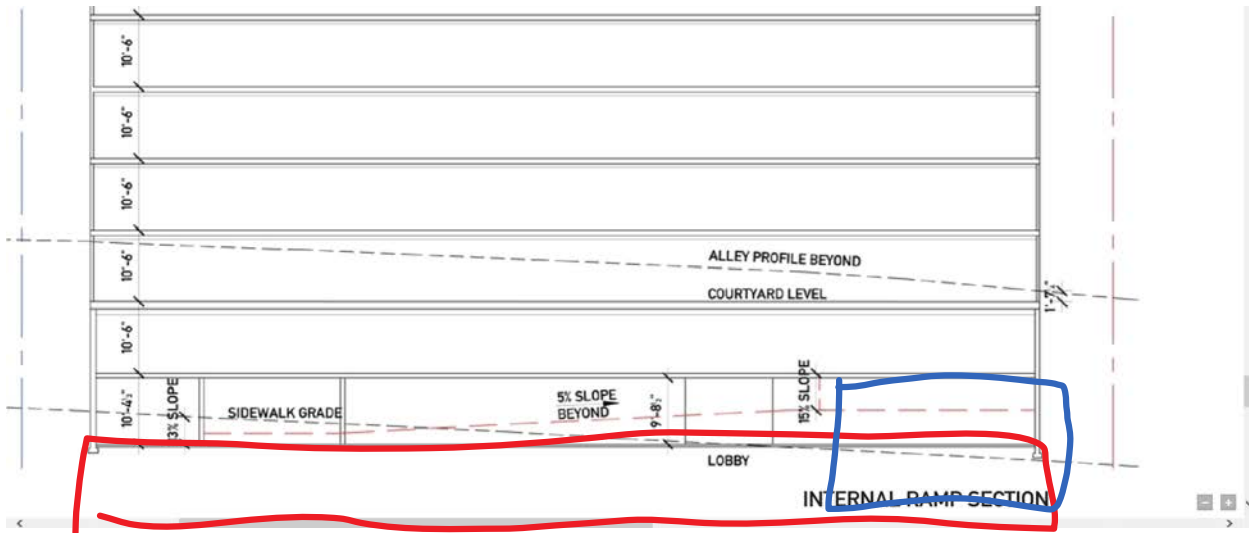
- To bring this project closer to a level that could be seen as compatible, we officially request the removal of the design element of alley access for parking access and only to only use SW Avalon Way for vehicle access and to place that access at the North end of the project. Precedent set by all buildings with under building/underground parking along SW Avalon Way. If they could do it, so can the developer.
 - **The Precedent:**
None of the apartments and or condos abutting the neighborhood of 32nd Ave SW (along the alley of 32nd Ave SW and SW Genesee Street between SW Avalon Way and 35th Ave SW) have alley access to a parking garage.



- This will help mitigate the projects adverse effects of the incompatible HBS.
 - Departures needed for steep ramps in current proposal will not be needed as the access to the parking and slopes to get into the parking would be at the lower North East corner of the structure and can be used for access to 2 full levels of underground parking.
 - It is substantially arguable that to allow alley access to parking will introduce adverse project effects that are traffic related such as building traffic, parking, congestion, and adverse impacts due to the overall elevation of the structure: solar orientation, privacy, incongruent height, and loss of neighborhood character (These are noted below for each corresponding guideline). The departure for SW Avalon Way parking access should be carried further and is supported by SMC 23.41.012 where a departure must lead to development that better meets the *intent* of adopted design guidelines, and the WSJDGs call for guidelines to be carried farther.
 - Street use is already necessary and is the standard along SW Avalon Way for all apartments and condos with underground parking, so just put all access down on SW Avalon Way and modify the design accordingly
 - The overall elevation of the building can then be lowered by an easy floor level 10+ or more feet, what should be effectively 3.5 stories and at most 4 above alley grade towards the North end of the structure

- The structure should be able to keep its unit counts
- This meeting is about “mitigation of a proposed project's impact and influence on a neighborhood” recommending design changes

Height of building with parking garage levels a story lower



- This addresses the neighborhood’s primary concern with regards to Height, Bulk and Scale to that which is more compatible by lowering the actual height by lowering the parking access only to SW Avalon Way and also placing the parking below grade this will be like “Treating topographic conditions in ways that minimize impacts upon neighboring development... Stepping down the hillside to match the topography to reduce the impact upon the building to the smaller buildings”. *MF Design Guidelines B1 Height, Bulk and Scale incompatibility and would help mitigate Siting and Privacy concerns noted in A-5 Respect For Adjacent Sites*
 - Mitigates the adverse effects of the alley traffic, safety and congestion that affects parking for the residences along the alley which has also been repeatedly stated *MF Design Guidelines A5 Respect For Adjacent Sites, A-8 Minimize effect of automobile parking on adjacent properties*
 - Mitigates the adverse effects relating to Solar Orientation and the Obstruction of Views *MF Design Guideline A1 Responding to Site Characteristics*
 - With parking traffic removed from the alley, take the 2 floors on the alley and make them modulate more like neighborhood houses and back yards *MF Design Guideline A6 to better encourage social interactions between neighbors*
 - Place the garage access towards the North end of the structure where it will better fit with the 10-12 foot dropping slope of the project and have an easier egress to two full garage level floors. It will also allow for the front of the building to be more modulated to reflect a residential area *MF Design Guideline C5 Structured Parking Entrances*
- **Further, to bring this project closer to a level that can be seen as compatible, we officially request that the overall floor heights be reduced to that which would make?**

- Lowers the building yet another ? feet

Here is what we see as compatible:

- Only 3-4 stories above alley grade shared with the houses on 32nd Ave SW; like 3112 SW Avalon Way and also the upper floors modulated back from the Single Family Households to provide a sensitive transition to less intensive zones by reducing the appearance of bulk by setting back upper floors.
- Overall height should be lower by 10 feet in accordance with the slope at the front or East side of the structures on SW Avalon Way. “Treating topographic conditions in ways that minimize impacts upon neighboring development... Stepping down the hillside to match the topography to reduce the impact upon the building to the smaller buildings”
- Drop the parking deeper to achieve this or
- Reduce the number of stories and unit count
- Garage access from below like 3112 SW Avalon Way, not the alley.
- Increase parking in garage to 1 car per unit is possible

Peace,

Paul Haury

On behalf of Neighbors Encouraging Reasonable Development

www.SeattleNERD.org

206-714-6113

4115 32nd Ave SW

Seattle WA

CERTIFICATE OF SERVICE

I, Fred Schmidt, an employee of Eglick Kiker Whited PLLC, declare that I am over the age of eighteen, not a party to this lawsuit and am competent to testify as to all matters herein.

On August 8, 2014, I caused to be delivered, a true and correct copy of the foregoing document by e-mail and U.S. mail to the following individuals:

Garry Papers
Department of Planning and Development
PO Box 94019
Seattle, WA 98124-4019
garry.papers@seattle.gov

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William Mills
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: August 8, 2014 at Seattle, Washington.



Fred Schmidt

