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4 BEFORE THE HEARING EXAMINER  
5 FOR THE CITY OF SEATTLE

6 In the Matter of the Appeal of

7 **NEIGHBORS ENCOURAGING**  
8 **RESPONSIBLE DEVELOPMENT**

9 From a decision by the Director, Department of  
10 Planning and Development, regarding a Master  
11 Use Permit

**Hearing Examiner file:**  
**MUP-14-006**

**Department Reference:**  
3013303

**APPLICANT'S RESPONSE TO**  
**APPELLANT'S CLOSING ARGUMENT**

12 **INTRODUCTION**

13 The Appellants, Neighbors Encouraging Reasonable Development (“Neighbors”), focus  
14 their closing argument on two issues: (1) parking; and (2) height, bulk and scale.

15 As for parking, the Neighbors concede that the proposal of the Applicant, Northlake  
16 Group LLC (“Northlake”), will result in no more than a 33-vehicle parking spillover. While they  
17 spend a great deal of time talking about parking conditions in their neighborhood, they spend  
18 very little time demonstrating a nexus between the impacts of this relatively modest project and  
19 the more global parking concerns they describe.  
20

21 To the extent there are parking challenges in their neighborhood, it is not the project that  
22 is responsible for them. Rather, it is the policy decision by the Seattle City Council that some  
23 parking congestion is the necessary price to pay in order to achieve the environmental objectives  
24 of reducing dependence on automobiles, and encouraging the use of mass transit.  
25

26 In the context of this Seattle City Council policy, Northlake’s proposal actually creates  
27 less of a parking impact than it might otherwise. Northlake’s proposal provides 59 parking  
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1 spaces. Under the Land Use Code, because the property is in an Urban Village and is within  
2 1320 feet of a bus stop with frequent transit service, no parking would be required. By providing  
3 59 spaces, it is actually reducing by 59 spaces the impact that might otherwise have resulted  
4 from its development.

5  
6 The Neighbors ask the Examiner to impose additional parking mitigation under the  
7 requirements of SEPA. However, as the Examiner knows, when a project is in an Urban Village  
8 and is within 1320 feet of a bus stop with frequent transit service, the Department has no  
9 authority to impose SEPA mitigation.

10 The Neighbors' appeal as to parking must accordingly be denied.

11  
12 As to height, bulk and scale, while the Neighbors devote 14 pages of their brief to an  
13 attack upon DPD's administration of the design review program, it is quite surprising that the  
14 Neighbors do not devote a single sentence to argue that any portion of the proposal as approved  
15 is in violation of any of the City's Design Guidelines. That is because, of course, the Design  
16 Review Board, as summarized in Northlake's Closing Argument at 6-8, scrupulously reviewed  
17 and applied each of the Guidelines to mitigate height, bulk and scale impacts. The Neighbors  
18 accordingly have nothing to debate on that score.

19  
20 Since the Neighbors can show no way in which the Guidelines were misapplied, the  
21 Neighbors' height, bulk and scale appeal must be dismissed.

## 22 DISCUSSION

### 23 Parking.

24  
25 Parking in the area is congested. But as indicated above, it is not Northlake's project that  
26 is causing the congestion. It is also not the new projects being built that are causing the  
27 congestion. The congestion is due to City Council policy to forego parking requirements in  
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1 certain areas of the City in order to reduce dependence on the automobile and increase use of  
2 transit.

3 In this light, the dispute between the Neighbors' witnesses, on the one hand, and John  
4 Shaw's analysis on the other, regarding the precise magnitude of parking congestion in the  
5 neighborhood, is purely beside the point. Whether parking utilization is 87% or 109%,  
6 congestion of that magnitude was clearly foreseen, and indeed intended, by the City Council  
7 when it adopted SMC 23.54.015, Table B, and SMC 25.05.675.M.2.b. Simply put, when  
8 parking is congested to this extent, clearly dependence on the automobile will be reduced, and  
9 use of transit will be increased. From the perspective of City Council legislative policy, this is a  
10 positive environmental impact, one not to be mitigated, but to be encouraged.  
11

12  
13 The Neighbors acknowledge that if SMC 25.05.675.M.2.B applies, then the Director has  
14 no authority to mitigate parking impacts. As pointed out in Northlake's Closing Argument, SMC  
15 25.05.675.M.2.b does apply. At 9-10. See Ex. 76. Accordingly, the Director has no authority to  
16 mitigate parking impacts of the proposal. The Neighbors' Appeal must be dismissed.  
17

18 The Neighbors stretch to find three arguments in support of their quest for parking  
19 mitigation.

20 First, they contend that because the Director cited a different bus stop in her Decision  
21 than was relied on at hearing, that it is necessary to vacate and remand the Decision. This makes  
22 no sense. The only result of a remand would be delay. Nothing of substantive benefit would  
23 result. Vacating and remanding would merely result in a new decision that identifies the bus  
24 stop relied on by the Director at this hearing. There would be no need for additional analysis.  
25 The Neighbors' speculation that there might be parties wanting to appeal a decision that refers to  
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1 a different bus stop but is otherwise the same, is far-fetched. This first argument, accordingly,  
2 has no foundation in logic.

3 Second, the Neighbors contend that Director's Rule 11-2012 is inconsistent with the  
4 Code definition of "frequent transit service" at SMC 23.48A.038. This issue was fully addressed  
5 in Northlake's Closing Argument at 11-13. There is nothing in the Code language which  
6 precludes averaging of headways. Indeed, allowing averaging, for example in cases such as this,  
7 fulfills the intent of the Code to allow parking reductions where there are in fact, overall, 15  
8 minute headways at a bus stop, although there may be occasional individual headways that  
9 slightly exceed 15 minutes. The interpretation of the Code by the Neighbors, on the other hand,  
10 leads to absurd results that frustrate legislative intent. As the Examiner knows, Courts construe  
11 statutes to give effect to their purpose while avoiding absurd, strained, or unlikely consequences.  
12 *First Citizens Bank & Trust Co. v. Harrison*, 181 Wn.App. 595, 602 (2014); *Thompson v.*  
13 *Hanson*, 168 Wn.2d 738, 750, 239 P.3d 537 (2009). If there is even one headway in a 12 hour  
14 period that is 16 minutes rather than 15, the Council's goal to encourage the use of transit by  
15 decreasing the availability of parking, would be frustrated, under the Neighbors' interpretation.  
16 Because the Director's Rule is fully consistent with the language and purpose of the Code, this  
17 second argument must be rejected.<sup>1</sup>

18 The Neighbors' third argument is that the Department did not provide proper notice of  
19 the comment period for the Rule. This Argument was fully addressed in the DPD Closing  
20 Statement at 7. As demonstrated in that Closing Statement, this Argument has no merit.

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25 <sup>1</sup> In addition, even if averaging is not allowed, this bus stop does meet the 15 minute headway requirement, as  
26 demonstrated in Northlake's Closing Argument at 13. Northlake does wish to clarify that the stops identified by the  
27 Metro Bus Schedule for the two routes are approximately .6 miles apart, and therefore the precise timing of the  
28 bisection of the C Line Headways will be slightly different than set forth in the Closing Argument. Nonetheless, it  
is Northlake's understanding that it remains the case that the Route 21 bus does bisect the C Line Headway at each  
of its four 16 minute headways, such that there is no headway at the bus stop greater than 15 minutes during the  
pertinent 12 hour period.

1 In sum, the Neighbors' parking claim should be dismissed.<sup>2</sup>

2 **Height, Bulk and Scale.**

3 There is a great deal of sound and fury in the Neighbors' argument as to height, bulk and  
4 scale, but there is nothing of substance. Throughout their Closing Argument, the Neighbors do  
5 not cite a single instance of the Design Review Board having improperly applied a Design  
6 Guideline. As a result, their appeal should be dismissed peremptorily. The Neighbors, simply  
7 put, have made no case for relief.

8  
9 The Neighbors' first argument is procedural, not substantive. At 13-17. As the Examiner  
10 observed at the Hearing, she does not have jurisdiction to consider procedural claims under SMC  
11 23.41. See SMC 23.76.022.C.6. Accordingly, the Neighbors' procedural claims must be  
12 dismissed.

13  
14 The Neighbors' second argument is also procedural. They assert that the corrections to  
15 the MUP plans to correct the FAR calculations should have been remanded to the Design  
16 Review Board for additional design review. Because this is also a procedural question under  
17 SMC 23.41, it is beyond the jurisdiction of the Examiner. But even assuming the Examiner does  
18 have jurisdiction, once again, the Neighbors are stretching their argument too far.

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20 As Ex. 74 depicts, the changes here involve merely the removal of a small high-sill  
21 window on the south elevation, and the raising by 2' of the clerestory window on the north  
22 elevation. The Department's decision that these minor changes were not sufficiently significant  
23 to merit remand to the Design Review Board was correct, and far from clearly erroneous.

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27 <sup>2</sup> Given that, with or without the Northlake project, parking congestion in the neighborhood will likely continue to  
28 be bothersome, the Neighbors might consider proposing the creation of a Residential Parking Zone, which could  
significantly ameliorate their concerns. See SDOT Director's Rule 4-2009.

1 Finally, the Neighbors argue that the Decision is invalid, not because it is inconsistent  
2 with the Design Review Guidelines but because, they claim, the Board did not take off a story or  
3 two of the building, as the Neighbors demanded. At 22-26.

4 Notably, throughout the five pages of their argument on this issue, the Neighbors fail to  
5 cite a single Design Guideline that the Board failed to properly apply. Since the only basis for  
6 appeal is that the Director was clearly erroneous in her application of the Guidelines, the  
7 Neighbors have failed to state a claim, and their appeal must be dismissed.

8 The Neighbors do acknowledge the key Guideline B-1, and indicate that this Guideline  
9 authorizes stepping a building down; reduction in height, bulk and scale; reducing the bulk of the  
10 building's upper floors; and reducing the height of the structure.

11 What the Neighbors fail to acknowledge is that in this case the Design Review Board  
12 exercised its authority and mitigated the proposal as to each and every one of these factors. See  
13 Applicant's Closing Argument at 4-5, 7-8.

14 The Design Review Board fully understood the scope of its authority and exercised that  
15 authority responsibly and conscientiously.

16 The Neighbors' real complaint is not that the Board abused its discretion, or was  
17 improperly advised. Rather, the Neighbors' real complaint is that the Board didn't acquiesce to  
18 the Neighbors' demands that the proposal be reduced in size by one to two stories (in addition to  
19 the 15' reduction in height that the Neighbors had already secured through lobbying of the City  
20 Council).

21 However, the Neighbors fail to cite to the operative language of Guideline B-1: "Design  
22 review should not result in significant reductions in a project's actual height, bulk and scale  
23 unless necessary to comply with this guideline" (emphasis in original). Here, the Board did  
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1 mitigate the height, bulk and scale of the proposal with all of the tools set forth in Guideline B-1.  
2 At the end of the day, the Board was satisfied that the guideline was complied with, without the  
3 need for “significant reductions in... height, bulk and scale.” Accordingly, it was not therefore  
4 necessary to further reduce the height of the building. This conclusion on the part of the Board  
5 was not an abuse of discretion. Rather, it was a proper exercise of discretion.  
6

7 The Neighbors also express concerns about statements allegedly made by the DPD  
8 Planner to the Board. This is yet another red herring. The issue is not what the Planner did or  
9 did not say to the Board, Rather, the issue is whether the Board properly understood and applied  
10 the Guidelines. The record here fully demonstrates that the Board understood the Guidelines,  
11 took them seriously, and applied them judiciously.  
12

13 Accordingly, the Neighbors’ height, bulk and scale claim must be dismissed.

14 **CONCLUSION**

15 While this appeal has sought to raise an array of issues, at the end of the day it boils down  
16 to two, each of which is easily resolved. As to parking, the Northlake proposal site is within  
17 1320 feet of frequent transit service. Therefore, DPD was without discretion to impose parking  
18 mitigation. As to height, bulk and scale, the Design Review Board carried out its mandated  
19 mission meticulously, considering the relevant guidelines and applying them with judicious taste  
20 and a serious interest in mitigating height, bulk and scale impacts in accordance with Guideline  
21 B-1.  
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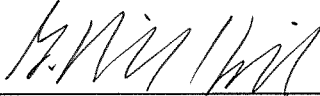
23 Accordingly, the appeal must be dismissed.

24 [signature on the following page]  
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1 Dated this 12<sup>th</sup> day of November, 2014.

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3 Respectfully submitted,

4 McCULLOUGH HILL LEARY, P.S.

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9 Attorneys for Applicant

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