BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of	
NEIGHBORS ENCOURAGING REASONABLE DEVELOPMENT	Hearing Examiner Files: **MUP-14-006 (DR, W)** **S-14-001**
from a decision and interpretation by the Director, Department of Planning and Development, on a Master Use Permit	Department References:
	Project 3013303
	Interpretation No. 14-005
	Interpretation No. 14-005 Supplemental
	Interpretation No. 14-005 Supplemental Addendum
	DPD Reply to Closing Statement

Summary

The closing argument by Neighbors Encouraging Reasonable Development (NERD) (hereafter referred to as "appellant") presents four main points in asserting that the DPD decision in Project 3013303 should be remanded for further DPD review: 1) alleged significant adverse unmitigated parking impacts; 2) the Design Review Board (DRB) allegedly was not "operating within its authority due to errors in procedure; 3) alleged inconsistent Design Guideline application by the DRB due to alterations made to the project after the DRB had completed its recommendation process; and 4) alleged significant unmitigated height, bulk and scale impacts. Appellants' arguments do not rest on any substantive basis for reversal. The appellant concedes that the Land Use Code requirements for the proposal are met but insists that alleged process issues and requirements for parking mitigation and height, bulk and scale mitigation under the State Environmental Policy Act (SEPA) that DPD has no authority to implement are a basis for further public notice, comment, and review of the subject application. As explained below and in DPD's initial closing statement, the Hearing Examiner should disregard appellants' arguments and affirm the DPD land use decision and related interpretations. The DPD decisions are not clearly erroneous.

Argument

Each of appellants' arguments is addressed and refuted below in the order presented in its closing brief:

1. The SEPA policy regarding parking does not give DPD authority to mitigate parking impacts from the proposed project, as it is clear that the project is in an urban village on a site that is within 1,320 feet of a street with frequent transit service.

Seattle Municipal Code (SMC) Section 25.05.675 sets forth the specific environmental policies under SEPA. Subsection 25.05.675.M provides in part as follows:

> "M. Parking
>
> 1. Policy background.
>
> a. Increased parking demand associated with development projects may adversely affect the availability of parking in an area.
>
> b. Parking regulations to mitigate most parking impacts and to accommodate most of the cumulative effects of future projects on parking are implemented through the City's Land Use Code. However, in some neighborhoods, due to inadequate off-street parking, streets are unable to absorb parking spillover. The City recognizes that the cost of providing additional parking may have an adverse effect on the affordability of housing.
>
> 2. Policies
>
> a. It is the City's policy to minimize or prevent adverse parking impacts associated with development projects.
>
> b. Subject to the overview and cumulative effects policies set forth in Sections 25.05.665 and 25.05.670, the decision maker may condition a project to mitigate the effects of development in an area on parking; provided that:
>
> * * *
>
> 2) No SEPA authority is provided for the decision maker to mitigate the impact of development on parking availability for residential uses located within:
>
> * * *
>
> c) portions of urban villages within 1,320 feet of a street with frequent transit service, measured as the walking distance from the nearest transit stop to the lot line of the lot;" [Emphasis added.]
>
> * * *

Much of the appellants' argument in its closing statement, as in their testimony at the hearing, is devoted to discussion of the increase in on-street parking that has already occurred in the vicinity of the project and that is likely to continue in the future as a number of new developments in the neighborhood are completed. Regardless of the percentage increase in parking utilization that has occurred or may occur within the vicinity of the project, evidence of increasing on-street parking is not relevant in the face of Section 25.05.675.M.2.b.c). Since the site is within 1,320 feet of a street with frequent transit service (FTS), there is no SEPA mitigation authority for the parking impacts. As DPD Senior Transportation Planner John Shaw testified at the hearing, the applicants' traffic studies and assumptions regarding parking from other projects indicate that the cumulative additional parking will not have a "more than moderate impact" on parking in the neighborhood. Appellants' own testimony, from their witnesses Mr. Burkhalter and Mr. Haury, actually supported Mr. Shaw's analysis that the overall effect on parking of the subject project and other nearby development would be to push parking utilization further out into the neighborhood such that individuals seeking to park on the street would have to do so "a block or two further away" than currently. Such an impact in an urban village within 1,320 feet of a street with FTS is anticipated by the regulations, and the DPD position is that these impacts are not significantly adverse under SEPA. Rather, they are a predictable outcome of changes in the Land Use Code to parking regulations for urban villages several years ago.

Perhaps conscious of the weakness of its argument concerning mitigation authority under Section 25.05.675.M, the appellant next devotes more than six pages of analysis to an attempt to demonstrate that the project site is not within 1,320 feet of a street with FTS or, even if it is, that the DPD decision should be remanded because it only analyzed one nearby transit stop and not others that may qualify. The appellant further argues that the Land Use Code definition of FTS was not correctly applied or interpreted by DPD Director's Rule 11-2012.

Even if the DPD decision did not specifically analyze every transit stop within 1,320 feet of the project site for compliance with the FTS definition, it is both unnecessary and inappropriate to remand the MUP decision just for DPD to make additional findings of clear fact that are readily available to the public. There is ample evidence in the record for the Examiner to find that the project site is within 1,320 feet of a street with FTS. The Metro schedules are in the record (Exhibits 45 and 83) and they provide the basic information the Examiner needs to make a finding of fact on this issue.[1]

DPD stands by the argument made in its closing statement that DR 11-2012 was given proper public notice and is a valid interpretation of the Land Use Code definition of FTS at Section 23.84A.038. Even if DR 11-2012 is somehow invalid, it does not matter in the face of clear facts about transit schedules showing that at least one street within 1,320 feet of the project site clearly does have frequent transit service, with headways in at least one direction of 15 minutes or less for at least 12 hours per day, 6 days per week, and transit service headways of 30 minutes or less for at least 18 hours per day. Appellants' frequent transit service argument fails to show that DPD's MUP decision is clearly erroneous.

2. <u>The Design Review Board was operating within its authority in reviewing the project, and procedural requirements for DRB review were met.</u>

The appellant raises numerous alleged procedural defects in the Design Review meeting process, citing various portions of Sections 23.41.008 and 23.41.014. In particular, the appellant argues that DRB members, including substitutes, at any given meeting must represent all five "interests" set forth in subsection 23.44.008.D.1, or a mix of interests. While the initial composition of the five DRB members must be mixed (SMC 23.41.008.C & D.1, D.2, and D.3), enforcing the mix for substitutes at individual meetings is not explicitly required anywhere in the code. The appellant is incorrectly applying subsection 23.41.008.D.4, which applies only to whole new substitute Boards, permanent replacement Board members, and out-of district substitutes. None of these conditions are relevant to the subject application. Section 23.41.008.D.5 is relevant and applies to the two substitute DRB members who attended the 11/21/13 Initial Recommendation meeting, and the substitutes met subsection D.5. Further, at all three meetings a quorum of three

[1] In addition to the exhibits in the record, DPD notes that the applicant, in its closing statement, provides even more information about transit schedules, pp. 13-14 of applicants closing statement and Attachments D-1 and D-2. The appellant may argue that such additional information should have been provided at the hearing or perhaps specifically reviewed and analyzed by DPD in its MUP decision, but Metro transit schedules are readily available on the internet and are essentially a matter of public record. Hearing Examiner Rule (HER) 2.18 allows the Examiner to "take official notice of judicially cognizable facts" and to "take notice of general . . . facts within his or her specialized knowledge." It seems a reasonable application of HER 2.18 for the Examiner to take notice of bus schedules that are a matter of public record. Thus, the appellants' extensive arguments about the MUP decision-making process in regard to transit and parking should be disregarded in the face of clear facts about FTS.

standing West DRB members existed, and the Final Recommendation meeting had all five standing members, including four who had been to at least one of the two prior DRB meetings. (See first page of Exhibits 4-6 and testimony of Garry Papers.)

The appellant further questions whether the DRB members visited the site, and implies that DPD should physically compel them to do so. Under DPD practice to fulfill Section 23.41.014.B.1, all volunteer DRB members are coached, reminded, and expected to do site visits prior to the meetings, but there is no explicit code requirement for DPD to somehow make sure that they carry out the task. It would not make sense for DPD to follow the Board members to make sure they carry out their site visits. The appellants are confusing what the code requires with how they think procedures should occur.

3. Changes made to the project as a result of Code interpretation review by DPD are not inconsistent with the DRB Recommendations or inconsistent with Design Guidelines.

This issue is covered in detail in the initial DPD closing statement. It is DPD's contention that the project changes are minimal and do not affect the building design in any significant way that would require additional review by the DRB. With respect to the changes to the proposed building windows, clarification of facts is warranted because testimony of appellants' witnesses reflects misunderstanding. The subject windows proposed on the north side will be in a ground floor corner unit that has an 11-foot clear height, and also has a 12-foot by 11-foot high wall of glass facing east, toward Avalon Way, so the north windows are not essential to the livability of the unit (units in this and many other projects have windows on only one wall). The north windows are located high on the wall ("clerestory"), originally from about 6 feet to 11 feet high, and full width; they were revised in the corrected plans to be 8 feet to 11 feet high, still full width, and a reduction of 30 percent glass area, but they still provide ample supplemental north light into that side of the unit.

Despite the testimony of appellants' witness Mr. Oustimovitch (based on a single line on one plan drawing), the north windows were never portrayed in any of the three DRB meetings as floor to ceiling, and there never was a flat terrace area outside them at the north side yard location; these fictional physical features occur nowhere in any of the project drawings. The purported flat terrace location and its purported "safety" were never a point of DRB discussion. In fact, this location was always represented as a slope of turf, angling up from the sidewalk to match the existing grade of the adjacent property; thus, the north windows were located high on the wall. This is clearly shown on page 23 of 11/21/13 DRB booklet (exhibit #14), page 23 of 1/16/14 DRB booklet (exhibit #15), and drawings #3 and #4 on page A0.04c of exhibit #74.

4. The height, bulk and scale impacts of the project have been mitigated through the Design Review process just as that process was intended to apply to projects, and no additional mitigation under SEPA is warranted.

The effect of the Design Review process on building massing is best illustrated by Exhibit 15, page 33. This graphic shows clearly how the building height, bulk and scale has been reduced by the process. The structure now proposed as a result of the process also meets the Land Use Code development standards.

The appellant argues that its witness Mr. Eanes developed an alternative massing option that deserved DRB consideration, by shifting building bulk down to grade along the alley property line, and stepping the forms that face the alley. This massing option is contrary to the first Early Design Guidance (EDG) from the DRB to shift the majority of the mass east away from the alley, and to use the intervening courtyard as a landscaped buffer, which are both suggestions consistent with the priority guidelines identified by the informed DRB. While the DRB approved version did employ stepping of forms located further east, the Eanes option disregards the full DRB guidance, reports, and priority guidelines, perhaps because Mr. Eanes attended none of the DRB meetings and is simply offering his personal speculation about the relationship of the proposed structure to the alley.

With respect to the advice given to the DRB by the DPD project review planner, at the beginning of all DRB meetings DPD staff introduces the DRB process, the guidelines, how to submit comments, and summarizes public comment to date. Since many members of the public attending are new to the process, staff also explains that Design Review Boards do not have the authority to change Council-adopted zoning, change the Council-adopted code, or re-write/add to the Council-adopted Design Guidelines. It is customary to give the public a graphic example of what the guidelines mean by "compatible height, bulk and scale" by saying that through Design Review, a building form might be adjusted by stepping forms and magnitudes of feet, but that wholesale reductions of entire floors of area might constitute a down-zone, which only City Council has the authority to do. The appellant has inappropriately chosen to brand these standard explanations as "jury instructions", but they were delivered with the intent to inform a public that often assumes Design Review can do more than it has legal authority to do.

Conclusion

Based on all the facts and analysis in this matter, the DPD MUP decision in Project 3013303 and the related Code interpretations are supported by the evidence in the record and are not clearly erroneous. The DPD decisions should be affirmed.

Entered this 12th day of November, 2014.

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