

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of)	Hearing Examiner Files:
)	MUP-23-011
AQUARIAN FOUNDATION, INC)	
)	Department Reference:
from a decision issued by the Director, Seattle)	3038146-LU
Department of Construction and Inspections)	
)	SDCI CLOSING STATEMENT
)	
)	

This memorandum constitutes the written closing statement of the Seattle Department of Construction and Inspections (SDCI) in the above-captioned appeal.

Summary

The Master Use Permit application contained two components: SEPA and Design Review. The SEPA (State Environmental Policy Act) application was withdrawn (SDCI Exhibit 36) due to a revision to Washington State law which exempts the project from SEPA (Senate Bill 5412).

The Department Director published a decision for this Master Use Permit in September 2023 (SDCI Exhibit 1). The MUP contains one component, Design Review.

Burden of Proof

The Hearing Examiner must give substantial weight to the Director’s decision. The Burden of proof is on the appellant to demonstrate that the Department’s decision was clearly in error.

Argument

The Design Review Board reviewed the project at two public meetings (the early design guidance meeting on February 9, 2022 and the recommendation meeting on February 15, 2023) and provided design guidance and recommendations using the Citywide and Capitol Hill Neighborhood Design Guidelines. All guidelines and maps used were the appropriate and relevant documents based on the project’s vesting date pursuant to SMC 23.76.

The Board’s guidance and recommendations, with consideration of public comment, related to items such as Massing, Façade Articulation, Street Level Uses and Frontages, Vehicle and Loading Access, and Landscape. The Board also recommended approval of 4 departures and recommended 7 design review conditions, all of which or documented in the Recommendation report (SDCI Exhibit 3) and Decision (SDCI Exhibit 1). The guidelines and maps used in

evaluation of the project were the relevant documents pursuant to the project's vesting date and SMC 23.76.

At the conclusion of the February 15, 2023 DRB Recommendation meeting, the Board determined that the project, departures, and conditions imposed resulted in a design that best meets the intent of the Design Guidelines. After the Recommendation meeting, working with City Staff, the applicant fully responded to each recommendation condition which is described in the design review analysis section of the Decision (SDCI Exhibit 1).

The Director found the Board's recommendation consistent with the Design Guidelines and was satisfied that all recommendations and conditions imposed by the DRB had been met.

The appellant's closing arguments raised several concerns which mainly focused on the following issues: the identity of the applicant and real parties, the appellants right to its witnesses, shoring permits and underlying block and lot configuration (Ordinance 105018); Ordinance 120754, tree cutting or pruning and the removal of trees.

Identity of the applicant and real parties

As explained in the Department's testimony, Jodi Patterson-O'hare was authorized by Greystar, the owner and financially responsible party, to act as the primary contact for the project. This was done through the submittal of a Statement of Financial Responsibility / Agent Authorization form and the appropriate designations were clearly identified on the SDCI public facing portal. Furthermore, the cover sheet included in the MUP plan sets (SDCI Exhibits 2a-2e) clearly call out Greystar as the owner and the Greystar logo appears in the footer of the Recommendation Proposal (SDCI Exhibit 4). The Department notes that this issue of proper identification of the applicant and real parties was not part of the appeal and were not relevant to the Department's decision.

Appellants right to its witnesses

With respect to denial of subpoena issuance for Mr. Reilly, the Department concurs with the Hearing Examiner's order on reconsideration re subpoena, in which it was stated "...*An individual appointed to act as part of a body which issues recommendations cannot testify on a project's consistency with recommendation criteria. That individual's role is to impartially receive evidence. They cannot step from that role to serve as a fact witness to advocate for a party who came before them. Consistent with evidentiary and conduct rules, judicial privilege protects the witness against subpoena...*". The Department's decision carefully considered the Design Review Board's recommendations, summarized in the Recommendation report (SDCI Exhibit 3). The appeal did not challenge the Recommendation report's accuracy or any misrepresentation of the recommendations given by the Board at the Recommendation meeting.

Shoring permits and underlying block, lot configuration, and variances (Ordinances 105018 and 120754)

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The Design Review Board assumes that proposed designs are in conformance with all code requirements in the Land Use Code – Title 23. SDCI requests and reviews schematic shoring plans as part of the Master Use permit to ensure that the proposed development is taking into consideration impacts to adjacent sites. SDCI does not confirm or require that private agreements are in place for a MUP to be issued. SDCI requires that all easements and private agreements are in place prior to Building Permit issuance.

With respect to the underlying block, lot configuration, and variances (Ordinances 105018 and 120754, no evidence was provided during the hearing showing how the development was not adhering to the requirements in the Land Use Code – Title 23. Any objection to the application or intent of any development regulation in Title 23 is considered an interpretation per SMC 23.88.020. No land use interpretation was filed in accordance to SMC 23.88.020 and that this issue was not part of the initial appeal filing and was not relevant to the Department’s decision.

Tree cutting or pruning and the removal of trees.

Tree cutting and Pruning activities are not regulated by the Land Use Code – Title 23. The Department notes that this issue of tree cutting or pruning was not part of the initial appeal filing and was not relevant to the Department’s decision.

With respect to the removal of trees, the Design Review Board specifically discussed and supported the removal of the existing trees along the shared property lines at the north end of the site in the Recommendation Report, items 5.b. (SDCI Exhibit 3) stating; “After hearing public comment and deliberating the importance of the existing trees along the shared property lines at the north end of the site, the Board reaffirmed their support given at EDG for the removal of the existing trees and the replacement with more appropriate columnar trees that will eventually grow to provide screening for the neighboring property and allow uninhibited access into the site. (CS1-D-1, DC4-D-3)”

Conclusion

The Director’s Decision was based on pertinent public comments, project plans and supporting documents, individual reviews by SDCI Staff, and the recommendations provided by the Design Review Board. The Department’s exhibits and testimony demonstrates that the Director properly analyzed the impacts identified on the project plans/documents, Recommendation packet, Design Review Board recommendations and conditions, as well as the appropriate and applicable issues raised by the appellant. The appellant has not demonstrated that the decision of the Director was clearly erroneous. Therefore, the decision of the director should be affirmed by the Hearing Examiner.

Entered this 5th day of March, 2024.

Erika Ikstrums

Erika Ikstrums, Planning & Development Specialist

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For David Sachs, Senior Land Use Planner
Seattle Department of Construction and Inspections