

**FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Appeal of
AQUARIAN FOUNDATION, INC.,

from a decision by the Director, Seattle
Department of Construction and Inspections

Hearing Examiner Files:
MUP-23-011

Department Reference
3038146-LU

FINDINGS

1. Background. The City of Seattle Department of Construction and Inspections, following design review, approved a master use permit, with conditions, for two, five-story apartment buildings. The project provides 336 units with parking for 373 vehicles.¹ Aquarian Foundation, Inc. appealed.

2. Site Location/Property Owner/Applicant. The site is at 1410 E John Street, King County Parcel #6003501820.² The property owner is Greystar, c/o Aaron Keeler, 800 5th Avenue., Ste. 4000, Seattle, WA 98104.³ The applicant is Jodi Patterson O'Hare, Weber Thompson, 900 N 34th Street, Ste. 200, Seattle, WA 98103.⁴

3. Hearing. A hearing was held February 6, 2024. Aquarian appeared through Rev. Jann Werner. The Property Owner/Applicant appeared through David Carpmann, McCullough Hill PLLC. The Department appeared through David Sachs, Sr. Land Use Planner. The parties agreed to present closing arguments in briefing to be submitted by Aquarian on February 20, and by the Applicant and Department on March 5.

4. Witnesses. The Department called Sr. Planner David Sachs. Aquarian called David Sachs and Rev. Cathryn Reid. The Applicant called two expert witnesses: (1) Austin Besse, AIA, LEED AP, an architect with Weber Thompson; and (2) Douglas Smith, arborist and founder of Seattle Tree Consulting.⁵

5. Exhibits. The Department submitted Exhibits 1-38. Aquarian submitted Exhibits 1-19. The Applicant submitted Exhibits 1-24. Except the Department, the parties did not refer to all exhibits during the proceeding or request admission of all exhibits. Without objection, Department Exhibits 1-38 were admitted. Applicant Exhibits 1, 3, 5, 6, 7, 9, 10,

¹ Department Exhibit 1, p. 1.

² Department Exhibit 34, p. 3.

³ Department Exhibit 2e, p. 1.

⁴ Department Exhibit 1, p. 1; Department Exhibit 2e, p. 1.

⁵ Before the hearing, the Examiner ruled on Aquarian's subpoena requests. The requests were denied due to timeliness and other reasons. *See* Order on Appellant's Request for Subpoenas (January 24, 2024); Order on Reconsiderations Re Subpoena (January 29, 2024).

15, 18, 19, 20, 23, and 24 were admitted, along with Appellant Exhibits 4, 5, 6, 12, 13, and 17. The Examiner took judicial notice of Appellant Exhibits 14, 15, and 18.⁶

6. Site Visit. The Examiner visited the site on March 14, 2024. The visit is not evidence but provides context.

7. Project Description. The project site is currently developed with a Safeway grocery store and surface parking lot. Primary vehicle access to the parking lot is from 14th Avenue East or East John Street with secondary vehicle access and primary service access from East Thomas Street to the North.⁷ The site is in within a mixed use zone with 55 foot height limits (Neighborhood Commercial 2-55 (M) and Pedestrian (M)), in the Capitol Hill neighborhood.⁸

Applicant witness testimony described the current store's orientation as "turn[ing] its back on the neighborhood" by having its only functioning entrance face west into a large surface parking lot.⁹ Truck deliveries, garbage pickups, and outdoor storage almost directly abut neighboring property lines.¹⁰ The back of the current building along 15th Avenue is "a large wall with no active uses, no transparent glass, narrow sidewalks, and a really unfriendly façade."¹¹

The project emphasizes the pedestrian and small-scale retail character of the neighborhood by placing retail entrances along 15th Avenue East and East John Street, placing parking underground, and limiting vehicle access points to two underground parking entrances on 14th Avenue East and a loading entrance on East Thomas Street. Illustrations of the current site and proposed project are attached.¹²

Aquarian owns property on the northeast corner of the project site's block, zoned NC2-55, like the project.¹³ Aquarian's property contains a single-family residential scale building used for religious functions, along with a garage and driveway.¹⁴ The project site's current configuration places the grocery store deliveries, waste services and outdoor storage directly adjacent to the shared property line.¹⁵ With the project's northern wing, Aquarian's property will be separated and shielded from these services.

Also on the project site's block, in the northwest corner, are two residential lots developed with multifamily buildings,¹⁶ zoned LR3 (M). Properties to the north and south

⁶ See Clerk's Exhibit List.

⁷ Besse, Part 3 at 59:40; Applicant Exhibit 24, p. 1.

⁸ Department Exhibit 1, p. 1.

⁹ Besse, Part 3 at 64:04.

¹⁰ Besse, Part 3 at 65:00.

¹¹ Besse, Part 4 at 2:53; Applicant Exhibit 24, p. 8.

¹² Applicant Exhibit 24, pp. 7 and 10.

¹³ Applicant Ex. 5, p. 25.

¹⁴ Department Exhibit 1, p. 2; Bess, Part 5 at 17:03; *see also* Applicant Exhibit 5, pp. 17, 114, 117.

¹⁵ Besse, Part 3 at 65:00; Applicant Ex. 24, p. 9.

¹⁶ Department Exhibit 1, p. 2.

are zoned NC2P-55(M) along 15th Avenue East while properties northwest and southwest of the property are primarily zoned LR3(M).¹⁷ Directly east, the 15th Avenue retail corridor runs north-south. This retail corridor is characterized by a wide range of building sizes and uses with an emphasis on small-scale businesses and pedestrian friendly infrastructure.¹⁸

8. Trees and Landscaping. An ISA Certified Arborist with over 20 years' experience inventoried the site's trees.¹⁹ Two groups of Leyland cypress trees are on the site. The first group consists of six trees running in a row north-south to the west of the Aquarian property, numbered 233-238 on the tree map.²⁰ The second group of about 30 trees forms an "L" shape with east-west and north-south legs, running along the project site's boundaries with the residential properties to the northwest. These trees are numbered 201 through 231.²¹

Leyland cypress is a hybrid species commonly used to create hedges which requires regular maintenance. It is fast growing and can quickly exceed desirable heights, creating safety hazards and maintenance difficulties.²² The Leyland cypress along the northern lot lines were presumably planted as hedges/barriers but not maintained.²³

After the arborist's initial visit in 2021, the Applicant arranged for the trees to be trimmed to remedy years of deferred maintenance.²⁴ City regulations do not require a permit to prune trees on private property.²⁵ In addition to the trees on the Applicant's property, street trees are along the adjacent rights of way, including East John Street to the south and East Thomas Street to the north.²⁶ These trees are within Seattle Department of Transportation jurisdiction.²⁷ In 2023, the Applicant sought a permit to trim some of these street trees.²⁸ That permit is not before the Examiner.

Project construction necessitates removing both groups of Leyland cypress trees. The trees closest to Aquarian's property boundary will be replaced by a portion of the Project, with a landscaped buffer area between the building and the Aquarian property line. Trees along the northwest property line will be replaced with a columnar tree species that will grow to provide shielding for the adjacent residential, LR-zoned properties.²⁹

¹⁷ Department Exhibit 1, pp. 1-2.

¹⁸ Applicant Exhibit 5, p. 18.

¹⁹ Applicant Exhibit 3, p. 1; Smith, Part 3 at 01:22.

²⁰ Smith, Part 3 at 6:30; Applicant Ex. 15, p. 4.

²¹ Applicant Exhibit 15, pp. 4-6.

²² Smith, Part 3 at 8:08, 12:13.

²³ Smith, Part 3 at 13-14:40.

²⁴ Smith, Part 3 at 16:48; 37:45.

²⁵ Smith, Part 3 at 24:22-25:30 (permit not required to prune trees on private property and Department of Transportation governs trees in right-of-way).

²⁶ Applicant Exhibit 15, p. 4.

²⁷ Sachs, Part 1 at 76:26, 77:50-78:11.

²⁸ Appellant Exhibit 15, p. 2; Sachs, Part 1 at 76:26, 77:50-78:11; Smith, Part 3 at 24:50.

²⁹ Besse, Part 5 at 23:38 and 28:43, *see generally* though 29:43.

9. Outreach and Design Review. The project underwent Design Review.³⁰ To prepare for that process, the Applicant collected community feedback.³¹ This process included four meetings with the Pike-Pine Urban Neighborhood Council, a local group of stakeholders interested in neighborhood design issues, along with review of a summary guidance document from a different neighborhood stakeholder meeting about development along 15th Avenue East.³² The Applicant also conducted two community information sessions, with Aquarian representatives attending at least one.³³ Neighborhood concerns the project addressed included:

- Keeping a grocery store in the neighborhood;
- Keeping new design looking new;
- Helping small business remain a part of the 15th Avenue community; and,
- Incorporating transparency for ground-level retail to integrate it with the streetscape.³⁴

Block-specific concerns the project addressed included remedying the “isolating and uninviting” façade along 15th Avenue, redesigning the Safeway to have housing above it, and activating the streets via retail storefronts that open onto 15th Avenue, greater articulation of façades and windows, and a Safeway entry that does not open onto surface parking.³⁵ Following this initial review, the Pike-Pine Urban Neighborhood Council endorsed the project, submitting a letter in support.³⁶

The Design Review Board solicited public input and discussed the Project in two meetings.³⁷ Review focused on the Capitol Hill neighborhood context, with an emphasis on the 15th Avenue corridor. The Applicant submitted three massing options, including one preferred option.³⁸ The Applicant chose the preferred option because it “did a very good job of breaking up façade elements into smaller pieces,” “incorporated more outdoor space,” “aligned the residential courtyard with Thomas Street,” and “aligned the entry of Safeway along East John Street.”³⁹ This option incorporated smaller scale retail and a residential entry along 15th Avenue in keeping with Design Guidelines.⁴⁰ The design team paid particular attention to avoiding large walls and activation of the bus stop on East John Street.⁴¹

³⁰ Department Exhibit 1, pp. 3-34.

³¹ Besse, Part 3 at 69:33; Applicant Exhibit 19.

³² Besse, Part 4, 1:00-7:00; Applicant Exhibit 18.

³³ Besse, Part 5 at 7:22; Applicant Exhibit 20, p. 6, 9.

³⁴ Besse, Part 4, 11:00-12:00; Applicant Exhibit 5, p. 17.

³⁵ Besse, Part 4, 12:18; Applicant Exhibit 5, p. 17.

³⁶ Besse, Part 4 at 5:30; Applicant Exhibit 6.

³⁷ Department Exhibit 1, pp. 3, 9; Besse.

³⁸ Besse, Part 4 at 23:33; Applicant Exhibit 5, pp. 52-53.

³⁹ Besse, Part 4 at 24:36.

⁴⁰ Besse, Part 4 at 25:08.

⁴¹ Besse, Part 4, 2:31-3:21; Applicant Ex. 5, p. 12.

During the Recommendation meeting, Board comments supported the changes the Applicant made, including the Project's façade design evolution, redesign of the residential entrance, and "the small and diverse commercial spaces flanking the main entry created a welcoming sense of place."⁴² The Board recommended that the project move forward, with further refinement on certain issues, including the Project's northern façade fronting East Thomas Street.⁴³

The Department and Applicant incorporated the Board's recommendations into the Project's design⁴⁴ and the Department concluded the project is "consistent with the City of Seattle design review guidelines."⁴⁵ The Department approved the project in a decision requiring consistency with the Design Review Board recommendation. Aquarian appealed.

CONCLUSIONS

1. Jurisdiction and Review Standard/Design Review. The Hearing Examiner has jurisdiction.⁴⁶ Appeals are considered de novo, with "substantial weight" accorded the Department's decision.⁴⁷ The Design Review process was adopted to "[e]ncourage better design and site planning to help ensure that new development enhances the character of the city and sensitively fits into neighborhoods."⁴⁸ The Design Review Board is charged with reviewing the project designs under the Design Review Guidelines.⁴⁹ If, as here, four or more Board members agree in their recommendation to the Department, then with limited exceptions, the Department must accept the Board's recommendation.⁵⁰ The deference the Examiner accords a decision recognizes Design Review's central role in project review.

2. Scope of Issues Before the Examiner. As addressed in the Order on Motion for Partial Dismissal,⁵¹ the issues properly before the Examiner involve project consistency with the Citywide Design Guideline and the neighborhood-specific Capitol Hill Design Guidelines. The appeal referenced several:

- Guideline CS3.A ("fitting old and new together")
- Guideline PL3-B (residential edges)
- Guideline CS2.D.5 (respect for adjacent properties)
- Capitol Hill Guideline CS1.4.e (tree canopy and street trees)

⁴² Besse, Part 4 at 38:555-39:11; Department Exhibit 3, p. 13.

⁴³ Department Exhibit 1, pp. 10-12; Department Exhibit 3, pp. 13-14. The Board's Recommendation supported four development standard departures which are not at issue. Department Exhibit 1, pp. 13-14.

⁴⁴ Department Exhibit 1, p. 32.

⁴⁵ Department Exhibit 1, p. 34.

⁴⁶ SMC 23.76.022.

⁴⁷ SMC 23.76.022.C.6.7; see *Moss v. City of Bellingham*, 109 Wn. App. 6, 13-14 (2001)

⁴⁸ SMC 23.41.002.

⁴⁹ SMC 23.41.008.A.

⁵⁰ SMC 23.41.008.F.3.

⁵¹ Order on Motion for Partial Dismissal (December 4, 2023).

At the hearing, Aquarian’s witness, Rev. Reid, focused on issues outside the appeal (the Applicant’s use of a permitting specialist, tree pruning, and alleged public outreach deficiencies).⁵² Aquarian sought to establish Guideline inconsistency when questioning Mr. Sachs (Department Sr. Planner) and Mr. Besse (Applicant Arborist), though both testified to proposal consistency with the Guidelines. In its closing brief, Aquarian continued to focus on issues outside the appeal. Aquarian addressed several issues at hearing which the appeal did not raise or which had been dismissed for lack of jurisdiction.

- Aquarian’s allegation that it is prejudiced as it does not know who the Applicant is.
- Aquarian’s argument that the project violates City Ordinance 120754, a street vacation ordinance that included conditions related to landscape screening of surface parking areas. Even if the appeal had identified the Ordinance, the project does not include surface parking.
- Aquarian’s arguments on street tree pruning. The 2023 pruning is outside Examiner review authority and pruning of privately owned trees does not require a permit.
- Aquarian’s concerns on future grading impacting its property rights are outside Examiner jurisdiction.⁵³
- Aquarian’s closing brief references to Ch. 25.11 SMC (“Tree Code”) and SDCI Tip 242A.⁵⁴ The Tree Code, effective on July 30, 2023,⁵⁵ does not apply to the project as it vested to an earlier version.⁵⁶ Regardless, Aquarian did not address why either the present or earlier code supports its case. Tree Code consistency was not included in the appeal and was not the subject of an interpretation request under SMC 23.88.020.C.3, an appeal prerequisite.

Though applicant identification is clarified, as these issues are beyond Examiner purview, they need not be further addressed.

3. Aquarian’s Newly Raised “Applicant Identification” Issue. Aquarian asserted for the first time at hearing that it does not know who the applicant is. Aquarian did not identify a code violation but alleged that due to this newly identified lack of knowledge, it was prejudiced. The issue was not raised in the appeal,⁵⁷ so is untimely and the decision could not be reversed on this basis. Regardless, the property owner appeared, was represented by counsel in this proceeding, and designated Ms. O’Hare as its representative during permitting.⁵⁸ This is as the code contemplates.

⁵² Reid, Part 2 at 35:30-70:00.

⁵³ *Id.*; Order on Motion for Partial Dismissal (December 4, 2023).

⁵⁴ Aquarian’s Closing Brief, p. 4.

⁵⁵ Appellant Exhibit 18 (Ordinance 126821) § 12 and p. 62.

⁵⁶ Sachs, Part 1 at 66:00.

⁵⁷ Aquarian referenced *La Fray v. City of Seattle*, 12 Wn. 2d 583 (1942). The holding, that property owners awarded condemnation funds must be made parties to a case challenging the award, is not relevant.

⁵⁸ See Finding 2.

Applications are made “by the property owner, lessee, contract purchaser ... or by an authorized agent thereof. A Master Use Permit applicant shall designate a single person or entity to receive determinations and notices from the Director.”⁵⁹ Even if timely raised, a code compliance issue is not present relative to this concern.

4. Guideline Consistency/Design. A project is compared against the Guidelines as a whole.

While all projects are expected to meet and address all of the guidelines, they are not expected to apply all the approaches and strategies listed for each guideline. Not all of the approaches and strategies will be relevant to every project. Applicants, Design Review Boards, and other reviewers should use their judgment and discretion in determining which approaches and strategies are particularly applicable to a given project.⁶⁰

The project directly serves several Guidelines, including Capitol Hill Guideline CS2.1.c, which the Applicant identified due it being specific to the 15th Avenue Corridor, which the project is on.

15th Avenue E is known for its lively mix of locally-owned businesses, larger format grocery stores that serve multiple neighborhoods, and the Kaiser Permanente campus. Despite the street’s narrow sidewalks, many businesses have outside seating or displays that add vitality to the street.

- Encourage façade detailing at the street level that contributes to the street’s existing intimate retail character and variety of pedestrian scaled storefronts.
- Consider design approaches that visually integrate the street level façade with existing buildings. Use upper level setbacks to reinforce the street scale retail character.
- Improve the walkability along 15th Avenue while maintaining the street’s positive intimate pedestrian character.
- On half block or full block developments break up long façades to avoid a monolithic presence and to add to the existing character of the corridor.
- Enhance visual connections and pedestrian flows to and through the Kaiser Permanente campus.

⁵⁹ SMC 23.76.010(A)(1).

⁶⁰ Guidelines, Introduction, p. v.

Façade detailing includes multiple types of brick colors, including special brick for the residential entry. This breaks up the single-story façade element to promote the neighborhood's intimate retail character. The project visually integrates the street-level façade with existing building by using upper-level setbacks, while maximizing ground-level setbacks along 15th Avenue. The ground-level setbacks improve walkability while allowing for planting strips, extra-wide sidewalks, and space for above-ground planters. The project avoids creating a monolithic presence by using a courtyard, upper-level setbacks, and materials differentiation to break the street façade into smaller portions. Aquarian did not discuss Capitol Hill Guideline CS2.1.c or challenge Mr. Besse's testimony regarding the Project's consistency with it.⁶¹

Aquarian referenced Capitol Hill Guideline CS3.1, "Fitting old and new together," to assert the project contradicts the surrounding neighborhood due primarily to size.

In areas with observable patterns of traditional materials and architectural styles, design new contemporary buildings to reference the scale, proportion, fenestration pattern, massing, and/or materials of character buildings. Encourage the use of pedestrian scaled materials that complement and take cues from historic buildings but do not try to mimic or copy existing structures. Foster the eclectic mix of architectural design and forms on the block and throughout the neighborhood. Encourage the use of new architectural concepts, as they emerge.

Guideline CS3.A.1 expresses similar considerations:

Create compatibility between new projects, and existing architectural context, including historic and modern designs, through building articulation, scale and proportion, roof forms, detailing, fenestration, and/or the use of complementary materials.

The appeal asserts the project is inconsistent as: (1) the project, as a new building, does not fit with Aquarian's older building; and (2) the project is inappropriately large or "monolithic." The Guidelines do not require a project to mimic neighboring buildings, but list ways projects are encouraged to "reference" and "create compatibility" with the existing architectural context. The Applicant's expert witness explained how the project's design considered the neighborhood's architectural context and included references to interesting brick patterns and courtyards found in nearby buildings, including the nearby Anhalt buildings (so named due to the architect).⁶²

The Applicant team studied buildings in the neighborhood, including several larger multifamily buildings designed in a modern style, and incorporated their findings into the design to "provide a variety of scales and proportions."⁶³ The project uses secondary

⁶¹ Besse, Part 4 at 43:46.

⁶² Besse, Part 4 at 49:00; Applicant Exhibit 5, pp. 32-35.

⁶³ Besse, Part 4 at 50:52; Applicant Exhibit 5, pp. 36-37, and 39.

architectural elements to reduce its perceived mass.⁶⁴ Measures taken to prevent the project from having a “monolithic” presence include: (a) incorporation of multiple recess and indentations within the building envelope; (b) protruding out lower levels; (c) setting back portions of façades; (d) adding balconies of varying sizes; (e) including porches and stoop elements along Thomas Street; and (f) having a variety of canopies on all four façades.⁶⁵

Beyond these design features, multiple buildings equal or taller in height to the project across the street and many multi-story buildings throughout the neighborhood are all indicia of project consistency with neighborhood character and scale. These design elements further the goals of other Guidelines, including:

- Capitol Hill Guideline DC2.3.b (“Fit with neighboring buildings: Selectively include design elements or proportions that reflect Capitol Hill’s historic character such as streetscape rhythm, historic parcel widths, fenestration patterns and/or material treatments.”); and,
- Guideline DC2.A.2 (“Reducing Perceived Mass: Use secondary architectural elements to reduce the perceived mass of larger projects. Consider creating recesses or indentations in the building envelope; adding balconies, bay windows, porches, canopies or other elements; and/or highlighting building entries.”).

Aquarian identified two large, bulky Kaiser Permanente health facility buildings to the east across 15th Avenue E from the project as consistent with neighborhood character, asserting in a question to Mr. Sachs that the facility was “huge. It’s a massive project but it fits in with the scaling of the neighborhood. ... And it follows the design guidelines.”⁶⁶ It is inconsistent to assert that the Kaiser Permanente buildings follow the Guidelines but the project does not, for reasons including Kaiser Permanente’s greater height, long unarticulated façades, and lack of street-level retail and transparency.⁶⁷

The second major theme is that the project will adversely affect the Aquarian site. The appeal identified Guideline CS2.D.5, which reads, “Respect adjacent properties with design and site planning to minimize disrupting the privacy and outdoor activities of residents in adjacent buildings.” Aquarian also invoked Guideline PL3.B.1, which reads: “Provide security and privacy for residential buildings through the use of a buffer or semi-private space between the development and the street or neighboring buildings.” As addressed in the Order on Motion for Partial Dismissal, these guidelines cannot support Appellant’s claims because they refer only to “residential” uses. Aquarian is a religious facility rather than a residential use.⁶⁸

⁶⁴ Besse, Part 5 at 1:50-3:27.

⁶⁵ Besse, Part 5 at 1:50-3:27.

⁶⁶ Sachs, Part 1 at 52:57-53:10.

⁶⁷ Besse, Part 4 at 56:38 through Part 5 at 1:3; *see* Applicant Exhibit 5, p. 28.

⁶⁸ Order on Motion for Partial Dismissal (December 4, 2023), pp. 2-3; Besse, Part 5 at 17:03.

Aquarian identified no guideline providing for consideration of the Aquarian property's privacy. Nevertheless the design considered the project's effects on its neighbors, including the Aquarian site.⁶⁹ Guideline CS2.D.1 directs designers to consider "the scale of development anticipated by zoning," which for the Aquarian site may be up to 55 feet high, the same as the project, with no required setback from the shared property line.⁷⁰ Guidelines CS2.D.3 and 4 direct designers to provide transitions to less intense zones, a consideration that applies to the LR-zoned residential properties abutting the Project site to the northwest (for which the Project will provide landscaped screening) but not to the non-residential, NC-55-zoned Aquarian Property.

Several design elements reflect respect for the Aquarian building. The trash and loading areas will be moved from their current location inches from the Aquarian site and shielded by a residential portion of the project, significantly buffering Aquarian from these services' noise and visual impacts.⁷¹ The setbacks between the project and the Aquarian site will be greater than now exist along most of the shared boundary, and the setback areas will incorporate landscaping to provide an additional buffer.⁷²

During the design process, the project was modified to remove planned windows from portions of the project closest to the Aquarian property and to remove balconies from the East Thomas Street façade to provide greater privacy.⁷³ Also, the project's 15th Avenue East and East Thomas Street frontages will provide greater-than-required setbacks.⁷⁴ Aquarian did not meet its burden to demonstrate clear error in the Department's determination of consistency with the Guidelines.

5. Guideline Consistent/Trees. Capitol Hill Guideline CS1.4.e recommends that the Applicant "[m]aximize preservation of the area's existing tree canopy" and "[e]ncourage the integration of any exceptional trees or heritage trees, or other mature plantings, into the project design." Similarly, Guideline CS1.D.1 recommends that projects "[i]ncorporate on-site natural habitats and landscape elements such as: existing trees, native plant species or other vegetations into project design"

Aquarian's tree removal concerns focus on protecting privacy. However, no guideline requires the project to provide privacy for the Aquarian site. Aquarian also suggested in earlier filings that as the project will remove trees, it does not maximize the tree canopy. Though encouraging integration of existing plantings, the Guidelines do not include a blanket ban on tree removal.⁷⁵ Integrating the trees along the property line shared with Aquarian was not possible given the project's massing needs, which included providing separated service vehicle access from East Thomas Street.⁷⁶ Although trees are removed, the project addresses

⁶⁹ Besse, Part 5 at 17:07.

⁷⁰ Besse, Part 5 at 6:38-8:10; Applicant Exhibit 9, p. 42.

⁷¹ Besse, Part 5, 17:20-18:04; Applicant Exhibit 24, pp. 9 and 11.

⁷² Applicant Ex. 24, p. 11; Besse, Part 5, 18:04-19:06.

⁷³ Besse, Part 5 at 12:15-13:14.

⁷⁴ Besse, Part 5 at 14:00-15:30 and FN 79.

⁷⁵ Besse, Part 5 at 36:28-36:51.

⁷⁶ Besse, Part 5 at 39:30-40:56.

Capitol Hill Guideline CS1.4.e by including new landscaping to contribute to the tree canopy and planting species suited for their selected location.⁷⁷ The Board supported the approach “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.”⁷⁸

The project includes native plants and trees.⁷⁹ This includes trees along the street frontages and in the roof deck areas. The existing Leeland Cypress which are not ideally located are removed, but street trees are retained and trees are added throughout the site.⁸⁰ The Applicant’s arborist examined the Guidelines as they apply to landscaping and identified no inconsistencies with the project. Aquarian did not meet its burden to demonstrate how the project’s approach is inconsistent with the Guidelines.

DECISION

The Department’s Master Use Permit decision is **UPHELD**. The appeal is dismissed.

Entered March 19, 2024.

A handwritten signature in black ink, appearing to read 'SD', is written over a horizontal line.

Susan Drummond, Deputy Hearing Examiner

⁷⁷ Besse, Part 5 at 38:31-39:47.

⁷⁸ Department Exhibit 3, p. 14.

⁷⁹ Besse, Part 5 at 31:50.

⁸⁰ Besse, Part 5 at 38:31-39:47; Applicant Exhibit 9, p. 32, 38, 80-82.

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult code sections and other appropriate sources, to determine applicable rights and responsibilities.

The Hearing Examiner's decision is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for the decision's judicial review must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case the judicial review request must be commenced within twenty-one (21) days of the date the motion for reconsideration order is issued.

The person seeking review must arrange for and initially pay for preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the date below I sent true and correct copies of the attached **FINDINGS AND DECISION** to each person below in **Aquarian Foundation, Inc.**, Hearing Examiner File **MUP-23-011** in the manner indicated.

Party	Method of Service
Appellant and Authorized Representative Reverend Jann Werner Aquarian Foundation, Inc info@aquarianfoundation.com	<input type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
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Dated: March 19, 2024

/s/ Angela Oberhansly
Angela Oberhansly
Legal Assistant