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2  
3 BEFORE THE HEARING EXAMINER FOR THE CITY OF SEATTLE  
4

5 In the Matter of the Appeal of )

6 **SUZANNE LASSER M.D. ET AL.** )

7 From a decision issued by the Director, )  
8 Seattle Department of Construction and )  
Inspections )

) Hearing Examiner File:

) **MUP-16-018 (DR)**

) Department Reference:

) 3020860

) **APPLICANT'S MOTION TO**  
) **DISMISS DESIGN REVIEW**  
) **APPEAL**  
10

11 I. INTRODUCTION

12 Applicant Epic Property Management LLC (referred to herein as "Applicant")  
13 respectfully requests the full dismissal of the above-referenced appeal of the Director's  
14 September 1, 2016 Design Review approval (referred to herein as the "Decision," which is  
15 attached to this motion as Exhibit A) for Applicant's project (the "Project"), because each  
16 of Appellants' claims raises issues or seeks relief outside the Examiner's jurisdiction, or  
17 otherwise fails to state any claim that is cognizable in their Design Review appeal.

18 Because the Appellants failed to comply with the Examiner's request that they  
19 clarify their appeal issues, their narrative of objections remains quite dense, raising dozens  
20 of claims relating to the Project and the City's land use review process in general. The  
21 vast majority of these claims are outside the scope of a Design Review appeal, and many  
22 bear no relation to the Project itself. As detailed in this Motion, a close review of  
23 Appellants' filings shows that their objections boil down to their own subjective

1 disagreement with the Director’s decision, their belief that Applicant should not redevelop  
2 its property, and their disappointment that all of their suggestions were not incorporated  
3 into the Project design. Because none of these matters justifies reversal of the Decision,  
4 summary dismissal is appropriate at this time.

## 5 II. RELIEF REQUESTED

6 Pursuant to Hearing Examiner Rules of Practice and Procedure (“HER”) 2.16(e)  
7 and 3.02(b), and the Examiner’s October 4, 2016 Prehearing Order in this matter (the  
8 “Prehearing Order”), Applicant moves for a dispositive order dismissing Appellants’  
9 appeal and striking the previously scheduled hearing for this matter.

## 10 III. STATEMENT OF FACTS

11 Applicant Epic Property Management LLC is a business entity owned and  
12 controlled by Glenn MacDonald and Ms. Amanda Twiss, a married couple who have  
13 owned and operated the property commonly known as 1830 East Mercer Street (the  
14 “Property”) for several years. Mr. MacDonald and Ms. Twiss reside near the Property, so  
15 when they decided to redevelop their Property, they felt it important to propose a well-  
16 designed project that would accommodate both commercial and residential space for the  
17 benefit of the neighborhood. They engaged PUBLIC47 Architects through the Applicant  
18 entity to design a new building on the portion of the property currently occupied by a  
19 surface parking lot. *See* Declaration of Mr. Kevin Tabari, AIA (“Tabari Decl.”), para. 1;  
20 Decision at 1. The Project proposal included a 5-story structure with 32 apartment units  
21 and approximately 2,000 square feet of retail at ground level. *See* Decision at 1.

22 The Seattle Municipal Code (referred to herein as the “Code” or “SMC”) requires  
23 no parking for the Project. *See* SMC 23.54.015 (Table A at II.K and Table B at II.M).

1 Nevertheless, the Project was designed to include 10 below-grade parking spaces and 2  
2 surface parking spaces (including accessible parking) in order to provide more convenient  
3 access for the Project’s residents, commercial tenants, and guests. *See* Decision at 1. The  
4 Applicant submitted the Project for review and approval pursuant to the City’s Design  
5 Review program, Chapter 23.41, SMC, and sought the East Design Review Board’s  
6 (referred to herein as the “Board”) approval for several departures. *See* Decision at 11.  
7 Part of the Applicant’s reason for seeking these departures was to accommodate parking  
8 stalls to serve the Project, even though none were required by Code.

9 An early design guidance meeting was held on September 16, 2015. *See* Decision  
10 at 2. The Board received and considered numerous public comments on the Project before  
11 and during their recommendation hearing on the Project, which was held on April 13,  
12 2016. *See id.* at 3-4 (referencing both in-person and written comments on the Project).  
13 The Board provided extensive design guidance based on their consideration of the Project,  
14 both under the Citywide and East Design Review Guidelines. *See, e.g., id.* at 5-11.

15 After this design guidance was incorporated into the Project plans, the Board  
16 approved four separate development standard departures based on a finding that they  
17 would “help the project better meet th[e] design guideline priorities *and achieve a better*  
18 *overall design than could be achieved without the departures.*” *See id.* at 11 (emphasis  
19 provided). In approving these departures, the Board closely considered the merits of the  
20 proposed design as well as site-specific design considerations. *Id.* For example, in  
21 allowing a departure to provide access to the underground parking from East Mercer Street  
22 instead of the alley (Departure 1), the Board recognized that “[t]he topography of the site  
23 with the high point along the alley would necessitate a ramp into the below grade parking

1 *that would result in fewer parking spaces and diminish the depth of the commercial space*  
2 *[in the proposed building].” Id. (emphasis provided). The Board approved a second*  
3 *departure (Departure 2) to permit a portion of the enclosed parking lot to abut Mercer*  
4 *Street without an intervening use, based on similar design considerations. See id. at 11-12.*

5 During early design guidance for the Project, the Board encouraged the applicant to  
6 consider a departure to reduce a 10-foot sight triangle for the driveway serving the Project  
7 (Departure 3), in order to diminish its presence within the overall Project. *See* Decision at  
8 5, Sec. 3(a); Tabari Decl., Exhibit 1(a) (graphic depicting driveway layout resulting from  
9 Departure 3). The Board ultimately approved a sight triangle reduction of 22 inches,  
10 adding a condition that the Applicant “provide a visual warning system at the garage door  
11 and a change in the paving of the sidewalk in front of the driveway to warn pedestrians of  
12 the garage’s presence.” *See* Decision at 12; Tabari Decl. Exhibit 1(a). The fourth and final  
13 departure the Board granted (Departure 4) was to permit additional street-level residential  
14 uses along East Mercer Street. *See id.* In approving this departure, the Board noted that  
15 designing a successful commercial space would otherwise be difficult, and that residential  
16 uses would serve to create a transition between the single family zone to the west of the  
17 site and commercial uses on the other side of the Project. *See id.* Departures 1 through 4  
18 were approved unanimously by the Board when it recommended approval of the Project.  
19 *See id.* at 11-13.

20 The Director accepted the Board’s recommendation on the Project, as well as the  
21 four departures described above. *Id.* at 14. In so doing, the Director specifically “agree[d]  
22 with the Design Review Board’s conclusion that the proposed project and conditions  
23 imposed *result in a design that best meets the intent of the Design Review Guidelines . . .*”

1 *Id.* (emphasis provided). The Director further found that the decision and  
2 recommendations of the Design Review Board . . . *are consistent with the City of Seattle*  
3 *Design Review Guidelines. The Director is satisfied that all of the recommendations*  
4 *imposed by the Design Review Board have been met.” Id.* (emphasis provided).

5 The Appellants appealed the Director’s Design Review Decision to the Examiner,  
6 submitting a statement that voiced their subjective disagreement with the Decision but  
7 generally failing to address—or even acknowledge—the design considerations that were  
8 carefully weighed and balanced by both the Board and the Director in approving the  
9 Project. Appellants’ initial appeal statement (referred to herein as the “Initial Filing,”  
10 which is attached to this Motion as Exhibit B) was modified on October 4, 2016 to remove  
11 parties that were initially listed as appellants (apparently without their permission), but was  
12 otherwise unchanged in substance. The Initial Filing indicated that Appellants were  
13 appealing “Design Review and Departure” for the Project, but also checked the “Other”  
14 box on the Examiner’s appeal form, raising a number of issues ranging from ADA access  
15 to fire lanes. *See* Initial Filing at 3.

16 Appellants’ narrative description of their appeal issues included approximately four  
17 single-spaced pages relating to the City’s handling of the design review for the Project.  
18 Accordingly, the Examiner set an October 11, 2016 deadline for the Appellants to  
19 “clarif[y] their appeal issues.” *See* Prehearing Order at 1. In response, Appellants  
20 submitted another filing (referred to herein as the “Second Filing,” attached to this Motion  
21 as Exhibit C) containing over four pages of single-spaced narratives adding new claims,  
22 but essentially raising the same issues as the Initial Filing. *See* Second Filing at 1-5.  
23

1 IV. STANDARD AND SCOPE OF REVIEW

2 As noted above, the Board’s recommendation in favor of the Project and the four  
3 requested departures were approved unanimously, with all six members present voting in  
4 favor. *See* Decision at 14. Where four or more members agree with the Board’s  
5 recommendation to the Director, the Director is *required* to accept the Board’s  
6 recommendation except in very limited circumstances. *See* SMC 23.41.014.F.3.  
7 Specifically, the Director may only go against such a decision only if “the Director  
8 concludes that the recommendation of the Design Review Board: [1] Reflects inconsistent  
9 application of the design review guidelines; or [2] Exceeds the authority of the Design  
10 Review Board; or [3] Conflicts with SEPA conditions or other regulatory requirements  
11 applicable to the site; or [4] Conflicts with the requirements of state or federal law.” *See*  
12 SMC 23.41.014.F.3.a-d.

13 While the Examiner’s review of the Director’s decision under these criteria is *de*  
14 *novo*, the Code provides that the Director’s decision in this Type II appeal “shall be given  
15 substantial weight.” *See* SMC 23.76.022.C.7. Under this deferential standard, the  
16 appellant bears the burden of demonstrating clear error in the Director’s design review  
17 decision, *See, e.g., Brown v. Tacoma*, 30 Wn. App. 762, 764, 637 P.2d 1005 (1981).  
18 Under the clearly erroneous standard of review, the decision maker “does not substitute its  
19 judgment for that of the administrative body and may find the decision clearly erroneous  
20 only when it is left with the definite and firm conviction that a mistake has been  
21 committed.” *Cougar Mountain Assocs. v. King County*, 111 Wn.2d 742, 747, 765 P.2d  
22 264 (1988) (quoting *Polygon Corp. v. Seattle*, 90 Wn.2d 59, 69, 578 P.2d 1309 (1978))  
23

1 (internal quotation marks omitted)); *see also Moss v. Bellingham*, 109 Wn. App. 6, 13, 31  
2 P.3d 703 (2001).

3 The scope of the Examiner's review in an appeal of a Type II Design Review  
4 decision includes the procedural and substantive Code compliance of the appealed  
5 decision, but excludes any issue that is not "*cited in the appeal.*" *See* SMC 23.76.022.C.6  
6 (emphasis provided).

7 V. ARGUMENT AND GROUNDS FOR RELIEF

8 Appellants cannot prevail in their appeal of the Director's Decision, even if a  
9 hearing were held on the matter, because they have failed to cite in their appeal any  
10 substantive or procedural flaw with the Decision that is within the Examiner's jurisdiction.  
11 *See id.* Under HER 3.02(a), "[a]n appeal may be dismissed without a hearing if the  
12 Hearing Examiner determines that it [1] fails to state a claim for which the Hearing  
13 Examiner has jurisdiction to grant relief or [2] is without merit on its face, frivolous, or  
14 brought merely to secure delay." Dismissal of the instant appeal is appropriate under both  
15 of these bases, because Appellants have failed to raise any claim that has merit on its face,  
16 or is within the Examiner's jurisdiction. While it is clear that Appellants disagree, as a  
17 subjective matter, with the Director's Decision, this cannot be the basis for a land use  
18 appeal. *See also Cougar Mountain*, 111 Wn.2d at 747 (under "clear error" standard,  
19 appellate body will not substitute its judgment for the decision maker below).

20 In any event, because the Board's recommendation was unanimous, the Code  
21 *required* the Director to accept the Board's decision unless one of the four issues  
22 enumerated in SMC 23.41.014.F.3.a-d affected the Decision. In this case, none did, and  
23 Appellants do not do not allege that the Decision was affected by any of these issues. This

1 alone is fatal to the appeal, because the criteria of SMC 23.41.014.F.3 provide the *only*  
2 *basis* for reversal of a unanimous Board decision. Appellants have failed to cite any of  
3 these criteria, or fairly raise any circumstance that could conceivably meet any of these  
4 criteria. Appellants thus cannot meet their burden of demonstrating that the Director's  
5 Decision was incorrect—let alone meet their burden of affirmatively proving clear error in  
6 the Decision.

7 Other claims raised by Appellants, which range from offsite fire lanes to ADA  
8 compliance to the impact on Appellants' own housing values, are clearly outside the  
9 Examiner's jurisdiction. As described further in Part V.C below, none of these claims  
10 should be recognized as issues on appeal, and should also be dismissed at this time.

11 **A. The Appeal Should Be Dismissed Because None of the Issues**  
12 **Enumerated in SMC 23.41.014.F.3.a-d Affected the Decision.**

13 Because the Board unanimously recommended approval of the Project, the Director  
14 lacked the authority to reject the Board's decision unless it was found that it "[1] Reflects  
15 inconsistent application of the design review guidelines; or [2] Exceeds the authority of the  
16 Design Review Board; or [3] Conflicts with SEPA conditions or other regulatory  
17 requirements applicable to the site; or [4] Conflicts with the requirements of state or  
18 federal law." *See* SMC 23.41.014.F.3.a-d. The appeal has failed to acknowledge this  
19 limitation on the Director's authority, or state any claim suggesting that any of these issues  
20 could have affected the Decision. Appellants have thus failed to meet the Code's  
21 requirement that any appeal issue be "cited in the appeal." *See* SMC 23.76.022.C.6; *see*  
22 *also In re Madison Court Partners, LLC*, HE FILE: MUP-11-001(DR, W), Findings and  
23 Decision (April 11, 2011), Conclusion No. 2 (finding, in response to design review claim



1 raised after initial appeal filed, that the “claim was *not included in the appeal and is*  
2 *therefore waived*”) (emphasis provided). This failure alone justifies dismissal of the  
3 appeal.

4 **B. Appellants Cannot Meet Their Burden of Proving the Design Review**  
5 **Guidelines Were Applied Inconsistently.**

6 As noted above, the appeal has failed to meet the Code’s requirement that the bases  
7 for reversal of the Decision be “cited in the appeal,” *see* SMC 23.76.022.C.6, which alone  
8 justifies dismissal. Further, while Appellants’ filings contain a number of complaints  
9 relating to what they perceive to be “design flaws” in the Project, they fail to address, or  
10 even acknowledge, the Design Review Guidelines that the Board applied to the Project.  
11 However, the Guidelines are the only conceivable link between Appellants’ claimed  
12 “design flaws” and the Examiner’s jurisdiction in a Type II Design Review appeal.

13 Even if the Examiner were to find that this issue was presented in Appellants’  
14 filings (The Applicant contends it was not.), the issue presented in this appeal would *not* be  
15 whether the Guidelines were properly applied in the Decision. Rather, the issue would be  
16 whether the Director clearly erred by finding the Board’s recommendation was *not* affected  
17 by one of the issues enumerated in SMC 23.41.014.F.3. This is because the Director, *even*  
18 *if he disagrees with the Board’s application of the Guidelines*, may disturb a unanimous  
19 Board recommendation on the guidelines only if he finds it “[r]eflects *inconsistent*  
20 *application* of the design review guidelines.” *SMC 23.41.014.F.3.a* (emphasis provided).

21 Thus, to prevail in this appeal, Appellants would need to affirmatively prove (1)  
22 that the Decision was inconsistent with the Board’s decisions on other Design Review  
23 applications, and (2) that the Director committed clear error by not detecting this

1 inconsistency and rejecting the Board’s recommendation on this basis. Appellants cannot  
2 meet their burden of proof in this regard, as they fail to cite any other Board decision that  
3 is inconsistent with, or conflicts with, the Decision. Dismissal of Appellants’ claims of  
4 “design flaws” in the Project is appropriate on this basis alone.

5 Nevertheless, Applicant would like the record to show that Appellants are incorrect  
6 to suggest that the Project suffers from any “design flaw.” For this reason, each of  
7 Appellants’ claims relating to the design of the Project, along with a brief response, is  
8 included by category below:

9 **Height, Bulk, and Scale:** Appellants’ claims regarding the height, bulk, and scale  
10 of the Project insinuate that the Board did not consider these matters. *See, e.g.*, Initial  
11 Filing at 4, Sec. 1 (“We are concerned about the omission of discussion of  
12 height/bulk/scale.”); *id.* at 6, Sec. 3 (“We would like a smaller scale building . . .”); Second  
13 Filing at 4 (“Immediate neighbors appealing this development feel [*the Project*] would be  
14 an outlier in volume and height in the immediate blocks.”) (emphasis provided).

15 Appellants also complain about massing and transitions for the Project, suggesting these  
16 matters were not adequately considered by the Board. *See* Initial Filing at 3, Sec. 2(1). Not  
17 only was massing closely reviewed during the Design Review process, the Applicant met  
18 with neighbors during the course of multiple open community meetings and  
19 accommodated several suggestions and requests about the massing of the building. In fact,  
20 neighbors living closest to (behind) the proposed building spoke in favor of the Project  
21 during the public hearings for the Project.

22 Appellants’ suggestion that the Board was not advised on matters of height, bulk,  
23 scale, and massing is patently incorrect. The Board closely considered the massing of the

1 structure along with the other design considerations in reaching their decision to  
2 recommend approval. For example, Applicant’s architect presented the Board with  
3 diagrams illustrating massing options for the building, with particular focus of the view of  
4 the Project from single family neighbors located west of the alley. *See generally* Tabari  
5 Decl. Applicant’s architect provided a detailed perspective drawing showing diminished  
6 height and width at this end of the building, versus the maximum height, bulk, and scale  
7 permitted by the Code, which permits much more bulk than what was proposed in the  
8 Project design. *See* Tabari Decl., Exhibit 1(b). The Board also considered detailed  
9 renderings showing the massing of the structure from different perspectives, along with  
10 design elements and materials that would be used to harmonize its appearance with  
11 surrounding buildings. *See, e.g.*, Tabari Decl. Exhibits 1(c) and 2(a). Several members of  
12 the public, as well as the Board, specifically commented that they approved of the massing  
13 approach proposed for the Project. *See, e.g.*, Decision at 6 (“The Board *did not attempt to*  
14 *alter the proposed massing* as it extends to five floors on the east and steps down in height  
15 as it approaches the single family homes across the alley.”) (emphasis provided).  
16 Revisions to these detailed massing and design studies, which further show the Project’s  
17 consistency with the Board’s recommendations, were submitted to the City before the  
18 Director issued the Decision. *See, e.g.*, Tabari Decl. Exhibit 3. Further, it is uncontested  
19 that the Project complies with all FAR,<sup>1</sup> height, bulk, and scale regulations under the Code.

20  
21  
22 <sup>1</sup> In their Second Filing, Appellants discuss a plan set showing a revision to the building height, describing it  
23 as a “decision on FAR that is confusing to some immediate neighbors.” *See* Second Filing at 2, Sec. 2 (citing  
document dated 6/26 and posted on DCI’s web site on 8/26, entitled “*Plan Set: Annotated Plan SetV4*”).  
This revision was a one-foot reduction to the elevator penthouse for the Project. Not only does this revision  
have no impact on the Design Review for the Project, it bears no relation to FAR.

1            **Pedestrian Access; Entrances and Exits:** Appellants claim that “[t]he current  
2 design of exits and entrances to the apartment endangers pedestrians and *may result in*  
3 *unsafe vehicle drop offs and deliveries.*” See, e.g., Initial Filing at 4; see also *id.* at 6-7  
4 (“We are very concerned that because the building is in a school zone, that *children and*  
5 *pedestrians may get hurt by the design flaws* of entrances and exits.”) (emphasis provided).  
6 Appellants’ filings contain numerous misunderstandings and misstatements about existing  
7 conditions and the design of the Project; including the statement that the alley “*is used as a*  
8 *thoroughfare for the 600 students attending St. Joseph school,*” see Second Filing, Request  
9 for Relief No. 1 (emphasis provided), although St. Joseph’s school (which has not  
10 appealed the Decision) has access via dozens of routes over city rights-of-way, see Tabari  
11 Decl., Exhibit 2(b) (graphic of Project vicinity).

12            As noted below, the design of the *existing* building on the Property and the access-  
13 related issues are not before the Examiner, as these are outside the scope of this appeal.  
14 Nevertheless, Appellants’ concerns about safety are unfounded, as the Project has  
15 incorporated a number of measures to *improve* pedestrian and vehicle safety on and around  
16 the Property. The pedestrian entries to the new building comprising the Project were  
17 designed to be accessible, well lit, safe, and well-located on the site. The stairs to access  
18 the existing building, which are off of 19<sup>th</sup>, will be rebuilt wider than the existing stairs,  
19 will include ample lighting to create a safe and inviting procession, and will have a rise and  
20 run that fully comply with Seattle Building Code’s safety regulations. Further, because  
21 there will no longer be 16 parking spaces accessed from the alley, and because access to  
22 the parking garage will be from Mercer, far fewer vehicles will be using the alley access—  
23 not more, as Appellants suggest. Appellants further complain of delivery trucks’ use of the

1 alley, though trucks stopping at the Property typically park in front of the building where  
2 they can easily reach the existing Monsoon restaurant space. Many, if not all, of the  
3 delivery trucks Appellants complain of are serving other businesses unrelated to the  
4 Property.

5 It should be noted that in reviewing pedestrian access via another route (the corner  
6 of 19<sup>th</sup> and Mercer), the Director required the Applicant to construct or fund an offsite curb  
7 bulb for the crossing near the project. *See* Decision at 19, Para. 3. This requirement goes  
8 above and beyond the traffic and pedestrian-related requirements that usually apply to a  
9 project of this type, and further belies Appellants' claims that the City failed to consider  
10 pedestrian safety in approving the Project.

11 **Parking and Delivery Areas:** Appellants claim the “proposed exits and entrances  
12 to the building and safe traffic flow plans of delivery trucks to the building, especially to  
13 the commercial spaces.” Initial Filing at 3, Sec. 1. They also complain of the vehicle and  
14 delivery truck “traffic flow,” *see* Initial Filing at 4, Sec 2, and state that they “would like  
15 trucks to have a prescribed parking spot and for the owners and future tenants to enforce  
16 these traffic plans,” *see* Initial filing at 6, Sec. 3. Appellants fail to explain how any of  
17 these measures are necessary, or would improve access to, or safety for, the Project.

18 Appellants have further asked that the “loading docks and deliveries . . . proposed for the  
19 new building” be included in the Project plans. *See* Second Filing at 4, Request for Relief  
20 No. 2. However, loading berths are not required or proposed for the Project, so  
21 Appellants' concerns about their location are unfounded. *See* SMC 23.54.035(Table A).

22 **Driveway; Sight Triangles:** While Appellants failed to raise this issue in their  
23 initial appeal of the Project, their more recent filing with the Examiner claims that the

1 design of the driveway for the Project is flawed, stating that it is “too narrow and too  
2 steep.” *See* Second Filing at 1, Sec. 1; *see also* Second Filing at 2 (“[R]educing sight  
3 triangles in the proposed driveway *may be hazardous*. Additionally, we wonder if trees  
4 planned on the parking strip as part of the Green Factor solution would block views of  
5 pedestrians or cars when cars exit the driveway.”). Each of these concerns is unwarranted,  
6 as the driveway is below the Code-required maximum slope of 15%, and its width meets  
7 the Code minimum set forth in SMC 23.54.030, D.1.a, which is 10 feet. The reduction of  
8 the sight triangle approved in Departure 3 is minimal (reduced 22 inches from 10 feet to 8  
9 feet, 2 inches) and is supplemented with a “caution vehicle approaching” sign and a  
10 textural and visual change in the paving at the driveway, as required by Condition of the  
11 DRB Recommendation. *See* Decision at 14, Item 2; *see also* Tabari Decl, Exhibit 1(b).

12 **Dumpster Location:** While Appellants also failed to raise this issue in their initial  
13 appeal, their more recent filing with the Examiner inquiries about the location of the  
14 dumpster of the Project. *See* Second Filing at 1 (“We would like to know if dumpsters will  
15 remain adjacent to ADA parking spaces in the alley.”). Applicant’s proposed dumpster  
16 location (which must be reviewed and finally approved by Seattle Public Utilities, *not* the  
17 Board) was clearly demonstrated in the materials submitted to the Board. *See* Tabari  
18 Decl., Exhibit 2(c). As shown in this exhibit, the dumpsters serving the Project will be  
19 enclosed within the building and accessed from the exterior for each periodic collection  
20 day. *See id.* This matter is beyond the scope of the Examiner’s review, and Appellants’  
21 statement does not even purport to challenge this aspect of the Project. Rather, they state  
22 that they “would like to know” where the dumpsters will be located. *See* Second Filing at  
23 1. For both reasons, this matter should not be included as an appeal issue.

1            **No Basis for Reversal of the Decision:** As noted above, the Design Review  
2 Guidelines were properly applied to the Project in the Decision, and the Project is fully  
3 consistent with the Guidelines. The comprehensive treatment of each of the above design  
4 considerations demonstrates how the Director’s Decision addressed the requirements of  
5 SMC 23.41.012.A on departures, and correctly found that “the proposed project and  
6 conditions imposed *result in a design that best meets the intent of the Design Review*  
7 *Guidelines . . .*” See Decision at 14 (emphasis provided). Appellants may have made  
8 different design choices than the Applicant, and they may disagree with the Board’s  
9 discretionary weighing and balancing of the merits of the Project under the City’s  
10 Guidelines. However, a neighbor’s subjective dissatisfaction a Design Review Board  
11 approval is not enough to sustain a Design Review appeal, let alone meet an appellant’s  
12 burden of affirmatively demonstrating clear error in the Director’s Design Review  
13 approval. For these reasons, none the above claims would be appropriate to include as  
14 issues in this appeal, even if they were properly raised in the Initial Filing (which they  
15 were not).

16            In any event, because there is no indication (and no claim by Appellants) that the  
17 Board’s recommendation was *inconsistent with the Board’s decisions on other*  
18 *applications*, Appellants cannot prevail on their claim that the Project suffered from  
19 “design flaws.” See SMC 23.41.014.F.3.a (“inconsistent application of the design review  
20 guidelines” basis for Director’s rejection of Board recommendation). Accordingly, these  
21 claims should be dismissed.  
22  
23

1           **C. Appellants Have Failed to Raise Any Other Claim within the**  
2           **Examiner’s Jurisdiction.**

3           All other claims asserted in Appellant’s filings relate to issues that are outside the  
4 Examiner’s jurisdiction. In a Type II design review appeal, the Code permits the Examiner  
5 to hear “issues cited in the appeal that relate to *compliance with the procedures for Type II*  
6 *decisions as required in this Chapter 23.76, [or] compliance with substantive criteria . . .*”  
7 SMC 23.76.022.C.6 (emphasis provided). The substantive criteria that can generally be  
8 raised in a design review appeal (though Appellants have generally failed to raise them)  
9 include the four criteria at SMC 23.41.014.F.3.a-d, and the Design Review Guidelines.  
10 Each of the claims described below should not be permitted as appeal issues, because they  
11 fall outside the Examiner’s jurisdiction as limited by these Code provisions.

12           **Accessibility Review; Federal Americans with Disabilities Act (ADA):**

13 Appellants state many times, in different ways, that the design of the Project lacks safe  
14 access, and “is not up to current ADA standards.” *See, e.g.,* Initial filing at 2; *see also*  
15 Second Filing at 1 (“We want to see visible ADA access to both the existing . . . building  
16 and the [new building’s] apartment and retail space in the drawings. We would like visible  
17 signs to the ADA parking spots in the alley.”). However, not only does the Project meet or  
18 exceed all ADA and accessibility standards, but the planned enhancement to the existing  
19 site greatly improve the accessibility of the Property. The Seattle Building Code sets  
20 accessibility standards for buildings in the City, all of which are reviewed for compliance  
21 at the building permit stage—not in design review decisions. *See, e.g.,* Seattle Building  
22 Code, Ch. 11 (Accessibility). Further, as acknowledged in Appellant’s appeal, the Federal  
23



1 Government enforces ADA standards. *See* Initial Appeal at 6. In any case, none of these  
2 accessibility-related claims are within the Examiner’s jurisdiction. Nor do they have merit.

3 **Property Devaluation; Presence of Additional Renters in the Neighborhood:**

4 Appellants seem to believe that additional renters in the neighborhood will devalue  
5 neighbors’ properties. *See* Initial Filing at 3; Second Filing (later claiming that “[the  
6 renter] concern is a parking concern and traffic concern which may or may not be under  
7 the review of the Design Review Board.”). These concerns are not only unfounded and  
8 completely at odds with City policies favoring new residential units in urban villages; they  
9 bear no relation to any Land Use Code procedure or Design Review standard within the  
10 Examiner’s jurisdiction.

11 **Construction Disruption; Traffic Congestion:** Appellants raise concerns

12 regarding the construction of the Project and the traffic it could create. *See, e.g.,* Initial  
13 Filing at 3; *id.* at 6, Sec. 3 (raising concerns about “the imposition of *more traffic and*  
14 *green gas emissions [sic]* to our families and school children . . .”); Second Filing at 2-3  
15 (noting Appellants’ discussions with SDOT regarding the traffic study for the Project, and  
16 stating “we are willing to address it in the appeal”) (emphasis provided). While the City  
17 did consider the impacts relating to construction and buildout of the Project prior to issuing  
18 the Decision, none of these issues bears any relation to any Land Use Code procedure or  
19 Design Review standard within the Examiner’s jurisdiction in this appeal.

20 **Claims Regarding the Board’s Discussions and Procedure; Request to Change**  
21 **or Reconvene Design Review Board:** Appellants assert many claims about whether and

22 how the Board considered neighbors’ comments on the Project, and concerns about  
23 whether these comments were properly weighed and/or implemented when the Board

1 recommended approval of the Project. *See, e.g.*, Initial Filing at 3, Sec. 1 (“[W]e are  
2 concerned about *omission of discussion* of height/bulk/scale.”); *id.* at 3, Sec. 2(1) (claiming  
3 the Board “*failed to address* the massing of the new building,” and “*refused to allow the*  
4 *public to voice concerns* on the bulk and massing of the building in public meetings”); *id.*  
5 at 3, Sec 2(a) (complaining that “*the [] Board did not comment* on the height, bulk/ scale  
6 [sic] issue in their formal report”); *id.* at 4, Sec. 2 (taking issue with “[*o*]mission of Design  
7 Review Board comments on both pedestrian entrances and exits . . .”); *id.* at 5, Sec. 2 (“No  
8 mention [sic] of citizen and Design Review Board members’ concern about current office  
9 building and ADA noncompliance.”); *id.* at 5, Sec. 2 (acknowledging the Board’s  
10 discussion regarding “pedestrian and vehicle entrances and exits,” but complaining there  
11 was “no documentation of this discussion in the [Board’s] formal report”); *id.* at 5, Sec. 2  
12 (“No mention about our . . . concerns or suggestions for corrections were mentioned [sic]  
13 in the Design Review Board summary.”); *id.* at 6, Sec. 3 (“We would also like public  
14 discussion and Design Review Board comment on the height/bulk/and scale of the  
15 building.”); Second Filing at 3, Sec. 2(1) (claiming the Board disregarded comments  
16 regarding the size of the Project); Second Filing, Request for Relief No. 3 (“We would like  
17 the Design Review Board or appointed reviewers to compare and contrast current alley  
18 behind 1830 East Mercer Street with alley behind [other buildings in the area].”).  
19 (emphasis provided).

20 In connection with these claims, Appellants seek the following relief: “reversal of  
21 the decision is needed followed by neighborhood engagement and public disclosure of a  
22 new design for the exits and entrances. *We request a new Design Review Board* that is  
23 sensitive to ADA issues and pedestrian safety.” Initial Filing at 6, Sec. 3 (emphasis

1 provided). Appellants' suggestion that the Board employed improper procedure, or  
2 somehow ignored neighbors' comments, is inaccurate, as the Board proceedings as well as  
3 the Decision demonstrate a careful consideration of all public comments. *See also*  
4 Decision at 3-4 (discussing oral and written comments received and considered by the  
5 Board). The Appellants were entitled to provide their comments on the Project, and the  
6 record indicates the Board heard, and considered, these comments in due course.  
7 However, the Board is not required to acquiesce to every design-related suggestion  
8 submitted by members of the public. Nor is the Director.

9 In any event, this request and all related claims should be dismissed, because the  
10 Examiner lacks jurisdiction over Design Review Board procedure. While SMC  
11 23.76.022.C.6 authorizes the Examiner to decide "that relate to compliance with  
12 *procedures for Type II decisions as required in this Chapter 23.76,*" nothing in the Code  
13 permits the Examiner to decide issues relating to the Code's procedural requirements for  
14 Design Review, which are codified at *Chapter 23.41, SMC*.

15 As the Examiner has found in prior cases, "the fact that the Land Use Code  
16 includes an express grant of Hearing Examiner jurisdiction over the procedural  
17 requirements set forth in Chapter 23.76 SMC, but is silent as to jurisdiction over the  
18 procedural requirements of Chapter 23.41 SMC, *indicates an intent on the part of the City*  
19 *Council that the Examiner not have jurisdiction over Chapter 23.41 SMC's procedural*  
20 *requirements."* *In Re Mid-Eastlake Neighbors, et al.*, HE FILE: MUP-15-027(DR), Order  
21 on Applicant's and Appellant's Dispositive Motion (November 11, 2015), at 3 (emphasis  
22 in original). In the *Mid-Eastlake Neighbors* case, the Examiner went on to conclude that,  
23 "[r]eading SMC 23.76.022 together with Chapter 23.41 SMC, it is clear that the Examiner

1 *has no jurisdiction* [regarding the issues Appellants raised] *concerning design review*  
2 *procedures . . .*” *Id.* (emphasis provided). In this case, Appellants have asked the  
3 Examiner to review, remand and/or otherwise alter the procedure the Board employed in  
4 reviewing the Project. *See* Initial Filing at 6, Sec. 3. These claims should be dismissed for  
5 reasons identical to those discussed in the *Mid-Eastlake Neighbors* case.

6 **Claims Seeking Additional Public Disclosure of Documents or Information:**

7 Appellants assert many claims relating to the public availability of documents relating to  
8 the Project. *See, e.g.* Initial Filing at 3, Sec. 1 (“*We want public disclosure* of proposed  
9 exits and entrances to the building . . .”); *id.* at 6, Sec. 3 (“*We insist on public disclosure*  
10 *and discussion* of the plans for delivery truck traffic flow to the building . . .”); Second  
11 Filing at 2, Sec. 2 (“*Our concern with regard to public disclosure* is that in September  
12 2015 the letters submitted by immediate neighbors during the first Design Review Meeting  
13 were not handled in a timely manner. (Letters hand delivered to Beth Hartwick in  
14 September 2015 were not posted until February 2016 until neighbor Suzanne Lasser  
15 noticed the letters *were not posted in the public record.*”); Second Filing at 4, Request for  
16 Relief No. 1 (“*Where is the location for the dumpsters of 1818 East Mercer Street and*  
17 *would that add to the difficulty of entering the established businesses of the professional*  
18 *building? Can these details be included in plans shared in the public record?*”) (emphasis  
19 provided).

20 The publicly-available records on the City’s review of the Project shows that  
21 Appellants’ comments and correspondence (including several dozen communications from  
22 Appellants) were reviewed, considered, and included in the City’s files for the Project, so  
23 there is no indication the City mishandled any these documents or communications. In any

1 event, the City’s actions in handling and making records available to the public are covered  
2 in Washington’s Public Records Act, which also provides recourse for violations of its  
3 terms. *See generally* Ch. 46.56, RCW. Appellants fail to cite any Code provision which  
4 brings these matters within the Examiner’s jurisdiction—for none exists.

5 **Claims Relating to Existing Conditions; Future Acts of Third Parties:** Many  
6 of Appellants’ claims relate to existing conditions in the neighborhood, and complaints  
7 about third parties’ present (and potential future) misuse of roads and alleys in the vicinity  
8 of the Project. *See, e.g.*, Initial Filing at 5, Sec. 2 (“There have already been issues cited of  
9 *unsafe pedestrian conditions in the area . . .*”); *id.* at 6, Sec. 3 (“Current delivery trucks  
10 illegally park in a fire lane on 19<sup>th</sup> Ave East . . . or in the alley.”); *id.* at 6, Sec. 3 (“ . . .  
11 immediate neighbors are worried about pedestrian safety and fire lane access *from the*  
12 *current and future parking violations*”); Second Filing at 1-2 (“[O]ur local UPS driver is  
13 *concerned about cars parking* right to the edge of the alley and potentially right to the edge  
14 of the future driveway. *We are worried with this street parking behavior* that reducing  
15 sight triangles . . . *may be hazardous.*”) (emphasis provided). These matters should not be  
16 included as issues in this appeal because none of them bears any relevance to the Board’s  
17 Design Review of a land use proposal, which focuses on design-related matters. To the  
18 extent the Appellants suggest that Applicant should be required to remedy some pre-  
19 existing traffic problem (if any such problem exists) as a condition of project approval, the  
20 City lacks the legal authority to require this under well-settled Washington law. *See, e.g.*,  
21 RCW 82.02.020; *Benchmark Land Co. v. City of Battle Ground*, 94 Wn. App. 537, 541,  
22 972 P.2d 944 (1999) (en banc).

1 Finally, third parties' future use (and potential misuse) of public rights-of-way is  
2 not within the Director's or the Applicant's control. Rather, it is within the jurisdiction of  
3 Seattle's Department of Transportation (SDOT) to regulate and enforce. Because  
4 Appellants fail to cite any Code provision bringing these matters within the Examiner's  
5 jurisdiction, these claims should not be included as issues on appeal.

6 **Fire Lane Access; Surrounding Streets:** Appellants raise concerns about fire  
7 lanes serving the Project, and safety of City-owned rights-of-way surrounding the  
8 Property. *See, e.g.,* Initial Filing at 6, Sec. 3 (stating "worrie[s] about pedestrian safety and  
9 *fire lane access . . .*"); Second Filing at 1 ("*We would like . . . fire lanes in the plans.*");  
10 Second Filing, Request for Relief No. 3 ("*We want to see where delivery trucks and*  
11 *visitors will park with clear signage. We would like this indicated in the drawings. We*  
12 *want trucks to have clear vision when they reverse to avoid pedestrians and children and*  
13 *for signage to warn cars not to park close to the alley entrance along East Mercer Street or*  
14 *driveway. . . We want to see clearly approved vehicle circulation plans around the*  
15 *proposed apartment building and existing 1818 East Mercer Street building, for 19th Ave*  
16 *East, East Mercer St, East Roy St and the alley.*") (emphasis provided). However, no fire  
17 lane is proposed on the Project site, and the future use and improvements to surrounding  
18 streets, including any required fire lanes, is within the authority of SDOT to regulate.  
19 Appellants fail to cite any Code provision bringing any of these matters within the  
20 Examiner's jurisdiction, so these claims should not be included as issues in this appeal.

21 **Tree Code:** While Appellants initially "request[ed] further review of the decision  
22 to remove an exceptional tree," *see* Initial Filing at 3, they have now stated that they  
23 "would like to dismiss this issue from the appeal," *see* Second Filing at 3, Sec. 1(4). For

1 this reason, and because it is uncontested that the Decision fully complies with the City  
2 Code's exceptional tree regulations, this should not be included as an appeal issue, either.  
3 *See also* HER 3.06(c) ("An appellant's request to withdraw shall be granted as a matter of  
4 right and the appeal dismissed.").

5 **Prior (2007) Design Review Board Proceedings:** Appellants suggest that another  
6 Design Review Board's comments from a 2007 proposal to develop the Property, which was  
7 initiated by another developer, should somehow control—or be considered in—the Decision.  
8 *See* Second Filing at 3, Sec. 2. However, because another board's review of another project  
9 from another developer a decade ago bears no relevance to the Project, this should not be  
10 considered or included as an issue in this appeal.

11 **Plans / Updates:** Each request for relief in Appellants' Second Filing asks the  
12 Examiner to require the Applicant to update its plan sets to show various aspects of the Project.  
13 *See generally* Second Filing at 4-5, Requests for Relief Nos. 1-3; *see, e.g.*, Request for Relief  
14 No. 3 ("We want to see clearly visible, safe, accessible public and private entrances and exits  
15 for deliveries and invitees *in the plans.*") (emphasis provided). However, as discussed above,  
16 all matters raised by Appellants' requests for relief were specifically addressed in the City's  
17 review of the Project. Of course, the Decision will control, and limit, Applicant's future  
18 development of the Project, regardless of what is shown in any particular plan set. Thus,  
19 ordering the Applicant to provide more plans showing these items would be a fruitless  
20 exercise. In any event, even if one or more of these referenced items was excluded from a plan  
21 set (or Appellants are otherwise unable to locate where it is shown or described), this would  
22 not justify reversal of the Decision. The Examiner should thus decline Appellants' invitation  
23 to require updates to Applicant's plans, regardless of the Examiner's decision on the merits.

1 **Appellants’ Other Questions / Concerns Regarding the Project:** The other

2 statements in the appeal state general comments, concerns, and questions about the City’s  
3 Design Review process and the Project. *See, e.g.*, Second Filing 1 (“We would like to  
4 know if dumpsters will remain adjacent to ADA parking spaces in the alley.”); *id* at 3, Sec.  
5 1(4) (stating general comments regarding tree regulations, along with a question regarding  
6 City’s green factor rules); Second Filing at 2, Sec. 2 (“There was a very *recent decision on*  
7 *FAR [floor area ratio] that is confusing* to some immediate neighbors.”); *id.* at 3, Sec. 2(1)  
8 (questioning “to whom would we address this concern for cohesiveness of neighborhood  
9 as part of overall design of this project . . .”) (emphasis provided).

10 If appellants have further questions or concerns about the Project, and what is or is  
11 not shown in the plans, they are free direct questions to, and seek plans from, both the City  
12 and the Applicant—as they have already done in this case. However, with due respect to  
13 Appellants and their concerns about the City’s process, a land use appeal is not an efficient  
14 or proper forum for a question-and-answer review of a development proposal. In any  
15 event, because the questions, comments, and other concerns raised in Appellants’ filings  
16 do not challenge any particular aspect of the Decision, they should be disregarded for  
17 purposes of this appeal.

18 **VI. CONCLUSION**

19 For the reasons stated above, the Applicant respectfully requests that the Hearing  
20 Examiner dismiss the instant appeal challenging the Director’s Design Review Decision  
21 for the project, and strike the previously scheduled hearing in this matter.



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DATED this 18th day of October, 2016.

Davis Wright Tremaine LLP  
Attorneys for Epic Property Management LLC,  
a Washington limited liability company

By   
Clayton P. Graham  
WSBA #38266

# *EXHIBIT A*



**City of Seattle**  
Edward B. Murray, Mayor

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**Department of Construction and Inspections**  
Nathan Torgelson, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR OF  
THE SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS**

**Application Number:** 3020860  
**Applicant Name:** Kevin Tabari of Public 47 Architects  
**Address of Proposal:** 1830 East Mercer St

**SUMMARY OF PROPOSAL**

Land Use Application to allow a 5-story structure containing 32 apartment units and 2,035 sq. ft. of retail at street level. Parking for 10 vehicles to be provided below grade and surface parking for 2 at the alley. The existing structure on site is to remain.

The following approvals are required:

**Design Review with Departures - (Seattle Municipal Code 23.41)\***

**SEPA - Environmental Determination - (Seattle Municipal Code Chapter 25.05)**

*\* Departures are listed near the end of the Design Review Analysis in this document*

**SEPA DETERMINATION:**

Determination of Non-Significance

- No mitigating conditions of approval are imposed.  
 Pursuant to SEPA substantive authority provided in SMC 25.05.660, the proposal has been conditioned to mitigate environmental impacts

**SITE AND VICINITY**

Site Zone: Neighborhood Commercial 1-40 (NC1-40)

Nearby Zones: North: NC1-40 and SF5000  
South: NC1-40

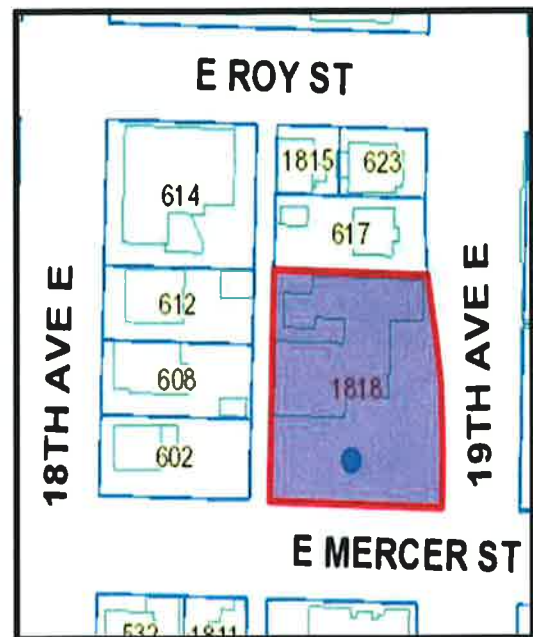
West: SF5000  
East: NC1-40 and SF5000

ECAs: None

Site Size: 19,420 sq. ft.

PUBLIC COMMENT:

The public comment period ended on January 6, 2016. In addition to the comment(s) received through the Design Review process, other comments were received and carefully considered, to the extent that they raised issues within the scope of this review. These areas of public comment related to removal of trees including one exceptional tree, parking, traffic, pedestrian safety and height, bulk and scale. Comments were also received that are beyond the scope of this review and analysis per SMC 23.41 and SMC 25.05.



**I. ANALYSIS – DESIGN REVIEW**

**CURRENT AND SURROUNDING DEVELOPMENT; NEIGHBORHOOD CHARACTER**

The site is occupied by a two-story structure originally built in 1905 that has had many additions and modifications including a one story commercial space along 19<sup>th</sup> Ave E. The current uses are office space and a restaurant. The southern portion of the site is a surface parking lot.

The site is located in a two block Neighborhood Commercial zone surrounded mostly by a Single Family zone and a few blocks of a Lowrise zone. The commercial development along 19<sup>th</sup> Ave E consists of smaller storefronts housing restaurants and small businesses. Kitty-corner to the site is a recently completed 4 story mixed use development. Across E Mercer St is a 10 unit 2-story apartment building managed by the Seattle Housing Authority which was constructed in 1980. Across the alley are well maintained single family residences built in the first decade of the 1900's. Across 19<sup>th</sup> Ave E is a brick three-story mixed use building that was built in 1907.

One block to the north is St. Joseph's church and school and two blocks to the south is the Miller Community Center and Meany Middle School. A bus route runs down 19<sup>th</sup> Ave E.

The site is located within the Madison-Miller Residential Urban Village.

**FIRST EARLY DESIGN GUIDANCE September 16, 2015**

The packet includes materials presented at the meeting, and is available online by entering the project numbers 3020860 at this website:

[http://www.seattle.gov/dpd/Planning/Design\\_Review\\_Program/Project\\_Reviews/Reports/default.asp](http://www.seattle.gov/dpd/Planning/Design_Review_Program/Project_Reviews/Reports/default.asp).

The packet is also available to view in the file, by contacting the Public Resource Center at Seattle DCI:

**Mailing Public Resource Center**  
**Address:** 700 Fifth Ave., Suite 2000  
P.O. Box 34019  
Seattle, WA 98124-4019

**Email:** [PRC@seattle.gov](mailto:PRC@seattle.gov)

## **PUBLIC COMMENT**

The following public comments were offered at the meeting:

- Concerned that easy access to the existing commercial uses will disappear after this development is built.
- Concerned about further development of the site.
- Supported a corner residential lobby.
- Concerned about parking access on E Mercer St due to the housing authority project across the street.
- Concerned about the loss of trees as they provide a visual respite.
- Stated appreciation for a building with high quality materials and is looking forward to the development as an addition to the neighborhood.
- Stated support for the development kitty-corner to the site.
- Concerned about the loss of trees but appreciated the thought out plans.
- Preferred the alternative with the maximum amount of retail space.
- Supported and encouraged the parking to be provided.
- Encouraged the curb cut to parking access be located on 19<sup>th</sup> Ave E, as E Mercer is tough to navigate.
- Concerned about the loss of two parking spaces on E Mercer St.
- Encouraged the project and stated it would be better without parking.
- Supported retail space for small neighborhood uses.
- Encouraged a lobby off of 19<sup>th</sup> Ave E.
- Concerned about the solid waste storage location as it needs easy access.
- Encouraged solid retail space to support commercial pockets in urban neighborhoods.
- Noted that if the tree is exceptional and is removed, great landscaping should be provided.
- Commended the design team as the site is challenging.
- Encouraged the residential lobby on E Mercer St as a corner lobby would take up commercial space.
- Encouraged extending the retail space.
- Supported commercial use at the corner over a residential lobby.
- Stated a love of trees, but the trees on this site are not important.
- Appreciated the design team.
- Stated that E Mercer St parking needs to be accessed.
- Concerned about parking impacts from the project.
- Encouraged down lighting on the building.

## RECOMMENDATION MEETING April 13, 2016

The packet includes materials presented at the meeting, and is available online by entering the project numbers 3020860 at this website:

[http://www.seattle.gov/dpd/Planning/Design\\_Review\\_Program/Project\\_Reviews/Reports/default.asp](http://www.seattle.gov/dpd/Planning/Design_Review_Program/Project_Reviews/Reports/default.asp).

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**Mailing Public Resource Center**  
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Seattle, WA 98124-4019

**Email:** [PRC@seattle.gov](mailto:PRC@seattle.gov)

### PUBLIC COMMENT:

At the Recommendation meeting, three members of the public affixed their names to the sign-in sheet. In general, speakers' remarks lauded the project's design, in particular the storefront along 19<sup>th</sup> Ave and the level of attention to the masonry. Several speakers encouraged the Board to preserve the exceptional cedar tree as well as the other significant trees on site. Replacement trees should have a larger caliper than what the applicant proposes. The height of the building also proved problematic to some of those in attendance. The five-stories facing 19<sup>th</sup> Ave and a portion of Mercer St. exceed the height of all the nearby structures, disrupting, according to them, the intimate scale of the neighborhood. The four stories at the alley, according to the commenters, are excessive given the single family neighborhood to the west.

Although comments differed on the merits of the quantity of parking proposed, speakers expressed their belief that the modest amount of tenant parking would exacerbate the scarcity of on-street parking. The safety of children, many of who walk to nearby schools, and the number of traffic accidents were highlighted by neighbors.

Seattle DCI received numerous letters detailing the applicant's failure to address the project's height, bulk and scale at the zone transitions to the west and its relationship to small commercial buildings along 19<sup>th</sup> Ave. Letters and emails also discussed parking and safety issues as well as the hope that the city would preserve the exceptional trees.

<b>PRIORITIES &amp; BOARD RECOMMENDATIONS</b>
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After visiting the site, considering the analysis of the site and context provided by the proponents, and hearing public comment, the Design Review Board members provided the following siting and design guidance.

**Early Design Guidance: September 16, 2015**

- 1. Massing Concept: The Board supported the applicant moving forward with their preferred Alternative 3, noting that it will add the most commercial frontage along 19<sup>th</sup> Ave E and enhance the context of the Madison-Miller Urban Village. (CS2.A.1)**  
**The following guidance was given:**
  - a. In the courtyard between the existing and proposed structures, provide lighting and safety measures to discourage transient use. (PL2.B.2)
  - b. Support the continuity of the commercial space at the existing building. (CS3.A.1)
  - c. Proceed with the materials shown in the EDG packet. (DC4.A.1)
  
- 2. Streetscape: The Board noted that all the alternatives added to the streetscape, but Alternative 3 was the strongest. (CS2.B.2) The following guidance was given:**
  - a. Design the commercial space to activate the corner. (PL3.C.1)
  - b. The lobby entry should be well designed. (PL3A.2)
  - c. Explore the use of the residential lobby to access the existing building uses and services. (PL3A.2)
  
- 3. Access to Parking: The Board agreed that access to parking from E Mercer St. was not a great location but it appeared to be the preferable location to access the mostly underground parking and to maximize commercial space along 19<sup>th</sup> Ave E and the site corner. (CS1.C.1, DC1.B.1)**
  - a. Consider reducing the sight triangles at the garage entry on E Mercer St. The Board indicated support for a departure to allow mirrors instead of full site triangles to reduce the size of the parking entry. (DC1.C.2)
  
- 4. Cedar Tree along 19<sup>th</sup> Ave E: The Board was supportive of removing the tree and stated that a strong commercial frontage on 19<sup>th</sup> Ave E and at the site corner is preferred over saving the tree. However a strong streetscape including high quality landscaping must be provided. (DC4.D.4) [Staff note: if an arborist determines the tree is exceptional and in good health, the Board will need to vote to recommend removal of the tree.]**
  - a. Provide high quality landscaping along the street and on site. (DC4.D.4)

**At the Recommendation Meeting provide the following:**

- Provide elevations and color renderings from eye level to show what the E Mercer St. streetscape with the parking access and lobby will look like.
- Provide a well-considered plan of where solid waste will be stored and how it will be serviced.

## RECOMMENDATION MEETING April 13, 2016

1. **Exceptional Tree:** The Board reasoned that the exceptional tree's location well above sidewalk level would make it cumbersome to design and construct a building around it. At the Early Design Guidance meeting, the Board members directed the applicant to produce a strong commercial frontage on 19<sup>th</sup> Ave E and at the site's corner. The streetscape must include high quality landscaping. The applicant's design with its wood and glass storefront (including floor to ceiling sliding windows) in response to the earlier guidance received the Board's commendation. (CS1-C, CS1-D)
  - a. The Board recommended that the proposed street trees (Greenvase Zelkova, Scarlet Oak and Hornbeam) possess a larger caliper at planting than the 2 ½ inches specified in the Recommendation booklet (p. 35) in order to expiate the loss of the exceptional tree, the junipers and the mature Locusts. (CS1-C, CS1-D)
2. **Height, Bulk and Scale:** The proposed mixed-use building's height along 19<sup>th</sup> Ave exceeds those of other commercial and residential structures in the immediate area. The two newer buildings across 19<sup>th</sup> Ave and south of Mercer St. rise four-stories increasing the height from the one to three story older edifices lining 19<sup>th</sup> Ave. St. Joseph's Church, one block to the north, will remain the tallest structure. The Board did not attempt to alter the proposed massing as it extends to five floors on the east and steps down in height as it approaches the single family homes across the alley. (CS2-A, CS2-B, CS2-C.1, CS2-D)
3. **Architectural Context:** The use of black brick and wood for the project complements other brick and wood buildings along 19<sup>th</sup> Ave E. including the dark masonry at the front of the Capitol Court apartments and red brick of the Parkside apartments among others. With tall, operable storefront windows stretching along 19<sup>th</sup> Ave, the building extends the commercial character of the adjacent Monsoon restaurant and the small shops and restaurants at the base of 526 19<sup>th</sup> Ave E. (CS3-A.1)
4. **Entries and Residential Frontage:** The Board observed that the execution of the residential entry porch with its steps and concrete wall mediating the slope along Mercer St. did not appear attuned to the pedestrian character of the neighborhood. Unlike the applicant's inspirational image of the framed recessed entry (pages 7 and 41 of the Recommendation booklet) of an older brick apartment building that entices or attracts the pedestrian into the building, the proposed concrete wall acts to obscure the entry. Of course, this has architectural precedence, too. The Board found the height and extent of the concrete unwelcoming in contrast to the richer materials of brick and wood elsewhere on the Mercer St. street front. The applicant will need to revise the wall to reduce the amount of concrete and reveal the entry in keeping the openness of the neighborhood (recommended condition). (PL3-A.1)
5. **Entries and Residential Frontage:** The applicant elected to locate access to the parking garage mid-way on Mercer St. rather than the alley. This access reduces the amount of ramping and excavation needed for the garage. City code prefers the alley; however, the Board recommended approval of a departure request to allow parking access from a street. (DC1-B.1)



6. **Parking Access:** The applicant requested two departures concerning parking and access to the garage. The parking garage, due in part to the sloping topography, extends to the right of way. The Land Use Code requires a separation between a garage and the street facing façade. In the proposal, a portion of the garage rises above the sloping ground plain. The design features a perforated brick screen at portions above grade which allows natural ventilation into the garage. The brick screen with its regular gaps to allow air flow provides texture to the masonry wall and complements the corbeling which occurs elsewhere on the façades.
  - a. The Board recommended approval of a departure to reduce the driver's side sight triangle at the garage entrance by 1'10". The applicant will provide a visual warning system. The Board recommended a condition to change the paving of the sidewalk in front of the driveway to help warn pedestrians of the garage's presence. (DC1-C.2)
  
7. **Architectural Composition:** Although the use of black brick and staggered patterns of fenestration are the material and compositional memes of recent architectural design, the patterning of the brick walls by corbeling should achieve a degree of elegance and sophistication unseen in comparable residential and mixed use buildings.
  - a. The Board and staff applauded this attempt to reintroduce subtle texture and pattern to a masonry building, particularly in this building type. (DC2-B, DC2-C.1, DC2-D)
  
8. **Signage:** The architect did not include the signage concept plan in the review booklet or bring drawings to the Recommendation meeting. He did discuss three signage types including painting directly on the storefront windows for the retail business. Given the high quality of the overall design, the Board felt comfortable with the explanation. Commercial signage on the brick wall to one side of the steps from 19<sup>th</sup> Ave to the courtyard is shown in the packet (p. 20). (DC4-B)
  
9. **Lighting:** The Board raised doubt about the adequacy of the lighting along the steps from 19<sup>th</sup> Ave leading to the courtyard. To meet safety and security needs, additional lighting beyond that of the recessed lights shown on p. 43 of the booklet will need to be provided. (PL2-B.2, DC4-C)

## DESIGN REVIEW GUIDELINES

The priority Citywide and Neighborhood guidelines identified by the Board as Priority Guidelines are summarized below, while all guidelines remain applicable. For the full text please visit the [Design Review website](#).

<b>CONTEXT &amp; SITE</b>
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**CS1 Natural Systems and Site Features: Use natural systems/features of the site and its surroundings as a starting point for project design.**

**CS1-C Topography**

**CS1-C-1. Land Form:** Use natural topography and desirable landforms to inform project design.

**CS1-C-2. Elevation Changes:** Use the existing site topography when locating structures and open spaces on the site.

### **CS1-D Plants and Habitat**

**CS1-D-1. On-Site Features:** Incorporate on-site natural habitats and landscape elements into project design and connect those features to existing networks of open spaces and natural habitats wherever possible. Consider relocating significant trees and vegetation if retention is not feasible.

**CS1-D-2. Off-Site Features:** Provide opportunities through design to connect to off-site habitats such as riparian corridors or existing urban forest corridors. Promote continuous habitat, where possible, and increase interconnected corridors of urban forest and habitat where possible.

### **CS2 Urban Pattern and Form: Strengthen the most desirable forms, characteristics, and patterns of the streets, block faces, and open spaces in the surrounding area.**

#### **CS2-A Location in the City and Neighborhood**

**CS2-A-1. Sense of Place:** Emphasize attributes that give a distinctive sense of place. Design the building and open spaces to enhance areas where a strong identity already exists, and create a sense of place where the physical context is less established.

**CS2-A-2. Architectural Presence:** Evaluate the degree of visibility or architectural presence that is appropriate or desired given the context, and design accordingly.

#### **CS2-B Adjacent Sites, Streets, and Open Spaces**

**CS2-B-1. Site Characteristics:** Allow characteristics of sites to inform the design, especially where the street grid and topography create unusually shaped lots that can add distinction to the building massing.

**CS2-B-2. Connection to the Street:** Identify opportunities for the project to make a strong connection to the street and public realm.

**CS2-B-3. Character of Open Space:** Contribute to the character and proportion of surrounding open spaces.

#### **CS2-C Relationship to the Block**

**CS2-C-1. Corner Sites:** Corner sites can serve as gateways or focal points; both require careful detailing at the first three floors due to their high visibility from two or more streets and long distances.

#### **CS2-D Height, Bulk, and Scale**

**CS2-D-1. Existing Development and Zoning:** Review the height, bulk, and scale of neighboring buildings as well as the scale of development anticipated by zoning for the area to determine an appropriate complement and/or transition.

**CS2-D-2. Existing Site Features:** Use changes in topography, site shape, and vegetation or structures to help make a successful fit with adjacent properties.

**CS2-D-3. Zone Transitions:** For projects located at the edge of different zones, provide an appropriate transition or complement to the adjacent zone(s). Projects should create a step in perceived height, bulk and scale between the anticipated development potential of the adjacent zone and the proposed development.

**CS2-D-4. Massing Choices:** Strive for a successful transition between zones where a project abuts a less intense zone.

**CS2-D-5. Respect for Adjacent Sites:** Respect adjacent properties with design and site planning to minimize disrupting the privacy of residents in adjacent buildings.

### **CS3 Architectural Context and Character: Contribute to the architectural character of the neighborhood.**

#### **CS3-A Emphasizing Positive Neighborhood Attributes**

**CS3-A-1. Fitting Old and New Together:** 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.

**CS3-A-4. Evolving Neighborhoods:** In neighborhoods where architectural character is evolving or otherwise in transition, explore ways for new development to establish a positive and desirable context for others to build upon in the future.

## PUBLIC LIFE

**PL1 Connectivity: Complement and contribute to the network of open spaces around the site and the connections among them.**

### **PL1-A Network of Open Spaces**

**PL1-A-2. Adding to Public Life:** Seek opportunities to foster human interaction through an increase in the size and quality of project-related open space available for public life.

**PL2 Walkability: Create a safe and comfortable walking environment that is easy to navigate and well-connected to existing pedestrian walkways and features.**

### **PL2-B Safety and Security**

**PL2-B-2. Lighting for Safety:** Provide lighting at sufficient lumen intensities and scales, including pathway illumination, pedestrian and entry lighting, and/or security lights.

**PL3 Street-Level Interaction: Encourage human interaction and activity at the street-level with clear connections to building entries and edges.**

### **PL3-A Entries**

**PL3-A-1. Design Objectives:** Design primary entries to be obvious, identifiable, and distinctive with clear lines of sight and lobbies visually connected to the street.

**PL3-A-2. Common Entries:** Multi-story residential buildings need to provide privacy and security for residents but also be welcoming and identifiable to visitors.

**PL3-A-4. Ensemble of Elements:** Design the entry as a collection of coordinated elements including the door(s), overhead features, ground surface, landscaping, lighting, and other features.

### **PL3-C Retail Edges**

**PL3-C-1. Porous Edge:** Engage passersby with opportunities to interact visually with the building interior using glazing and transparency. Create multiple entries where possible and make a physical and visual connection between people on the sidewalk and retail activities in the building.

## DESIGN CONCEPT

**DC1 Project Uses and Activities: Optimize the arrangement of uses and activities on site.**

### **DC1-B Vehicular Access and Circulation**

**DC1-B-1. Access Location and Design:** Choose locations for vehicular access, service uses, and delivery areas that minimize conflict between vehicles and non-motorists wherever possible. Emphasize use of the sidewalk for pedestrians, and create safe and attractive conditions for pedestrians, bicyclists, and drivers.

### **DC1-C Parking and Service Uses**

**DC1-C-1. Below-Grade Parking:** Locate parking below grade wherever possible. Where a surface parking lot is the only alternative, locate the parking in rear or side yards, or on lower or less visible portions of the site.

**DC1-C-2. Visual Impacts:** Reduce the visual impacts of parking lots, parking structures, entrances, and related signs and equipment as much as possible.

**DC1-C-4. Service Uses:** Locate and design service entries, loading docks, and trash receptacles away from pedestrian areas or to a less visible portion of the site to reduce possible impacts of these facilities on building aesthetics and pedestrian circulation.

**DC2 Architectural Concept: Develop an architectural concept that will result in a unified and functional design that fits well on the site and within its surroundings.**

**DC2-B Architectural and Facade Composition**

**DC2-B-1. Façade Composition:** Design all building facades—including alleys and visible roofs— considering the composition and architectural expression of the building as a whole. Ensure that all facades are attractive and well-proportioned.

**DC2-B-2. Blank Walls:** Avoid large blank walls along visible façades wherever possible. Where expanses of blank walls, retaining walls, or garage facades are unavoidable, include uses or design treatments at the street level that have human scale and are designed for pedestrians.

**DC2-C Secondary Architectural Features**

**DC2-C-1. Visual Depth and Interest:** Add depth to facades where appropriate by incorporating balconies, canopies, awnings, decks, or other secondary elements into the façade design. Add detailing at the street level in order to create interest for the pedestrian and encourage active street life and window shopping (in retail areas).

**DC2-D Scale and Texture**

**DC2-D-1. Human Scale:** Incorporate architectural features, elements, and details that are of human scale into the building facades, entries, retaining walls, courtyards, and exterior spaces in a manner that is consistent with the overall architectural concept

**DC2-D-2. Texture:** Design the character of the building, as expressed in the form, scale, and materials, to strive for a fine-grained scale, or “texture,” particularly at the street level and other areas where pedestrians predominate.

**DC4 Exterior Elements and Finishes: Use appropriate and high quality elements and finishes for the building and its open spaces.**

**DC4-A Exterior Elements and Finishes**

**DC4-A-1. Exterior Finish Materials:** Building exteriors should be constructed of durable and maintainable materials that are attractive even when viewed up close. Materials that have texture, pattern, or lend themselves to a high quality of detailing are encouraged.

**DC4-B Signage**

**DC4-B-1. Scale and Character:** Add interest to the streetscape with exterior signs and attachments that are appropriate in scale and character to the project and its environs.

**DC4-B-2. Coordination with Project Design:** Develop a signage plan within the context of architectural and open space concepts, and coordinate the details with façade design, lighting, and other project features to complement the project as a whole, in addition to the surrounding context.

**DC4-C Lighting**

**DC4-C-1. Functions:** Use lighting both to increase site safety in all locations used by pedestrians and to highlight architectural or landscape details and features such as entries, signs, canopies, plantings, and art.

**DC4-C-2. Avoiding Glare:** Design project lighting based upon the uses on and off site, taking care to provide illumination to serve building needs while avoiding off-site night glare and light pollution.

**DC4-D Trees, Landscape, and Hardscape Materials**

**DC4-D-4. Place Making:** Create a landscape design that helps define spaces with significant elements such as trees.

## DEVELOPMENT STANDARD DEPARTURES

The Board's recommendation on the requested departures are based upon the departure's potential to help the project better meet these design guideline priorities and achieve a better overall design than could be achieved without the departures. At the Recommendation meeting 4 departures were requested.

1. **Access to Parking (SMC 23.47A.032.A.1.a):** The Code states "Access to parking shall be from the alley if the lot abuts an alley improved to the standards of subsection 23.53.030.C, or if the Director determines that alley access is feasible and desirable to mitigate parking access impacts. If alley access is infeasible, the Director may allow street access."

The applicant requested a departure to provide access to the underground parking from E. Mercer St rather than the alley

This departure would provide an overall design that would better meet the intent of Design Guidelines **CS1-C-1. Land Form:** Use natural topography and desirable landforms to inform project design and **CS2-B-2. Connection to the Street:** Identify opportunities for the project to make a strong connection to the street and public realm. The topography of the site with the high point along the alley would necessitate a ramp into the below grade parking that would result in fewer parking spaces and diminish the depth of the commercial space off of 19<sup>th</sup> Ave E. **CS2-D-5. Respect for Adjacent Sites:** Respect adjacent properties with design and site planning to minimize disrupting the privacy of residents in adjacent buildings. By providing parking access from E Mercer St instead of the alley, the development will help minimize use of the alley, respecting the Single Family zone across the alley.

The Board voted unanimously to recommend this departure.

2. **Access to Parking (SMC 23.47A.032.B.1.b):** The Code states "Within a structure, street-level parking shall be separated from street-level, street-facing facades by another permitted use. This requirement does not apply to access to parking meeting the standards of subsection 23.47A.032.A"

The applicant requested a departure for a portion of the enclosed parking along the E Mercer St facade to be allowed without an intervening use.

This departure would provide an overall design that would better meet the intent of Design Guidelines **CS1-C-1. Land Form:** Use natural topography and desirable landforms to inform project design. E Mercer Street slopes downward from the alley to 19th Ave E. creating a situation where the enclosed parking will be mostly below the line of the sidewalk. The façade area that is above the line of the sidewalk and is not part of the residential entry will have a brick screen that will meet the intent of guidelines **DC2-C-1. Visual Depth and Interest:** Add depth to facades where

appropriate by incorporating...or other secondary elements into the façade design. Add detailing at the street level in order to create interest for the pedestrian.... and DC2-D-1. Human Scale: Incorporate architectural features, elements, and details that are of human scale into the building facades, entries, retaining walls, courtyards, and exterior spaces in a manner that is consistent with the overall architectural concept.

The Board voted unanimously to recommend this departure

3. **Parking Standards - Sight Triangles (SMC 23.54.030.G):** The Code states “For exit-only driveways and easements, and two way driveways and easements less than 22 feet wide, a sight triangle on both sides of the driveway or easement shall be provided, and shall be kept clear of any obstruction for a distance of 10 feet from the intersection of the driveway or easement with a driveway, easement, sidewalk or curb intersection if there is no sidewalk.”

The applicant requested a departure for a reduction in the size of the sight triangle from 10’ to 8’-2”to the east of the garage entry.

This departure would provide an overall design that would better meet the intent of Design **Guideline DC1-C-2. Visual Impacts:** Reduce the visual impacts of parking...entrances.... Given the setback of the parking entry to the sidewalk, the reduced sight triangle will help minimize the visual impact of the garage entry.

The Board voted unanimously to recommend this departure with a recommended condition to provide a visual warning system at the garage door and a change in the paving of the sidewalk in front of the driveway to warn pedestrians of the garage’s presence.

4. **Residential Uses at Street Level (SMC 23.47A.005.C.1.e):** The Code states that within an NC1 zone, residential uses may occupy, in the aggregate, no more than 20 percent of the street-level street-facing façade.

The applicant proposed 97’ or 78% of the street-level uses along E Mercer St be residential uses.

This departure would provide an overall design that would better meet the intent of Design Guidelines **CS2-D-2. Existing Site Features:** Use changes in topography, site shape, and vegetation or structures to help make a successful fit with adjacent properties, and **CS2-D-5. Respect for Adjacent Sites:** Respect adjacent properties with design and site planning to minimize disrupting the privacy of residents in adjacent buildings. Along sloped E Mercer St designing successful commercial space would be difficult and by providing residential uses instead, will create a transition from the commercial uses along 19th Ave E and the corner to the single family zone to the west of the site.

The Board voted unanimously to recommend this departure.

## Exceptional Tree

*Staff Note:* At the Recommendation meeting the applicant presented an alternate design option showing development retaining the Exceptional Western Red cedar tree along 19<sup>th</sup> Ave E. The Board considered the proposed design with this tree removed, and the alternate design with the tree retained. The Board unanimously recommended approval of the design that included removal of the exceptional tree, as this design better met the intent of the Design Guidelines. (CS1-C, CS1-D)

## RECOMMENDATIONS

The recommendation summarized above was based on the design review packet dated April 13, 2016, and the materials shown and verbally described by the applicant at the April 13, 2016 Design Recommendation meeting. After considering the site and context, hearing public comment, reconsidering the previously identified design priorities and reviewing the materials, six Design Review Board members recommended APPROVAL of the subject design and departures with the following conditions:

1. Increase the caliper of the proposed street trees (Greenvase Zelkova, Scarlet Oak and Hornbeam) to greater than the 2 ½ inches specified in the Recommendation booklet (p. 35). (CS1-D.2)
2. Provide a visual warning system at the garage door and a change in the paving of the sidewalk in front of the driveway to warn pedestrians of the garage's presence. (DC1-C.2)
3. Specify and install additional lighting along the steps from 19<sup>th</sup> Ave leading to the courtyard beyond that of the recessed lights shown on p. 43 of the Recommendation meeting booklet. (PL2-B.2, DC4-C)
4. Revise the concrete wall at the steps in front of the E. Mercer St. residential entry to reduce the height, length and extent of the concrete. Consider using wood and or brick in keeping with the predominant materials of the facades. (PL3-A.1)

## ANALYSIS & DECISION – DESIGN REVIEW

### Director's Analysis

The design review process prescribed in Section 23.41.014.F of the Seattle Municipal Code describing the content of the Seattle DCI Director's decision reads in part as follows:

The Director's decision shall consider the recommendation of the Design Review Board, provided that, if four (4) members of the Design Review Board are in agreement in their recommendation to the Director, the Director shall issue a decision which incorporates the full substance of the recommendation of the Design Review Board, unless the Director concludes the Design Review Board:

- a. Reflects inconsistent application of the design review guidelines; or
- b. Exceeds the authority of the Design Review Board; or
- c. Conflicts with SEPA conditions or other regulatory requirements applicable to the site; or
- d. Conflicts with the requirements of state or federal law.

Subject to the recommended conditions, the design of the proposed project was found by the Design Review Board to adequately conform to the applicable Design Guidelines.

At the conclusion of the Recommendation meeting held on April 13, 2016, the Board recommended approval of the project with the conditions described in the summary of the Recommendation meeting above.

Six members of the East Design Review Board were in attendance and provided recommendations (listed above) to the Director and identified elements of the Design Guidelines which are critical to the project's overall success. The Director must provide additional analysis of the Board's recommendations and then accept, deny or revise the Board's recommendations (SMC 23.41.014.F3).

The Director agrees with the Design Review Board's conclusion that the proposed project and conditions imposed result in a design that best meets the intent of the Design Review Guidelines and accepts the recommendations noted by the Board.

Following the Recommendation meeting, Seattle DCI staff worked with the applicant to update the submitted plans to include the recommendations of the Design Review Board.

Applicant response to Recommended Design Review Conditions:

1. The applicant responded in the MUP plan set by indicating on the plant schedule that the Hornbeam, Scarlett Oak and Greenvase Zelkova trees to be planted in the right-of-way will have a 3" caliper size, therefore satisfying condition #1.
2. The applicant responded in the MUP plan set by changing the design so that the sidewalk between the curb cut and the garage entry will have a 1' by 2' scoring with a heavy broom finish different than the typical 2' by 2' scoring of the sidewalk, and a "caution vehicle exiting" LED surface mounted sign will be located across the garage entry from where the sight triangle will have reduced dimensions, therefore satisfying condition #2.
3. The applicant responded in the MUP plan set by adding four additional lighting fixtures in the stairs up from 19<sup>th</sup> Ave E, therefore satisfying condition #3.
4. The applicant responded by submitting two revised design options which showed a design with a reduced wall and either brick or concrete as the material. Seattle DCI agreed that the reduced concrete wall with a metal railing similar to the railings of the balconies was the stronger design. This design is shown in the MUP plan set, therefore satisfying condition #4.

The applicant shall be responsible for ensuring that all construction documents, details, and specifications are shown and constructed consistent with the approved MUP drawings.

The Director of Seattle DCI has reviewed the decision and recommendations of the Design Review Board made by the six members present at the decision meeting and finds that they are consistent with the City of Seattle Design Review Guidelines. The Director is satisfied that all of the recommendations imposed by the Design Review Board have been met.



## **DIRECTOR'S DECISION**

The Director accepts the Design Review Board's recommendations and **CONDITIONALLY APPROVES** the proposed design and the requested departures with the conditions summarized at the end of this Decision.

## **II. ANALYSIS – SEPA**

Environmental review resulting in a Threshold Determination is required pursuant to the State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code (SMC) Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated 11/12/2015. The Seattle Department of Construction and Inspections (Seattle DCI) has annotated the environmental checklist submitted by the project applicant; reviewed the project plans and any additional information in the project file submitted by the applicant or agents; and any pertinent comments which may have been received regarding this proposed action have been considered. The information in the checklist, the supplemental information, and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and certain neighborhood plans and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states in part: "*where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation*" subject to some limitations.

Under such limitations/circumstances, mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

### **Short Term Impacts**

Construction activities could result in the following adverse impacts: construction dust and storm water runoff, erosion, emissions from construction machinery and vehicles, increased particulate levels, increased noise levels, occasional disruption of adjacent vehicular and pedestrian traffic, a small increase in traffic and parking impacts due to construction related vehicles, and increases in greenhouse gas emissions. Several construction-related impacts are mitigated by existing City codes and ordinances applicable to the project such as: the Stormwater Code (SMC 22.800-808), the Grading Code (SMC 22.170), the Street Use Ordinance (SMC Title 15), the Seattle Building Code, and the Noise Control Ordinance (SMC 25.08). Puget Sound Clean Air Agency regulations require control of fugitive dust to protect air quality. The following analyzes construction-related noise, greenhouse gas, construction traffic and parking impacts, as well as mitigation.

### Greenhouse Gas Emissions

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant and no further mitigation is warranted pursuant to SMC 25.05.675.A.

### Construction Impacts - Parking and Traffic

Increased trip generation is expected during the proposed demolition, grading, and construction activity. The area is subject to significant traffic congestion during peak travel times on nearby arterials. Large trucks turning onto arterial streets would be expected to further exacerbate the flow of traffic.

The area includes residential parking zones. Additional parking demand from construction vehicles would be expected to further exacerbate the supply of on-street parking. It is the City's policy to minimize temporary adverse impacts associated with construction activities.

Pursuant to SMC 25.05.675.B (Construction Impacts Policy), additional mitigation is warranted and a Construction Management Plan is required, which will be reviewed by Seattle Department of Transportation (SDOT). The requirements for a Construction Management Plan include a Haul Route and a Construction Parking Plan. The submittal information and review process for Construction Management Plans are described on the SDOT website at: <http://www.seattle.gov/transportation/cmp.htm>.

### Construction Impacts - Noise

The project is expected to generate loud noise during demolition, grading and construction. The Seattle Noise Ordinance (SMC 25.08.425) permits increases in permissible sound levels associated with private development construction and equipment between the hours of 7:00 AM and 7:00 PM on weekdays and 9:00 AM and 7:00 PM on weekends and legal holidays in Neighborhood Commercial zones.

A Construction Management Plan will be required prior to issuance of the first building permit, including contact information in the event of complaints about construction noise, and measures to reduce or prevent noise impacts. The submittal information and review process for Construction Management Plans are described on the SDOT website at: <http://www.seattle.gov/transportation/cmp.htm>. The limitations stipulated in the Noise Ordinance and the CMP are sufficient to mitigate noise impacts; therefore no additional SEPA conditioning is necessary to mitigation noise impacts per SMC 25.05.675.B.

### Long Term Impacts

Long-term or use-related impacts are also anticipated as a result of approval of this proposal including: greenhouse gas emissions; parking; and possible increased traffic in the area. Compliance with applicable codes and ordinances is adequate to achieve sufficient mitigation of most long-term impacts and no further conditioning is warranted by SEPA policies. However,

greenhouse gas, height bulk and scale, historic resources, parking, plants, and traffic warrant further analysis.

### Greenhouse Gas Emissions

Operational activities, primarily vehicular trips associated with the project construction and the project's energy consumption, are expected to result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant, and no further mitigation is warranted pursuant to SMC 25.05.675.A.

### Height, Bulk, and Scale

The proposal has gone through the design review process described in SMC 23.41. Design review considers mitigation for height, bulk and scale through modulation, articulation, landscaping, and façade treatment.

Section 25.05.675.G.2.c of the Seattle SEPA Ordinance provides the following "The Citywide Design Guidelines (and any Council-approved, neighborhood design guidelines) are intended to mitigate the same adverse height, bulk, and scale impacts addressed in these policies. A project that is approved pursuant to the Design Review Process shall be presumed to comply with these Height, Bulk, and Scale policies. This presumption may be rebutted only by clear and convincing evidence that height, bulk and scale impacts documented through environmental review have not been adequately mitigated. Any additional mitigation imposed by the decision maker pursuant to these height, bulk, and scale policies on projects that have undergone Design Review shall comply with design guidelines applicable to the project."

The height, bulk and scale of the proposed development and relationship to nearby context have been addressed during the Design Review process for any new project proposed on the site. Per the Overview policies in SMC 25.05.665.D, the existing City Codes and regulations to mitigate impacts to height bulk and scale are presumed to be sufficient, and additional mitigation is not warranted under SMC 25.05.675.G.

### Historic Preservation

The existing structure on site is more than 50 years old, but this structure is to remain. No mitigation is warranted per SMC 25.05.675.H.

### Parking

The proposed development includes 32 residential units with 10 off-street vehicular parking spaces. The traffic and parking analysis Memorandum by TENW on February 19, 2016 indicates a peak demand of up to 23 vehicles from the proposed development. The Parking analysis noted that due to the proximity of transit and non-motorized travel options, the peak parking demand from this proposal would likely be for 17 vehicles in the evenings and 19 vehicles during daytime hours. Peak residential demand typically occurs overnight. Peak commercial demand typically occurs during daytime hours.

The traffic and parking analysis noted that the existing on-street parking utilization rate is approximately 83% within 800' of the site, during weekday evening hours. The proposed development peak demand of 23 parking spaces would not be accommodated by the proposed 12 parking off-street spaces in the development, resulting in a spillover demand for 11 on-street parking spaces. With the reduced parking demand of 17 to 19 parking spaces due to proximity of transit and non-motorized travel options, the spillover demand would be for 5 to 7 on-street parking spaces. The proposal therefore would have a potential additional impact to on-street parking utilization, resulting in an on-street utilization of up to 88%.

SMC 25.05.675.M notes that there is no SEPA authority provided for mitigation of parking impacts in an Urban Villages within 1,320 feet of frequent Transit service. This site is located in the Miller-Madison Urban Village within 1,320 feet of frequent transit service. Regardless of the parking demand impacts, no SEPA authority is provided to mitigate impacts of parking demand from this proposal.

### Plants

Mature vegetation is located on the site, including several mature trees and one exceptional tree. The location of this tree is described in the arborist report and page 13 of this document (the Design Review Recommendations). The applicant submitted an arborist report by Tree Solutions on September 29, 2015 and a revised arborist report on January 22, 2016. The arborist reports identified the exceptional 42-inch western red cedar tree on the MUP plan set. Seattle DCI's Arborist has reviewed the information.

Removal of the tree as related to the proposed design is discussed in the Design Review section earlier in this decision. The Design Review Board recommended that the proposed building and landscape design meets the Design Review Guidelines better than a design that retains the existing exceptional tree.

Seattle DCI has reviewed the proposal and determined that the landscape plan proposes new trees that will replace and exceed the canopy of the existing tree at maturity. No mitigation beyond the Code-required landscaping is warranted under SMC 25.05.675.N.

### Transportation

The Traffic Impact Analysis memorandum done by TENW on December 16, 2015 indicated that the project is expected to generate a net total of 290 new daily vehicle trips, with 17 net new PM Peak Hour trips and 13 AM Peak hour trips.

The additional trips would have minimal impact on levels of service at nearby intersections and on the overall transportation system. Concurrency analysis was conducted for nearby identified areas. That analysis showed that the project is expected to be well within the adopted standards for the identified areas. The Seattle DCI Transportation Planner reviewed the information and determined that while these impacts are adverse, they are not expected to be significant.

The development will increase pedestrian and vehicle traffic in the area, including crossings of 19<sup>th</sup> Ave E. Crossing 19<sup>th</sup> Ave E can be an uncomfortable experience due to the existing sight lines and crossing distance. A curb bulb can create additional pedestrian space and increase both comfort and safety for pedestrians. To reduce the impact of additional crossing of 19<sup>th</sup> Ave E, the

project will be conditioned to provide a curb bulb on 19<sup>th</sup> Ave E adjacent to the project site. No other mitigation is warranted per SMC 25.05.675.R.

### **DECISION – SEPA**

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2) (c)

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued after using the optional DNS process in WAC 197-11-355 and Early review DNS process in SMC 25.05.355. There is no further comment period on the DNS.

### **CONDITIONS – DESIGN REVIEW**

#### *For the Life of the Project*

1. The building and landscape design shall be substantially consistent with the materials represented at the Recommendation meeting and in the materials submitted after the Recommendation meeting, before the MUP issuance. Any change to the proposed design, including materials or colors, shall require prior approval by the Land Use Planner Beth Hartwick at [beth.hartwick@seattle.gov](mailto:beth.hartwick@seattle.gov) or 206 684-0814.

### **CONDITIONS – SEPA**

#### *Prior to Issuance of Demolition, Excavation/Shoring, or Construction Permit*

2. Provide a Construction Management Plan that has been approved by SDOT. The submittal information and review process for Construction Management Plans are described on the SDOT website at: <http://www.seattle.gov/transportation/cmp.htm>.

#### *Prior to Issuance of Certificate of Occupancy*

3. Subject to SDOT approval, construct or provide funding for SDOT to construct a curb bulb adjacent to the project site, shortening the crossing distance of 19<sup>th</sup> Ave E.

Beth Hartwick, Land Use Planner  
Seattle Department of Construction and Inspections

Date: September 1, 2016

BH:drm

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**IMPORTANT INFORMATION FOR ISSUANCE OF YOUR MASTER USE PERMIT**

**Master Use Permit Expiration and Issuance**

The appealable land use decision on your Master Use Permit (MUP) application has now been published. At the conclusion of the appeal period, your permit will be considered “approved for issuance”. (If your decision is appealed, your permit will be considered “approved for issuance” on the fourth day following the City Hearing Examiner’s decision.) Projects requiring a Council land use action shall be considered “approved for issuance” following the Council’s decision.

The “approved for issuance” date marks the beginning of the **three year life** of the MUP approval, whether or not there are outstanding corrections to be made or pre-issuance conditions to be met. The permit must be issued by Seattle DCI within that three years or it will expire and be cancelled. (SMC 23-76-028) (Projects with a shoreline component have a **two year life**. Additional information regarding the effective date of shoreline permits may be found at 23.60.074.)

All outstanding corrections must be made, any pre-issuance conditions met and all outstanding fees paid before the permit is issued. You will be notified when your permit has issued.

Questions regarding the issuance and expiration of your permit may be addressed to the Public Resource Center at [prc@seattle.gov](mailto:prc@seattle.gov) or to our message line at 206-684-8467.

# *EXHIBIT B*

#3020860

**LAND USE/SEPA DECISION APPEAL FORM**

You do not have to use this form to file an appeal. However, if you do not use it, please make sure that your appeal includes all the information requested on this form. The appeal, along with any required filing fee, must reach the Office of Hearing Examiner, no later than 5:00 p.m. of the last day of the appeal period.

**APPELLANT INFORMATION (Person or group making appeal)**

**1 Appellant:**  If several individuals are appealing together, list the additional names and addresses on a separate sheet and identify a representative in #2 below. If an organization is appealing, indicate group's name and mailing address here and identify a representative in #2 below.

2

**Immediate Neighbors**

1. **Suzanne Lasser M.D. (Representative)/Stephen Burns M.D. -2 adults;3 minors**  
533 18<sup>th</sup> Ave East Seattle WA 98112

2. **Margaret Kineke/Dennis West-2 adults;1 minor**  
607 18<sup>th</sup> Ave East, Seattle, WA 98112

3. **6.St. Joseph School-Patrick Fennessy, Principal**  
Enrollment:600 students;458 families;75 staff  
700 18<sup>th</sup> Ave. East, Seattle, WA 98112

4. **Patricia Wendt/Joe Wendt-4 adults**  
601 18<sup>th</sup> Ave E., Seattle, WA 98112

5. **Jen Campbell/Mike Zak-2 adults;2 minors**  
602 18<sup>th</sup> Ave East Seattle WA 98112

6. **Charlene Hampton-1 Seattle Housing Authority renter**

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1821 E. Mercer St.#7, Seattle, WA 98112

7. Samuel and Daniel Kiflu  
1821 E. Mercer St, Seattle, WA 98112  
Seattle Housing Authority renter

8. Mark Aalfs  
523 18<sup>th</sup> Ave East Seattle WA 98112  
[aalfs@yahoo.com](mailto:aalfs@yahoo.com)

9. Erika Tone  
528 18<sup>th</sup> Ave East Seattle WA 98112  
[Erika.sophie.t@gmail.com](mailto:Erika.sophie.t@gmail.com)

10. Kathyrne Torras  
608 18<sup>th</sup> Ave East Seattle WA 98112

11. Alaine Nijenhuis 1715 East Mercer Street Seattle WA 98112

12. Kim Teraberry 532 18<sup>th</sup> Ave East Seattle WA 98112

13. Anne Guilfoyle 1701 East Mercer Street Seattle WA 98112  
Apt 3

14. Monica Drummey 623 18<sup>th</sup> Ave East Seattle WA 98112

15. Judy Hirning 1710 East Mercer Street Seattle WA 98112

Representative #1: Suzanne Lasser M.D.

[suzlasser@hotmail.com](mailto:suzlasser@hotmail.com) 206-595-8765

533 18<sup>th</sup> Ave East Seattle WA 98112

Representative #2 (alternate): Dennis West

[west\\_dennis@comcast.net](mailto:west_dennis@comcast.net)

607 18<sup>th</sup> Ave. East Seattle, WA 98112

**DECISION BEING APPEALED**

1830 E MERCER ST Seattle WA 98112

Project: 3020860 Zone: NEIGHBORHOOD COMMERCIAL 1-40',

Decision Date: 09/01/2016

Contact: KEVIN TABARI - (206)316-2647 x1 Planner: Beth Hartwick -  
(206) 684-0814

Adequacy of conditions

Design Review and Departure

Conditional Use

EIS not required

Major Institution Master Plan

Other (specify: ADA compliance; Fire lane access and safety;  
safety of pedestrian exits and entrances; delivery truck entrance and exit  
safety to building; safety of vehicles needing ADA parking for building)

Variance

Adequacy of EIS

Interpretation (See SMC 23.88.020)  Short Plat

Rezone

**APPEAL INFORMATION**

Answer each question as completely and specifically as you can. Attach separate sheets if needed and refer to questions by number.

1 What is your interest in this decision? (State how you are affected by it)

**We are immediate neighbors and a school adjacent to the proposed 32-unit urban village.**

**We will be adversely affected by design flaws related to entrances and exits. The current design of exits and entrances to the apartment endangers pedestrians and may result in**

**unsafe vehicle drop offs and deliveries. The design is not up to current ADA standards. Also, we are concerned about property devaluation, construction disruption, renters' and retail traffic congestion.**

Additionally, we are concerned about the omission of discussion of height/bulk/scale. We want public disclosure of proposed exits and entrances to the building and safe traffic flow plans of delivery trucks to the building, especially to the commercial spaces. We request further review of the decision to remove an exceptional tree.

2 What are your objections to the decision? (List and describe what you believe to be the errors, omissions, or other problems with this decision.)

**1. Omission of Design Review Board to Address the Height/Bulk/Scale**

According to the 9/1/2016 summary report of Beth Harwick Design Review Planner, the Design Review Board "failed to address the massing" of the new building and the transition of the building on the west side to a single family home neighborhood. All current buildings on 19<sup>th</sup> Ave East and nearby blocks are no taller than 4 stories. The most recently built commercial building is 4 stories tall (houses Cone and Steiner/ on 19<sup>th</sup> and East Mercer St.) A proposed urban village building (Project # 3019411) that will house Country Doctor Clinic and apartments on 19<sup>th</sup> Ave East between East Mercer St and East Republican Street plans to be 4 stories (and 8 apartments), more in scale with the neighborhood. The Design Review Board refused to allow the public to voice concerns on the bulk and massing of the building in public meetings. The Design Review Board did not comment on the height, bulk/ scale issue in their formal report. Immediate neighbors are upset about this omission because commenting on

the Bulk/Height/Scale is part of the Design Review Board's mission statement.

- 2. Omission of Design Review Board comments on both pedestrian entrances and exits, vehicle and delivery truck traffic flow to businesses on the property and the impacts of these flows in our immediate neighborhood in the formal report. No mention of citizen and Design Review Board members' concern about current office building ADA noncompliance. Immediate neighbors shared these concerns with the Design Board by letters, verbal discussion and emails.**

Although Design Review Board members verbally expressed safety concern about the pedestrian and vehicle entrances and exits of the proposed development during the #2 Public Design Review Board meeting (under the supervision of Bruce ~~Ames~~ <sup>Ries</sup>), there is no documentation of this discussion in the formal report. The owner, Amanda Twiss admitted verbally to an immediate neighbor Suzanne Lasser MD, that the current office building on property (1818 East Mercer St) is ADA noncompliant. With the construction of a new apartment building, the proposed main access to medical and orthodontist offices in the existing building would require climbing at least 13 stairs on 19<sup>th</sup> Ave East. Immediate residents were concerned that clients, including children visiting the orthodontist office would access the building unsafely via the alley through back entrances. The alley abuts our single resident homes and St Joseph's School/Church property. We are worried about parents dropping off kids on a regular basis to the orthodontist office through the unsafe alley. There have already been issues cited of unsafe pedestrian conditions in the area; the existence of a school with 600 children and 75 employees exacerbates the situation. No mention about our entrance and exit design concerns or suggestions for corrections were mentioned in the Design Review Board summary.

The existing 1818 East Mercer Street office building is not required to

be ADA compliant due to its age but it has functioned as an ADA accessible building due to parking lot access. The solution proposed by the developer/architect is to have those clients needing ADA access to be routed to the apartment entrance. Then clients would need to be personally escorted by a tenant through the apartment building. This appears to be an onerous burden for both the existing business and those needing access who need to visit the businesses.

3 What relief do you want? (Specify what you want the Examiner to do: reverse the decision, modify conditions, etc.)

**We believe reversal of the decision is needed followed by neighborhood engagement and public disclosure a new design for the exits and entrances.** We request a new Design Review Board that is sensitive to ADA issues and pedestrian safety. We insist on public disclosure and discussion of the plans for delivery truck traffic flow to the building, including restaurant supply trucks, Amazon.com delivery and UPS trucks. Current delivery trucks illegally park in a fire lane on 19<sup>th</sup> Ave East (where the proposed bulb and expanded sidewalk will be) or in the alley. We would like trucks to have a prescribed parking spot and for the owners and future tenants to enforce these traffic plans. The building is in a school zone and immediate neighbors are worried about pedestrian safety and fire lane access from the current and future parking violations.

We also would like public discussion and Design Review Board comment on the height/bulk and scale of the building. We believe that with the removal of the exceptional tree and loss of visual green respite for immediate neighbors and the imposition of more traffic and green gas emissions to our families and school children compromise is needed. We would like a smaller scale building that could provide larger and wider ADA compliant parking spaces for office clients in the alley (identical to the parking spaces provided in the back of 19<sup>th</sup> and East Mercer St) Tallulah/Cone and Steiner building. We are very concerned that because the building

is in a school zone, that children and pedestrians may get hurt by the design flaws of entrances and exits.

Please note that we received advice from Disability NW and the City ADA Coordinator Holly Delcambre in April 2016. Both advised that we can file a Dept of Justice complaint based on our concerns about the entrances and exits. Pasted below is an excerpt of Holly Delcambre's e-mail to appellant Suzanne Lasser M.D. about this issue:

*Regarding ADA access concern to a commercial building. Holly Delcambre Title II ADA Coordinator Holly.Delcambre@seattle.gov 206.615.0509 From: Delcambre, Holly Sent: Wednesday, April 20, 2016 8:15 AM To: 'suzanne lasser' Subject: RE: Inq 2016-00880 (1830 East Mercer St development) Commercial buildings fall under Title III of the ADA which prohibits discrimination, based on disability, in public accommodations.*

*From: suzanne lasser Sent: Tuesday, April 19, 2016 5:33 PM To: Delcambre, Holly Subject: Re: Inq 2016-00880 (1830 East Mercer St development) Current building is 1818 East Mercer St Seattle WA 98112 and is a private commercial building owned by Amanda Twiss and Glenn Macdonald. It houses a chiropractor, orthodontist, acupuncturist, and construction company. The owners plan to develop a 32 unit apartment building on 1818 East Mercer St's parking lot. Current building is not ADA accessible for all businesses and will become more inaccessible based on Design plans if new apartment (1830 East Mercer) is built on the parking lot. I was advised by Disability NW to file a complaint with the DOJ. Feel free to call me at 2065958765 to discuss Suzanne Lasser MD Sent from my iPhone On Apr 19,*

Signature  Suzanne Lasser MO

Date 9/11/2016  
Appellant or Authorized Representative

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**Deliver or mail appeal and appeal fee to:**

**City of Seattle**

**OFFICE OF HEARING EXAMINER**

**P.O. Box 94729**

**Seattle WA 98124-4729**

**SEATTLE MUNICIPAL TOWER - 700 5<sup>th</sup> Avenue, Suite 4000**

**Phone: (206) 684-0521 Fax: (206) 684-0536 [www.seattle.gov/examiner](http://www.seattle.gov/examiner)**



1977 + East Mercer Building parking (alley)  
Example of good design - safe alley  
parking spaces





19th & East Mercer Building  
Example of generous parking spaces  
&  
safe



Alley between 18<sup>th</sup> & 19<sup>th</sup> Ave East  
Illegal delivery parking spot on a  
regular basis.



Alley between 18<sup>th</sup> & 19<sup>th</sup> Ave East



19th Ave East  
illegal parking  
along firelane

19th Ave East  
Illegal parking along  
Fire lane



19th Ave East  
Regular illegal parking  
by trucks along firelane



# *EXHIBIT C*

3020860 1860 E. Mercer St.

Date: October 10, 2016

Clarifying questions for Beth Hartwick:

Section 1, What is your interest in the decision?

We will be adversely affected by design flaws related to entrances and exits.

Clarify which entries you mean:

We want to see visible ADA access to both the existing 1818 East Mercer Street office building and the 1830 East Mercer St apartment and retail space in the drawings. We would like visible signs to the ADA parking spots in the alley. We would like visible load/unload parking and fire lanes in the plans. We would like to know if dumpsters will remain adjacent to ADA parking spaces in the alley.

Some of ADA requests to 1818 East Mercer Street (the existing office building) are directly relevant to the lives of the immediate neighbors. For example, the representative Suzanne Lasser's daughters are patients of the tenants of the building. We currently access the building through the parking lot which will be replaced with project. The new main access to the professional building is via 13 steep steps on 19<sup>th</sup> Ave East. through the alley or street and both have stair access. My mother has hip issues and would have to enter the building using the alley entrance which is too dangerous due to illegal parking of trucks and dumpsters limiting ADA parking spaces.

1. Design Flaw: The design flaw (which were granted exceptions by the Design Review Board) relate to the location of the driveway and the width of the driveway. As planned, it is too narrow and too steep. This was discussed and the solution was accepted later in the design review months after public comment, of having a sign of "Vehicle Approaching." There are a large number of children in the neighborhood due to the school of 600 children one block north and some immediate neighbors feel that this is an inadequate safety measure for the density of the area. Additionally, our local UPS driver



is concerned about cars parking right to the edge of the alley and potentially right to the edge of the future driveway. We are worried with this street parking behavior that reducing sight triangles in the proposed driveway may be hazardous. Additionally, we wonder if trees planned on the parking strip as part of the Green Factor solution would block views of pedestrians or cars when cars exit the driveway.

Our secondary concern, again, is access to current 1818 office building. The solution suggested by the architect is for those who do not want to use stairs is to be able to ring to the business through the residential units and be retrieved by the businesses. Is there no better design that would allow for the existing structure to not have diminished accessibility?

2. Public disclosure: We would like any design improvements of entrances and exits and delivery truck circulation included in the plans/drawings and posted in the public record. Immediate neighbors currently view the public record via:  
<http://web6.seattle.gov/dpd/edms/> Input Project No. 3020860. Our concern with regard to public disclosure is that in September 2015 the letters submitted by immediate neighbors during the first Design Review Meeting were not handled in a timely manner.

(Letters hand delivered to Beth Hartwick in September 2015 were not posted until February 2016 until neighbor Suzanne Lasser noticed the letters were not posted in the public record.) We are concerned that the alterations being suggested between architect and city were not adequately communicated to persons of interest in the neighborhood.

Additional issue: There was a very recent decision on FAR that is confusing to some immediate neighbors; the annotated plans that are publicly disclosed are using a cross out in red to lower the height of the building with no specific change to the plan so we can see what effect the lowering would have on the planned roof deck, elevator shaft etc. (see document dated 6/26 and posted on 8/26: [Plan Set: Annotated Plan SetV4](#))

3. Renters: The concern is a parking concern and traffic concern which may or may not be under the review of the Design Review Board. We had asked

that the traffic study done by the owners be reviewed for peak traffic which in this neighborhood is from 8:00 to 8:30 am, 2:45 to 3:15 pm and late evening (after 7-8pm). The study was done once, around 4-6 pm and did not include looking at traffic flows up and down East Mercer Street between 18<sup>th</sup> and 19<sup>th</sup> Ave East. The additional 30-32 units combined with the daily school traffic of St. Joseph School, which has no bus service, could lead to hazardous conditions on the corner of 19<sup>th</sup> Ave East and East Mercer. We attempted to address these issues separately with the city/SDOT but as the owners plan to discuss traffic specifically we are willing to address it in the appeal. (Please see e-mail submitted in public record labeled Public Comment Letter Lasser 3/13/2016 filed 3/25/16 ; email was sent to John Shaw 2/23/2016 about questions about the traffic study)

4. Exceptional Tree: We would like to dismiss this issue from the appeal about the exceptional tree. However, we want to comment that many immediate neighbors are disappointed that the Design Review Board made a weak recommendation of asking to increase the caliper of new replacement trees from 2.5 to 3 inches in diameter. We also are concerned that there should be a guarantee of regular irrigation and replacement of the new trees if replacement trees die from lack of water in the summer. Are replacement trees mandated if newly planted trees in the planting strip die in the Green Factor city rules?

## Section 2:

1. When the property was originally slated for development in 2007, the Design Review Board had indicated their desire for the project to fit in with the neighboring buildings. The height at that time was considered excessive. We are concerned that the current design review did not take the neighborhood into account but dwelt on the stand alone design and materials used for this project. We are disappointed that they Design Review Board was not willing to hear the concerns that the current design would dwarf the single family homes, the Seattle Housing complex, and was not in keeping with the buildings on the adjacent corners. The Design Review Board said in the public meetings that this was not a topic to be discussed. Our question is to whom would we address this concern for cohesiveness of neighborhood as part of overall design of this project in relation to the surrounding area.

19<sup>th</sup> Ave East is primarily a residential and secondarily commercial street. All buildings are in keeping of maximum of four stories. Immediate neighbors appealing this development feel 1830 East Mercer Street would be an outlier in volume and height in the immediate blocks.

Did the Design Review Board consider that this a four story neighborhood and it is essential part of fabric and identity of our neighborhood to keep new buildings a consistent height and scale reflecting the history of the neighborhood?

### Section 3:

#### Relief

1. With relation to deliveries, alley use, pedestrian and vehicular safety, we are looking for a design that would allow for easy access to the 1818 Mercer Professional Building. If there are delivery trucks in the spots in the alley and, as is often the case, the alley is used as a thoroughfare for the 600 students attending St. Joseph school, there is a safety issue for those trying to access the building. We also noticed that the agreement between the owners and the public utility is that the waste would be brought to the alley. Where is the location for the dumpsters of 1818 East Mercer Street and would that add to the difficulty of entering the established businesses of the professional building? Can these details be included in plans shared in the public record?
2. It is not visible in the plans where loading docks and deliveries are proposed for the new building. Can these be included in the plans? We anticipate significantly more deliveries with the addition of 32 residential units and over 2000 square feet of retail space.
3. We want to see clearly visible, safe, accessible public and private entrances and exits for deliveries and invitees in the plans. We want to see where delivery trucks and visitors will park with clear signage. We would like this indicated in the drawings. We want trucks to have clear vision when they reverse to avoid

pedestrians and children and for signage to warn cars not to park close to the alley entrance along East Mercer Street or driveway. We would like the Design Review Board or appointed reviewers to compare and contrast current alley behind 1830 East Mercer Street with alley behind the 19<sup>th</sup> and East Mercer Street building that houses Talulah's /Hello Robin/Cone and Steiner space in the drawings. We want to see clearly approved vehicle circulation plans around the proposed apartment building and existing 1818 East Mercer Street building, for 19th Ave East, East Mercer St, East Roy St and the alley. We would like these plans to help guide large vehicles such as weekly garbage trucks and daily UPS trucks. This is all in the name of public safety.

Thank you,

Suzanne Lasser M.D.

Representative

Dennis West

Alternate Representative

*Immediate Neighbors of 18<sup>th</sup> Ave East and East Mercer Street.*