Hearing Examiner Sue A. Tanner

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeals of LISA PARRIOTT, ET AL. and SEATTLE GREEN SPACES COALITION, from a decision issued by the Director, Department of Construction and Inspections.	Hearing Examiner Files: MUP-16-019 & MUP-16-020 Department Reference: 3024037 OWNER'S RESPONSE TO ISSUE OF WHETHER APPEAL CONCERNS TYPE I OR TYPE II DECISION

COMES NOW the property owner Nehem Properties LLC ("Nehem"), by and through its undersigned attorneys, Samuel M. Jacobs and Brandon S. Gribben of Helsell Fetterman LLP, in response to the briefing submitted by appellants Lisa Parriott ("Parriott") and Seattle Green Spaces Coalition ("Green Spaces") and in furtherance of the Hearing Examiner's request for briefing on whether the appellants seek review of a Type II issue, which is within the jurisdiction of the Hearing Examiner, or a Type I issue, which is not.

I. RESPONSE TO SEATTLE GREEN SPACES COALITION'S BRIEF

Green Spaces raises three issues in its supplemental memorandum, none of which have any merit, and one of which seeks to mislead the Hearing Examiner. Green Spaces concedes that it did not file a request for a code interpretation of the Director's Decision, which is a requirement to exhaust administrative remedies. Because Green Spaces failed to

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exhaust its administrative remedies, Nehem requests that the Hearing Examiner dismiss its appeal with prejudice.

A. The Director's determination of whether a lot may be developed or redeveloped under the Historic Lot Exception, SMC 23.44.010.B.1.d, is a nondiscretionary decision subject to Type I review.

Green Spaces alleges that the Hearing Examiner has jurisdiction to review a Type I Director's decision even in cases where the appellant has not sought a land use code interpretation. In support of this contention, Green Spaces states that a preliminary opinion letter is not a Type I decision. Nehem concurs. As far as Nehem is aware, no one is arguing that a preliminary opinion letter is a Type I decision. The issue is whether the Director's determination that the lot qualifies under the Historic Lot Exception is a Type I or Type II decision. Nehem submits that whether the lot falls within the Historic Lot Exception is a Type I decision; whether the proposed development meets the special exception requirements (depth of structure, placement of windows, etc.) is a Type II decision.

SMC 23.44.010 (Lot requirements) provides five[1] separate exceptions to the minimum lot requirements. None of these exceptions are discretionary decisions, including the Historic Lot Exception. The Historic Lot Exception, SMC 23.44.010.B.1.d, sets forth the circumstances under which a lot that is less than 3,200 square feet may be developed or redeveloped. If a lot qualifies under the Historic Lot Exception, then the owner has an absolute right to develop or redevelop the site, subject to the special exceptions enumerated under SMC 23.44.010.B.3. SDCI has no discretion to deny this right to develop the lot.

Whether or not a lot that is less than 3,200 square feet may be developed under the Historic Lot Exception is a Type I decision that is not appealable to the Hearing Examiner. A party must first request a code interpretation, which may then be appealed to the Hearing

[1] The sixth item listed under subsection f allows a lot boundary adjustment if the lot qualifies for an exception under subsections (a) through (e).

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Examiner. SMC 23.76.004 distinguishes Type I and Type II decisions and states in part that: "Type I decisions are decisions made by the Director that are not appealable to the Hearing Examiner. Type II decisions are discretionary decisions made by the Director that are subject to an administrative open record appeal hearing to the Hearing Examiner...[2]" (emphasis added). Type I and Type II decisions are distinguished by whether the Director has any discretion in issuing the decision, not whether there is a decision making process that precedes the Director's decision that might involve discretion.

A review of the Director's decisions subject to Type I review under SMC 23.76.004, Table A, contain many uses that involve varying levels of discretion when determining whether the particular criteria are met. For example, Director's decisions concerning "Special accommodation," "Determination of whether an amendment to a property use and development agreement is major or minor," "Reasonable accommodation" and many of the other decisions require a level of discretion when determining whether the particular criteria is met. However, if SDCI makes the determination that the various criteria have been satisfied, then the requested use must be approved. In other words, SDCI does not have discretion to deny a particular use when it has been determined that the criteria for that use have been met. Type I Director's decisions also include the "[a]pplication of development standards for decisions not otherwise designated as Type II, III, IV, or V."

Whether a lot qualifies under the Historic Lot Exception is not a discretionary decision subject to appeal to the Hearing Examiner. Once SDCI has determined that a lot qualifies under the Historic Lot Exception it is required to allow development on the lot. On the other hand, whether the development of the lot meets the special exception requirements for structure depth and window placement is a discretionary Type II decision that may be appealed directly to the Hearing Examiner.

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[2] See SMC 23.76.004.B.

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Green Spaces alleges in its brief that: "In the absence of the statutorily required public records establishing a separate building site on the northern part of the site, the Planner exercised discretion.[3]" It can be inferred from this statement that Green Spaces believes a determination of whether a lot qualifies under the historic lot exception can either be a Type I or Type II decision depending on the evidence used in the Director's decision. This is nonsensical. If the Director determines that a lot qualifies under the Historic Lot Exception then it does not have any discretion to determine whether the lot may be developed. This lack of discretion is what makes it a Type I decision. Green Spaces may not agree with the Director's decision, but that does not make the decision discretionary.

Green Spaces goes on to argue that even if the historic lot exception is a permitted use, which it is, then the Hearing Examiner still has jurisdiction over their appeal, even though they failed to timely request a code interpretation. Green Spaces misses the mark by arguing that the preliminary opinion letter is not an appealable decision. No one has suggested as much. Green Spaces must request a code interpretation of the Director's decision, not the preliminary opinion letter.

B. No fewer than three members of Green Spaces had actual knowledge of the Director's decision.

Implicitly acknowledging the requirement to request a code interpretation, Green Spaces alleges that the "neighbors were not informed by the Seattle Municipal Code or by notice from SDCI how to appeal SDCI's action of issuing a building permit based on the historic lot exception…No information was provided to Seattle Green Spaces Coalition about the need to pay for a costly land use interpretation.[4]" This is a false statement and a blatant misrepresentation to the Hearing Examiner. Accompanying the October 6, 2016 Director's decision is a Notice of Decision that provides the exact information Green Spaces

[3] Green Spaces' brief, p. 4, last full ¶.
[4] Green Spaces' brief, p. 6, ¶3.

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denies receiving[5]. On the first page under the bolded headline "**Interpretations**," The notice clearly states that: "The subject matter of an appeal of a discretionary decision is limited to the code criteria for that decision, and generally may not include other arguments about how the development regulations of the Land Use Code or other related codes were applied. However, in conjunction with an appeal, a Land Use Code interpretation may be requested to address the proper application of certain development regulations in the Land Use Code..." The last page of the notice demonstrates that the notice was served on at least three members[6] of Green Spaces, including Ms. Fleck, the author of the brief, co-chair of Green Spaces, and an attorney who has been admitted to the Washington State Bar for over 20 years.

Green Spaces cites to the non-binding dictum in *Kates v. City of Seattle*, 44 Wn. App. 754, 723 P.2d 493 (Div. II 1986), for the proposition that a code interpretation is not necessary to exhaust administration remedies. *Kates* is easily distinguishable from the instant matter. The Court of Appeals in *Kates* found that the neighbors did not fail to exhaust their administrative remedies by failing to request a code interpretation of a short subdivision because the neighbors did not have notice of this right. Green Spaces disingenuously attempts to draw parallels to this matter by falsely claiming that they did not receive notice or have an opportunity to request a code interpretation. As explained above, several members of Green Spaces were provided with actual notice and a detailed explanation of how to request a code interpretation.

In addition to receiving actual notice from SDCI explaining how to request a code interpretation, Green Spaces quotes *Duffus v. City of Seattle*, 61 Wn. App. 670 (1991) in

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[5] A copy of the Notice of Decision is attached as Exhibit A; a copy of the public notice comments by Green Space members Elaine Ike and Martin Westerman are attached as Exhibit B. If you click on Martin Westerman's email in the publicly available document his email appears as artartart@seanet.com.

[6] Elaine Ike and Martin Westerman are the other two members of Green Spaces who received notice.

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their appeal brief, which explains in its procedural history the requirement for requesting a code interpretation. Green Spaces allegation that it did not receive notice of its right to request a code interpretation is simply unbelievable and unsupported by the facts.

C. The Hearing Examiner does not have jurisdiction to determine the constitutionality of the code interpretation fee.

Finally, Green Spaces argues that the cost of requesting a code interpretation is prohibited by the Washington State Constitution and the First, Fifth and Fourteenth Amendments to the U.S. Constitution. Regardless of whether this dubious pronouncement is correct, the Hearing Examiner has no jurisdiction to make that decision. In support of this argument, Green Spaces questions whether the 80 neighbors would be required to pay $2,500 each to exhaust their administrative remedies, which would result in a $200,000 windfall to SDCI. We believe this proposition is better stated that if the 80 neighbors pooled their resources together they could exhaust their administrative remedies for as little as $31.25[7] each. This would clearly not be an impediment to legal redress.

D. Green Spaces' request for a site visit and preservation of tree.

The Hearing Examiner stated during the prehearing conference that she would conduct a site visit if this appeal proceeds to a hearing. Nehem bears no objection to the Hearing Examiner conducting a site visit if this appeal proceeds to a hearing and the Hearing Examiner believes that a site visit would assist her in making a determination. At the same prehearing conference, Green Spaces moved for a stay to preclude Nehem from performing any work on the site, including removal of the tree. The Hearing Examiner correctly stated that she lacked jurisdiction to issue a stay and denied Green Spaces' oral motion.

[7] This amount is reached by dividing the $2,500 code interpretation fee by the 80 neighbors.

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II. RESPONSE TO PARRIOTT'S BRIEF

Parriott's primary argument is that the plain language of the code dictates whether a lot qualifies under the Historic Lot Exception is a Type I or a Type II decision. On this point, Parriott is correct, however, her conclusion is not. Based upon the plain language of the code, whether a lot qualifies under the Historic Lot Exception is a Type I decision that may only be challenged through a request for a code interpretation. Furthermore, if the ordinance is clear and unambiguous, which it is, then there is no need to address the secondary arguments made by Parriott.

A. The plain language of the ordinance establishes that the Director's decision determining whether a lot qualifies under the Historic Lot Exception is a Type I decision that is not appealable to the Hearing Examiner.

Parriott misstates the ordinance when she states that the first two sentences of 23.44.010.B.3 "state that the lot itself shall be the subject of the review[8]." That is not what the ordinance says. The ordinance states that Type II review "is required for separate development of any lot with an area less than 3,200 square feet..." It is the separate development of the lot that is subject to Type II review, not the lot itself as Parriott suggests.

The interpretation offered by Parriott requires a strained reading of the plain language of SMC 23.44.010.B.3, which provides that:

> 3. Special exception review for lots less than 3,200 square feet in area. A special exception Type II review as provided for in Section 23.76.004 is required for separate development of any lot with an area less than 3,200 square feet that qualifies for any lot area exception in subsection 23.44.010.B.1. The special exception application shall be subject to the following provisions:
>
> a. [structure depth requirements].
>
> b. [window replacement requirements].

[8] Parriott brief, 3:3-4.

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c. [interior privacy requirements].

Parriott argues that the first two sentences calls for a Type II special exception review of whether a lot less than 3,200 square feet may be developed under the Historic Lot Exception, SMC 23.44.010.B.1.d. This is not what the ordinance says. The ordinance clearly states that Type II review "is required for separate development of any lot with an area less than 3,200 square feet that qualifies for any lot area exception in subsection 23.44.010.B.1" (emphasis added). The special exceptions presuppose that you have that you have a lot, which is under 3,200 square feet that qualifies for development. You do not get to the special exception requirements unless SDCI has determined that you have a lot that may be developed.

Under Parriott's strained reading, this means that whether a lot that is less than 3,200 square feet was developable under SMC 23.44.010 et seq. would be a Type II decision. To adopt Parriott's argument would require a finding that any of the exceptions found at SMC 23.44.010 that resulted in a lot less than 3,200 square feet are discretionary decisions. That is simply not the case. For example, subsection (c) provides that a lot that does not satisfy the minimum lot area requirements of its zone may be developed if: "The lot would qualify as a legal building site under subsection 23.44.010.B but for a reduction in the lot area due to court-ordered adverse possession, and the amount by which the lot was so reduced was less than 10 percent of the former area of the lot." This criteria is based on math. Likewise, some of the other exceptions only require the Director to perform simple math to determine whether or not a lot that is less than 3,200 square feet may be developed under these exceptions. Math is not something that requires "discretion." Under these scenarios, either the lot qualifies for the exception, or it does not – there is no discretion for the Director to exercise. Similarly, while determining whether a lot qualifies under the Historic Lot Exception might be slightly more complicated than performing simple math, it does not

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mean that it is a decision that involves discretion. If the Director determines that a lot qualifies under the Historic Lot Exception, then the Director must allow development of the lot.

B. The legislative history is ambiguous at best, and regardless, the City's long-standing interpretation and enforcement of the ordinance should be given deference.

Because the plain meaning of the ordinance is clear and unambiguous, there is no need to look at the legislative history. However, even if the legislative history was relevant, there are legitimate questions concerning whether the Director's Report prepared by Andy McKim even qualifies as legislative history. If the report does qualify as legislative history, it should be accorded very little weight. The Director's Report (version #9) that is referenced and attached to Parriott's brief, has no bearing on the issue of whether a lot that qualifies under the Historic Lot Exception is a Type I or Type II decision. There were two more drafts of the ordinance that were prepared and circulated after Andy McKim's memo (version #9). What was discussed prior to the most recent change in the ordinance language is not relevant. This is supported by the fact that the proposed ordinance language for 23.44.010.B.3 changed from versions #12 and #13, from what was ultimately passed by the City Council in version #14[9].

SDCI's interpretation of the ordinance that it is charged with enforcing is much more probative of what the ordinance means than the memo prepared by Andy McKim. Upon information and belief, SDCI has always considered a decision that determines whether a lot meets the Historic Lot Exception (or any of the other exceptions enumerated under SMC 23.44.010.a-f) as a Type I decision that is only subject to review through a code interpretation. "Considerable judicial deference should be given to the construction of an ordinance by the agency charged with its enforcement." *Hoberg v. City of Bellevue*, 76 Wn.

[9] Attached as Exhibit C is the relevant code language for versions #12, 13 and 14.

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App. 357, 359–60, 884 P.2d 1339, 1341 (1994). "When construing an ordinance, a 'reviewing court gives considerable deference to the construction of the challenged ordinance 'by those officials charged with its enforcement.'" *Phoenix Dev., Inc. v. City of Woodinville*, 171 Wn.2d 820, 830, 256 P.3d 1150, 1154 (2011); *quoting Gen. Motors Corp. v. City of Seattle*, 107 Wn. App. 42, 57, 25 P.3d 1022 (2001). If the Hearing Examiner is going to look outside the language of the ordinance, SDCI's long-standing and consistent interpretation and enforcement of the ordinance is much more probative than an obscure paragraph pulled from the vast legislative history.

C. The term "special exception" is not used consistently anywhere in the Seattle Municipal Code.

Parriott argues that because the term "special exception" is used differently in other parts of the Land Use Code than it is in SMC 23.44.010.B.3, that it provides credence to her argument that the Type II review applies to the special exception criteria (depth, window placement, etc.), as well as whether a lot qualifies under the Historical Lot Exception. The "special exception" language quoted by Parriott demonstrates that there is no uniform statutory language employed by the City in the Land Use Code. If anything, the fact that the City does not have any uniform language when addressing "special exceptions," demonstrates that the particular phrasing in SMC 23.44.010.B.3 should not be given any particular significance when compared to other sections of the Seattle Municipal Code.

III. CONCLUSION

The plain meaning of the ordinance concerning the Historic Lot Exception makes it clear that it is a Type I decision that may only be challenged though a code interpretation. This is supported by SDCI's long-standing and consistent enforcement of the ordinance. Accordingly, Seattle Green Spaces Coalition's appeal should be dismissed with prejudice because it failed to timely request a code interpretation. Likewise, while Lisa Parriott timely

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filed a request for a code interpretation, she must wait for a code interpretation before appealing that issue to the Hearing Examiner. Furthermore, Parriott's appeal did not challenge any of the special exceptions enumerated under SMC 23.44.010.B.3.

Respectfully submitted this 14th day of November, 2016.

HELSELL FETTERMAN LLP

By: *s/ Brandon S. Gribben*
Brandon S. Gribben, WSBA No. 47638
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 14, 2016, the foregoing document was sent for delivery on the following party in the manner indicated:

Lisa Parriott et al c/o Peter Goldman Washington Forest Law Center Alex Sidles	☐ Via first class U. S. Mail ☐ Via Legal Messenger ☐ Via Facsimile ☒ Via Email pgoldman@wflc.org; asidles@wflc.org
Mary Fleck SGSC	☐ Via first class U. S. Mail ☐ Via Legal Messenger ☐ Via Facsimile ☒ Via Email maryfleckws@gmail.com
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EXHIBIT A

Seattle Department of Construction and Inspections

Nathan Torgelson, Director

October 6, 2016

MASTER USE PERMIT

Notice of Decision

The Director of the Seattle Department of Construction and Inspections has reviewed the Master Use Permit application(s) below and issued the following decisions. Interested parties may appeal these decisions.

Hearing Examiner Appeals

To appeal to the City's Hearing Examiner, the appeal MUST be in writing. Appeals may be filed online at www.seattle.gov/examiner/efile.htm, delivered in person to the Hearing Examiner's office on the 40th floor of Seattle Municipal Tower at 700 Fifth Ave. or mailed to the City of Seattle Hearing Examiner, P.O. Box 94729, Seattle, WA 98124-4729. (Delivery of appeals filed by any form of USPS mail service may be delayed by several days. Allow extra time if mailing an appeal.) An appeal form is available at www.seattle.gov/examiner/LANDUSEAPLFORM.pdf.

Appeals must be received prior to 5:00 P.M. of the appeal deadline indicated below and be accompanied by an $85.00 filing fee. The fee may be paid by check payable to the City of Seattle or a credit/debit card (Visa and MasterCard only) payment made in person or by telephone at 206-684-0521. (The Hearing Examiner may waive the appeal fee if the person filing the appeal demonstrates that payment would cause financial hardship).

The appeal must identify all the specific Master Use Permit component(s) being appealed, specify exceptions or objections to the decision, and the relief sought. Appeals to the Hearing Examiner must conform in content and form to the Hearing Examiner's rules governing appeals. The Hearing Examiner Rules and "Public Guide to Appeals and Hearings Before the Hearing Examiner are available at www.seattle.gov/examiner/guide-toc.htm. To be assured of a right to have your views heard, you must be party to an appeal. Do not assume that you will have an opportunity to be heard if someone else has filed an appeal from the decision. For information regarding appeals, visit the Hearing Examiner's website at www.seattle.gov/examiner or call them at (206) 684-0521.

Interpretations

The subject matter of an appeal of a discretionary decision is limited to the code criteria for that decision, and generally may not include other arguments about how the development regulations of the Land Use Code or related codes were applied. However, in conjunction with an appeal, a Land Use Code interpretation may be requested to address the proper application of certain development regulations in the Land Use Code (Title 23) or regulations for Environmentally Critical Areas (Chapter 25.09) that could not otherwise be considered in the appeal. For standards regarding requests for interpretations in conjunction with an appeal, see Section 23.88.020.C.3.c of the Land Use Code.

Interpretations may be requested by any interested person. Requests for interpretations must be filed in writing prior to 5:00 P.M. on the appeal deadline indicated below and be accompanied by a $2,500.00 minimum fee payable to the City of Seattle. (This fee covers the first ten hours of review. Additional hours will be billed at $250.00.) **Requests must be submitted to the Seattle Department of Construction and Inspections, Code Interpretation and Implementation Section, 700 5th Av Ste 2000, PO Box 34019, Seattle WA 98124-4019**. A copy of the interpretation request must be submitted to the Seattle Hearing Examiner together with the related project appeal. Questions regarding how to apply for a formal interpretation may be sent to PRC@seattle.gov. (Please include "Interpretation Information" in the subject line.) You may also call the message line at (206) 684-8467.

Shoreline Decisions

An appeal from a shoreline decision is made to the State Shorelines Hearing Board. It is NOT made to the City Hearing Examiner. The appeal must be in writing and filed within 21 days of the date the Seattle DCI decision is received by the State Department of Ecology (DOE). The Seattle DCI decision will be sent to DOE by the close of business on the Friday of this week. If the Shoreline decision involves a shoreline variance or shoreline conditional use, the appeal must be filed within 21 days after DOE has made their decision. The information necessary for DOE to make their decision will be sent to them by the close of business on the Friday of this week. The beginning of the appeal period may also be provided to you by contacting the PRC at PRC@seattle.gov, or by calling the message line at (206) 684-8467. The minimum requirements for the content of a shoreline appeal and all the parties who must be served within the appeal period cannot

be summarized here but written instructions are available in Seattle DCI's TIP 232 (web6.seattle.gov/dpd/cams/CamList.aspx). Copies of TIP 232 are also available at the Seattle DCI Applicant Services Center, 700 5th Av Ste 2000, PO Box 34019, Seattle, WA 98124-4019. You may also contact the Shorelines Hearing Board at (360) 459-6327. Failure to properly file an appeal within the required time period will result in dismissal of the appeal. In cases where a shoreline and environmental decision are the only components, the appeal for both shall be filed with the State Shorelines Hearing Board. When a decision has been made on a shoreline application with environmental review and other appealable land use components, the appeal of the environmental review must be filed with both the State Shorelines Hearing Board and the City of Seattle Hearing Examiner.

Comments

When specified below written comments will be accepted. Comments should be sent to: PRC@seattle.gov or mailed to Seattle Department of Construction and Inspections, 700 5th Av Ste 2000, PO Box 34019, Seattle, WA 98124-4019. All correspondence is posted to our electronic library.

Information

The project file, including the decision, application plans, environmental documentation and other additional information related to the project, is available in our electronic library at web6.seattle.gov/dpd/edms/. Public computers, to view these files, are available at the Seattle DCI Public Resource Center, 700 Fifth Avenue, Suite 2000. The Public Resource Center is open 8:00 a.m. to 4:00 p.m. on Monday, Wednesday, Friday and 10:30 a.m. to 4:00 p.m. on Tuesday and Thursday.

To learn if a decision has been appealed check the website at web6.seattle.gov/DPD/PermitStatus/ and click on the Land Use tab in the lower half of the screen for any Hearing date and time. You may also contact the PRC at prc@seattle.gov, 700 Fifth Avenue, Suite 2000, 20th Floor or call our message line at (206) 684-8467. (The Public Resource Center is open 8:00 a.m. to 4:00 p.m. on Monday, Wednesday, Friday and 10:30 a.m. to 4:00 p.m. on Tuesday and Thursday.)

Decision

Area: WEST SEATTLE **Address:** 3036 39TH AVE SW
Project: 3024037 **Zone:** SINGLE FAMILY 5000

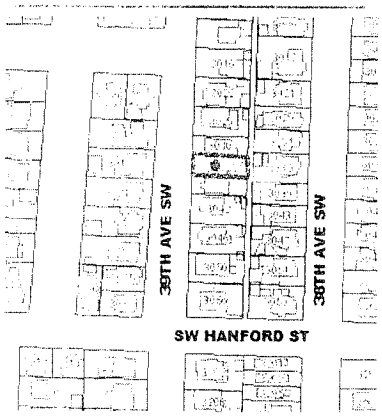
Decision Date: 10/06/2016

Contact: YUEANN WU - (206) 707-1406
Planner: CRYSTAL TORRES - (206) 684-5887

Land Use Application to allow a two-story, single family residence with attached two car garage.

The following appealable decisions have been made based on submitted plans:

Grant - Special Exception to allow a new single family dwelling unit on a lot less than 3,200 sq. ft.



The top of this image is north. This map is for illustrative purposes only. In the event of omissions, errors or differences, the documents in Seattle DCI's files will control.

Appeals of this decision must be received by the Hearing Examiner no later than **10/20/2016.**

3024037 - **Notice of Decision Infor & Report Others Notice of Decision sent 10/6/16 rgc

**Applicant, Owner, FRP:
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EXHIBIT B

Herbaugh, Melinda

From: Elaine Ike <elaineike@hotmail.com>
Sent: Tuesday, May 31, 2016 3:54 PM
To: PRC
Subject: FW: Project # 3024037 New proposal for 2 story house 3036 39th Ave SW, 98117

Dear Sir/Madam:

I understand that Project#3024037 (3036 39th Ave SW) is asking for an exception in order to build on a lot of less than 3,200 square feet. As current code limits construction to 35% of a 5,000 square foot (1750 square feet

), this current request would increase the 35% limit to more than 54% of the small lost, to build a 2 story home with a double car garage as requested by the project developer. Not only would the squeezing of this structure between two established homes affect their privacy and daylight, it will decrease their home values.

Also troubling is that building on the lot will require the removal of an exceptional pine tree that is well over the measurement of 24" at 4.5' (chest height measurement.) to be designated exceptional. Moreover, the tree provides habitat to squirrels, crows, owls and ladybugs which hibernate there every year. It is the largest tree in the neighborhood and visible from all my front windows., a beautiful sight!

Please enforce the rules governing development zoning and the tree codes for exceptional trees. Limit the development allowed on this very narrow property.

Thank you,

Elaine Ike
3029 Fairmount Ave SW
Seattle, WA 98116
(206) 933-0163

From:	Martin Westerman
To:	PRC
Subject:	Project #3024037 - 3036 39th Ave SW, Seattle 98117
Date:	Tuesday, June 07, 2016 11:09:29 PM

Dear PRC Friends,

Like dozens of neighbors, I support retaining the exceptional pine tree on this lot, and urges you to ask or require the developer to alter his house design to fit the lot, or to find another developer who will.

The developer is asking basically for two illegal exceptions, in order to build a two-story, 1750 square foot, two-car garage house on a 3,200 square foot lot at 3036 39th Ave SW. I urge you to reject his requests, which include:

(a) to allow his proposed house to occupy 54% of the lot -- contrary to Seattle code that limits a residential structure to occupying 35% of a 5,000 square foot lot.

(b) to cut what Seattle city arborists have declared to be an "exceptional" tree -- a giant Ponderosa pine with historical and esthetic value to the northeast Admiral neighborhood.

Squeezing this developer's oversized structure on an undersized lot between two established homes will adversely affect the neighbors' privacy, daylight and home values.

Martin Westerman / West Seattle / 206-938-3847

EXHIBIT C

development of any lot with an area less than 3,200 square feet that qualifies for any lot area exception in subsection 23.44.010.B.1. The special exception application shall be subject to the following provisions:

a. The depth of any structure on the lot shall not exceed two times the width of the lot. If a side yard easement is provided according to subsection 23.44.014.D.3, the portion of the easement within 5 feet of the structure on the lot qualifying under this provision may be treated as a part of that lot solely for the purpose of determining the lot width for purposes of complying with this subsection 23.44.010.B.2.c.

b. If a side of a proposed principal structure is more than 25 feet in length and faces one or more abutting lots that are developed with a house, the sides of the proposed principal structure that face the existing houses shall be modulated to visually break up the side.

c. Windows in a proposed principal structure facing an existing abutting lot that is developed with a house shall be placed in manner that takes into consideration the interior privacy in abutting houses, provided that this provision shall not prohibit placing a window in any room of the proposed house.

d. In approving a special exception review, additional conditions may be imposed that address modulation to address the character of facades of the proposed principal structure that face existing abutting houses, and window placement to address interior privacy of existing abutting houses.

((~~C. Development of any principal structure on lots that meet the conditions outlined in subsection 23.44.010.B.1.d but have a total area less than 3,750 square feet shall comply with the height standards of Section 23.44.012.A.3.~~

~~D.~~))C. Maximum ((~~Lot Coverage~~))lot coverage. The maximum lot coverage permitted for principal and accessory structures is as ((~~follows~~))provided in Table B for 23.44.010:

31, 1992, if proposed and future development will not intrude into the environmentally critical area or buffer.

b. Lots on totally submerged lands do not qualify for any minimum lot area exceptions.

3. Special exception review for lots less than 3,200 square feet in area. A special exception Type II review as provided for in Section 23.76.004 is required for separate development of any lot with an area less than 3,200 square feet that qualifies for any lot area exception in subsection 23.44.010.B.1. The special exception application shall be subject to the following provisions:

a. The depth of any structure on the lot shall not exceed two times the width of the lot. If a side yard easement is provided according to subsection 23.44.014.D.3, the portion of the easement within 5 feet of the structure on the lot qualifying under this provision may be treated as a part of that lot solely for the purpose of determining the lot width for purposes of complying with this subsection 23.44.010.B.2.c.

b. Windows in a proposed principal structure facing an existing abutting lot that is developed with a house shall be placed in manner that takes into consideration the interior privacy in abutting houses, provided that this provision shall not prohibit placing a window in any room of the proposed house.

c. In approving a special exception review, additional conditions may be imposed that address window placement to address interior privacy of existing abutting houses.

((~~C. Development of any principal structure on lots that meet the conditions outlined in subsection 23.44.010.B.1.d but have a total area less than 3,750 square feet shall comply with the height standards of Section 23.44.012.A.3.~~

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c. In approving a special exception review, additional conditions may be imposed that address window placement to address interior privacy of existing abutting houses.

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