

**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

In the Matter of the Appeal of

**SEATTLE GREEN SPACES  
COALITION**

From a decision Issued by the Director,  
Department of Construction and  
Inspections

Hearing Examiner File:  
**MUP-16-019 (SE); MUP-16-020 (SE)**

(SDCI Project No. 3024037)

**SDCI RESPONSE TO  
SEATTLE GREEN SPACES  
COALITION SUPPLEMENTAL  
MEMORANDUM**

The Department agrees with the appellant's position that opinion letters issued by SDCI are not Type I MUPs. However, a determination that a proposed development meets a development standard, in the course of the project's zoning review, is a Type I decision. SMC 23.76.006.B.1.

The appellant appears to confuse "exceptions" with "special exceptions." Special exceptions are explicitly listed as a Type II decision. But not every exception is a special exception. It is not unusual for development standards set forth in Seattle's Land Use Code to include exceptions. Exceptions allow eaves and porches to extend into required yards, and pitched roofs and chimneys to extend above the structure height limit. A determination that a project meets a development standard sometimes reflects a conclusion that it qualifies for a codified exception. Determining that a project qualifies for an exception is not inherently an exercise of discretion.

Even if, in a particular case, the project reviewer does exercise a degree of discretion in resolving an ambiguity or otherwise deciding how the code should apply to a particular set of facts, this does not elevate that decision to become a Type II, appealable MUP decision. The code makes clear what decisions are eligible for an administrative appeal, and the Hearing Examiner cannot consider appeals of other matters.

The appellant cites *Kates v. Seattle*, which relates to whether an interpretation request is necessary in order to exhaust one's administrative remedies. However, that is not the issue before the Hearing Examiner. The question is whether the Hearing Examiner has jurisdiction to consider the appellant's arguments about the application of a particular development standard in the context of a special exception appeal, where compliance with that development standard was not one of the criteria for the special exception review, and where the appeal did not include an interpretation request regarding that development standard.

SMC 23.88.020.A.3.c provides in part: "...an appeal of a Type II decision to the Hearing Examiner...may include a request that the Director issue in writing an interpretation of specified


SDCI Response to Seattle Green Spaces Coalition Memorandum

code sections, combined with an appeal of such interpretation....” The need to request an interpretation in order to raise issues that otherwise could not be considered in the appeal is reflected in Notice of Decision that was sent to interested parties, including the Seattle Green Spaces Coalition. A copy of the notice that was mailed is attached to this response.

The Seattle Green Space Coalition appeal did not include a request for an interpretation or an appeal of an interpretation. While multiple parties with a common interest may join in an appeal and act as a single party, that is not what has happened in this case. The appeal filed by the Seattle Green Space Coalition must be considered on its own, and on its own it fails either to raise any issues relating to the special use exception or to include an interpretation request that would allow additional issues to be raised. The interpretation request submitted by the other, unrelated appellant does not cure this defect.

For these reasons the Department respectfully requests that the appeal of Seattle Green Spaces Coalition be dismissed.

Dated November 14, 2016.



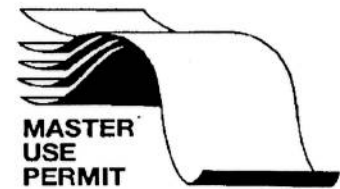
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Andrew S. McKim  
Land Use Planner – Supervisor  
Seattle Department of Construction and Inspections

# Seattle Department of Construction and Inspections

Nathan Torgelson, Director

October 6, 2016



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## 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](http://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](http://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](http://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](http://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](mailto: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](mailto: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](http://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](mailto: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/](http://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/](http://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](mailto: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.

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



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.

**3024037** - \*\*Notice of Decision Infor &  
Report Others Notice of Decision sent  
10/6/16 rgc Notice of Appeal Hearing sent  
11/3/16 drm

\*\*Applicant, Owner, FRP:

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HEARING EXAMINER'S OFFICE  
SMT-40-40

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**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **SDCI Response to Seattle Green Spaces Coalition Supplemental Memorandum**, via email, to each person listed below, in the matter of the appeal of **Seattle Green Spaces Coalition.**, Hearing Examiner Files **MUP-16-019 (SE) and MUP 16-020 (SE)**.

Lisa Parriott et al.  
c/o Peter Goldman  
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Dated November 14, 2016.



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