

Applicant _____
Department _____ ADMITTED ✓
Public ✓ DENIED _____
FILE # CF-314356

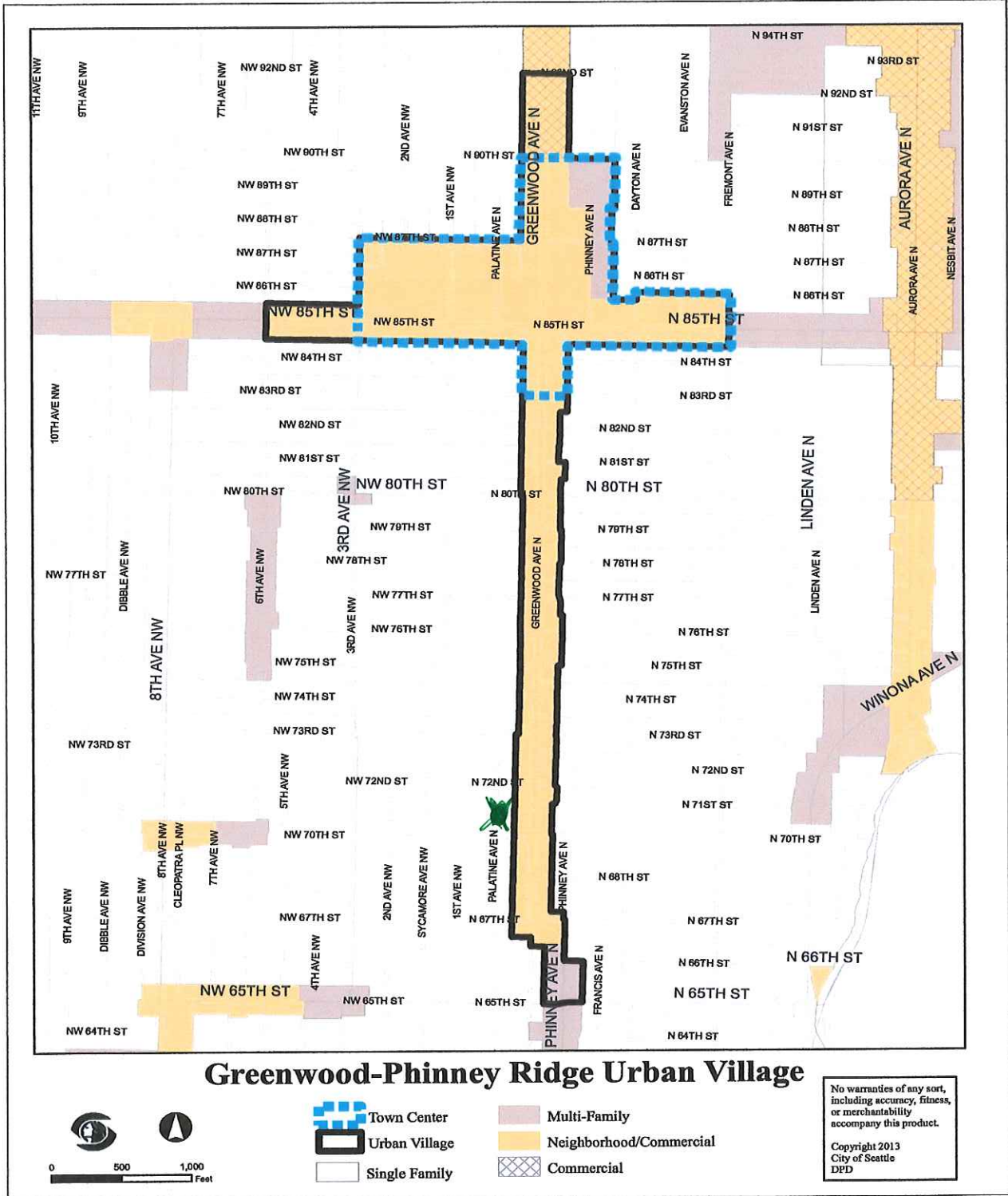
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**Public Hearing for 7009 Greenwood Ave N Contract
Rezone, #314356
April 30, 2018**

**Supporting Documents for Esther Bartfeld
testimony**

1. Greenwood / Phinney Urban Village Map (1 page)
2. Table showing application of Contract Rezone Criteria and why Rezone should be DENIED (6 pages);
3. Violations of setbacks in SMC 23.47A.014.B.1 (5 pages)

Map 2: Greenwood-Phinney Ridge Urban Village



Note: Design Review does not apply to all zones. See the Seattle Municipal Code, section 23.41.004 for more details. Additionally, zoning areas shown on this map are for general reference only. For confirmation of a specific property's zoning, contact the Department of Planning and Development.

Application of Contract Rezone Criteria in SMC 23.34.007, 008, 009 shows Rezone should be DENIED

Rezone Criteria	Analysis	SDCI errors
23.34.008A – zoned capacity standards	Irrelevant – project doesn't affect zoned capacity	SDCI arbitrarily claims that the project would lead to an "increase in zoned capacity" because if the 5 th floor was removed there would be 6 fewer units. By that rationale every rezone proposal "increases" zoned capacity. This project could provide the same number of units on 4 floors.
23.34.008B – Match between established locational criteria and area characteristics	Irrelevant, no change to NC zone designation	n/a
23.34.008C – Zoning history and precedential effect	The zoning history shows that this area along <u>Greenwood</u> has <u>always been zoned consistently</u> , regardless of the height. No parcel has ever been singled out for upzoning. The precedential effect of upzoning a single parcel in a uniformly-zoned area where the nearest parcel with a height greater than 40 feet is 15 blocks away cannot be underestimated. Every other parcel on Phinney would be vulnerable to upzoning before HALA is even finalized, and likely every other parcel in the city would be as well.	SDCI discussion of MHA financial requirements and MHA area-wide zoning proposals is irrelevant to this criteria
23.34.008D – Neighborhood plans	The Greenwood Phinney neighborhood plan did not anticipate a 55 foot zone and it did not anticipate any variation to the uniform zoning in this area where all parcels are zoned the same height	SDCI correctly notes that the property is covered by the Phinney Greenwood Neighborhood Plan and that the Plan did not identify any specific areas or policies for rezones. In its revised Decision, SDCI (curiously) removed its conclusion that the proposed rezone is "consistent

Rezoning Criteria	Analysis	SDCI errors
<p>23.34.008E – Zoning Principles</p> <p>1. Minimize the impact of commercial zones on other zones by the use of transitions or buffers, if possible. A gradual transition between zoning categories, including height limits, is preferred</p>	<p>There is NO transition between the NC parcels proposed for rezoning and the SF parcels that share the rear boundary of the NC parcels.</p> <p>The five story building would be built right on the property line. See plan set pages G002,</p>	<p>SDCI errors</p> <p>with the density anticipated in and around the [UV] as contemplated in the Seattle Comprehensive Plan” and that “the proposal will facilitate future development that will best accomplish the City’s planning objectives.” See p29 of 1.18 Decision.</p>
<p>2. Physical buffers may provide an effective separation</p> <p>Buffers include open space and greenspace</p>	<p>There are NO BUFFERS.</p> <p>The building is right on the property line that separates NC from SF zones.</p> <p>See plan set PA100.</p> <p>The so-called buffers are all exclusively on / in the SF-zoned parcels that are NOT part of the rezoning parcel and are entirely separate legal lots, and not subject to any PUDA. See SMC 23.34.004.</p>	<p>SDCI claims that there are some instances in the Greenwood Pinney Ridge neighborhood where a 65’ zone is adjacent to a SF zone, but fails to identify any such location or note that the nearest 65’ zone is on the north side of 84th street, 15 blocks (almost one mile) from the 7009 site. See p29</p> <p>SDCI acknowledges that a gradual transition between zoning categories would NOT occur between the rezoned property and the SF properties to the west but then misleadingly claims that this would allow for a “55’ height zone in proximity to a single family zone” instead of admitting that it would allow for a 55’ zone adjacent to a SF zone. See p.31</p> <p>SDCI’s so-called “summary” ignores the impact of having a large NC parcel upzoned to 55 feet with a 5-story building right on the property line</p> <p>SDCI acknowledges that the NC255 zone would be adjacent to the NC240 zones to the north, south, and east, but once again refuses to acknowledge that it would be adjacent to the SF zone on the west. (SDCI says it would be “in proximity” to SF zone). P32</p> <p>SDCI offers an almost indecipherable explanation for insisting that the vacant SF lot is a buffer: “[A] 55’ wide buffer exists between the zoning designation line and the shared property line</p>

Rezone Criteria	Analysis	SDCI errors
<p>3. Zone Boundaries - consider physical buffers and platted lot lines</p>	<p>Some drawings show a 10-foot wide strip with a concrete wall on the west side to separate it from the rest of the SF parcels. See e.g., plan set pages L1.10, L1.11, L5.0</p> <p>Earlier iterations claimed this buffer would be a “no-build – access” easement, but it is unclear whether that is still proposed. As of 4.29.18, there was nothing recorded on the 7010 Palatine property.</p> <p>In addition, both SDCI and the applicant claim that the 53 foot wide, vacant SF lot on N. 70th is a “buffer” although both erroneously claim it is 55-ft wide. See e.g., survey on plan set page C-100.</p> <p>This separate, legal lot in the SF zone is not a “buffer” nor is it “open space” for purposes of this analysis because it could be developed at any point regardless of what the owners say now.</p>	<p>between the development site and the neighboring property to the west. . . . This area is planned to be a landscaped open space. p32.</p> <p>This is a tortured way of claiming the legally separate, vacant SF lot on 70th Street as a “buffer” when it is not.</p> <p>The applicant also claims, misleadingly and incorrectly, that there is a 55-foot wide buffer along the entire western edge. See p10 of application.</p> <p>There is not. There is a 53-foot wide, vacant SF lot in the southern 2/3 of the west side, and the remainder of the west side is a SF lot with a craftsman home on it that is closer than 55 feet to its rear boundary. See unlabeled page of 7010 Palatine survey preceding page c100 survey</p> <p>The applicant also claims that the vacant lot “will remain an open lawn” but it has no legal obligation to leave any more lawn than necessary on a SF parcel that could easily be developed just like any other SF parcel. See Application, p11.</p>
	<p>The proposal follows platted lot lines: 2 commercial parcels are proposed for upzone; 2 SF parcels are not part of the rezoning proposal (although the applicant claims they are part of a so-called “development site,” a stunt they claim gets them out of complying with the required setbacks between zones.</p> <p>The new NC55 zone would be adjacent to 2 SF parcels along the rear property line and adjacent to a NC240 parcel on the north</p>	<p>SDCI erroneously claims there would be “some physical buffers.” There would be no physical buffers.</p> <p>SDCI fails to acknowledge that there are 4 separate lots in the so-called “development site” and it is the 2 commercial lots that would be upzoned, leaving no buffers to the NC240 parcel to the north or the 2 SF parcels to the west</p>

Rezone Criteria	Analysis	SDCI errors
<p>4. Height limits greater than 40 feet should be in urban villages</p> <p>23.34.008F - Impact evaluation</p>	<p>Complies</p>	
<p>a. Housing, particularly low-income housing</p>	<p>This project has no more meaningful impact on housing than any other project built within the NC240 zone height. 12 of the 35 units are reserved for the owner / investors who intend this to be “their primary residence for decades and generations.” See Application p1. The applicant promotes “family units” but reserves virtually all of the units greater than 1000 sq ft for themselves exclusively on the 4th and 5th floors. Almost every unit on the 5th floor exceeds 1100 sq ft., with one at almost 1900 sq ft on 2 floors. In contrast, the one 3-BR available to the public is only 1077 sq ft. The “studio” on the 4th floor is almost 600 sq ft (larger than many of the 1-BRs on the lower floors), but the studios on the lower floors max out at around 342 sq ft. Even the rooftop greenhouse is larger (425 sq ft). See floor plan s pages A201-206. The studios and 1-bedrooms offered in the new, 4-story building across the street are larger than those proposed for 7009.</p>	<p>SDCI erroneously claims that the project will have a “positive impact” on the housing supply by providing 35 new residential units. P33. SDCI fails to note that there will be only 23 units available to the public, fewer than are being offered at the new, four-story building right across the street.</p>
<p>c. Environmental factors, including shadows</p>	<p>A five story building casts more shadows, leaving that stretch of Greenwood in shadow more of the day. A five story building right on the property</p>	<p>SDCI claims the shadow impact would be relatively small but completely ignores the impact of a 55 foot building built within the required setback area along the east side of the property / zoning line</p>

Rezone Criteria	Analysis	SDCI errors
<p>23.34.008G - Changed Circumstances: Evidence of changed circumstances shall be taken into consideration in reviewing proposed rezones, but is not required to demonstrate the appropriateness of a proposed rezone.</p>	<p>line where the Code requires setback will block light and air, and cast shadows in that stretch of land east of the zoning line. The impact would be exacerbated in the winter when the sun is in the southern sky because this parcel is at the southern end of the block.</p> <p>This rezone is obviously all about trying to get a jumpstart on the proposed MHA upzones even when the details and characteristics of the new NC55 zone have not been defined, there is no legislation proposed to implement the zone citywide or in Phinney Ridge, and the FIS is in litigation. Indeed, the applicant boasts about how it will be meeting MHA on almost every page of its application. <u>But the potential for an areawide upzone is not a "changed circumstance" because that "circumstance" does not exist.</u> There are an infinite number of ways the currently proposed HALA upzones could get derailed, modified, withdrawn, not applied in Phinney Ridge, or any number of other changes to the current version being floated at public meetings. Yet the dream of HALA upzoning is the obvious driver for this rezone request.</p>	<p>(p34)</p> <p>SDCI showed its hand in the original January Decision when it relied on the potential for area-wide upzoning through MHA to justify this rezone, noting specifically that the city proposals "include the rezone site" and specifically concluding that "the proposed rezone responds to changed circumstances for this area." P36 of 1.18 decision.</p> <p>In its revised decision, the City pretends that "there is no evidence of changed circumstances in consideration of this rezone proposal." P36. But that new language does not free SDCI of its obvious reliance on the potential HALA SDCI neglected to cleanse the entire revised Recommendation of this argument. Just two pages later, when insisting that the proposal meets the height and scale criteria of SMC 23.34.009.C, SDCI reasons that "the proposed development would also be compatible with the anticipated proposed scale of development being contemplated for the forthcoming HALA/MHA zoning to NC2-55(M). p38. It made the same argument for SMC 23.34.009.D.</p>
<p>SMC 23.34.009 - Height limits</p>		
<p>B Topography of the area, and consider view</p>	<p>The NC240 zone requires an analysis of view blockage before adding 4 feet of extra</p>	<p>SDCI claims without any support that the rezone "will have negligible impact beyond what would be</p>

Rezone Criteria	Analysis	SDCI errors
<p>blockage</p>	<p>height. SMC 23.47A.012. The NC255 zone has not been developed, so it is unknown whether such a view study would be required. But it is obvious that a 55 foot building will block protected views from parcels across the street that will remain zoned at NC240 if this parcel gets upzoned</p>	<p>SDCI errors allowed under the current zoning designation. That statement is false. In the NC240 zone, a developer is required to do a view analysis before SDCI grants 4 feet in height (up to 48 feet). This building would have a rooftop of 55 feet, perimeter walls on top of that, and a 24-ft long greenhouse on the roof extending approximately 12 feet above the roof. See elevation drawings at A300-303</p>
<p>C. Height and Scale of Area - height limits established by current zoning in the area shall be given consideration; - permitted height limits shall be <u>compatible</u> with the predominant height and scale of existing development</p>	<p>The 7009 site is in a stretch of Greenwood Avenue that is uniformly zoned NC240. The nearest property with a greater height limit is at Greenwood on the north side of 84th Street in the Greenwood Town Center, an area that is almost one mile north, and treated entirely differently in the neighborhood plan</p>	<p>SDCI incorrectly claims that there is a 65' zone "nearby." There is not. The closest 65' parcel is almost a mile away. SDCI also claims without support that the proposed development would be "compatible" with the predominant height and scale of newer development even though every commercial property within almost a mile is zoned NC240. P38 SDCI admits that it is relying on the potential MHA upzones to justify this project. P38 SDCI claims incorrectly that the proposed rezone would be consistent with the scale of the newer developments in the area. The newer developments, such as the building across the street, are NC240, and they do not have a massive greenhouse on top to extend a substantial portion of their rooftop profile to almost 70 feet</p>
<p>D. Compatibility with Surrounding Area - height limits shall be compatible with actual and zoned heights in the surrounding areas - a <u>gradual transition</u> in height and scale and <u>level of activity</u> shall be provided unless there are major physical buffers as in 23.34.008.E.2</p>	<p>The NC55 is not compatible with the actual and zoned heights in the uniformly zoned NC240 area along Greenwood or the adjacent SF zone to the west. This building adds a 425 sq ft greenhouse to the other rooftop features that raise the actual height to almost 70 feet in substantial portions of the roof. There is no "gradual transition" and indeed no transition at all between zones and there is no "major physical buffer" as required</p>	<p>SDCI admits that it is using the potential HALA upzones to justify this project (it would be "consistent with . . . the anticipated scale of development being contemplated for the forthcoming HALA/MHA zoning"). P38</p>

SETBACK VIOLATIONS OF 7009 GREENWOOD PROPOSAL

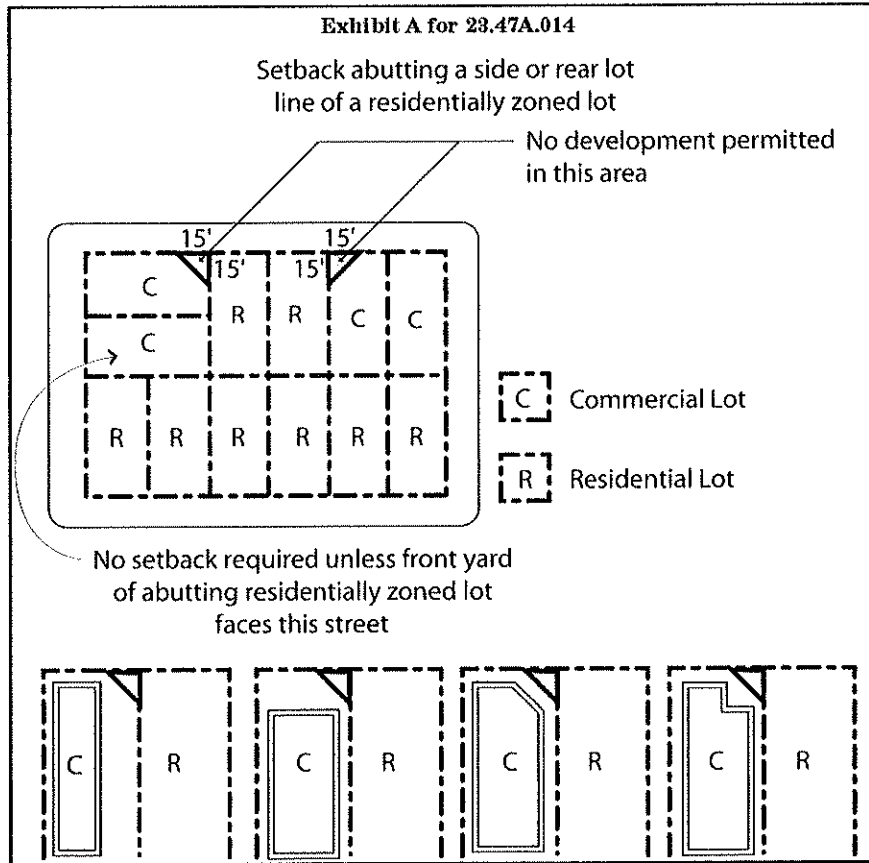
SMC 23.47A.014.B (Setback requirements for lots abutting . . . residential zones)

1. SMC 23.47A.014.B.1: No-build corner setbacks required where the rear boundary of the commercial lot abuts a side boundary of a residential parcel

CODE: A setback is required where a lot abuts the intersection of a side lot line and front lot line of a lot in a residential zone. The required setback forms a triangular area. Two sides of the triangle extend along the street lot line and side lot line 15 feet from the intersection of the residentially zoned lot's front lot line and the side lot line abutting the residentially zoned lot. The third side connects these two sides with a diagonal line across the commercially-zoned lot (Exhibit A for 23.47A.014).

Exhibit A for 23.47A.014

Seatback abutting a side or rear lot line of a residentially zoned lot



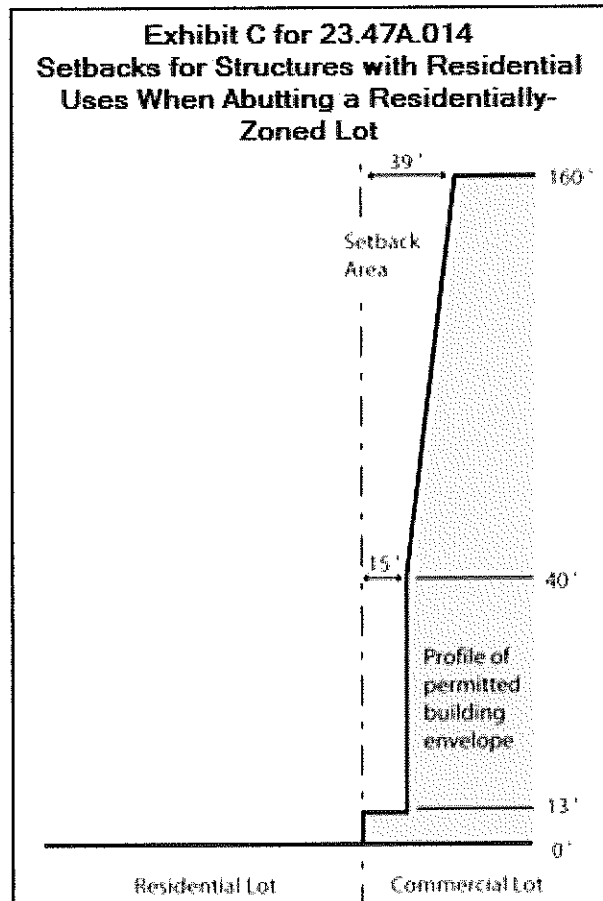
7009 violation: The southwest corner of the building comes right up to the property line in violation of SMC 23.47A.014.B.1. Various alternative design options are shown in Exhibit A to SMC 23.47A.014.B.1.

2. SMC 23.47A.014.B.3: Setbacks required on all floors above the first floor when the rear boundary of the commercial lot abuts a lot in a residential zone

CODE: For a structure containing a residential use, a setback is required along any side or rear lot line that abuts a lot in a residential zone . . . as follows:

- a. Fifteen feet for portions of structures above 13 feet in height to a maximum of 40 feet; and
- b. For each portion of a structure above 40 feet in height, additional setback at the rate of 2 feet of setback for every 10 feet by which the height of such portion exceeds 40 feet (Exhibit C for 23.47A.014).

Exhibit C for 23.47A.014 Setbacks for Structures with Residential Uses When Abutting a Residentially-Zoned Lot



7009 violation: All floors above the first floor are built within the required setback area in violation of SMC 23.47A.014.B.3. The massive greenhouse appears to be less than 15' from the line (page A206). Based on elevations shown on page A300-303, the 40 foot elevation (where even more than a 15-foot setback is required) occurs before the ceiling of the 4th floor). The greenhouse appears to be 67 feet tall.

3. SMC 23.47A.014.B.5: Prohibits entrance, window, or other opening closer than 5 feet to abutting residential lot

CODE: No entrance, window, or other opening is permitted closer than 5 feet to an abutting residentially-zoned lot.:

7009 violation: Almost the entire west side of the building violates this provision. See West elevation drawing at page A310. Most of the west side of the first floor is built

4. Other relevant Code provisions:

SMC 23.47A.014.A: Definition: For the purposes of this Section 23.47A.014, "portions of structures" include those features listed in subsection 23.47A.012.C, Rooftop features.

SMC 23.47A.012.C.6 covers greenhouses dedicated to food production, such as the one described for the 7009 project, so that structure is covered by the setback requirements of SMC 23.47A.014.B.3

SMC 23.84A.002: "Abut" means to border upon.

SMC 23.84A.024 : "Lot" means, . . . a parcel of land that qualifies for separate development or has been separately developed. A lot is the unit that the development standards of each zone are typically applied to.

SMC 23.84A.024 : "Lot lines" means the property lines bounding a lot.

5. Applicant's unsupported reason for ignoring setback requirements:

Applicant claims, on page G002 of the plan set that "Adjoining residential (SF5000) zoned parcels are part of the same development site (see A100 and Diagram 1 above [on G002], so no side setbacks apply at the west side." See page G002 of plan set.

Flaw in analysis:

- (1) Development site" is not defined in the Code;
- (2) A "development site" is explained in TIP247 and that requires a boundary line adjustment if "lots" are combined into a single development site, something which has not happened in 7009 project;.
- (3) The setback requirements are based on "lots" and "lot lines;"
- (4) The "development site" contains 4 "lots." There are 2 commercial lots proposed for rezone and PUDA, and 2 single-family lots that are not part of the rezone and therefore would not be part of PUDA. They are, therefore, just like any 2 single family lots for purposes of sale, development, redevelopment, etc
- (5) The zoning code is not based on ownership, nor is there a provision that waives compliance when two lots are in common ownership in different zones.

Diagrams and images showing setback violations

1. This is an image from one of the design review packets showing:

- (1) The driveway at the southwest corner and the entire southwest corner portion of the structure violates the no-build setbacks required in SMC 23.47A.014.B.1 when the rear boundary of a commercial lot abuts the side boundary of a residential lot; and
- (2) The west side of the building facing the grassy area is built right on the property / zoning line separating the commercial parcels from the single family parcels in the rear, in violation of SMC 23.47A.014.B.3. The grassy area and the walkway adjacent to the building are in the single-family zone. All floors above the first floor are required to be set back at least 15 feet from the property line.



^ looking NE to project from N 70th St with upper floor setback and mid-block modulation

To comply with SMC 23.47A.014.B.1 the entire southwest corner needs to be cut off or the building otherwise made smaller per the alternative design ideas presented in Exhibit A to SMC 23.47A.014.B.1.

To comply with SMC 23.47A.014.B.3, all floors above the first floor need to be set back 15 from the west property line for all portions of the building up to 40 feet high, with an increased setback for all portions of the building above 40 feet

2. This is another image from one of the design review packets showing the massive wall rising right on the property line separating the commercial parcels from the adjacent single family parcels.



WEST ELEVATION

The code requires all portions of the building above the first floor, and up to 40 feet to be set back 15 feet from the property line, with an increasing setback for all portions of the building over 40 feet.

Although there may be minor design changes from this image to the current plans, there has been no change to the building rising four floors right on the property line where the Code requires a minimum 15-foot setback for floors 2-4. There is only a minimal 4-6 foot setback on the 5th floor in the current version of the building (except for the SW corner where there is no setback), where the Code requires more than a 15 foot setback, at a rate of 2 feet per 10 feet above 40 feet. This would make the top of the 5th floor 18 feet from the line.

The greenhouse, which appears to be at least 12 feet tall (grey box in center of left rooftop side), is located less than 15 feet from the property line. The roof in that area should be at least 18 feet from the line.