

Exhibit No. 139

**From:** Esther Bartfeld [ebartfeld@comcast.net](mailto:ebartfeld@comcast.net)  
**Subject:** Re: Please reschedule the Design Recommendation mtg for 7009 Greenwood (#3023260)# - 2nd REQUEST  
**Date:** April 28, 2017 at 2:19 PM  
**To:** Roberta Baker [Roberta Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov)  
**Cc:** Torgelson, Nathan [Nathan.Torgelson@seattle.gov](mailto:Nathan.Torgelson@seattle.gov)

Thank you for getting back to me, Roberta. And thank you, Mr. Torgelson, for any time you have spent on this issue.

This is a really disappointing response, though, and I think it is a disservice to the community and the time that the Design Review Board puts in.

I have been at several design meetings where the Board has been told and/or states independently that it has no jurisdiction over code issues.

This current proposal does not comply with code requirements for setbacks. If this project is (1) required by code to have upper level setbacks, and (2) is not allowed to build in that 15-ft triangle at the SW corner of the commercial property (where applicant is currently seeking a departure to place a column in the site triangle), that fundamentally changes the design of this project, and would obviously affect the input provided by the Board.

This setback issue has been raised for months. Wouldn't it make more sense to resolve this issue BEFORE the Recommendation meeting when the outcome could result in a substantially different building that what is being presented, or, at a minimum, a proposal that includes departure requests for what is now proposed, something that the Board may not be willing to grant?

Note also that this project has gone from an EDG meeting in August, where the proposal was for a 6-story building with a public park in the vacant lot on 70th (which the board liked), to a fundamentally different project now that includes departures that were not previously requested, no public park, reduced height at the lower levels, and many other changes that make this a very different project than what the board previously reviewed. Shouldn't there have been some meeting BEFORE a Recommendation meeting, especially when the proposal includes a rezone request?

Please reconsider your decision to keep the Monday meeting.

Given the Board's stated concerns about the transition between the commercial and single family zone for this massive building, wouldn't it be a better use of the Board's time (and the public's time) to reschedule this meeting until SDCI has carefully investigated this issue so that the Board spends its time considering a correct version of this project?

Thank you again for your consideration.

-Esther

On Apr 28, 2017, at 1:56 PM, Baker, Roberta <[Roberta.Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov)> wrote:

Esther-

I have looked at the project and have some follow-up issues I want to discuss with the project reviewers on Monday, since both assigned planners are out of the office today. The follow-up, in part, is related to the upper level setback issue.

In talking with Lisa Rutzick who manages the DR program, she believes we should go forward with the board meeting on Monday. Lisa indicates that there are many design issues to be discussed so plenty of reasons to still meet with the board. There will still be opportunity for our planners to followup on issues where the board gives guidance to further refine the design, and it's possible the board may ask the project to return for another meeting if they believe there are too many unresolved design issues.

We understand the issue of the upper level setback is of concern for the neighborhood so anticipate it will be part of the discussion with the board on Monday.

Roberta

Sent from my iPhone

On Apr 28, 2017, at 12:31 PM, Esther Bartfeld <[ebartfeld@comcast.net](mailto:ebartfeld@comcast.net)> wrote:

Roberta-

I know you have a ton of things to juggle, but I'm wondering whether you (and others) reached a decision about rescheduling the Design Recommendation meeting for 7009 Greenwood that is presently scheduled for Monday, May 1 (see email chain below).

Thank you,  
-Esther

Begin forwarded message:

**From:** Esther Bartfeld <[ebartfeld@comcast.net](mailto:ebartfeld@comcast.net)>  
**Subject:** Re: Please reschedule the Design Recommendation mtg for 7009 Greenwood (#3023260)# - 2nd REQUEST

002085

**Date:** April 27, 2017 at 9:47:24 AM PDT  
**To:** Roberta Baker <[Roberta.Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov)>

Thanks Roberta.

I just realized that when I typed in references in my email from earlier this morning, below, I mistakenly wrote "page 10" to identify the second image, when I should have written "page 7" of the draft. In my original email, the page number was evident in the image. Sorry for any confusion.

Actually, if you use a larger copy of the actual plan sets, which print on 11x17 paper, it is much easier to see and read, and it is also easier to compare how the referenced diagrams from the 3/16/17 draft compare to the 4/20/17 revised plans.

E.g., Compare:

- (1) draft p. 6 with revised p.7 (Existing Site Conditions; eliminated details clearly indicating separate parcels);
- (2) draft p. 7 with revised p. 8 (Proposed site plan; eliminates all referendes to separate lots);
- (3) draft p 17, with revised p. 19 (Architectural concept; eliminates all reference to adjacent SF parcel. Note that both versions have a misleading image that shows the Palatine garage off to the side, it is not, it is directly behind the proposed building, along the north boundary shared by both lots);
- (4) draft p 22, with revised p25 (Commercial Corridor; eliminates reference to "10' landscape and access easement' across the abutting SF lots)

Note that these comments are just related to the setback issue per my email below. There are numerous other problems with the design (and the request for rezone), that I will save for the appropriate forum.

Thank you again.

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On Apr 27, 2017, at 9:18 AM, Baker, Roberta <[Roberta.Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov)> wrote:

Yes, they did come through, and I'll make sure these are present in our meeting with Nathan – thanks for sending them!

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**From:** Esther Bartfeld [<mailto:ebartfeld@comcast.net>]  
**Sent:** Thursday, April 27, 2017 8:34 AM  
**To:** Baker, Roberta <[Roberta.Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov)>  
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Thank you Roberta.

Did the images included in my original email from Monday come through? I deleted them from my email below and substituted identifying text instead.

I look forward to hearing from you.

-Esther

On Apr 27, 2017, at 8:24 AM, Baker, Roberta <[Roberta.Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov)> wrote:

Esther – I'm sorry we haven't yet responded to your email – we will be discussing the project later today which will help inform our response to you, which will likely occur tomorrow given the schedule of the meeting.

002086

Respectfully,  
Roberta Baker  
LU Division Director, SDCI

**From:** Esther Bartfeld [<mailto:ebartfeld@comcast.net>]  
**Sent:** Thursday, April 27, 2017 8:20 AM  
**To:** Torgelson, Nathan <[Nathan.Torgelson@seattle.gov](mailto:Nathan.Torgelson@seattle.gov)>; Baker, Roberta <[Roberta.Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov)>; King, Lindsay <[Lindsay.King@seattle.gov](mailto:Lindsay.King@seattle.gov)>  
**Subject:** Fwd: Please reschedule the Design Recommendation mtg for 7009 Greenwood (#3023260)# - 2nd REQUEST

Dear Mr. Torgelson (and Roberta and Lindsay):

I am writing again to request that you RESCHEDULE the Design Recommendation meeting for the 7009 Greenwood project (#3023260) currently scheduled for next Monday, May 1st due to a large flaw in the proposed design that affects the size of the building that could be built on this site.

On Monday April 24th, I sent the email below asking that the May 1st Design Review Recommendation meeting for this project be rescheduled for the reasons explained below. I did not hear back from any of you. I did not see any notice of rescheduling in the Land Use Bulletin from today.

I am re-sending my original email and requesting again that you reconsider whether a Design Recommendation meeting at this time is appropriate.

As described below, the current proposal shows a 5-story, 55 foot building to be constructed right on the property line that separates the NC2-40 lot and the two adjacent SF5000 lots behind it. This violates the setback requirements in SMC 23.47A.014.B that prohibit any building in the 15-foot triangle adjacent to the side lot line of one of the SF5000 lots, and requires at least a 15-foot upper level setback in all buildable areas of the rear lot line.

The applicant evidently believes that because it owns the abutting SF5000 lots, it can evade these setback requirements simply by claiming that all of its separate lots are somehow one 'development site.' Tip 247, however, clearly indicates that a development site must be platted with a recording number (in contrast, the 7009 project includes several discrete lots, each with separate recording numbers), or a lot boundary adjustment reviewed by SDCI (there is no mention nor evidence of a lot boundary adjustment).

Note that this project also has a rezone component. If the applicant pursued a lot boundary adjustment, it would need to adjust its rezone proposal to also upzone the portion of the SF5000 land that would move to the NC lot to create the required setback areas for a building of the proposed dimensions.

Please consider this request to postpone the Design Recommendation meeting until the proposed design complies with the setback requirements or the applicant properly complies with the requirements to establish a "development site."

If you are unwilling to change the date of this meeting, can you please send someone out TODAY to post proper signs for the meeting? As of yesterday, there were no signs at all on the project site. Instead there are only outdated signs from January. For public notice of the upcoming design review meeting, there is only one little yellow paper sign on the streetpole on the corner of 70th and Greenwood, and another one on a street pole on Greenwood several buildings past the project site. There are no signs at all on the block of Palatine that includes the 7010 Palatine single family house that is allegedly part of the development site. Instead there is one sign on a street pole on the opposite side of 70th and Palatine. Inadequate signage at this site has been a consistent problem and previously resulted in a re-noticing.

Thank you for your prompt attention to these issues

-Esther Bartfeld, Phinney Ridge resident

Begin forwarded message:

**From:** Esther Bartfeld <ebartfeld@comcast.net>  
**Subject:** Please reschedule the Design Recommendation mtg for 7009 Greenwood (#3023260)#  
**Date:** April 24, 2017 at 6:04:58 PM PDT  
**To:** "Torgelson, Nathan" <nathan.torgelson@seattle.gov>  
**Cc:** Roberta Baker <Roberta.Baker@seattle.gov>, "King, Lindsay" <lindsay.king@seattle.gov>

Dear Mr. Torgelson:

I am writing to request that you **please RESCHEDULE the Design Recommendation meeting for project 3023260 (7009 Greenwood, contract rezone) currently scheduled for Monday May 1st.**

This project continues to have a substantial design flaw: it lacks the required setbacks where the NC parcel abuts the SF 5000 zone at the rear boundary, per SMC 23.47A.014.B.

This issue has been raised numerous times since this project was first proposed, and it remains unaddressed. That is the

reason why I am bringing this to your attention.

The proposal is for a 5-story building constructed right to the property/zoning line separating the NC parcel from the abutting SF5000 parcels. The proposal includes a contract rezone to NC265, from NC240. Images from the recent design material are included below.

SMC 23.47A.014.B.3 requires a 15-foot upper level setback along any side or rear lot line that abuts a lot in a residential zone, plus an additional setback for heights over 40 feet. The proposed building is 55 feet tall. But there are no setbacks proposed at all for this project.

This project involves a 12,000 sq ft lot zoned NC2-40 that faces Greenwood Avenue on the corner of N. 70th in the Phinney Ridge neighborhood. In this area, all of the commercial lots face Greenwood Ave N, and all share a rear lot line with the SF5000 homes.

The owners/developer of 7009 Greenwood also owns the SF parcel facing 70th (currently vacant) that abuts the SW rear lot line of the NC parcel, and they recently acquired the single family home at 7010 Palatine that abuts the NW rear property line of the NC240 parcel. The zoning line separating NC240 from SF5000 runs along the property line.

When this project was first proposed, the developer requested a departure for the upper level setback. Then that departure request was removed at some point. There was an EDG meeting in August 2016. The DRB notes from that meeting indicate the Board's substantial concerns about the transitions between the commercial and SF zone and the need for a "thoughtful" transition." With zero setbacks in the current design, there is obviously no thoughtful transition as the DRB required.

I raised the upper level setback issue (SMC 23.47A.014.B.3) in an email to Lindsay King (assigned planner) on December 5, 2016.

I raised this issue again on January 25, 2017 in an email to Roberta Baker and Lindsay King during the comment period for the MUP application. I also flagged this issue in my comments opposing the proposed rezone that I submitted February 8, 2017 during the MUP comment period.

A Correction Notice issued Feb 2, 2017 identified the need for this setback (item #7). It also identified the required 15'

diagonal setback where no development is allowed when a commercial lot abuts the intersection of a side lot line and front lot line in a residential zone (SMC 23.47A.014.B.1).

A Correction Notice issued Feb 23, 2017 contained those same requirements (#7 again).

On April 13, 2017, I received the notice of the upcoming DRB Recommendation meeting. I checked the SDCI website at that time and discovered a Response to Correction Notice dated March 15, 2017 that claimed that “since the adjoining residential SF5000 zoned parcels are part of the same development site, no side setbacks are needed at the west side.”

Evidently that explanation was good enough for SDCI to remove the prior correction notices requiring setbacks. The SDCI website had draft plans dated March 16, 2017 that showed no setback. The other items in the correction notices, such as transparency and sight triangle, are now included as requested Departures. But there is no further mention of the setback issue.

There is a big problem here. As you can see in the images below captured from the design drawings, the alleged “development site” is three discreet parcels: (1) one NC240 parcel that they want to rezone to NC265, (2) one vacant SF5000 parcel facing N. 70th St, and (3) a SF5000 parcel (7010 Palatine) that has an existing single family home. There is no lot boundary adjustment proposed (as required in Tip 247, “Development Site Permitting Guidelines.”)

Instead, the developer is proposing a 10-foot “Access / no build” easement that consumes 10 feet of the SF parcels along the property line that they are using as open space and (it appears) as access to commercial space in the NC building. Perhaps they are not doing a lot boundary adjustment because there is insufficient space in the rear yard of the Palatine home to allow this (and perhaps insufficient square footage in the vacant lot at N 70th as well). So this easement gimmick is being used instead, with the corresponding attempt to evade the setback requirements of SMC 23.47A.014.B altogether by claiming that their common ownership of three discrete lots is somehow a “development site.” It is not.

**If these parcels were under separate ownership, the setbacks in SMC 23.47A.014.B would be required. There is no provision in the Code that allows one owner to acquire lots in two different zones, keep those lots as entirely separate tax parcel lots, and then claim that the setback requirements at zone transitions do not apply.**

The images from the March 16, 2017 draft plans clearly show what is going on here. The revised plans for the forthcoming DRB meeting, which were not posted until April 21st (a week after the notice went out), conceal a lot of what is going on. I have attached a series of images from the MArch 16 plans below for your review.

Note also that the zoning / property line follows the same N/S line along the shared rear lines of all parcels on that block. A five story building within the required 15-foot upper level setback on the 7009 parcel steals the light, air, and views of all parcels on that block, and interferes with the view from buildings on surrounding blocks as well.

**I hope you will investigate what is really going on here and POSTPONE the forthcoming Design Recommendation meeting until there is a building design that complies with required setbacks.** The 12,000 sq foot commercial is already one of the largest commercial parcels in Phinney Ridge. It has ample space to accommodate a thoughtful design without unlawfully encroaching into required setback areas through the creative gimmicks being used here.

Thank you for your prompt consideration of this matter.

Sincerely,

Esther Bartfeld  
Phinney Ridge resident, former PRCC board member

(1) This is the site plan (page 6 of 3.16.17 draft); the property line is the same as the zoning line at the color change separating SF5000 and NC240 zones:

[image from page 6 of 3.16.17 draft Design Review packet; actual image in original email]

(2) This is the site plan that shows the buiding right on the property line (see line at left edge of orange), along with the access easement (it is also called a “no build” easement, but the Code prohibits building in that portion of a rear SF ot anyway...)

[iimage on page 10 of 3.17.17 draft Design Review packet; actual image in original email]

(3) This image from p11 of 3.16.17 draft shows the south side on

70th and the west massive wall that is proposed right on the property line separating NC240 and SF5000 (this is the part of the building left of the corner facing the grass; the grass is the vacant SF lot on 70th); the car / driveway / corner is within the no-development area of SMC 23.47A.014.B.1.

[image from page 11 of 3.16.17 draft Design Review packet; actual image in original email]

(4) This drawing shows the sidewalk in the easement over the SF5000 zone, accessing the retail space of the commercial building (the property line is at the edge of the building (in white); the dashed line left of the sidewalk is the easement boundary in the SF zone, the grey shaded building in the upper left is the SF house at 7010 Palatine).

[image from page 15 of 3.16.17 draft Design Review packet; actual image in original email]

(5) This image describes the drawing above, identifying the easement

[image from page 22 of 3.16.17 draft Design Review packet; actual image in original email]

(6) This is the west side of the building (as viewed from the adjacent SF zone) that is built right on the property line of the SF zone for 4 stories, with a minimal setback at the fifth floor. Note also that the right side, where the car is entering the driveway (and for which they request a departure for that column located in the sight triangle) is within the 15-ft no-development triangle of SMC 23.47A.014.B.1.

[image from page 38 of 3.16.17 draft Design Review packet; actual image in original email]

Exhibit No. 140

From: **Esther Bartfeld** [ebartfeld@comcast.net](mailto:ebartfeld@comcast.net)  
Subject: Re: [ 7009 Greenwood (#3023260) - followup to Design Review Meeting]  
Date: May 2, 2017 at 5:57 PM  
To: Roberta Baker [Roberta Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov)

Thank you Roberta.

Please understand that my comments below are not intended as a criticism of Lindsay, but rather to point out places where I think there were missed opportunities to clarify how the Board could have addressed one of the most important design issues of this project. Lindsay was patient and allowed people to speak during public comment, and she was constrained at the end of the Board's deliberations due to the next meeting that was scheduled in the same room. My observations below relate to opportunities that, I believe, could have reduced or clarified the confusion of the board on such a critical issue.

-Esther

On May 2, 2017, at 5:41 PM, Baker, Roberta <[Roberta.Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov)> wrote:

Esther-

Thank you for sharing this info related to the board meeting on Monday. I will follow up with Lindsay tomorrow to understand what happened at the meeting from her perspective.

I do understand the neighborhood concerns on this topic and I'm sure we will be having further discussion about the zone edge condition.

Thanks for following up-  
Roberta

Sent from my iPhone

On May 2, 2017, at 5:25 PM, Esther Bartfeld <[ebartfeld@comcast.net](mailto:ebartfeld@comcast.net)> wrote:

Dear Roberta and Mr. Torgelson-

In response to Roberta's email below, I want to update you on what happened at the Design Review meeting for 7009 Greenwood because I am concerned that a major mistake was made due to Board confusion about their ability to require setbacks at ZONE transitions pursuant to the applicable design guidelines.

I met Lindsay for the first time at that meeting (5.1.17). Before the meeting started, she informed me that SDCI had determined that it would not require the setbacks in SMC 23.47A.014.B (subject of my emails below). However, she said she was not familiar with the specific language of Tip 247 (Development Site Permitting Guidelines) that I referenced in emails below, and she suggested that I raise this issue with you directly. I will do that via separate email at a later time.

For last night's meeting, Lindsay informed the attendees that setbacks were not required and that the Board would therefore not be reviewing a departure request for a setback (however, since there were no such requests made for this meeting, that likely generated confusion). She then explained that the Board did have purview over design guidelines including height, bulk, scale, and the Greenwood/Phinney guidelines as they related to access and commercial street frontage on Greenwood (but unfortunately, she did not specifically mention that the zone transition and massing guidelines).

During the Board deliberation, it was apparent the Board was confused about the setback issue, and believed they had no authority to impose setbacks to obtain a zone transition consistent with applicable design guidelines. The meeting was chaired by Dale Kutzera. When he raised the topic of massing, he said specifically that he was confused by the property lines and how that affected their review of setbacks. Unfortunately, Lindsay did not take that opportunity to clarify that the design guidelines could be applied to the transition between ZONES (in this case, the zoning line and NC2 property line is the same). As a result, there was virtually no Board discussion about massing or the total lack of transition between the 4-5 story wall right on the zoning line of the SF zone, and the adjacent SF zone.

The EDG notes from the 8.15.16 EDG meeting note that the Board had specifically requested a "thoughtful transition" between zones, and expressed substantial concern about the massing, and specifically requested "an appropriate massing response" based on Guidelines CS2-D, and Phinney/Greenwood guidelines CS2-1, II, VII, DC2-111) (see EDG report at 5-6, "Priorities & Board Recommendations"). But at last night's meeting, there was no discussion about any of the applicable design guidelines that were deemed priorities at the EDG meeting, nor did the Board make any attempt to determine whether the proposed project complied with their specific directions from the EDG meeting (other than noting that this design was one floor lower than at the EDG). Instead, one board member commented that perhaps all of the commercial property owners on Greenwood should purchase the SF homes behind their rear lot lines so they, too, could build a multi-story building right to the property/zoning line.

The only change the Board made to the massing was to require the minimal 5th floor setback to extend across the entire west side (instead of only a portion as proposed), and then they spent a lot of time discussing whether they could condition the project to have a nice gate. They voted to move the project forward. So design review is evidently finished.

I spoke to Board Chair Dale Kutzera after the meeting in the brief time before the next meeting started. He apologized that it seemed the

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board had no power to require setbacks, and that this didn't seem right in this case. I asked him why he didn't speak up about this during the meeting. He said he believed the board lacked authority to do anything, so they didn't. Unfortunately, that is not correct. It is evident that they misunderstood the difference between a setback being required by Code, and the Board's separate authority to require a setback at a Zone Transition to meet the applicable Design Guidelines. The approved project, therefore, does not reflect the Board's prior EDG direction or the requirements of the applicable guidelines.

Also, I want to bring to your attention that when the Board reviewed the 6726 Greenwood project right across the street (#3020114, 4 story building in NC2 zone), it required, at the first Recommendation meeting on 8.1.16, a 5 foot ground floor setback from the northeast rear property line (in an area where SDCI interpreted the Code to allow zero setback), due to impacts on the single family home at the rear. Does the Board's current approval of the 7009 project, with a 4-story wall right on the property/zoning line (with a minimally set back 5th floor above that at level) really reflect a consistent application of the Design Review Guidelines? No other recently-permitted NC2 project in Phinney Ridge has been built right to the property line at ground level, and no other recently-permitted NC2 project has upper level setbacks less than 10 feet. The 7009 project has zero setbacks for four stories.

I hope you will consider this information as you continue to review this project.

Thank you for your consideration.

-Esther

On Apr 28, 2017, at 1:56 PM, Baker, Roberta <[Roberta.Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov)> wrote:

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**To:** Baker, Roberta <[Roberta.Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov)>

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Respectfully,  
Roberta Baker  
LU Division Director, SDCI

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I am re-sending my original email and requesting again that you reconsider whether a Design Recommendation meeting at this time is appropriate.

As described below, the current proposal shows a 5-story, 55 foot building to be constructed right on the property line that separates the NC2-40 lot and the two adjacent SF5000 lots behind it. This violates the setback requirements in SMC 23.47A.014.B that prohibit any building in the 15-foot triangle adjacent to the side lot line of one of the SF5000 lots, and requires at least a 15-foot upper level setback in all buildable areas of the rear lot line.

The applicant evidently believes that because it owns the abutting SF5000 lots, it can evade these setback requirements simply by claiming that all of its separate lots are somehow one 'development site.' Tip 247, however, clearly indicates that a development site must be platted with a recording number (in contrast, the 7009 project includes several discrete lots, each with separate recording numbers), or a lot boundary adjustment reviewed by SDCI (there is no mention nor evidence of a lot boundary adjustment).

Note that this project also has a rezone component. If the applicant pursued a lot boundary adjustment, it would need to adjust its rezone proposal to also upzone the portion of the SF5000 land that would move to the NC lot to create the required setback areas for a building of the proposed dimensions.

Please consider this request to postpone the Design Recommendation meeting until the proposed design complies with the setback requirements or the applicant properly complies with the requirements to establish a "development site."

If you are unwilling to change the date of this meeting, can you please send someone out TODAY to post proper signs for the meeting? As of yesterday there were no signs at all on the project site. Instead there are

only outdated signs from January. For public notice of the upcoming design review meeting, there is only one little yellow paper sign on the streetpole on the corner of 70th and Greenwood, and another one on a street pole on Greenwood several buildings past the project site. There are no signs at all on the block of Palatine that includes the 7010 Palatine single family house that is allegedly part of the development site. Instead there is one sign on a street pole on the opposite side of 70th and Palatine. Inadequate signage at this site has been a consistent problem and previously resulted in a re-noticing.

Thank you for your prompt attention to these issues

-Esther Bartfeld, Phinney Ridge resident

Begin forwarded message:

**From:** Esther Bartfeld <[ebartfeld@comcast.net](mailto:ebartfeld@comcast.net)>  
**Subject:** **Please reschedule the Design Recommendation mtg for 7009 Greenwood (#3023260)#**  
**Date:** April 24, 2017 at 6:04:58 PM PDT  
**To:** "Torgelson, Nathan" <[nathan.torgelson@seattle.gov](mailto:nathan.torgelson@seattle.gov)>  
**Cc:** Roberta Baker <[Roberta.Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov)>, "King, Lindsay" <[lindsay.king@seattle.gov](mailto:lindsay.king@seattle.gov)>

Dear Mr. Torgelson:

I am writing to request that you **please RESCHEDULE the Design Recommendation meeting for project 3023260 (7009 Greenwood, contract rezone) currently scheduled for Monday May 1st.**

This project continues to have a substantial design flaw: it lacks the required setbacks where the NC parcel abuts the SF 5000 zone at the rear boundary, per SMC 23.47A.014.B.

This issue has been raised numerous times since this project was first proposed, and it remains unaddressed. That is the reason why I am bringing this to your attention.

The proposal is for a 5-story building constructed right to the property/zoning line separating the NC parcel from the abuttingj SF5000 parcels. The proosal includes a contract rezone to NC265, from NC240. Images from the recent design material are included below.

SMC 23.47A.014.B.3 requires a 15-foot upper level setback along any side or rear lot line that abuts a lot in a residential zone, plus an additional setback for heights over 40 feet. The proposed building is 55 feet tall. But there are no setbacks proposed at all for this project.

This project involves a 12,000 sq ft lot zoned NC2-40 that faces Greenwood Avenue on the corner of N. 70th in the Phinney Ridge neighborhood. In this area, all of the commercial lots face Greenwood Ave N, and all share a rear lot line with the SF5000 homes.

The owners/developer of 7009 Greenwood also owns the SF parcel facing 70th (currently vacant) that abuts the SW rear lot line of the NC parcel, and they recently acquired the single family home at 7010 Palatine that abuts the NW rear property line of the NC240 parcel. The zoning line separating NC240 from SF5000 runs along the property line.

When this project was first proposed, the developer requested a departure for the upper level setback. Then that departure request was removed at some point. There was an EDG meeting in August 2016. The DRB notes from that meeting indicate the Board's substantial concerns about the transitions between the commercial and SF zone and the need for a "thoughtful" transition." With zero setbacks in the current design, there is obviously no thoughtful transition as the DRB required.

I raised the upper level setback issue (SMC 23.47A.014.B.3) in an email to Lindsay King (assigned planner) on December 5, 2016.

I raised this issue again on January 25, 2017 in an email to Roberta Baker and Lindsay King during the comment period for the MUP application. I also flagged this issue in my comments opposing the proposed rezone that I submitted February 8, 2017 during the MUP comment period.

A Correction Notice issued Feb 2, 2017 identified the need for this setback (item #7). It also identified the required 15' diagonal setback where no development is allowed when a commercial lot abuts the intersection of a side lot line and front lot line in a residential zone (SMC 23.47A.014.B.1).

A Correction Notice issued Feb 23, 2017 contained those same requirements (#7 again).

On April 13, 2017, I received the notice of the upcoming DRB Recommendation meeting. I checked the SDCI website at that time and discovered a Response to Correction Notice dated March 15, 2017 that claimed that “since the adjoining residential SF5000 zoned parcels are part of the same development site, no side setbacks are needed at the west side.”

Evidently that explanation was good enough for SDCI to remove the prior correction notices requiring setbacks. The SDCI website had draft plans dated March 16, 2017 that showed no setback. The other items in the correction notices, such as transparency and sight triangle, are now included as requested Departures. But there is no further mention of the setback issue.

There is a big problem here. As you can see in the images below captured from the design drawings, the alleged “development site” is three discreet parcels: (1) one NC240 parcel that they want to rezone to NC265, (2) one vacant SF5000 parcel facing N. 70th St, and (3) a SF5000 parcel (7010 Palatine) that has an existing single family home. There is no lot boundary adjustment proposed (as required in Tip 247, “Development Site Permitting Guidelines.”)

Instead, the developer is proposing a 10-foot “Access / no build” easement that consumes 10 feet of the SF parcels along the property line that they are using as open space and (it appears) as access to commercial space in the NC building. Perhaps they are not doing a lot boundary adjustment because there is insufficient space in the rear yard of the Palatine home to allow this (and perhaps insufficient square footage in the vacant lot at N 70th as well). So this easement gimmick is being used instead, with the corresponding attempt to evade the setback requirements of SMC 23.47A.014.B altogether by claiming that their common ownership of three discrete lots is somehow a “development site.” It is not.

**If these parcels were under separate ownership, the setbacks in SMC 23.47A.014.B would be required. There is no provision in the Code that allows one owner to acquire lots in two different zones, keep those lots as entirely separate tax parcel lots, and then claim that the setback requirements at zone transitions do not apply.**

The images from the March 16, 2017 draft plans clearly show what is going on here. The revised plans for the forthcoming DRB meeting, which were not posted until April

forthcoming DRD meeting, which were not posted until April 21st (a week after the notice went out), conceal a lot of what is going on. I have attached a series of images from the MARCH 16 plans below for your review.

Note also that the zoning / property line follows the same N/S line along the shared rear lines of all parcels on that block. A five story building within the required 15-foot upper level setback on the 7009 parcel steals the light, air, and views of all parcels on that block, and interferes with the view from buildings on surrounding blocks as well.

**I hope you will investigate what is really going on here and POSTPONE the forthcoming Design Recommendation meeting until there is a building design that complies with required setbacks.** The 12,000 sq foot commercial is already one of the largest commercial parcels in Phinney Ridge. It has ample space to accommodate a thoughtful design without unlawfully encroaching into required setback areas through the creative gimmicks being used here.

Thank you for your prompt consideration of this matter.

Sincerely,

Esther Bartfeld  
Phinney Ridge resident, former PRCC board member

(1) This is the site plan (page 6 of 3.16.17 draft); the property line is the same as the zoning line at the color change separating SF5000 and NC240 zones:

[image from page 6 of 3.16.17 draft Design Review packet; actual image in original email]

(2) This is the site plan that shows the buiding right on the property line (see line at left edge of orange), along with the access easement (it is also called a “no build” easement, but the Code prohibits building in that portion of a rear SF ot anyway...)

[iimage on page 10 of 3.17.17 draft Design Review packet; actual image in original email]

(3) This image from p11 of 3.16.17 draft shows the south side on 70th and the west massive wall that is proposed right on the property line separating NC240 and SF5000 (this is the part of the builing left of the corner facing the grass; the grass is the

vacant SF lot on 70th); the car / driveway / corner is within the no-development area of SMC 23.47A.014.B.1.

[image from page 11 of 3.16.17 draft Design Review packet; actual image in original email]

(4) This drawing shows the sidewalk in the easement over the SF5000 zone, accessing the retail space of the commercial building (the property line is at the edge of the building (in white); the dashed line left of the sidewalk is the easement boundary in the SF zone, the grey shaded building in the upper left is the SF house at 7010 Palatine).

[image from page 15 of 3.16.17 draft Design Review packet; actual image in original email]

(5) This image describes the drawing above, identifying the easement

[image from page 22 of 3.16.17 draft Design Review packet; actual image in original email]

(6) This is the west side of the building (as viewed from the adjacent SF zone) that is built right on the property line of the SF zone for 4 stories, with a minimal setback at the fifth floor. Note also that the right side, where the car is entering the driveway (and for which they request a departure for that column located in the sight triangle) is within the 15-ft no-development triangle of SMC 23.47A.014.B.1.

[image from page 38 of 3.16.17 draft Design Review packet; actual image in original email]

Exhibit No. 141

Owner Information:

70<sup>th</sup> and Greenwood LLC

Chad Dale

3621 Stone Way N

STE E

Seattle, WA 98103

734-320-1846

[chad@evolutionprojects.com](mailto:chad@evolutionprojects.com)

Parcel Numbers:

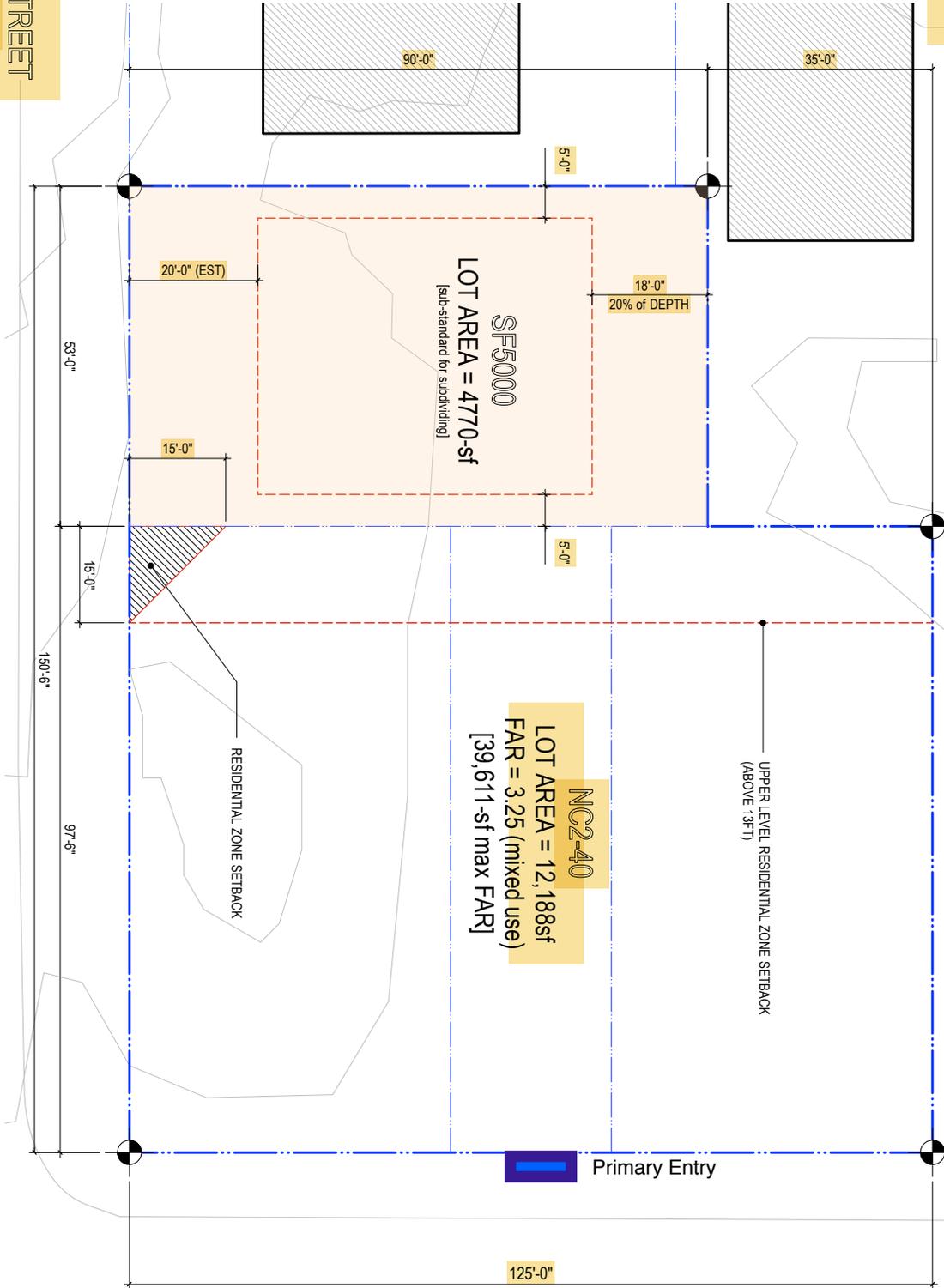
2877104127, 2877104100, 2877104085

SZ

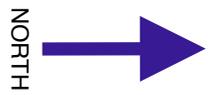
SITE ZONING

N 70TH STREET

Shared Roof Phinney  
28 OCTOBER 2015



GREENWOOD AVE NORTH



002103

PUBLIC47ARCHITECTS

**EXHIBIT A**

**Legal Description**

PARCEL A:

LOTS 1, 2, 3, 4 AND 5, IN BLOCK 23 OF GREENLAKE CIRCLE RAILROAD ADDITION TO THE CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS ON PAGE 170, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT FOR THE EAST 10 FEET THEREOF CONDEMNED FOR GREENWOOD AVENUE IN THE SUPERIOR COURT OF KING COUNTY CAUSE NO. 65489, UNDER PROVISIONS OF ORDINANCE NO. 19334.

PARCEL B:

THE SOUTH 15 FEET OF THE EAST 53 FEET OF LOT 9 AND THE EAST 53 FEET OF LOTS 10, 11 AND 12, IN BLOCK 23 OF GREENLAKE CIRCLE RAILROAD ADDITION TO THE CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, ON PAGE 170, RECORDS OF KING COUNTY, WASHINGTON.

SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON.

<sup>DS</sup>  
CD

12/11/2015

<sup>DS</sup>  
SN

12/11/2015  
002104

Exhibit No. 142



## MEMORANDUM

**To:** Lindsay King, SDCI

**From:** Mike Jobes, The Miller Hull Partnership LLP

**Re:** Pre-Submittal Meeting Notes – 7009 Greenwood Avenue N, Seattle  
Project No. 3023260

**Date:** November 22, 2016

---

### Meeting attendees:

- Lindsay King, SDCI, Senior Land Use Planner
- Megan Neuman, SDCI Senior Land Use Planner
- Alan Hall, Seattle City Light
- Ketil Freeman, City Council Central Staff, Legislative Analyst
- Bradford Davis, SDCI Land Use Planner
- Chad Dale, Owner/Developer
- Mike Jobes, The Miller Hull Partnership LLP
- Ian Loveless, IML Real Estate
- Shannon Loew, FIX
- Nancy Bainbridge Rogers, Cairncross & Hempelmann

### Project Overview

- Site includes a 12,188SF parcel zoned NC2-40 and 4,770 SF parcel zoned SF-5000. Urban Village and Future Land Use Map lines divide these parcels.
- Proposing a contract rezone for NC2-40 to NC2-65, so as to allow a HALA-style project at 55' + 4' in height and 3.75 FAR
- Plan to include affordable housing if granted extra height
- Site at top of hill, therefore, no view impacts expected

### Rezoning process and Issues

- Ms. King mentions that HALA changes the conversation significantly
- Mr. Freeman and Ms. King described the contract rezone process
  - Quasi-judicial decision of City Council, which precludes lobbying when application is pending (EDG starts pending Quasi-Judicial process)
  - A flow chart detailing the process was provided

- SDCI makes a recommendation to the Hearing Examiner, the Hearing Examiner creates the record and forwards a recommendation to Council.
- Appeals of SDCI SEPA decision are heard by the Seattle Hearing Examiner along with the public hearing of the rezone. Appeals of the Hearing Examiner Recommendation are heard by Seattle City Council.
- Council reviews first at Committee, then Committee recommendation goes to full Council
- Need to show how the project proposal meets rezone criteria (SMC 23.34). If the underlying zoning remains the same you are required to show how the project complies with SMC 23.34.008 General Rezone Criteria and SMC 23.34.009 Height Limits of the proposed rezone.
- If a rezone is approved it is approved by Ordinance and the accompanying PUDA will be recorded on title.
- Mr. Freeman described status of the HALA rezones as being at least one year out, including environmental review. Major Comprehensive Plan update underway that may also expand Urban Village boundaries.
- It was noted that the HALA commercial program has already been adopted and imposes requirements (e.g. fee-in-lieu) for construction of commercial space over 4,000 sf (in zones subject to SMC 23.58B)
- If HALA upzone is adopted during contract rezone process for this project, and project complies with HALA as adopted, it is possible to drop the Contract Rezone component.
- Contract rezone is not for the faint of heart, lengthy process and it is possible the rezone may not be approved.
- Public outreach is highly recommended

#### Seattle City Light

- Mr. Hall explained the following
  - Stephanie Franklin will be main contact
  - Assuming 10 owner units approx. 1500-2000 sf, approx. 25 smaller units, and 5000 sf commercial
  - 208 voltage/1000amps-project this size might stay at the lower voltage but probably over 1000amp limit, and if so will likely need a vault on property (two small hatches if both properties tied together)
  - Vault might be in subgrade garage, 3-hr room with its own ventilation
  - Recommends evaluating what is the project development site. If considered two sites, may be able to keep it lower, but if one site may go above 1000amps and need a transformer vault.
  - Must have 14' radius clear from nearest wire along Greenwood Avenue. The Greenwood wires are 40 feet above grade.
  - Transformer exists on pole near north end of our also requires clearance

- Utility lines along 70<sup>th</sup> are secondary and need a five foot setback.
- Pole on 70<sup>th</sup> is possible place to tap as not currently being used.
- SCL has no current plans to underground wires in this area. If applicant desires underground SCL requires additional off-site work to connect to other underground service
- Question for Ms. King: Are there any projects forthcoming in the area that may be considering undergrounding?

#### Access to Apartments using Single Family lot

- Ms. Neuman explained that code would not allow access through a SF zone for an apartment and commercial use project in the NC zone. See, SMC 23.42.030.A.
- Question for Ms. King: Is it possible to provide an access drive across the SF site if the SF site is included in the contract rezone, e.g., to go to Lowrise-1? Generally, access is allowed across a different zone if the use is also allowed in the zone where access is proposed. Commercial uses are not allowed in the LR1 zone; project may have to include an RC overlay. Can a contract rezone be applied for to go to Lowrise-1 in light of current Comprehensive Plan designation?
- Ms. Neuman explained that open space has been allowed on an SF lot as amenity space for an adjacent NC zone lot. If separate sites, would be required to establish use for the SF site as open space.
- If both lots are combined, then not a lot line but still a zoning line between.
- Owner decides to apply as combined or separate lots.
- Residential setback is a departable standard but not access.
- Adding in a permanent open space as a buffer may be much more palatable to the neighbors.
- Clarifying Questions for Ms. King:
  - If the Owner decides to combine lots without changing the SF zone designation at the west lot, could the setback requirement between the NC-2 and SF lots both controlled by the Owner, be omitted? Setbacks in the commercial zone are measured from the lot line (not zone line) for the development site per 23.47A.014. Development standards for the SF zone would apply to the portion of the lot designated SF and development standards for the commercial zone apply to the NC zoned portion of the lot.
  - Please confirm that setbacks are departable should the Owner decide to keep the NC-2 and SF lots separate but are still seeking to modify the setback required between the two lots they control. Setback standards are eligible for a departure through the Design Review process if the reduced setback is shown to better address the design guidelines.

#### Rezone criteria and issues to consider

- Ms. King discussed the rezone criteria:

- Will have to apply for NC-2 (65') and then show planned project at 59'.
- In light of Comprehensive Plan FLUM designations, upzoning of the SF lot will be difficult.
- Application and project materials will need to demonstrate specific ways the proposal minimizes impacts (shadows, etc.)
  - Show impacts of a project proposal within a 40' zone, a 65' zone and what we're actually proposing at 59'
  - Show transitions through design of structure between adjacent zone
  - Provide massing that creates a meaningful response to the existing context
  - Show how project fits within the greater neighborhood context.
- Review project examples of current contract rezones, e.g.,: 3016024 and 3016369
- Height bulk and scale analysis occurs as part of Design Review. Must be reviewed within context of what can be done under existing zoning (40'), proposed zoning (65') and desired project (59').
  - Show planned unit sizes encourage families.
  - Show plans for open space, quality materials, big windows
  - Focus on providing housing, using similar language to HALA without explicitly calling it out. HALA does represent the City's goals, so weave those goals into the argument supporting the rezone.
  - Comprehensive Plan also sets City goals to grow density, and provide housing for families.
  - Obtain and show neighborhood support, including immediate neighbors.
  - Delta of height will matter most at zoning lines
  - NW DRB generally has meetings available
- When reach Council level, recall Council shutdown timing, e.g., for budget, can slow down process.
- Green Priority could help this process speed up a bit, at building permit.

Sincerely,



Mike Jobes, AIA, Principal  
The Miller Hull Partnership LLP

Exhibit No. 143



MEMORANDUM

To: Lindsay King, SDCI  
From: Mike Jobes, The Miller Hull Partnership LLP  
Re: Pre-Submittal Meeting Notes – 7009 Greenwood Avenue N, Seattle  
Project No. 3023260  
Date: December 19, 2018

Deleted: December 17, 2018 March 28, 2016 March 14, 2016

Meeting attendees:

- Lindsay King, SDCI, Senior Land Use Planner
- Megan Neuman, SDCI Senior Land Use Planner
- Alan Hall, Seattle City Light
- Ketil Freeman, City Council Central Staff, Legislative Analyst
- Bradford Davis, SDCI Land Use Planner
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  - A flow chart detailing the process was provided

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[www.millerhull.com](http://www.millerhull.com)

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San Diego, CA 92110  
Tel: 619.220.0984

- SDCI makes a recommendation to the Hearing Examiner, the Hearing Examiner creates the record and forwards a recommendation to Council.
- [Appeals of SDCI SEPA decision are heard by the Seattle Hearing Examiner along with the public hearing of the rezone. Appeals of the Hearing Examiner Recommendation are heard by Seattle City Council.](#)
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**Deleted:** Appeals are possible and may need to be decided by Hearing Examiner and Council

**Deleted:** If not changing from NC2, then need only show how meet criteria as to increased height.

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Seattle City Light

- Mr. Hall explained the following
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Deleted: NC-2

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Deleted: more

Deleted: than the aforementioned NC-2-40 to NC-2-65 upzone.

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Sincerely,



Mike Jobs, AIA, Principal  
The Miller Hull Partnership LLP