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NO. 66874-9-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

RENTON NEIGHBORS FOR HEALTHY GROWTH,

Appellant,

v.

PACLAND; JEFF CHAMBERS, P.E.; BONNELL FAMILY, LLC;
PETER BONNELL; CITY OF RENTON,

Respondents.

and

WAL-MART STORES, INC.

Intervenor-Respondent

RESPONSE BRIEF OF INTERVENOR-RESPONDENT
WAL-MART STORES, INC.

Charles E. Maduell, WSBA #15491
Clayton P. Graham, WSBA # 38266
Davis Wright Tremaine LLP
Attorneys for Intervenor-Respondent
Wal-Mart Stores, Inc.
Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
(206) 622-3150 Phone
(206) 757-7700 Fax

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I. INTRODUCTION

This appeal constitutes the fourth consecutive formal review of a site plan application by Intervenor-Respondent Wal-Mart Stores, Inc. (“Wal-Mart”) for a modest remodel and expansion of its existing retail store in Renton, which would add approximately 12,000 square feet of space to a store currently occupying over 140,000 square feet. Following a public hearing on Wal-Mart’s site plan application, at which there was no opposition to the project, the Renton City Hearing Examiner approved the project, specifically finding that it complied with all applicable code requirements, including the Design Regulations.

Petitioner Renton Neighbors for Healthy Growth (“RNHG”) then surfaced and submitted both a request for reconsideration to the Examiner and an appeal to the City Council seeking denial of the project on two grounds: (1) that the project violates the Design Regulations because it fails to comply with some of the design standards, and (2) that the project is an unlawful expansion of a non-conforming structure because the expansion does not conform to a 15-foot maximum setback that applies in the underlying zone. Neither of these claims has merit.

As the Hearing Examiner correctly determined in denying RNHG’s reconsideration request, and as confirmed by the City Council—and later by the King County Superior Court—in the decision affirming

the Examiner, both claims are addressed by the Design Regulations themselves, which are “overlay” regulations that (1) expressly allow the Examiner to approve a project that does not meet all design “standards” so long it meets the “intent” and “guidelines” for any given standard; and (2) expressly supersede “other sections of the Renton Municipal Code” that are in conflict with the Design Regulations, including the 15-foot maximum setback for the underlying zone.

Because the Examiner was right on both counts, RNHG has failed to satisfy its burden of proving the City erred in approving the project. For this reason, this Court should uphold the Superior Court’s dismissal of RNHG’s LUPA appeal of Wal-Mart’s site plan approval.

II. ISSUES PRESENTED

1. Whether RNHG has standing to bring a LUPA appeal?
2. Whether RNHG has met its burden of proof under LUPA of establishing that the City’s site plan approval for the Wal-Mart store expansion should be reversed for failure to comply with the Design Regulations in RMC 4-3-100?
3. Whether RNHG has met its burden of proof under LUPA of establishing that the City site plan approval for the Wal-Mart store expansion should be reversed because it is an unlawful enlargement of a nonconforming structure under RMC 4-10-050(A)(4)?

III. STATEMENT OF THE CASE

A. Existing Store and Project Description

Wal-Mart proposes a modest remodel and expansion of its retail store in Renton, which currently contains 134,352 square feet of retail space along with 9,000 square feet in its garden center. CP 986, 1001-1002. The store sits on the west side of a 13.6-acre site, with a parking area between the store and its street frontage along Rainer/Hardie Avenue. CP 985, 1010. Most of the store site is currently zoned Commercial Arterial (CA) and is located in the Urban Design District 'D' overlay area subject to the regulations in RMC 4-3-100 ("Design Regulations"). CP 987, 989.

Wal-Mart proposes adding 16,000 square feet to the store, and reducing the garden center by 4,000 square feet. CP 991. Wal-Mart also proposes adding 127 parking stalls to the existing 618 stalls. *Id.* The proposed additions to the front of the store will move the store closer towards Hardie Ave SW and Rainier Avenue S and includes design features that "soften the visual lines of the store." CP 987, 990, 1002. The proposal will enhance and create pedestrian amenities and links through the site, and includes perimeter and parking area landscaping that exceeds Code requirements. CP 1002.

B. Hearing Examiner Review and Approval

On February 8, 2010, PACLAND, on Wal-Mart's behalf, filed an application for site plan approval. CP 990. On April 27, 2010, the Examiner held the required public hearing for the application, at which no one opposed the proposal. CP 986, 988, 990. On May 13, 2010, the Examiner issued a written Decision approving the project. CP 1003-1004. In the 19-page Decision, which included extensive findings and conclusions, the Examiner found that the project met all applicable site plan criteria, including the Design Regulations. CP 1001-1003.

In finding compliance with the Design Regulations, the Examiner adopted a table prepared by City staff, which contains a detailed staff analysis of the proposal's compliance with the Design Regulations, including the "standards," "guidelines," and "intent" that must be considered for each design element in the Design Regulations. CP 1002, Conclusion No. 10, *see also* RMC 4-3-100(A)(2)(b), (E). The staff's analysis adopted in the Decision considers over 70 different sub-elements addressed in the Design Regulations, and found compliance with all sub-elements. CP 992-1001.

In approving the project, the Examiner found that, as demonstrated in the staff's table and analysis, "the proposal meets the intent of the Design Regulations on the basis of individual merit if all conditions of

approval are satisfied,” and imposed all of the development conditions recommended by City staff. CP 992, 1002-1003.

Regarding the maximum front yard setback of 15 feet in the CA zone, the Hearing Examiner found that while the proposed expansion would not comply with this requirement, providing a setback of approximately 555 feet from Hardie-Rainier, “[o]nly an incredibly large expansion or complete rebuild could move the front of the store to the street and parking to the rear”; that the “proposed approximately 16,000 square foot expansion cannot be expected to accomplish the maximum front yard setback of 15 feet”; that “[a]s a practical matter the tradeoff is allowing a reasonably well-designed expansion and revitalized store or probably permitting no change weighs in favor of the excessive setback”; that “[t]aking advantage of the building’s existing placement in the overall block and its surrounding stores help achieve a reasonable proposal”; and that the “additional or better landscaping can help fill in the large space between the street and actual store.” CP 991 (Finding 20), 975-77 (Conclusions 3, 12, 16). The Examiner also found that the “extensive setback, while non-conforming as to the Zoning Code, actually helps the transition between the rather large big box store and its neighboring uses,” and that the proposal “is successful in meeting the intent of the design

standard to minimize the visual impact of the parking located between the building and the street.” CP 995, (Finding 28), 1001 (Conclusion 4).

C. RNHG’s Request for Reconsideration and the Examiner’s Denial of the Same

RNHG filed a request for reconsideration of the Examiner’s decision on May 27, 2010, alleging, *inter alia*, that (1) the project violates the Design Regulations because it is “not compliant” with some of the “standards”; and (2) the project is an unlawful expansion of a non-conforming structure because it does not conform to the CA zone’s 15-foot maximum setback. CP 77-79. This was the first time RNHG or any of its members commented on or raised objections to the project. CP 77. At no time did RNHG allege that notice for the hearing was deficient. *Id.* As the Examiner found: “It would appear that opposition to the application is newly minted in this request.” *Id.*

On June 10, 2010, the Hearing Examiner denied RNHG’s reconsideration request. CP 79. The Examiner found that the answer to both of RNHG’s appeal issues—i.e., whether the project complies with the Design Regulations and whether it is a prohibited expansion of a nonconforming structure—is found in the Design Regulations themselves, which are “overlay” provisions that “govern properties within their boundaries regardless of the underlying zoning and other provisions.” CP

77. Regarding the first claim, the Examiner concluded that the Design Regulations “provide that projects be reviewed with an eye toward flexibility to forward the main thrust of the guidelines—to create better designed and integrated projects”—and that the “guidelines allow different or creative ways to achieve those principals.” *Id.* They thus “allow sufficient latitude to permit the proposed expansion as conditioned in the decision.” CP 77-78. Regarding the second claim, the Examiner concluded that the Design Regulations also govern properties that may be considered legal non-conforming uses, which the Code “permits...to be developed in accordance with the [Design Regulations] rather than the more general regulations governing properties outside of a District governed by overlay regulations.” CP 78.

D. RNHG’s City Council Appeal and the Council’s Denial of the Same

At the same time that RNHG filed its request for reconsideration, it also filed an appeal to the City Council raising the same issues. At the appeal hearing before the Planning Development Committee, the Councilmembers acknowledged the setback issue as well, with Councilmember Briere noting that, “[w]ell, you understand that the setback is an existing issue,” and later noting that “[t]he only way they could get by that would be to tear the building down and redevelop . . . the

entire parcel.” CP 166. Councilmember Parker responded: “Yeah, quite frankly which isn’t even reasonable in [sic] estimation. I think they have given us a satisfactory explanation of how that’s interlinked with the design guidelines in order to make that happen.” *Id.* The Committee members voted to “uphold the Hearing Examiner’s decision” immediately thereafter. CP 167.

At the regular City Council meeting of August 16, 2010, the City Council affirmed the Hearing Examiner’s Decision without making any findings or conclusions of its own, *see* CP 695, 698, thus adopting the Examiner’s findings and conclusions as their own. *See* RMC 4-8-100(K)(2).

E. RNHG’s LUPA Petition and the Superior Court’s Denial of the Same

On September 7, 2010, RNHG appealed the Decision to the King County Superior Court pursuant to the Land Use Petition Act, Ch. 36.70C, RCW (“LUPA”), making claims similar to those asserted in the Examiner and City Council appeals below. *See* CP 1-6. Wal-Mart moved to dismiss the Petition for lack of standing under RCW 36.70C,060(2), including failure to exhaust administrative remedies. The King County Superior Court denied the motion. CP 119-120. On the merits of the LUPA appeal, the Court, in an order dated February 22, 2011, found that “[t]he

City of Renton properly interpreted and applied its code requirements in approving [Wal-Mart's] proposed site plan,” and that “[RNHG] failed to satisfy the standards of RCW 36.70C.130(1)(a)-(d) [LUPA's standards of review] and is therefore not entitled to relief.” CP 170-171. Based on these conclusions, the Court upheld the Decision. CP 171.

IV. STANDARD OF REVIEW

LUPA governs judicial review of land use decisions. *HJS Dev., Inc. v. Pierce County, Dep't of Planning & Land Servs.*, 148 Wn.2d 451, 467, 61 P.3d 1141 (2003) (en banc). When reviewing a superior court's decision on a land use petition, the appellate court stands in the same position as the superior court. *Lakeside Industries v. Thurston County*, 119 Wn. App. 886, 893, 83 P.3d 433 (2004). Under LUPA, the court reviews the land use decision of the local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals—in this case, the City Council. RCW 36.70C.020(1); *Citizens to Preserve Pioneer Park LLC v. Mercer Island*, 106 Wn. App. 461, 474, 24 P.3d 1079 (2001); *see also Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 175-76, 4 P.3d 123 (2000) (en banc) (applying LUPA standards of review to local land use decision). Because the City Council did not modify any of the Examiner's findings and conclusions, they became the findings and conclusions of the

City Council for purposes of the Court’s review of the Decision. *See* RMC 4-8-100(K)(2) (“Unless otherwise specified, the City Council shall be presumed to have adopted the Examiner’s findings and conclusions.”); *see also, e.g., J.L. Storedahl & Sons, Inc. v. Clark Cnty*, 143 Wn. App. 920, 930, 180 P.3d 848 (2008) (examiner’s factual findings “became verities” where not reversed or modified by board of county commissioners on appeal).

As petitioner, RNHG has the burden of showing that one or more of LUPA’s six standards for granting relief has been met. RNHG cites four standards in its appeal:

(a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts

...

RCW 36.70C.130(1)(a)-(d), *cited in* Op. Br. 7-8.

This statute “reflects clear legislative intention that [courts] give substantial deference to both legal and factual determinations of local jurisdictions with expertise in land use regulations.” *Timberlake Christian Fellowship v. King County*, 114 Wn. App. 174, 180, 61 P.3d 332 (2002). Accordingly, while issues involving interpretation of law in standard (b) are reviewed *de novo* under the error of law standard, *Wenatchee Sportsmen*, 141 Wn.2d at 169, the court must give “great weight” to the City’s interpretation of its zoning laws, *see Ass’n of Rural Residents v. Kitsap County*, 95 Wn. App. 383, 391, 974 P.2d 863 (1999). RNHG cites the *de novo* component of standard (b) in its brief, *see* Op. Br. 8, but wholly ignores the plain language of this standard, which concludes with the words “*after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise,*” *see* RCW 36.70C.130(1)(b). Thus, in this case, the Examiner’s interpretation of the laws at issue, such as the City’s Design Regulations, are entitled to substantial deference.

Factual determinations are subject to a deferential “substantial evidence” standard, with the court considering all of the evidence and reasonable inferences in the light most favorable to the party who prevailed in the highest forum that exercised fact-finding authority. *Freeburg v. City of Seattle*, 71 Wn. App. 367, 371-72, 859 P.2d 610

(1993). Here, that was the Hearing Examiner.¹ While RNHG challenges the compliance with the Design Regulations, it has not assigned error to any of the Examiner’s findings of fact on this issue, so they are verities on appeal. *See, e.g., City of Medina v. T-Mobile USA, Inc.*, 123 Wn. App. 19, 29, 95 P.3d 377 (2004); *United Dev. Corp. v. Mill Creek*, 106 Wn. App. 681, 688, 26 P.3d 943 (2001).

Questions involving application of the law to the facts, such as RNHG’s claims that the project does not comply with the Design Regulations, are reviewed for clear error. *Citizens to Preserve Pioneer Park LLC v. City of Mercer Island*, 106 Wn. App. 461, 474, 24 P.3d 1079 (2001). “Under the clearly erroneous standard of review, the court does not substitute its judgment for that of the administrative body and may find the decision clearly erroneous only when it is left with the definite and firm conviction that a mistake has been committed.” *Cougar Mountain Assocs. v. King County*, 111 Wn.2d 742, 747, 765 P.2d 264 (1988).

Here, RNHG only seems to address standard (b)—the error of law standard—in its briefing, and has failed to assign any errors under, or even acknowledge the other, more stringent, standards of review applicable in

¹ Under the City zoning code, Hearing Examiner decisions are appealable to the City Council. RMC 4-8-110(E)(8)(a). The City Council limits its review to the evidence presented to the Hearing Examiner. RMC 4-8-110(F)(5),(6).

this case. In any event, RNHG cannot meet its burden of proving that the Decision (the City Council’s affirmance of the Examiner’s project approval) was reversible under any of these standards. For this reason, this Court should uphold the Superior Court’s denial of RNHG’s LUPA appeal.

V. ARGUMENT

A. RNHG lacks standing to bring this LUPA appeal.

RNHG’s failure to participate in the only open record hearing in the City’s review of this matter deprives it of any standing to bring this LUPA appeal. To have standing to bring a petition under LUPA, a party must first exhaust all available administrative remedies. *See* RCW 36.70C.060(2)(d); *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 867-872, 947 P.2d 1208 (1997). As our Supreme Court has explained, “[a] party must generally exhaust *all available administrative remedies* prior to seeking relief in superior court.” *Id.* at 866 (emphasis provided) (finding citizen group exhausted its administrative remedies prior to LUPA appeal of land use decision because it raised the appropriate project approval issues in correspondence and through testimony at the public hearing). As the Supreme Court explained, “[t]he court will not intervene and administrative remedies need to be exhausted when the ‘relief sought ... *can be obtained by resort to an*

exclusive or adequate administrative remedy.” Id. (emphasis provided). In this case, RNHG does not claim that its right to participate in the Examiner’s open record hearing on Wal-Mart’s approval could not have resulted in the relief it seeks in its LUPA appeal (i.e. denial of the project), or that the available relief was inadequate. In this case, the Examiner may or may not have changed the Decision if RNHG had appeared at, commented on, or otherwise participated in the open record appeal. But we will never know for sure since RNHG completely failed to participate in this proceeding.

The applicable City Code provisions confirm RNHG’s lack of standing to file its motion for reconsideration with the Hearing Examiner or its appeal to the City Council. While the land use appeal provisions in force at the time RNHG submitted its reconsideration request allowed “any person aggrieved” to appeal an administrative decision to the Examiner, only an “interested party aggrieved” can appeal a Hearing Examiner decision to the City Council. *Compare* RMC 4-8-110(E)(3)(b) *with* RMC 4-8-110(E)(8)(a). “When the Legislature uses different words within the same statute, we recognize that a different meaning is intended.” *State v. Beaver*, 148 Wn.2d 338, 343, 60 P.3d 586 (2002) (en banc). Because the term “interested party” is clearly intended to limit the parties that can appeal the Examiner’s decision beyond “any person,” the

term “interested party” should be limited to individuals and/or entities who actually participated in Examiner’s hearing.²

This interpretation furthers goals of the exhaustion doctrine, which “protects the autonomy of administrative agencies by giving them the opportunity to correct their own errors” and “discourages litigants from ignoring administrative procedures by resort to the courts.” *Harrington v. Spokane County*, 128 Wn. App. 202, 210; 114 P.3d 1244 (2005) (citations omitted). A similar policy rationale is behind the authorities holding that new issues cannot be raised at the reconsideration or appeal stage. *See, e.g.*, CR 59 (limiting reconsideration to certain cases, such as “[n]ewly discovered evidence” not discoverable at time of trial with reasonable diligence); *Peste v. Mason County*, 133 Wn. App. 456, 468-469, 136 P.3d 140 (2006) (appellant waived right to argue issues not timely appealed as permitted by law). In fact, RNHG’s after-the-fact complaints about the language used in the Examiner’s decision—including the City’s alleged failure to “invoke” the proper Code provisions—is a near-perfect example of the policy behind these doctrines. If this Court chooses to decide this case on the merits, it will be based on a record and decision that could not

² While the term “interested party” is clear enough on its face, RNHG may suggest—as it did below—that the meaning of this term is ambiguous. To the extent that the Court agrees that the term is ambiguous, it would be appropriate for the Court to construe this term with due consideration of the express purposes of the Code’s appeal provisions, which is “to combine and expedite development review to eliminate redundancy and minimize delays,” *see* RMC 4-8-110(A).

have addressed RNHG's untimely complaints about the proposal, and it would allow RNHG to skip a critical stage in the City's review of the project, resulting in further administrative inefficiency, repetitive, redundant project reviews, as well as delay. This is not to mention a fundamental lack of fairness to the City and Wal-Mart, whom RNHG seeks to punish for their lack of clairvoyance relating to RNHG's future complaints about the proposal.

RNHG's lack of standing to bring this appeal provides an alternate basis for upholding the Decision and denying RNHG's LUPA appeal. The Court should dismiss RNHG's appeal on these grounds.

B. Wal-Mart's Project Complies with the City's Design Regulations.

RNHG claims the Decision should be reversed because it violates the City's Design Regulations. Op. Br. 19. This argument is based on RNHG's faulty assumption that a project's failure to comply with any of the "standards" stated for any design element means the project violates the Design Regulations. Op. Br. 24. However, this assumption finds no support in the Design Regulations, which provide that a project need not adhere to a stated "standard" so long as it is consistent with the "guidelines" and "intent" for the design element in question. The Design

Regulations also allow minimum standards to be modified. Under either basis, the project complies with the Design Regulations.

In this case, the Hearing Examiner properly held that project complies with the Design Regulations because it meets the “guidelines” and “intent” behind each design element, and even if it did not, the City’s modification of the standards was proper.

- 1. The City properly found that compliance with the Design Regulations’ “standards” is not mandatory for any given design element where, as here, a project complies with the “guidelines” and “intent” for that element.**

The City’s Design Regulations address a comprehensive set of design elements including site layout, building location, parking and vehicular access, pedestrian environment, and building and architectural design. *See* RMC 4-3-100(E)(1)-(7). “Each [design] element includes an intent statement, standards, and guidelines” addressing how a developer must demonstrate compliance with each design requirement. RMC 4-3-100(A)(2) (emphasis provided). The following Code provision articulates how these components relate to one another:

The[] *standards* specify a prescriptive manner in which the [design] requirement can be met. *In order to provide flexibility, guidelines* are also stated for each element. These *guidelines* and the *intent* statement provide direction for those who seek to meet the required element *in a manner that is*

different from the standards.

...

When the Administrator . . . has determined that the proposed manner of *meeting the design requirement through the guidelines and intent is sufficient, the applicant shall not be required to demonstrate sufficiency to the standard associated with the guideline that has been approved.*

RMC 4-3-100(A)(2)(b) (emphasis provided). Under the plain language of this provision, an applicant can comply with any given design element by (1) meeting the stated standard, or (2) complying with the guidelines and intent stated for each design element. *Id.*

In an attempt to avoid this language, RNHG now claims that Wal-Mart's project vested to a prior version of the Design Regulations' purpose statement, which "[e]stablish[es] two categories of regulations: (a) 'minimum standards' that must be met, and (2) 'guidelines' that while not mandatory, are considered. . . in determining if the proposed action meets the intent of the guidelines." Op. Br. at 23-24. However, it is well-settled law that a site plan application *does* not trigger vesting, *see Abbey Road Group, LLC v. City of Bonney Lake*, 167 Wash.2d 242, 218 P.3d 180 (2009) (en banc), so the Design Regulations RNHG relies on do not apply to Wal-Mart's project.³

³ Even if the prior version of the Design Regulations did apply as RNHG suggests, the Court should consider the City Council's later clarification (in RMC 4-3-100(A)(2)(b)) of how the Design Regulations' statements of standards, guidelines, and intent relate to one

In any event, the Decision is consistent with either iteration of the Design Regulations, which—as the City points out in its briefing—provide a great deal of flexibility to the City to apply them to ensure a quality project design. In fact, both iterations of the Design Regulations mandate that the Examiner will, in reviewing a project’s consistent with the Design Regulations, “consider proposals *on the basis of individual merit*, will consider the overall intent of the minimum standards and guidelines, *and encourage creative design alternatives* in order to achieve the purposes of the design regulations.” RMC 4-3-100(D)(2) (emphasis provided).

RNHG’s reading of the Design Regulations would render this mandate a dead letter, along with each and every “guideline” and “intent” statement in the Code. It also flies in the face of common sense (Why would the “guidelines” and “intent” statements appear in the Code if they are to be ignored in favor of the “standards”?), as well as the canon of statutory construction requiring that *all* provisions of an enactment be given effect. *See, e.g., Commercial Waterway Dist. No. 1 of King County v. Permanente Cement Co*, 61 Wn.2d 509, 524, 379 P.2d 178 (1963) (“It is

another. It is well-settled law in Washington that a statutory amendment may apply retroactively if it is “curative”—that is, if it “clarifies or technically corrects an ambiguous, older statute, without changing prior case law.” *Magula v. Benton Franklin Title Co., Inc.*, 131 Wn.2d 171, 182, 930 P.2d 307 (1997) (en banc). Further, as this Court has noted, “[t]o help clarify the original intent of a statute, the court may . . . turn to the statute’s subsequent history.” *State v. McKinley*, 84 Wn. App. 677, 681, 929 P.2d 1145 (1997).

too well-established to need citation of authority that a court may not place a narrow, literal, and technical construction upon a part only of a statute and ignore other relevant parts.”).

In this case, the Examiner correctly interpreted the Design Regulations to allow deviation from some of the standards so long as the project was consistent with the guidelines and intent for each design element, and its interpretation is consistent with the express intent of the Design Regulations—which were intended to allow flexibility to encourage quality, creative design in the District D overlay area. *See* RMC 4-3-100(A)(2)(b), (D)(2); *see also Burlington Northern, Inc. v. Johnston*, 89 Wn.2d 321, 572 P.2d 1085 (1977) (en banc) (statutory interpretation must “give effect to the intent and purpose of the legislature, as expressed in the act.”). The Court should decline RNHG’s invitation to apply the Design Regulations’ “standards” in a way that eviscerates other Code provisions and circumvents the purposes of the Design Regulations.

RNHG has failed to prove error in the Decision, especially considering the “considerable judicial deference” due the Examiner’s interpretation of the Design Regulations. *Citizens For A Safe Neighborhood v. City of Seattle*, 67 Wn. App. 436, 440, 836 P.2d 235 (1992); *Rural Residents*, 95 Wn. App. at 391.

2. The City correctly applied the Design Regulations to the proposed store expansion.

RNHG has also failed to satisfy its burden under RCW 36.70C.130(1)(d) of demonstrating clear error in the City's application of the Design Regulations to Wal-Mart's proposal. RNHG assumes that the "not compliant" notations by some of the design element standards in the table included in the Decision are conclusive proof of a violation of the Design Regulations. *See, e.g., Op. Br. 25.* But this assumption ignores the Examiner's Decision, which addresses this issue head-on and concludes that "the [Wal-Mart] proposal *meets the intent of the Design Regulations* on the basis of individual merit." CP 992-93 (emphasis provided).

In fact, these and other Hearing Examiner findings relating to the project's compliance with the Design Regulations, including Finding 28 and the table addressing compliance with all applicable design elements, are supported by substantial evidence in the record under RCW 36.70C.130(1)(c). Not only does RNHG fail to allege otherwise, RNHG does not even challenge or assign error to any of the Examiner's findings regarding compliance with the Design Regulations. They are thus verities on appeal. *See, e.g., City of Medina, 123 Wn. App. at 29.*

The only design elements RNHG specifically addresses relate to parking, tree planting, and façade requirements.⁴ With respect to parking, the Decision included a finding that Wal-Mart’s proposal was successful in minimizing the visual impact of the parking located between the building and the street, CP 995, a fact which is a verity on appeal given RNHG’s failure to challenge it.⁵ RNHG’s parking claim also falls short because it assumes, erroneously, that the “standard” for this design element controls the parking layout of the project to the exclusion of any other Code provision. RNHG thus fails to analyze—or even discuss—the stated guidelines and intent behind this parking requirement, all of which are intended to be flexible and allow the Examiner broad discretion in applying them. *See, e.g.*, RMC 4-3-100(E)(2) (surface parking element intended to “maintain active pedestrian environments” by “placing parking lots *primarily* in back of buildings” and encourage screening and landscaping of parking lots “*as dictated by [the] location*” of a given proposal) (emphasis provided). Nor does RNHG address any of the other

⁴ RNHG does not raise or brief any other specific objections to the proposal’s compliance with the Design Regulations. In any event, they cannot be sustained on this record. This is because the Examiner imposed specific development conditions to address all of the remaining standards that were marked “not compliant.” *See* CP 992-1001.

⁵ RNHG’s argument relating to parking should also be rejected because it seeks to apply the current Design Regulations to the existing development as well as the new portions proposed by Wal-Mart. *See, e.g.*, Op. Br. 25. However, the Code clearly exempts existing nonconforming structures from compliance with any of its provisions. *See, e.g.*, RMC 4-10-050(A)(4) (nonconforming structure “shall not be enlarged unless the *enlargement* is conforming”) (emphasis provided).

factors the Examiner considered in concluding that the proposal “is successful in meeting the intent of th[is] design standard.” CP 995.

With respect to the tree planting requirement, RNHG likewise fails to assign error to the Examiner’s finding that “[a]ll new parking areas would comply with the minimum standard for tree spacing.” *See* CP 997. This finding—which is a verity on appeal due to RNHG’s failure to assign error to it—unequivocally demonstrates the project’s consistency with this standard. RNHG’s briefing fails to demonstrate how, or why, it believes Wal-Mart’s proposal does not comply with the landscaping element, which is also intended to be applied in a flexible manner in the Examiner’s sound discretion. *See, e.g.*, CP 996 (“landscaping” element is intended to “reinforce the architecture or concept of the area; provide visual and climactic relief in areas of expansive paving or structures; channelize and define logical areas of pedestrian and vehicular circulation; and add to the aesthetic enjoyment of the area by the community”). In any event, this standard no longer exists in the Design Regulations, *see* RMC 4-3-100(E)(4), and (2), so it cannot form the basis for finding error in the Decision.⁶

⁶ This argument should also be dismissed because it assumes, incorrectly, that the *existing* structure must comply with the requirements of this design element, *see* Op. Br. 26, despite the Code’s specific exemption for existing development, *see* RMC 4-10-050(A)(4).

RNHG's initial objection to the façade issue was part of its blanket objection to every design element in the Examiner's table with the "not compliant" notation next to the standard. But like many of these objections, RNHG fails to recognize the fact that the Hearing Examiner explicitly conditioned his approval of Wal-Mart's proposal on the satisfaction of these elements, including the façade element through treatments for the store's northern façade. *See* CP 1004 (Condition 9).

In any event, the façade requirement is, like the other two design elements RNHG has raised, intended to be applied in a flexible, discretionary manner. *See, e.g.*, RMC 4-3-100(E)(5) (intent of building character and massing, including the façade requirements, is to "ensure that buildings are not bland," that they "appear to be at a human scale," and "are visually interesting"); *id.* (stating, in the guidelines for building character and massing, that "[b]uilding facades *should* be modulated and/or articulated" for various reasons) (emphasis provided). RNHG fails to recognize this, and also fails to allege—let alone demonstrate—clear error or lack of substantial evidence to support the finding that "the applicant has achieved visual interest along the eastern façade, thereby meeting the intent of the code." CP 998.

Under the clearly erroneous standard of review, a court "does not substitute its judgment for that of the administrative body"—in this case,

the Examiner. *See Cougar Mountain*, 111 Wn.2d at 747. Yet, this is precisely what RNHG invites the Court to do in this case, based on RNHG's subjective impressions of how Wal-Mart's modest expansion squares with the "City's vision" and the "general feeling" of the Design Regulations. Op. Br. 20-22, 24 (concluding that "[Wal-Mart's] proposal is for *exactly the opposite* of what the City requires in its regulations") (emphasis provided). But RNHG's subjective disagreement with the Examiner's interpretation of City policy and the Design Regulations does not demonstrate any basis for reversing the Decision for "clear error"—which is proper "only when [the court] is left with the definite and firm conviction that a mistake has been committed." *Cougar Mountain*, 111 Wn.2d at 747.

Considering the flexible nature of the Code's design elements, the Examiner's discretion in applying them, and the Examiner's specific findings—all of which are fully supported by the record—that the design complies with the Code, *see, e.g.*, CP 992-993, RNHG cannot satisfy its burden of demonstrating clear error in the City's application of the three design elements RNHG argues were not satisfied—or any other part of the Design Regulations.

3. Even if all of the Design Regulations' standards were to apply to Wal-Mart's proposal, the City's modification of these standards was proper in this case.

Even if RNHG were correct (which it is not) that departures from the standards were not permitted based on the guidelines and intent for any given design element, the Decision would still be proper under the City's authority to approve modifications to these standards. The Design Regulations authorize the Administrator "to modify the minimum standards of the design regulations," so long as the modification "meets the intent of the minimum standards and guidelines . . . of the design regulations" and the applicable design standard will not have a detrimental effect on nearby properties, "manifests high quality design," and will "enhance the pedestrian environment." RMC 4-3-100(F)(1)-(5). The Code does not require any specific approval process or timeline for these modifications⁷: All that is required is a written submittal from the

⁷ See *id.* (citing RMC 4-9-250(D)). Given the lack of specific timing requirements, the City may allow such modifications as standalone approvals, as with the City's approval of the refuse modification for this proposal; or the modifications can be part of the Administrator's recommendations to the Examiner, as was done for the remaining modifications granted in this case. See CP 991 (Examiner's Finding 18, noting that Wal-Mart "requested and was granted a modification to allow a smaller than required refuse and recycling area"); CP 134-35 (City Staff testifying at Examiner Hearing that "[t]he appeal period for this modification ended on April 16th," several days before the Examiner Hearing); CP 992-1003 (table and discussion of other items marked "non compliant" but subject to modification); CP 1003-1004 (conditions addressing items marked "not compliant" in Examiner's table).

applicant, *see* RMC 4-9-250(D)(1).⁸ So long as the modification proposed is consistent with the intent of the Code and Comprehensive Plan, is the minimum necessary to implement these policies, and meets additional standards similar to those found under RMC 4-3-100, a modification to the standards may be allowed “[w]herever there are practical difficulties involved in carrying out the [development regulations].” *See* RMC 4-9-250(D)(2)(a)-(f); RMC 4-3-100(F).

In this case, the Examiner, based on written submissions by the applicant, found the proposal’s quality of design justified modifications to some of the standards of the Design Regulations, that departure from the standards was mitigated by the conditions on development, and they were clearly based on the practical difficulties resulting from an expansion of an existing store. *See, e.g.*, CP 992-993, 1002-1003, including Conclusion 10 (The applicant “has justified why their project may not precisely meet some of the standards.”). Thus, modification of the standards marked “not compliant” in the staff table was not only proper, it is fully supported by the record and the Examiner’s findings. *See* RMC 4-3-100(F), 4-9-250(D)(2) (modification standards).

⁸ This Code provision states that modification requests are “subject to review and decision by the Planning/Building/Public Works Department upon submittal in writing of *jurisdiction* for such modification.” RMC 4-9-250(D)(1) (emphasis provided). The use of the term “jurisdiction” seems to be a typographical error—the term “justification” may be intended here, especially considering the use of the term “justified” later in this same Code section. *See* RMC 4-9-250(D)(2)(e).

RNHG urges the Court to disregard the City’s modification authority because the above Code provision “was not invoked” in the proceedings below. *See* Op. Br. 28. But this is because the City believed—correctly—that the Design Regulations themselves permitted deviation from the “standards” based on the project’s compliance with the intent and guidelines of the design elements. However, it is within the Court’s authority to uphold the Decision on this alternate basis in its appellate review of the City’s Decision. *See Burnet Spokane Ambulance*, 131 Wn.2d 484, 493, 933 P.2d 1036 (1997) (en banc) (decision below “may be sustained on any basis supported by the record”); *Peste v. Mason Cnty*, 133 Wn. App. 456, 136 P.3d 140 (2006) (applying RAP 2.5 in LUPA petition); *see also* RAP 2.5 (“A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground.”).

Because the record in this case fully supports modification of the specific design standards under RMC 4-3-100(F), *see, e.g.*, CP 1002 (Examiner’s Conclusion 10, finding that Wal-Mart “has justified why their project may not precisely meet some of the standards”), upholding the Decision on this basis—as opposed to remanding the matter for further deliberations—is warranted. This is also the most equitable result, as RNHG’s complaint that the City failed to “invoke” the correct words to

grant the modification could have been addressed below but for RNHG's admitted failure to participate in or timely raise this issue at the open record hearing before the Examiner. CP 4. It would be unjust to fault the City—and punish Wal-Mart—for the lack of diligence displayed by RNHG's members by failing to participate in the Examiner hearing.

Further, LUPA only provides relief to a party who suffers actual harm as a result of a procedural irregularity. *See* RCW 36.70C.130(1)(a) (permitting a court to grant relief under LUPA if “[t]he body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, *unless the error was harmless*”) (emphasis provided). In this case, RNHG has failed to meet its burden of affirmatively demonstrating *harmful* error in the City's alleged failure to properly “invoke” its modification authority under the Code.

For the above reasons, to the extent the Court finds that modification to the Design Regulations was necessary for the City's approval, it should uphold the decision based on these modifications.

C. The Project Is Not an Improper Enlargement of a Non-Conforming Structure.

RNHG claims that the proposed store expansion “is an illegal enlargement of an existing non-conforming structure” because it does not comply with standards in the Design Regulations or the 15-foot maximum

front yard setback requirement in the CA zone. Op. Br. 9, 13. In support of this claim RNHG relies on RMC 4-10-050(A)(4), which provides that a legal nonconforming structure “shall not be enlarged unless the enlargement is nonconforming.”

Contrary to RNHG’s claims in its Opening Brief, RMC 4-10-050(A)(4) does not require that the proposed enlargement bring the existing store into conformance with the Code. Op. Br. 10, 12-14. It only requires that the *enlargement* be conforming. See RMC 4-10-050(A)(4) (“[A nonconforming] structure shall not be enlarged unless the *enlargement*” is conforming.”) (emphasis added). In this case it is.

As the Hearing Examiner found, and as the Code and record support, the proposed enlargement complies with the Design Regulations and the Design Regulations supersede conflicting Code requirements, including the 15-foot setback in the underlying CA zone. Even if not, the record fully supports the Examiner’s approval of a more extensive setback pursuant to the modification provisions of RMC 4-2-120(C)(15). Under either basis, the store expansion complies with the Code and thus RNHG cannot meet its burden of proof under LUPA that the proposed expansion is an unlawful enlargement of a legal nonconforming use under RMC 4-10-050(A)(4).

1. The expansion complies with the Design Regulations, which take precedence over any conflicting zoning requirements, including the 15-foot maximum setback.

RNHG claims that the store expansion is nonconforming in two respects: (1) that it fails to comply with some of the minimum standards in the Development Regulations; and (2) that it violates the 15-foot maximum front yard setback in the CA zone. Neither claim has merit.

The first claimed nonconformance is no different than RNHG's claim of noncompliance with the Design Regulations addressed in Section V-A above and fails for the same reasons set forth therein—i.e., that the Design Regulations expressly allow the Hearing Examiner to approve a project that does not meet all design “standards” so long it meets the “intent” and “guidelines” for any given standard, and that in this case, the Hearing Examiner found that “the [Wal-Mart] proposal meets the intent of the Design Regulations on the basis of individual merit” so long as Wal-Mart complied with the conditions of approval. CP 992-1001, 77-78.

The second claimed noncompliance—that the proposed expansion violates the 15-foot setback in the CA zone—is equally without merit. As the Hearing Examiner concluded, the Design Regulations are overlay provisions that take precedence over conflicting underlying zoning requirements, including the 15-foot setback at issue. CP 77 (Design

Regulations “are ‘overlay’ provisions that govern properties within their boundaries *regardless of the underlying zoning and other zoning provisions.*”) (emphasis provided). This interpretation by the Hearing Examiner is consistent with the language and intent of the Design Regulations. *See Burlington Northern*, 89 Wn.2d 321 (statutory interpretation must “give effect to the intent and purpose of the legislature, as expressed in the act.”). It also is entitled to deference. RCW 36.70C.130(1)(b); *Citizens*, 67 Wn. App. at 440; *Rural Residents*, 95 Wn. App. at 391.

The Design Regulations are overlay regulations that only apply to development within certain designated design districts, including Design District D where the Wal-Mart store is located. *See* RMC 4-3-100(B)(1)(b)(ii), (B)(3)(Urban Design Districts Map). As overlay regulations, they contain specific design elements that are required to be included in all development in the designated design districts, including “big box retail” as well as “[a]lterations, enlargements, and/or restorations of nonconforming structures pursuant to RMC 4-1-050.” RMC 4-3-100(A); RMC 4-3-100(B)(1)(a), (b). These overlay regulations, which contain standards, guidelines and statements of intent, govern such design elements as “site design and building location,” “parking and vehicular access,” “pedestrian environment,” and “building and architectural

design.” See RMC 4-3-100(E)(1)-(7). They are intended to provide flexibility in how the design elements are met, based on “the overall intent of the minimum standards and guidelines,” and to “encourage creative design alternatives in order to achieve the purposes of the design regulations.” RMC 4-3-100(D)(2); *see also* 4-3-100(A)(2). As overlay regulations, they are applied independently of the other development regulations in the Code, and prevail over conflicting underlying zoning regulations, including the 15-foot maximum setback in the underlying CA zone. See RMC 4-3-100(B)(2) (“Where there are conflicts between the design regulations of this Section and other sections of the Renton Municipal Code, *the regulations of this Section shall prevail.*”) (emphasis provided).

In this case, the Hearing Examiner carefully considered these required design elements and determined that a larger setback was appropriate because it allowed for a better design and was otherwise consistent with the Design Regulations. See CP 992-1001. For example, the Examiner specifically determined, among other relevant findings, that “[t]he extensive setback . . . helps the transition between a rather large big box store and its neighboring uses,” CP 1001-02 (Conc. 4), and that “[t]aking advantage of the building’s existing placement . . . helps achieve

a reasonable proposal,” CP 1002 (Conc. 12).⁹ In so finding, the Examiner properly characterized his determination as a “tradeoff . . . allowing a reasonably well-designed expansion and revitalized store or probably permitting no change weighs in favor of the excessive setback.” CP 1001 (Conc. 3).

These findings demonstrate the proposal’s compliance with the Design Regulations. They also demonstrate the conflict between the larger setback approved by the Hearing Examiner under the Design Regulations and the 15-foot setback in the underlying CA zone. CP 1002. Because of this conflict, the Hearing Examiner properly held that the larger setback, which was necessary to achieve a “reasonably well-designed expansion,” takes precedence over the 15-foot setback. *See* CP 1001 (Conc. 3).

While conceding that the Design Regulations “are meant to be an ‘overlay’ to other regulations that set forth standards for design,” RNHG nonetheless argues the Design Regulations “exist in addition to and on top of other Regulations in the Code.” In other words, according to RNHG, overlay provisions cannot supersede underlying zoning requirements. This argument is belied by the *express* conflict provision in the Development Regulations, which reads as follows:

⁹ Notably, RNHG does not assign error to these factual findings, so they are verities on appeal. *City of Medina*, 123 Wn. App. at 29.

Where there are conflicts between the design regulations of this Section and other sections of the Renton Municipal Code, the regulations of this Section shall prevail.

RMC 4-3-100(B)(2) (emphasis provided). It is difficult to imagine a clearer statement that the Design Regulations can and will supersede conflicting underlying zoning requirements.

RNHG next argues that there is no conflict between the Design Regulations and the 15-foot setback in the CA zone because there is no setback provision in the Design Regulations that conflicts with this setback. While it is true that there is no minimum or maximum setback in the Design Regulations, this does not mean that application of the Design Regulations cannot result in a setback that differs from the setback required by the underlying zoning. The Design Regulations contain a number of design elements that address and govern the appropriate setback required for a project. For example, the “building location and orientation” element “ensure[s] an appropriate transition between buildings, parking areas, and other land uses,” “transition to surrounding development” must account for differences in “building height, bulk and scale,” parking areas are encouraged to “maintain active pedestrian environments,” “pathways through parking lots” should “provide safe and attractive pedestrian connections to buildings,” and building facades and

architectural elements should add visual interest and enhance the character of the neighborhood. *See* RMC 4-3-100(E)(1)-(5) (intent and guidelines for these design elements). These and other design elements can affect the required setback for a particular development.

Because of the flexible and discretionary nature of the Design Regulations—each design element consists of standards, guidelines and statements of intent that are applied to a project “on the basis of individual merit” and in consideration “of the overall intent of the standards and guidelines” in order to “encourage creative design alternatives” and “achieve the purposes of the [D]esign [R]egulations,” 4-3-100(D)(2)—there is no way to know whether or to what extent the Design Regulations conflict with other underlying zoning regulations until they are applied to a particular project. This is especially so where—as here—the application of the setback requirement to the proposed expansion would result in a bizarre project design that would be wholly inconsistent with anyone’s idea of quality project design. In this case, applying the setback as urged by RNHG would result in the construction of a “hallway” expansion—roughly 30 feet wide and 540 feet in length—extending from the current storefront toward Hardie-Rainier.

Thus, with regard to the 15-foot setback in the underlying CA zone, while there may not be a facial conflict with the Design Regulations,

there certainly can be and, in this case, is an actual conflict between the Design Regulations, as applied by the Hearing Examiner to the expansion project, and the 15-foot setback that would otherwise apply. This conflict between the setback permitted and the 15-foot setback is fully acknowledged in the Examiner’s decision. CP 1001 (Conc. 3), CP 78 (noting that the Code permits properties to be developed “in accordance with the [Design Regulations] *rather than* the more general regulations governing properties outside of a District governed by overlay regulations”) (emphasis provided). In light of this conflict, the Examiner correctly applied the Code in finding that the larger setback—approved pursuant to the Design Regulations—was controlling. *See id.*

A conflict exists wherever it is “impossible to *comply*” with two separate directives. *See, e.g., Van Patten v. Jensen*, 112 Wn.2d 552, 554, 773 P.2d 62 (1989) (en banc) (addressing conflicts standards in the context of federal preemption). No express contradiction is required. Courts have—and this Court should—recognize conflicts between two provisions even where the requirements of one involve the exercise of discretion. *See, e.g., Baker v. Snohomish County Dept. of Planning and Community Development*, 68 Wn. App. 581, 841 P.2d 1321 (1992).

In *Baker*, for example, this Court addressed a claim of a conflict between the permitting requirements of two separate agencies—the

Department of Natural Resources (DNR) and Snohomish County. *Id.* at 591. The Court acknowledged that the agencies would first have to exercise their discretion in order for the Court to determine whether a conflict exists, noting that “[t]he DNR has great flexibility in fixing the terms of its permit and the local agency likewise has a large measure of discretion in the terms to be required in a conditional use permit.” *Id.* The Court found that a finding of preemption would be inappropriate under the facts presented because “any conflict [wa]s hypothetical and dependent upon the precise manner in which two discretionary permits were crafted,” noting that “[i]t is soon enough to find preemption when a conflict arises.” *Id.*

The same is true here. Until the Examiner exercised his discretion in determining the requirements of the Design Regulations, there was no way to know whether these conflict with the general 15-foot maximum setback provision in the Code. Having done so, and approving a larger setback for the expansion project to ensure compliance with the Design Regulations, the Hearing Examiner properly found that the larger setback conflicted with and thus took precedence over the 15-foot setback in the underlying CA zone.

RNHG employs contradictory reasoning in claiming that “[t]here is no conflict” in this case, because—in the same breath—it claims that the

15-foot maximum setback should apply *instead of* the Design Regulations as applied by the Hearing Examiner. *See, e.g.*, Op. Br. 19. This reasoning implicitly acknowledges the conflict between these standards, a conflict which is expressly controlled by the Code provision stating that “[w]here there are conflicts between the design regulations . . . *and other sections of the Renton Municipal Code, the regulations of this Section shall prevail.*” RMC 4-3-100(B)(2) (emphasis provided). Because the Examiner found that Wal-Mart’s proposal needed a setback greater than 15 feet to comply with the Design Regulations, the 15-foot setback is superseded.¹⁰ *See id.*

Because the Examiner’s application of the Design Regulations to supersede the inconsistent 15-foot setback was consistent with the language and intent of the Code, RNHG cannot satisfy its burden of demonstrating error—let alone clear error—in the Decision. Wal-Mart’s expansion is thus “conforming,” and RNHG’s claims to the contrary must be rejected.

¹⁰ In briefing this conflict issue, RNHG mischaracterizes Wal-Mart’s argument as urging the Court to find the Design Regulations supersede the Code’s nonconforming structure provisions. *See* Op. Br. 16-19. But contrary to RNHG’s suggestion, it is not necessary for the Court to even reach this issue. This is because Wal-Mart’s proposed expansion is “conforming” in that it fully complies with all applicable development regulations (i.e. the Design Regulations, which supersede the 15-foot maximum setback requirement, or alternatively through modification of the setback). Thus, the nonconforming structure provisions never even come into play. However, to the extent the Court finds that the 15-foot setback provision applies to the project, was not superseded by the Design Regulations, and that the City should not have modified it, the nonconforming structure provisions would conflict with the Design Regulations, and the Design Regulations would in fact control under the express conflict provision of RMC 4-3-100(B)(2).

2. Even if the 15-foot setback did apply to the Wal-Mart proposal, modification of this standard was proper in this case.

Even if the 15-foot setback provision were not superseded by the Design Regulations, the general design regulations of the underlying CA zone specifically authorize modification of this setback requirement, *see* RMC 4-2-120C(15), and the Examiner's modification of this setback was proper in this case, and fully supported in the record. A note to the 15-foot maximum setback provision that RNHG relies upon states that "[t]he maximum setback *may be modified by the Reviewing Official through the site development plan review process*" if the applicant can demonstrate three specific criteria are met *to the extent possible*. These three criteria relate to (1) the "orient[ation of the] development to the pedestrian" through various measures, (2) creation of a low scale streetscape," and (3) promotion of "safety and visibility . . . and ensuring adequate setbacks to accommodate required parking and/or access that could not be provided otherwise." RMC 4-2-120C(15)(a)-(c). Under this provision, modification is appropriate where strict compliance with the setback requirement (1) cannot be met "[d]ue to factors including . . . the unique site design requirements of physical site constraints," (2) would result in impairment of one of the setback modification criteria, (3) or would impair "[a]ny

function of the use which serves the public health, safety or welfare.” *See* RMC 4-2-120C(15)(d)-(f).

This provision applies to Wal-Mart’s proposal because it was, in fact, subject to the site development plan review process, and the Examiner’s uncontested findings in this matter as well as his conclusions fully support modification of the 15-foot setback under these standards. In this respect, the Examiner specifically found that the proposal (1) complies with *all* of the Design Regulations’ “pedestrian environment” standards, intended to “provide safe and attractive pedestrian connections” and “create a network of linkages for pedestrians to improve safety and convenience and enhance the pedestrian environment,” *see* CP 995-96; (2) includes “a substantial amount of interior parking lot landscaping,” which is “successful in . . . minimiz[ing] the visual impact of the parking located between the building and the street,” CP 995; and (3) complies with the Design Regulations’ “landscaping” standards, or the Examiner imposed conditions to ensure such compliance, CP 996-97. As noted above, the Examiner also found that these design features result in a better overall proposal, and that the 15-foot setback was not feasible without compromising this design of the proposal. *Id.*

The Examiner’s findings and conclusions in this respect—i.e., those supporting the Examiner’s determination that it was inappropriate to

apply the 15-foot setback to the Wal-Mart proposal—are entitled to deference in this proceeding, and fully support modification of the 15-foot setback pursuant to RMC 4-2-120C(15). The City Council considered the potential difficulties posed by the 15-foot setback, CP 166, as well as the City staff’s testimony that because “the existing improvements reasonably preclude the maximum setback requirement from being met...the maximum setback requirement was modified.” CP 155. Because the record fully supports such a modification, even if the Court were to find that the 15-foot setback is not superseded by the Design Regulations, upholding the Decision on the basis of this modification is the appropriate remedy. *Burnet*, 131 Wn.2d at 493 (on appeal, decision below “may be sustained on any basis supported by the record”); *Peste*, 133 Wn. App. at 456, 136 P.3d 140; RAP 2.5.

While RNHG generally complains of the City’s alleged failure to “invoke” the correct provisions in support of these modifications, it has failed to meet its burden of demonstrating error—let alone *clear* or *harmful* error—in the Examiner’s determination that the 15-foot setback should not be required for Wal-Mart’s proposal, so its challenge on this basis must be rejected.¹¹ RCW 36.70C.130(1)(a), (d).

¹¹ As discussed above, while RNHG complains that the City did not properly “invoke” the modification provisions, this was because the City—properly—determined that no modification was necessary since the Design Regulations control. In any event, to the

D. Wal-Mart Is Entitled to Attorneys' Fees Under RCW 4.84.370.

Pursuant to RCW 4.84.370,¹² a party in whose favor a municipality's land use decision is rendered is entitled to attorney fees if such decision is affirmed by at least two courts: the superior court and the Court of Appeals and/or the Supreme Court. *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 413, 120 P. 3d 56 (2005). In *Habitat Watch*, the court noted that "parties challenging a land use decision get one opportunity to do so free of the risk of having to pay other parties' attorney fees and costs if they are unsuccessful." *Id.* at 413.

Here, Wal-Mart was a prevailing party both before the City and in the prior superior court proceedings. Thus by the terms of the statute, Wal-Mart is entitled to an award of reasonable attorneys' fees under RCW 4.84.370 if the trial court decision is affirmed.

extent that the Court finds that such modification was necessary, it would be proper—and just—to uphold the Decision on this basis because the modifications are supported in the record, and because any failure to provide an in-depth written description of the modifications is due to RNHG's complete failure to participate in or raise the issue at the Examiner hearing below.

¹² RCW 4.84.370 provides in relevant part: "(1) Notwithstanding any other provisions of this chapter, reasonable attorneys' fees and costs shall be awarded to the prevailing party or substantially prevailing party on appeal before the court of appeals or the supreme court of a decision by a county, city, or town to issue, condition, or deny a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or similar land use approval or decision. The court shall award and determine the amount of reasonable attorneys' fees and costs under this section if: (a) The prevailing party on appeal was the prevailing or substantially prevailing party before the county, city, or town . . .; and (b) The prevailing party on appeal was the prevailing party or substantially prevailing party in all prior judicial proceedings."

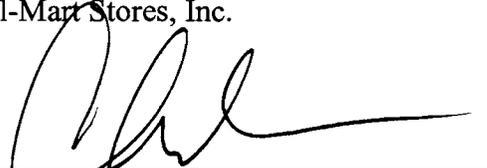
II. CONCLUSION

For the reasons set forth herein, Wal-Mart respectfully requests that the Court uphold the King County Superior Court's order denying RNHG's Land Use Petition, uphold the City's Decision approving Wal-Mart's proposal, and award attorney's fees against RNHG pursuant to 4.84.370 and any other statute or law authorizing the same.

DATED this 10th day of August, 2011.

Respectfully submitted,

Davis Wright Tremaine LLP
Attorneys for Intervenor-Respondent
Wal-Mart Stores, Inc.

By 

Charles E. Maduell, WSBA #15491
Clayton P. Graham, WSBA # 38266
1201 Third Avenue - Suite 2200
Seattle, WA 98101-3045
Telephone: (206) 757-8093
Fax: (206) 757-7093
E-mail: chuckmaduell@dwt.com

APPENDIX A

Hearing Examiner's Decision

May 13, 2010

OFFICE OF THE HEARING EXAMINER
CITY OF RENTON

Minutes

OWNER: Peter Bonnell
Bonnell Family LLC
10047 Main Street, #509
Bellevue, WA 98004

CONTACT/APPLICANT: Jeff Chambers
PACLAND
1505 Westlake Ave N, Ste. 305
Seattle, WA 98109

PROJECT NAME: Walmart Expansion Site Plan Approval
File No.: LUA 10-009, ECF, SA-H

LOCATION: 743 Rainier Ave S

SUMMARY OF REQUEST: Site Plan Review for the construction of a additions to the existing Walmart retail facility, which would include 16,000 square feet of additions to the retail space and a reduction of 4,000 square feet in the Garden Center and an approximate 16,000 square foot area for outdoor retail sales.

SUMMARY OF ACTION: Development Services Recommendation: Approve

DEVELOPMENT SERVICES REPORT: The Development Services Report was received by the Examiner on April 20, 2010.

PUBLIC HEARING: After reviewing the Development Services Report, examining available information on file with the application, field checking the property and surrounding area; the Examiner conducted a public hearing on the subject as follows:

MINUTES

*The following minutes are a summary of the April 27, 2010 hearing.
The legal record is recorded on CD.*

The hearing opened on Tuesday, April 27, 2010, at 9:00 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<p><u>Exhibit No. 1:</u> Project file containing the original application, reports, staff comments and other documentation pertinent to this request.</p>	<p><u>Exhibit No. 2:</u> Zoning and Neighborhood Detail Map</p>
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<u>Exhibit No. 3: Site Plan</u>	<u>Exhibit No. 4: Landscape Plan</u>
<u>Exhibit No. 5: Tree Inventory Plan</u>	<u>Exhibit No. 6: East and West Elevations</u>
<u>Exhibit No. 7: North and South Elevations</u>	<u>Exhibit No. 8: Large Page Short Plat Plan (9 pages)</u>

The hearing opened with a presentation of the staff report by Rocale Timmons Associate Planner, Community and Economic Development, City of Renton, 1055 S Grady Way, Renton, Washington 98057. The site is located just west of Rainier Avenue S and Hardie Avenue SW between SW 7th Street and S Grady Way. The site is 13.6 acres and is zoned Commercial Arterial and is located within the Commercial Land Use Designation.

The applicant is proposing an expansion of the existing Walmart retail facility in the amount of 16,000 square feet. The applicant is further proposing a reduction in the Garden Center from 9,000 square feet to approximately 4,000 square feet. An area would be set aside just north of the expansion area for outdoor retail sales.

The Examiner questioned conforming or non-conforming, parking is an example of non-conforming as well as other aspects of the project. Can a legal non-conforming use be expended under the Code?

Ms. Timmons stated that as long as it is not more than a 50% expansion; with relation to the parking stalls there are approximately 618 existing, the applicant is proposing only 127 new parking stalls.

The applicant is proposing improvements to existing landscaping, lighting and drainage from the site.

Access would continue via the current curb cuts along the perimeter streets.

The Environmental Review Committee issued a Determination of Non-Significance – Mitigated with 6 measures. No appeals were filed.

The project does comply with all policies within the Commercial Corridor Comprehensive Plan designation. The project is located within the Commercial Arterial Zoning designation and this project is permitted within this zone. Lot coverage for this site is limited to 65%, the applicant is proposing 840,000 square foot footprint on the site, which results in a lot coverage of 25.3%. CA zone requires a 10-foot minimum front yard setback with a maximum 15-foot setback. There are no other setbacks required in this zone. The front yard setback would be assessed from Hardie Avenue SW and Rainier Avenue S. The proposal does not comply with the maximum front yard setback; however the expansion does increase the conformity of the project in that it moves closer towards Hardie Ave SW and Rainier Ave S, which then does not require a variance.

A short plat was recently approved for the site which would allow Walmart to site structure on its own building pad. The short plat has not been recorded and this must be done.

Height in the CA zone is limited to 50 feet; the applicant has proposed a maximum height of 32' 4". The applicant has provided various roof shapes and heights along the eastern façade to break up the massing of the structure.

There are 99 existing trees on site; the applicant proposes to remove 15 trees. Mature vegetation on site should be retained as much as possible. The existing parking layout presented a challenge to the layout; the spacing of the landscape islands could not be reorganized. The CA zone requires a 10-foot landscape strip along all street

frontages. The applicant has proposed to enhance all existing landscaping in the interior as well as the perimeter of the site. Approximately 55 feet of landscaping would be provided along Rainier Ave as well as 20 feet of landscaping along SW 7th Street. The code requires intervening landscaping every six parking stalls and that is being done in the parking area. Thirty-five feet of landscaping must be provided for each parking stall, 745 parking stalls are proposed, which requires 26,000 square feet in landscaping. The applicant has proposed 30,000 square feet of landscaping thereby meeting the requirements.

Fire and Traffic mitigation fees have been imposed by ERC.

The applicant has applied for a Refuse Modification in order to reduce the refuse area from 1,500 square feet to 30 cubic yards. The modification was granted administratively due to the proposed compactor that is engineered for high volume usage. No screening detail has been provided and must be submitted to show compliance with refuse and recycle standards.

Staff has received several letters as well as a petition that demonstrate the community support for this expansion.

Property values in the area are anticipated to be maintained or increased as a result of the project.

Vehicular circulation was looked at and found that the access would remain the same as currently used by the retail facility. There was one existing pedestrian connection that runs from the center of the east elevation to Rainier Ave S, the applicant has proposed to increase the width of that pedestrian walkway as well as enhance it with pedestrian scale lighting. An additional pedestrian connection has been proposed from the northern portion of the structure to SW 7th Street.

The applicant has proposed 3-5 additional parking lot lighting poles with a height of 40-feet that will match the existing lights on site and surrounding properties. A lighting plan needs to be provided showing both existing and new lighting plans that conform with spillover requirements of the Code.

A drainage report has been submitted stating that the proposed project improvements generate less than .5 cubic feet per second; therefore, the project is exempt from the flow control requirements. Water quality treatment has been provided in the form of a new bio-swale just north of the expanded parking lot area.

The project is located within Design District D, which includes minimum design standards that are to be met and if not met, they must demonstrate how they meet the intent of the code. The proposal complies with the Urban Design District D.

The proposed elevations meet the Site Design and Building Location minimum standards with the exception of refuse and recycle elevations. Those were discussed earlier. The proposal does not comply with the minimum standards for parking and vehicular access mainly due to the location of existing surface parking. The situation is existing and the applicant has met the intent to reduce the visual impacts of the parking lot with the use of landscaping. The proposal does comply with all minimum standards within the pedestrian environment. Most of the minimum standards have been met for landscaping. A landscaping maintenance surety device and an irrigation plan must be provided.

There are many limitations on building architecture due to the need for altering an existing structure, the intent for the front elevation has been met due to the visual interest provided with the exception of the human scale element. Additional elements could be provided in the area and staff has recommended that that be done.

Additional elements need to be provided to the eastern elevation of the façade. A building materials and colors board must be provided to staff in order to insure that quality materials have been provided.

Jack McCullough, McCullough & Hill, 701 5th Avenue, Ste. 7220, Seattle, WA 98104 stated that the applicant looked at a larger expansion, the site is very tight and decided that they could not make it work. The proposal presented today seems appropriate for the site.

There has been a lot of attention to the landscaping, some of the planters have been expanded rather than building more landscape bays. The parking requirements of the code do create a range within which the project must fall, one is to look at code compliance for this project and then looking at parking from a demand point of view. The 745 stalls proposed for this site are necessary in order to provide an adequate level of parking to support this facility.

Jeff Chambers, PACLAND, 1505 Westland Ave N, Ste. 305, Seattle, WA 98109 stated he wanted to discuss some of the items previously brought forward.

In relation to landscaping, during the discussions with staff they expressed interest in definitely keeping as many of the mature trees as possible on the site. The current sidewalk is approximately 3-4 feet wide, that walkway would be widened out and some compact stalls were created in that location. The landscape islands went from approximately six feet wide to approximately 12 feet wide. Rather than adding additional islands to the site, which constrains the stall size, they agreed with staff to expand the existing islands to 10-12 feet wide. By doing that they do meet all code requirements. Some parking stalls were lost along Hardie with the proposed new landscaping. Other parking stalls were lost with the additional landscaping along 7th, which was part of the request from staff.

The proposed trash compactor is widely used by many large stores and has been working very efficiently in those facilities. In addition to the compactor there is a bale and pallet area for additional storage.

The existing 40-foot lights give a more uniformed lighting level across the site. Industry standard encourages parking areas around four foot candles and front of store areas around 10-foot candles. The current parking lot meets that uniformity. When 25-foot lights are used the spacing ends up about 50-feet apart, the uniformity of the lighting goes from one foot candle to about 8-9 foot candles throughout the parking lot. This creates a bigger safety concern with lighting being too bright and too dark. The number of lighting standards would increase, there would be more conduits and circuits added to the parking lot. The only lights being added to this site are in the area where the Billy McHale's restaurant was located.

Usunobun Osagie, Larry D. Craighead Architects, 211 N Record Street, Ste. 222, Dallas, TX 75202 stated that they would be able to make the suggested changes to the façade with a variety of colors for a more pleasant look.

The refuse area will meet the screening requirements as well as gates and a roof on the compactor area. The design of this area does allow for a portion of the roof to remain open for ventilation. They will continue to work with staff to create a workable resolution in regards to the elevation, providing pedestrian amenities and finalize a workable solution that will make everyone happy. They want the City to be happy with this expansion.

Jack McCullough stated that they were going to take an existing facility that is non-conforming in some respects and make it better. Code does not require full conformance. They are consistently working with staff to make the project better.

Kayren Kittrick, Community and Economic Development stated that most utilities were covered under the Short Plat. All the issues regarding storm drains etc have been worked out to the City's satisfaction. It is still subject to final review and permitting.

Parking lot lighting usually does not come under her control, at the time the Walmart was originally built, they were subject to the foot candles being at a level that was common throughout the City at that time. It mostly was a matter of a nice even distribution of light. A lighting plan should be provided, showing that the light is not going to wander off the property. There is some concern about excess lighting on the drainage swale on the west, that lighting should not be increased as it could interfere with the existing bioswale as well as the new one.

The Examiner called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 10:56 am.

FINDINGS, CONCLUSIONS & RECOMMENDATION

Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. The applicant, Jeff Chambers for PACLAND, filed a request for a Site Plan approval.
2. The yellow file containing the staff report, the State Environmental Policy Act (SEPA) documentation and other pertinent materials was entered into the record as Exhibit #1.
3. The Environmental Review Committee (ERC), the City's responsible official issued a Determination of Non-Significance - Mitigated (DNS-M).
4. The subject proposal was reviewed by all departments with an interest in the matter.
5. There was no opposition from the public regarding the subject proposal.
6. The subject site is located at 743 Rainier Avenue South. The subject site includes the existing Walmart store and parking area as well as the former Billy McHale's building and parking area. The site does not include other buildings or parking areas to the north, south and east that includes the Columbia Bank and Jimmy Mac's.
7. The map element of the Comprehensive Plan designates the area in which the subject site is located as suitable for the development of commercial corridor uses and employment area valley use, but does not mandate such development without consideration of other policies of the Plan.
8. The subject site is currently zoned CA (Commercial Arterial) and IM (Medium Industrial). The vast majority of the subject site is zoned for commercial uses with the most westerly portion of the site limited to IM uses. The subject site is also governed by the Urban Design District D guidelines.
9. The subject site was annexed to the City with the adoption of Ordinance 1745 enacted in February 1959.
10. The underlying ownership has submitted a short plat to separate the existing and future Walmart areas from surrounding properties. That short plat has been approved but not recorded.
11. The subject site is approximately 594,553 square feet or 13.6 acres.
12. The subject site is essentially level.

13. The subject site contains 99 significant trees. Code requires 10% of the trees be retained. The applicant proposes removing 5 coniferous trees and 10 deciduous trees or 15 trees in total. The trees that would be removed are in the expansion areas north and east of the main building. Additional landscaping is proposed (see below).
14. Access to the subject site will be unchanged.
15. The applicant proposes remodeling and expanding the existing Walmart complex. The existing complex contains approximately 134,352 square feet of retail space along with 9,000 square feet in its garden center. The applicant proposes adding 16,000 square feet to the store and reducing its garden space to 5,000 square feet. The expansion will occur in five areas. There will be two expansion areas along the eastern or front facade near the main entrance and near the southeast corner of the front facade. The other additions will be a large area along the north facade near its northeast corner and two smaller additions near the northwest corner of the building. The applicant also proposes adding 127 additional parking stalls to its complement of 618 stalls for a total of 745 stalls.
16. The applicant proposes changes to its front or eastern facade to provide more visual interest. The applicant will remodel the inside of the store as part of its proposed expansion and modification. There will be two entrances into the store from the east. The two entrances will generally divide access to the general merchandize areas and the grocery areas of the store. The entrances will be defined by parapet rooflines that curve in wing-like facades with clerestory windows on either side of a larger curving central entrance wall with a focal point niche containing a larger tree alcove. These vestibule areas would contain seating and trash cans. The roofline will rise to approximately 32 feet 4 inches.
17. The applicant will be redeveloping the garden area to contain more retail space. The new garden center will be located along the northern end of the eastern facade. The roofline along the north will be 21 feet 4 inches matching the existing roofline or that facade's tallest extreme.
18. The applicant requested and was granted a modification to allow a smaller than required refuse and recycling area due to its proposed use of an efficient, high volume compactor unit. These units have been demonstrated to handle waste/recycling materials in other locations. The unit will be located in an area away from public areas of the subject site. The screening details were not submitted for this aspect of the proposal.
19. The facade treatment includes additional modulations, the changes in the height of elements along eastern roofline as well as a mix of facade materials. Lighting is also proposed to add to visual interest around the prominent facades. Staff recommended additional elements be added to enhance the appearance and feel of the building for pedestrians on the subject site. In addition, staff wanted the applicant to submit materials boards to verify the quality and appearance features of the exterior treatments.
20. The CA Zone requires a maximum front yard setback of 15 feet in order to locate structures closer to the street and reduce the visual impact of parking along thoroughfares. The proposed expansion would not comply with this requirement providing a setback of approximately 555 feet from Hardie-Rainier. Staff found that since the expansion encompasses a small portion of the proposed existing complex it does not trigger a need to conform to the newer, current standards. The setbacks on the north, west and south are respectively 150 feet, 65 feet and 15 feet. Yard coverage of 65 percent is permitted whereas the proposed coverage is 25.3 percent meeting code requirements. The proposed maximum height of 32 feet 4 inches meets the height limit of the CA Zone's 50 feet.

21. As noted, the applicant will be increasing the number of parking stalls, mainly in the northern portion of the site in the area where Billy McHale's was located. Code permits a range of parking and the proposed use's range would be between 601 stalls to 751 stalls. The applicant proposes just under the top range of 745 stalls. The applicant's review of parking on site demonstrates the need for the larger complement of parking.
22. Code requires 26,075 square feet of landscaping for the 745 stall parking lots. The applicant proposes 65,690 square feet or approximately 40,000 square feet of additional landscaping than required. The new parking areas will comply with code as to the amount and spacing of interior landscaping. The older parking areas will have enlarged landscape pads but will take advantage of the existing conditions to maintain landscape spacing in parking aisles. The applicant suggested that attempting to modify the existing configuration would eliminate many of the larger, mature trees located in the parking areas. Perimeter landscaping already meets code and contains some of the larger, mature trees. These landscape areas will be enlarged although they are limited to ingress and egress areas, the perimeter of the site is dominated by third party properties, not part of the subject site or expansion plans.
23. The development will increase traffic approximately 600 trips per day. The ERC imposed a mitigation fee to help offset the impacts of those additional trips.
24. The uses surrounding the subject site are restaurants, a bank, tire store, retail pad and car dealership. Staff noted that the proposed use has been and will continue to be compatible with these various uses.
25. Stormwater will be handled by providing for an additional bio-swale to treat surface parking lot runoff. The proposal does comply with the impervious surface requirements of Code. There was concern that lighting might affect the functioning of the bioswales.
26. As noted, the subject site straddles two zoning districts and two comprehensive plan use areas but the vast majority of the subject site is governed by the CA Zone and the Commercial Corridor policies. Staff determined as a practical matter that the majority zoning, CA, and use designations, Commercial Corridor, should be applied.
27. The existing parking areas are currently served by light standards that are approximately 40 feet tall. Code currently restricts lighting standards to not more than 25 feet in height. The applicant has proposed matching the existing pole height. The applicant noted that the taller lights provide better overall lighting. Any change to light standards should be done by code amendment. There is nothing critical or unique to justify deviation from the adopted standards. Those standards apply to all development and if they are inadequate then they would be inadequate for all development. While the expanded parking area will be part of the existing complex, the more aesthetically pleasing shorter poles should prevail as it would require strict observation for someone to notice the asymmetry of pole heights throughout the complex.
28. The following Table contains staff's analysis of the proposal's compliance with the Design District D Guidelines:

a) Review of Compliance to District 'D' Design Guidelines;

The site is located within Design District 'D'. The proposed project must meet the intent of the Design Regulations where the regulations are applicable. As demonstrated in the table below the proposal

meets the intent of the Design Regulations on the basis of individual merit if all conditions of approval are met.

A. SITE DESIGN AND BUILDING LOCATION:	
Intent: To ensure that buildings are located in relation to streets and other buildings so that the Vision of the City of Renton can be realized for a high-density urban environment; so that businesses enjoy visibility from public rights-of-way; and to encourage pedestrian activity throughout the district.	
1. Site Design and Street Pattern:	
Intent: To ensure that the City of Renton Vision can be realized within the Urban Center Districts; plan districts that are organized for efficiency while maintaining flexibility for future development at high urban densities and intensities of use; create and maintain a safe, convenient network of streets of varying dimensions for vehicle circulation; and provide service to businesses.	
N/A	Minimum Standard: Provide a network of public and/or private local streets in addition to public arterials.
N/A	Minimum Standard: Maintain a hierarchy of streets to provide organized circulation that promotes use by multiple transportation modes and to avoid overburdening the roadway system. The hierarchy shall consist of (from greatest in size to smallest): (a) High Visibility Street. A highly visible arterial street that warrants special design treatment to improve its appearance and maintain its transportation function. (b) Arterial Street. A street classified as a principal arterial on the City's Arterial Street Plan. (c) Pedestrian-Oriented Streets. Streets that are intended to feature a concentration of pedestrian activity. Such streets feature slow moving traffic, narrow travel lanes, on-street parking, and wide sidewalks. (d) Internal or local roads (public or private).
2. Building Location and Orientation:	
Intent: To ensure visibility of businesses; establish active, lively uses along sidewalks and pedestrian pathways; organize buildings in such a way that pedestrian use of the district is facilitated; encourage siting of structures so that natural light and solar access are available to other structures and open space; enhance the visual character and definition of streets within the district; provide an appropriate transition between buildings, parking areas, and other land uses and the street; and increase privacy for residential uses located near the street.	
✓	Minimum Standard: Orient buildings to the street with clear connections to the sidewalk.
✓	Minimum Standard: The front entry of a building shall not be oriented to a drive aisle, but instead a public or private street or landscaped pedestrian-only courtyard.
3. Building Entries:	
Intent: To make building entrances convenient to locate and easy to access, and ensure that building entries further the pedestrian nature of the fronting sidewalk and the urban character of the district.	
✓	Minimum Standard: A primary entrance of each building shall be located on the facade facing a street, shall be prominent, visible from the street, connected by a walkway to the public sidewalk, and include human-scale elements.
N/A	Minimum Standard: Multiple buildings on the same site shall provide a continuous network of pedestrian paths and open spaces that incorporate landscaping to provide a directed view to building entries.
N/A	Minimum Standard: Ground floor units shall be directly accessible from the street or an open space such as a courtyard or garden that is accessible from the street.
✓	Minimum Standard: Secondary access (not fronting on a street) shall have weather protection at least 4-1/2 feet wide over the entrance or other similar indicator of access.
✓	Minimum Standard: Pedestrian access shall be provided to the building from property edges, adjacent lots, abutting street intersections, crosswalks, and transit stops.
4. Transition to Surrounding Development:	

<p>Intent: To shape redevelopment projects so that the character and value of Renton's long-established, existing neighborhoods are preserved.</p>	
✓	<p>Minimum Standard: Careful siting and design treatment are necessary to achieve a compatible transition where new buildings differ from surrounding development in terms of building height, bulk and scale. At least one of the following design elements shall be considered to promote a transition to surrounding uses:</p> <ul style="list-style-type: none"> a. Setbacks at the side or rear of a building may be increased by the Reviewing Official in order to reduce the bulk and scale of larger buildings and so that sunlight reaches adjacent yards; b. Building proportions, including step-backs on upper levels; c. Building articulation to divide a larger architectural element into smaller increments; or d. Roof lines, roof pitches, and roof shapes designed to reduce apparent bulk and transition with existing development.
<p>5. Service Element Location and Design:</p> <p>Intent: To reduce the potential negative impacts of service elements (i.e., waste receptacles, loading docks) by locating service and loading areas away from high-volume pedestrian areas, and screening them from view in high visibility areas.</p>	
✓	<p>Minimum Standard: Service elements shall be located and designed to minimize the impacts on the pedestrian environment and adjacent uses. Service elements shall be concentrated and located where they are accessible to service vehicles and convenient for tenant use (see illustration, RMC 4-3-100E7e).</p>
Not Compliant	<p>Minimum Standard: Garbage, recycling collection, and utility areas shall be enclosed, consistent with RMC 4-4-090, Refuse and Recyclables Standards, and RMC 4-4-095, Screening and Storage Height/Location Limitations.</p> <p>Staff Comment: Elevations for the refuse and recycle enclosure were not provided with the site plan application. Staff has recommended as a condition of approval the applicant submit elevations for the refuse and recyclable enclosure.</p>
Not Compliant	<p>Minimum Standard: In addition to standard enclosure requirements, garbage, recycling collection, and utility areas shall be enclosed on all sides, including the roof and screened around their perimeter by a wall or fence and have self-closing doors.</p> <p>Staff Comment: See comments above.</p>
Not Compliant	<p>Minimum Standard: The use of chain link, plastic, or wire fencing is prohibited.</p> <p>Staff Comment: See comments above.</p>
✓	<p>Minimum Standard: If the service area is adjacent to a street, pathway, or pedestrian-oriented space, a landscaped planting strip, minimum 3 feet wide, shall be located on 3 sides of such facility.</p>
<p>6. Gateways: Not Applicable</p>	
<p>B. PARKING AND VEHICULAR ACCESS:</p> <p>Intent: To provide safe, convenient access to the Urban Center and the Center Village; incorporate various modes of transportation, including public mass transit, in order to reduce traffic volumes and other impacts from vehicles; ensure sufficient parking is provided, while encouraging creativity in reducing the impacts of parking areas; allow an active pedestrian environment by maintaining contiguous street frontages, without parking lot siting along sidewalks and building facades; minimize the visual impact of parking lots; and use access streets and parking to maintain an urban edge to the district.</p>	
<p>1. Location of Parking:</p> <p>Intent: To maintain active pedestrian environments along streets by placing parking lots primarily in back of buildings.</p>	
Not Compliant	<p>Minimum Standard: No surface parking shall be located between a building and the front property line or the building and side property line on the street side of a corner lot.</p> <p>Staff Comment: The bulk of the parking is existing and located in between the retail store and</p>

	<p>Rainier Ave S/SR 167. The applicant is proposing to add a total of 127 additional parking stalls of which most would be located to the north of the proposed expansion area and existing parking lot. The parking areas could have negative impacts on the pedestrian environment and the abutting properties without adequate landscape buffers. The applicant is proposing a substantial amount of interior parking lot landscaping in order to minimize to the visual impact in addition to increases in the width of landscape buffers on the perimeter of the site. Specifically perimeter landscaping along Rainier Ave S/SR 167 is proposed at a width of approximately 55 feet and SW 7th St would have a landscape strip width of approximately 20 feet. The applicant's proposal is successful in meeting the intent of the design standard to minimize the visual impact of the parking located between the building and the street.</p>
<p>2. Design of Surface Parking: Intent: To ensure safety of users of parking areas, convenience to businesses, and reduce the impact of parking lots wherever possible.</p>	
Not Compliant	<p>Minimum Standard: Parking lot lighting shall not spill onto adjacent or abutting properties. <i>Staff Comment:</i> A lighting plan was not submitted as part of the application materials, therefore staff could not verify whether or not there would be light spillover onto adjacent properties. Staff has recommended, as a condition of approval, the applicant submit a site lighting plan to be reviewed and approved by the Current Planning Project Manager prior to construction or building permit approval.</p>
✓	<p>Minimum Standard: All surface parking lots shall be landscaped to reduce their visual impact (see RMC 4-4-080F7, Landscape Requirements).</p>
<p>3. Structured Parking Garages: Not Applicable</p>	
<p>C. PEDESTRIAN ENVIRONMENT:</p>	
<p>Intent: To enhance the urban character of development in the Urban Center and the Center Village by creating pedestrian networks and by providing strong links from streets and drives to building entrances; make the pedestrian environment safer and more convenient, comfortable, and pleasant to walk between businesses, on sidewalks, to and from access points, and through parking lots; and promote the use of multi-modal and public transportation systems in order to reduce other vehicular traffic.</p>	
<p>1. Pathways through Parking Lots: Intent: To provide safe and attractive pedestrian connections to buildings, parking garages, and parking lots.</p>	
✓	<p>Minimum Standard: Clearly delineated pedestrian pathways and/or private streets shall be provided throughout parking areas.</p>
✓	<p>Minimum Standard: Within parking areas, pedestrian pathways shall be provided perpendicular to the applicable building facade, at a maximum distance of 150 feet apart.</p>
<p>2. Pedestrian Circulation: Intent: To create a network of linkages for pedestrians to improve safety and convenience and enhance the pedestrian environment.</p>	
✓	<p>Minimum Standard: Developments shall include an integrated pedestrian circulation system that connects buildings, open space, and parking areas with the adjacent street sidewalk system and adjacent properties.</p>
✓	<p>Minimum Standard: Sidewalks located between buildings and streets shall be raised above the level of vehicular travel.</p>
✓	<p>Minimum Standard: Pedestrian pathways within parking lots or parking modules shall be differentiated by material or texture from adjacent paving materials.</p>
✓	<p>Minimum Standard: Sidewalks and pathways along the facades of buildings shall be of sufficient width to accommodate anticipated numbers of users. Specifically:</p>
N/A	<p>(a) Sidewalks and pathways along the facades of mixed use and retail buildings 100 or more feet in width (measured along the facade) shall provide sidewalks at least 12 feet in width. The walkway shall include an 8 foot minimum unobstructed walking surface and street</p>

	trees (see illustration, subsection RMC-4-3-100.G4d).
✓	(b) To increase business visibility and accessibility, breaks in the tree coverage adjacent to major building entries shall be allowed.
✓	(c) For all other interior pathways, the proposed walkway shall be of sufficient width to accommodate the anticipated number of users.
✓	Minimum Standard: Locate pathways with clear sight lines to increase safety. Landscaping shall not obstruct visibility of walkway or sight lines to building entries.
✓	Minimum Standard: All pedestrian walkways shall provide an all-weather walking surface unless the applicant can demonstrate that the proposed surface is appropriate for the anticipated number of users and complementary to the design of the development.
3. Pedestrian Amenities:	
Intent: To create attractive spaces that unify the building and street environments and are inviting and comfortable for pedestrians; and provide publicly accessible areas that function for a variety of activities, at all times of the year, and under typical seasonal weather conditions.	
✓	Minimum Standard: Provide pedestrian overhead weather protection in the form of awnings, marquees, canopies, or building overhangs. These elements shall be a minimum of 4-1/2 feet wide along at least 75 percent of the length of the building facade, a maximum height of 15 feet above the ground elevation, and no lower than 8 feet above ground level.
✓	Minimum Standard: Site furniture provided in public spaces shall be made of durable, vandal- and weather-resistant materials that do not retain rainwater and can be reasonably maintained over an extended period of time.
✓	Minimum Standard: Site furniture and amenities shall not impede or block pedestrian access to public spaces or building entrances.
D. LANDSCAPING/RECREATION AREAS/COMMON OPEN SPACE:	
Intent: To provide visual relief in areas of expansive paving or structures; define logical areas of pedestrian and vehicular circulation; and add to the aesthetic enjoyment of the area by the community. To have areas suitable for both passive and active recreation by residents, workers, and visitors; provide these areas in sufficient amounts and in safe and convenient locations; and provide the opportunity for community gathering in places centrally located and designed to encourage such activity.	
1. Landscaping:	
Intent: Landscaping is intended to reinforce the architecture or concept of the area; provide visual and climatic relief in areas of expansive paving or structures; channelize and define logical areas of pedestrian and vehicular circulation; and add to the aesthetic enjoyment of the area by the community.	
✓	Minimum Standard: All pervious areas shall be landscaped (see RMC 4-4-070, Landscaping).
✓	Minimum Standard: Street trees are required and shall be located between the curb edge and building, as determined by the City of Renton.
N/A	Minimum Standard: On designated pedestrian-oriented streets, street trees shall be installed with tree grates. For all other streets, street tree treatment shall be as determined by the City of Renton (see illustration, subsection RMC 4-3-100.H3a).
✓	Minimum Standard: The proposed landscaping shall be consistent with the design intent and program of the building, the site, and use.
✓	Minimum Standard: The landscape plan shall demonstrate how the proposed landscaping, through the use of plant material and nonvegetative elements, reinforces the architecture or concept of the development.
✓	Minimum Standard: Surface parking areas shall be screened by landscaping in order to reduce views of parked cars from streets (see RMC 4-4-080F7, Landscape Requirements). Such landscaping shall be at least 10 feet in width as measured from the sidewalk (see illustration, subsection RMC 4-3-100.H3b).
✓	Minimum Standard: Trees at an average minimum rate of one tree per 30 lineal feet of street frontage. Permitted tree species are those that reach a mature height of at least 35 feet.

	Minimum height or caliper at planting shall be eight feet or two inch caliper (as measured four feet from the top of the root ball) respectively.								
✓	Minimum Standard: Shrubs at the minimum rate of one per 20 square feet of landscaped area. Shrubs shall be at least 12 inches tall at planting and have a mature height between three and four feet.								
✓	Minimum Standard: Ground cover shall be planted in sufficient quantities to provide at least 90 percent coverage of the landscaped area within three years of installation.								
Not Compliant	Minimum Standard: The applicant shall provide a maintenance assurance device, prior to occupancy, for a period of not less than three years and in sufficient amount to ensure required landscape standards have been met by the third year following installation. <i>Staff Comment:</i> Staff recommends, as a condition of approval, the applicant submit a landscape maintenance surety device for a period of no less than three years in sufficient amount as determined by the Current Planning Project Manager prior to temporary occupancy permit.								
✓	Minimum Standard: Surface parking with more than 14 stalls shall be landscaped as follows: (1) Required Amount:								
	<table border="1"> <thead> <tr> <th>Total Number of Spaces</th> <th>Minimum Required Landscape Area*</th> </tr> </thead> <tbody> <tr> <td>15 to 50</td> <td>15 square feet/parking space</td> </tr> <tr> <td>51 to 99</td> <td>25 square feet/parking space</td> </tr> <tr> <td>100 or more</td> <td>35 square feet/parking space</td> </tr> </tbody> </table>	Total Number of Spaces	Minimum Required Landscape Area*	15 to 50	15 square feet/parking space	51 to 99	25 square feet/parking space	100 or more	35 square feet/parking space
Total Number of Spaces	Minimum Required Landscape Area*								
15 to 50	15 square feet/parking space								
51 to 99	25 square feet/parking space								
100 or more	35 square feet/parking space								
✓	(2) Provide trees, shrubs, and ground cover in the required interior parking lot landscape areas.								
Not Compliant	(3) Plant at least one tree for every six parking spaces. Permitted tree species are those that reach a mature height of at least 35 feet. Minimum height or caliper at planting shall be eight feet or two inch caliper (as measured four feet from the top of the root ball) respectively. <i>Staff Comment:</i> The applicant is proposing to retain most of the trees on site in order to maintain the mature tree cover. As a result of the preservation of the mature vegetation the existing location and spacing of landscape islands had to be maintained. Therefore the landscape spacing, which does not comply with the design requirements of the code, could not be brought into conformity. However, as the situation is existing a modification is not necessary. All new parking areas would comply with the minimum standard for tree spacing.								
✓	(4) Up to 50 percent of shrubs may be deciduous.								
✓	(5) Select and plant ground cover so as to provide 90 percent coverage within three years of planting; provided, that mulch is applied until plant coverage is complete.								
✓	(6) Do not locate a parking stall more than 50 feet from a landscape area.								
✓	Minimum Standard: Regular maintenance shall be provided to ensure that plant materials are kept healthy and that dead or dying plant materials are replaced.								
Not Compliant	Minimum Standard: Underground, automatic irrigation systems are required in all landscape areas. <i>Staff Comment:</i> An irrigation plan was not submitted as part of the application. Therefore staff recommends, as a condition of approval, the applicant submit an irrigation plan to and be approved by the Current Planning Project Manager prior to construction or building permit approval.								

2. Recreation Areas and Common Open Space: Not Applicable

E. BUILDING ARCHITECTURAL DESIGN:

Intent: To encourage building design that is unique and urban in character, comfortable on a human scale, and uses appropriate building materials that are suitable for the Pacific Northwest climate. To discourage franchise

retail architecture.	
1. Building Character and Massing: Intent: To ensure that buildings are not bland and visually appear to be at a human scale; and ensure that all sides of a building, that can be seen by the public, are visually interesting.	
Not Compliant	<p>Minimum Standard: All building facades shall include modulation or articulation at intervals of no more than forty feet (40').</p> <p><i>Staff Comment:</i> The proposal does not include alterations to the blank walls located on the southern and western facades. Therefore, the applicant would not be required to comply with the modulation requirements for the southern and western facades. The two street-facing elevations, the north and eastern facades, are proposed to be expanded and enhanced with architectural elements; however these facades would also not comply with the minimum modulation requirement. The applicant is proposing two 80-foot vestibules along the approximate 500-foot eastern façade which creates horizontal modulation at spacing which exceeds the 40-foot intervals. However, extending parapets, clerestories, canopies, ornamental lighting and a large planter box with an iconic tree have been provided in order to distinguish the two building entrances as well as to break up the monotony of the large façade. Based on the limitations of altering the existing structure in addition to the many architectural features provided staff has found that the applicant has achieved visual interest along the eastern façade thereby meeting the intent of the code. Alternatively, the SW 7th St facing façade has not provided adequate visual interest. The northern façade includes the use of three pilaster elements similar to that which is used to wrap around the Garden Center. While the proposed architectural elements add visual interest, which break up the wall plane, there are additional elements that could be added or used to replace the pilaster elements which would reduce the apparent size of the façade. Therefore staff recommends, as a condition of approval, that the applicant submit revised elevations, for the northern façade, that depict alternative methods to mass and treat the proposed façade. Revised elevations shall be submitted to and approved by the Current Planning Project Manager prior to building permit approval.</p>
2. Ground-Level Details: Intent: To ensure that buildings are visually interesting and reinforce the intended human-scale character of the pedestrian environment; and ensure that all sides of a building within near or distant public view have visual interest.	
Not Compliant	<p>Minimum Standard: Untreated blank walls visible from public streets, sidewalks, or interior pedestrian pathways are prohibited. A wall (including building facades and retaining walls) is considered a blank wall if:</p> <ul style="list-style-type: none"> (a) It is a ground floor wall or portion of a ground floor wall over six feet in height, has a horizontal length greater than 15 feet, and does not include a window, door, building modulation or other architectural detailing; or (b) Any portion of a ground floor wall having a surface area of 400 square feet or greater and does not include a window, door, building modulation or other architectural detailing. <p><i>Staff Comment:</i> See comments above.</p>
Not Compliant	<p>Minimum Standard: Where blank walls are required or unavoidable, blank walls shall be treated with one or more of the following:</p> <ul style="list-style-type: none"> (a) A planting bed at least five feet in width containing trees, shrubs, evergreen ground cover, or vines adjacent to the blank wall; (b) Trellis or other vine supports with evergreen climbing vines; (c) Architectural detailing such as reveals, contrasting materials, or other special detailing that meets the intent of this standard; (d) Artwork, such as bas-relief sculpture, mural, or similar; or (e) Seating area with special paving and seasonal planting. <p><i>Staff Comment:</i> See comments above.</p>

✓	Minimum Standard: Treatment of blank walls shall be proportional to the wall.
✓	Minimum Standard: Provide human-scaled elements such as a lighting fixture, trellis, or other landscape feature along the facade's ground floor.
Not Compliant	<p>Minimum Standard: Facades on designated pedestrian-oriented streets shall have at least 75 percent of the linear frontage of the ground floor facade (as measured on a true elevation facing the designated pedestrian-oriented street) comprised of transparent windows and/or doors.</p> <p><i>Staff Comment:</i> The applicant has not provided glazing in the amount specified along the eastern façade. However, the applicant has provided extending parapets, clerestories, canopies, ornamental lighting, pedestrian furniture and a large planter box with an iconic tree in order to break up the monotony of the large façade and provide human scale elements. Based on the limitations of altering the existing structure in addition to the many architectural features and pedestrian amenities provided staff has found that the applicant has achieved visual interest along the eastern façade for the distant public. However, additional elements could be included in the pedestrian plaza area, beneath the northern canopy that extends to south of the northern entrance, in order to reinforce the intended human-scale character of the pedestrian environment. Staff recommends, as a condition of approval, the applicant provide revised elevations for the eastern façade prior to building permit approval. The revised elevations shall include additional human scale elements in the pedestrian plaza area, beneath the northern canopy that extends to south of the northern entrance. The applicant is encouraged to include one or more of the following in order to achieve a human scale character: additional glazing, artwork and/or planting beds containing trees, shrubs, evergreen ground cover, or vines adjacent to the facade.</p>
	Minimum Standard: Other facade window requirements include the following:
✓	(a) Building facades must have clear windows with visibility into and out of the building. However, screening may be applied to provide shade and energy efficiency. The minimum amount of light transmittance for windows shall be 50percent.
✓	(b) Display windows shall be designed for frequent change of merchandise, rather than permanent displays.
✓	(c) Where windows or storefronts occur, they must principally contain clear glazing.
✓	(d) Tinted and dark glass, highly reflective (mirror-type) glass and film are prohibited.
3. Building Roof Lines:	
Intent: To ensure that roof forms provide distinctive profiles and interest consistent with an urban project and contribute to the visual continuity of the district.	
✓	<p>Minimum Standard: Buildings shall use at least one of the following elements to create varied and interesting roof profiles:</p> <p>(a) Extended parapets; (b) Feature elements projecting above parapets; (c) Projected cornices; (d) Pitched or sloped roofs.</p>
✓	Minimum Standard: Locate and screen roof-mounted mechanical equipment so that the equipment is not visible within 150 feet of the structure when viewed from ground level.
✓	Minimum Standard: Screening features shall blend with the architectural character of the building, consistent with RMC 4-4-095E, Roof-Top Equipment.
Not Compliant	<p>Minimum Standard: Match color of roof-mounted mechanical equipment to color of exposed portions of the roof to minimize visual impacts when equipment is visible from higher elevations.</p> <p><i>Staff Comment:</i> Staff recommends, as a condition of approval, the applicant match the color of the roof-mounted mechanical equipment to the color of exposed portions of the roof.</p>
4. Building Materials:	

<p>Intent: To ensure high standards of quality and effective maintenance over time; encourage the use of materials that reduce the visual bulk of large buildings; and encourage the use of materials that add visual interest to the neighborhood.</p>	
Not Compliant	<p>Minimum Standard: All sides of buildings visible from a street, pathway, parking area, or open space shall be finished on all sides with the same building materials, detailing, and color scheme, or if different, with materials of the same quality. <i>Staff Comment:</i> It appears that all sides of the structure are finished using the same color scheme and materials. However, in order to ensure that quality materials are used staff recommends the applicant submit a material and colors board subject to the approval of the Current Planning Project Manager prior to building permit approval.</p>
Not Compliant	<p>Minimum Standard: Materials, individually or in combination, shall have an attractive texture, pattern, and quality of detailing for all visible facades. <i>Staff Comment:</i> See comments above.</p>
Not Compliant	<p>Minimum Standard: Materials shall be durable, high quality, and reasonably maintained. <i>Staff Comment:</i> See Condition above.</p>
Not Compliant	<p>Minimum Standard: Buildings shall employ material variations such as colors, brick or metal banding, patterns, or textural changes. <i>Staff Comment:</i> See comments above.</p>
<p>F. SIGNAGE:</p>	
<p>Intent: To provide a means of identifying and advertising businesses; provide directional assistance; encourage signs that are both clear and of appropriate scale for the project; encourage quality signage that contributes to the character of the Urban Center and the Center Village; and create color and interest.</p>	
N/A	<p>Minimum Standard: Signage shall be an integral part of the design approach to the building.</p>
N/A	<p>Minimum Standard: Corporate logos and signs shall be sized appropriately for their location.</p>
N/A	<p>Minimum Standard: Prohibited signs include: i. Pole signs; ii. Roof signs; iii. Back-lit signs with letters or graphics on a plastic sheet (can signs or illuminated cabinet signs). Exceptions: Back-lit logo signs less than ten (10) square feet are permitted as are signs with only the individual letters back-lit.</p>
N/A	<p>Minimum Standard: In mixed use and multi-use buildings, signage shall be coordinated with the overall building design.</p>
N/A	<p>Minimum Standard: Freestanding ground-related monument signs, with the exception of primary entry signs, shall be limited to five feet above finished grade, including support structure. All such signs shall include decorative landscaping (ground cover and/or shrubs) to provide seasonal interest in the area surrounding the sign. Alternately, signage may incorporate stone, brick, or other decorative materials as approved by the Director.</p>
N/A	<p>Minimum Standard: Entry signs shall be limited to the name of the larger development.</p>
<p>G. LIGHTING:</p>	
<p>Intent: To ensure safety and security; provide adequate lighting levels in pedestrian areas such as plazas, pedestrian walkways, parking areas, building entries, and other public places; and increase the visual attractiveness of the area at all times of the day and night.</p>	
Not Compliant	<p>Minimum Standard: Lighting shall conform to on-site exterior lighting regulations located in RMC 4-4-075, Lighting, Exterior On-Site. <i>Staff Comment:</i> Staff has recommended, as a condition of Approval, the applicant be required to provide a lighting plan that adequately provides for public safety without casting excessive glare on adjacent properties at the time of building permit review. Pedestrian scale and downlighting shall be used in all cases to assure safe pedestrian and vehicular movement, unless alternative pedestrian scale lighting has been approved administratively or is specifically listed as exempt from provisions located in RMC 4-4-075 Lighting, Exterior On-Site.</p>

Not Compliant	Minimum Standard: Lighting shall be provided on-site to increase security, but shall not be allowed to directly project off-site. <i>Staff Comment: See comments above</i>
Not Compliant	Minimum Standard: Pedestrian-scale lighting shall be provided, for both safety and aesthetics, along all streets, at primary and secondary building entrances, at building facades, and at pedestrian-oriented spaces. <i>Staff Comment: See comments above</i>

CONCLUSIONS:

1. The site plan ordinance provides a number of specific criteria for reviewing a site plan. Those criteria are generally represented in part by the following enumeration:
 - a. Conformance with the Comprehensive Plan;
 - b. Conformance with the Building and Zoning Codes;
 - c. Mitigation of impacts on surrounding properties and uses;
 - d. Mitigation of the impacts of the proposal on the subject site itself;
 - e. Conservation of property values;
 - f. Provision for safe and efficient vehicle and pedestrian circulation;
 - g. Provision of adequate light and air;
 - h. Adequacy of public services to accommodate the proposed use;

The proposed use satisfies these and other particulars of the ordinance.

2. The proposal is appropriate given either the "employment area valley" or "commercial corridor" goals and policies of the Comprehensive Plan. The expansion of an existing retail operation could create new jobs and certainly help revitalize the commercial uses of the subject site. The use could also attract patrons to other businesses on this large commercial block. The new design features will also create a more aesthetic focal point in this area of the City.
3. The existing use, a large "big box" establishment does not meet current code requirements for the setback along its frontage street, the Hardie-Rainier complex. Only an incredibly large expansion or complete rebuild could move the front of the store to the street and parking to the rear. The proposed approximately 16,000 square foot expansion cannot be expected to accomplish the maximum front yard setback of 15 feet. As a practical matter the tradeoff is allowing a reasonably well-designed expansion and revitalized store or probably permitting no change weighs in favor of the excessive setback. The building and expansion in its other particulars, height, other setbacks and lot coverage meets the Zoning Code. Similarly, the parking lot landscaping standards would require a complete redesign of the parking area for what is a modest remodel. In addition, attempting to meet the newer standards would remove the larger, mature specimen trees. Compliance with Building and Fire codes will be determined when actual permits for construction are submitted.
4. The two-story facade of the main complex is not substantially higher than the surrounding uses and the

large, somewhat landscaped parking areas provide wide separation permitting light and air to enter the site and surrounding sites. The extensive setback, while non-conforming as to the Zoning Code, actually helps the transition between a rather large big box store and its neighboring uses. The neighboring uses to the south, north and east work to ease the transition to the much larger background Walmart store. The new facade treatment with the curved parapets also soften the visual lines of the store. Parking is the dominant feature and while the older landscape spacing does not meet code, the existing larger trees do help to soften the appearance and the parking islands will be enlarged and the newer parking will meet code. The expanded building will probably be a better neighbor than the existing more utilitarian store. Staff noted that while the site has an exceptional amount of parking, the applicant has gone beyond code requirements to provide additional interior landscaping and perimeter landscaping to shield and buffer the parking lot.

5. The new facade features, the new landscape feature at the front of the store and the new landscaping in the northern parking areas all help to mitigate impacts of the development on the site. As noted, parking is a dominant feature and frankly, it is hard to disguise the large surface parking areas. The applicant does propose approximately 4,000 square feet of landscaping in excess of the parking lot landscape requirements and over 65,000 square feet of overall landscaping. Pedestrian links through the site and to the surrounding sidewalks help mitigate some of the impacts and do allow pedestrians to circulate on the site and to and from the site.
6. The redevelopment of the site should preserve or enhance overall property values.
7. Access to the subject site will not be changed. The additional parking, while obviously adding to the asphalt jungle, should also reduce the number of cars circling the lot looking for parking thereby cutting down air pollution and conflicts with pedestrians walking to and from parking stalls. As indicated, pedestrian pathways and amenities near the front of the store have been enhanced.
8. While the store has a large footprint, it is rather low-scale and therefore, adequate light and air should be available to adjoining uses that share the block with the applicant's use.
9. The store is served by existing urban infrastructure. The applicant will be providing additional stormwater treatment with an additional bioswale.
10. In addition to the general site plan review criteria discussed above, there are District Guidelines that are applicable to the subject site. The staff analysis is contained above and except as noted or highlighted in this discussion, that analysis and its conclusions are adopted by this decision. Staff has noted that in most cases the applicant's modest expansion meets the guidelines and the minimum standards or has justified why their project may not precisely meet some of the standards.
11. The applicant sought and received a modification for the refuse and recycling center and equipment and it appears that the proposed area and methods meet the objectives of the standards. The enclosure will have to meet the standards for containment and screening.
12. As noted above, the 16,000 square feet of remodeled area cannot be expected to close the distance to the street to 15 feet. Taking advantage of the building's existing placement in the overall block and its surrounding stores help achieve a reasonable proposal. Additional or larger landscape specimens should be used where smaller or stunted trees might exist. The additional or better landscaping can help fill in the large space between the street and actual store.
13. The applicant did not submit appropriate lighting details with the exception of proposing light standards

that do not meet code specifications. There is no reason for the applicant to deviate from the existing standards limiting lighting poles to 25 feet. As discussed above, visitors to the site will more than likely not notice the difference in height and changes in zoning and standards should be applied unless there is an overriding reason not to be conforming. The limited aesthetic of shorter poles in the new parking lot does not provide any justification. If the lighting standards that City has adopted are inadequate then that should be addressed in an amendment to code. The applicant shall comply with the newer standards.

14. On the other hand, the loss of mature trees to redesign a compliant parking lot is not an adequate tradeoff. The applicant will be providing more parking lot landscaping than required and will be supplementing the existing landscaping on the limited perimeter areas of the site. The applicant will have to meet irrigation requirements for all landscaping.
15. Staff noted that the facade could use more relief to break up the various facades of the building. Decorative treatment in the way of contrasting or complementary paints or additional molding trim or other architectural features including additional glazing or false windows shall be used to comply with the guidelines.
16. In conclusion, while it might be nice to start again and comply with newer code provisions, the proposed expansion is modest overall and clearly enhances the existing building's appearance. The additional landscaping will also enhance the site. "Big Box" appears to invite "Big Parking" but as noted, additional parking cuts down on circulating cars and their attendant noise and pollution. Maybe the next remodel will include an elevated parking structure to reduce the sea of asphalt.

DECISION:

The proposed site plan for the expansion is approved subject to the following conditions:

1. The applicant shall comply with the six mitigation measures issued as part of the Determination of Non-Significance Mitigated, dated March 22, 2010.
2. The applicant shall be required to record the Short Plat reflecting the property's lot lines as depicted on Exhibit 2 prior to building permit approval. As an alternative the applicant may submit a modification to the approved Site Plan which reflects the surveyed lot lines, at the time of building permit, as long as all development standards of the CA zone can be met.
3. The applicant shall submit screening detail for the refuse and recyclable deposit area prior to building permit approval. Elevations shall include a roof, screening around the perimeter of the wall and have self-closing doors. Chain link, plastic or wire fencing is prohibited.
4. The applicant shall be required to provide a lighting plan that will adequately provide for public safety without casting excessive glare on adjacent properties at the time of building permit review. Pedestrian scale and downlighting shall be used in all cases to assure safe pedestrian and vehicular movement, unless alternative pedestrian scale lighting has been approved administratively or is specifically listed as exempt from provisions located in RMC 4-4-075 Lighting, Exterior On-Site. The applicant shall comply with the newer standards including 25-foot height limitations.
5. The applicant shall submit a landscape maintenance surety device for a period of no less than three years in sufficient amount as determined by the Current Planning Project Manager prior to temporary occupancy permit.

6. The applicant shall submit an irrigation plan to and be approved by the Current Planning Project Manager prior to construction or building permit approval.
7. The applicant shall submit revised elevations, for the northern façade, which depict alternative methods to mass and treat the proposed facade. Revised elevations shall be submitted to and approved by the Current Planning Project Manager prior to building permit approval.
8. The applicant shall provide revised elevations for the eastern façade prior to building permit approval subject to the approval of the Current Planning Project Manager. The revised elevations shall include additional human scale elements in the pedestrian plaza area, beneath the northern canopy that extends to south of the northern entrance. Decorative treatment in the way of contrasting or complementary paints or additional molding trim or other architectural features including additional glazing or false windows shall be used to comply with the guidelines.
9. The applicant shall match the color of the roof-mounted mechanical equipment to the color of exposed portions of the roof.
10. The applicant shall submit a materials and color board subject to the approval of the Current Planning Project Manager prior to building permit approval.
11. Additional or larger landscape specimens should be use where smaller or stunted trees might exist.

ORDERED THIS 13th day of May 2010.


FRED J. KAUFMAN
HEARING EXAMINER

TRANSMITTED THIS 13th day of May 2010 to the parties of record:

Rocale Timmons
Community & Economic Dev
City of Renton

Kayren Kittrick
Community & Economic Dev
City of Renton

Jack McCullough
McCullough & Hill
701 5th Avenue, Ste. 7220
Seattle, WA 98104

Jeff Chambers
PACLAND
1505 Westland Ave N, Ste. 305
Seattle, WA 98109

Usunobun Osagie,
Larry D. Craighead Architects
211 N Record Street, Ste. 222
Dallas, TX 75202

Peter Bonnell
Bonnell Family LLC
10047 Main Street, Ste. 509
Bellevue, WA 98004

Jeremy Smith, Manager
Walmart #2516
743 Rainier Ave S
Renton, WA 98057

Sharon Ajibade, Asst. Manager
Walmart #2516
743 Rainier Ave S
Renton, WA 98057

Huy Tran, Asst. Manager
Walmart #2516
743 Rainier Ave S
Renton, WA 98057

Sophorn Chan, Assistant
Walmart #2516
743 Rainier Ave S
Renton, WA 98057

Anapogi Toleafoa, ICS Loader
Walmart #2516
743 Rainier Ave S
Renton, WA 98057

Tilea L. Swehla, Mgr. Foods Walmart #2516 743 Rainier Ave S Renton, WA 98057	Traffaney Black, Mgr. Electronics Walmart #2516 743 Rainier Ave S Renton, WA 98057	Brandi Hansen, Mgr. Automotive Walmart #2516 743 Rainier Ave S Renton, WA 98057
Sierra Schavrien, ICS Associate Walmart #2516 743 Rainier Ave S Renton, WA 98057	Mark Goodman Walmart #2516 743 Rainier Ave S Renton, WA 98057	Tauasi Paaga, HR Walmart #2516 743 Rainier Ave S Renton, WA 98057
Nancy Chase, Dept Manager Walmart #2516 743 Rainier Ave S Renton, WA 98057	William Carey, Jr. Safety Team Ld. Walmart #2516 743 Rainier Ave S Renton, WA 98057	Francis Canapi Walmart #2516 743 Rainier Ave S Renton, WA 98057
Cheryl Harrelson Walmart #2516 743 Rainier Ave S Renton, WA 98057	Josh Smith, Mgr. Pets/Chem/Paper Walmart #2516 743 Rainier Ave S Renton, WA 98057	Levan, Dept. Mgr. Walmart #2516 743 Rainier Ave S Renton, WA 98057
Josie Merveus, Dept. Mgr. Walmart #2516 743 Rainier Ave S Renton, WA 98057	Abram Sparrow, Dept. Mgr Walmart #2516 743 Rainier Ave S Renton, WA 98057	Valerie Reyes, ICS Lead Supv. 2 nd Shift Walmart #2516 743 Rainier Ave S Renton, WA 98057
Irish Joy E. Layador, Ent. Supv. Walmart #2516 743 Rainier Ave S Renton, WA 98057		

TRANSMITTED THIS 13th day of May 2010 to the following:

Mayor Denis Law	Dave Pargas, Fire
Jay Covington, Chief Administrative Officer	Larry Meckling, Building Official
Julia Medzegian, Council Liaison	Planning Commission
Gregg Zimmerman, PBPW Administrator	Transportation Division
Alex Pietsch, Economic Development	Utilities Division
Jennifer Henning, Development Services	Neil Watts, Development Services
Stacy Tucker, Development Services	Janet Conklin, Development Services
Marty Wine, Assistant CAO	Renton Reporter

Pursuant to Title IV, Chapter 8, Section 100G of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., May 27, 2010.** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$250.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., May 27, 2010.**

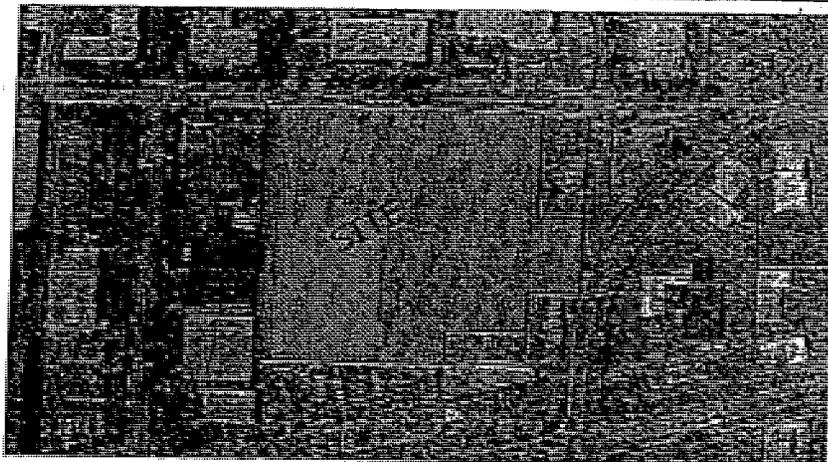
If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.

<i>Site Area:</i>	594,553 SF (13.6 ac)	<i>Total Building Area GSF:</i>	150,244 SF
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F3 - 18 T23N R5E W 1/2

G2 - 24 T23N R4E E 1/2

G3 - 19 T23N R5E E 1/2

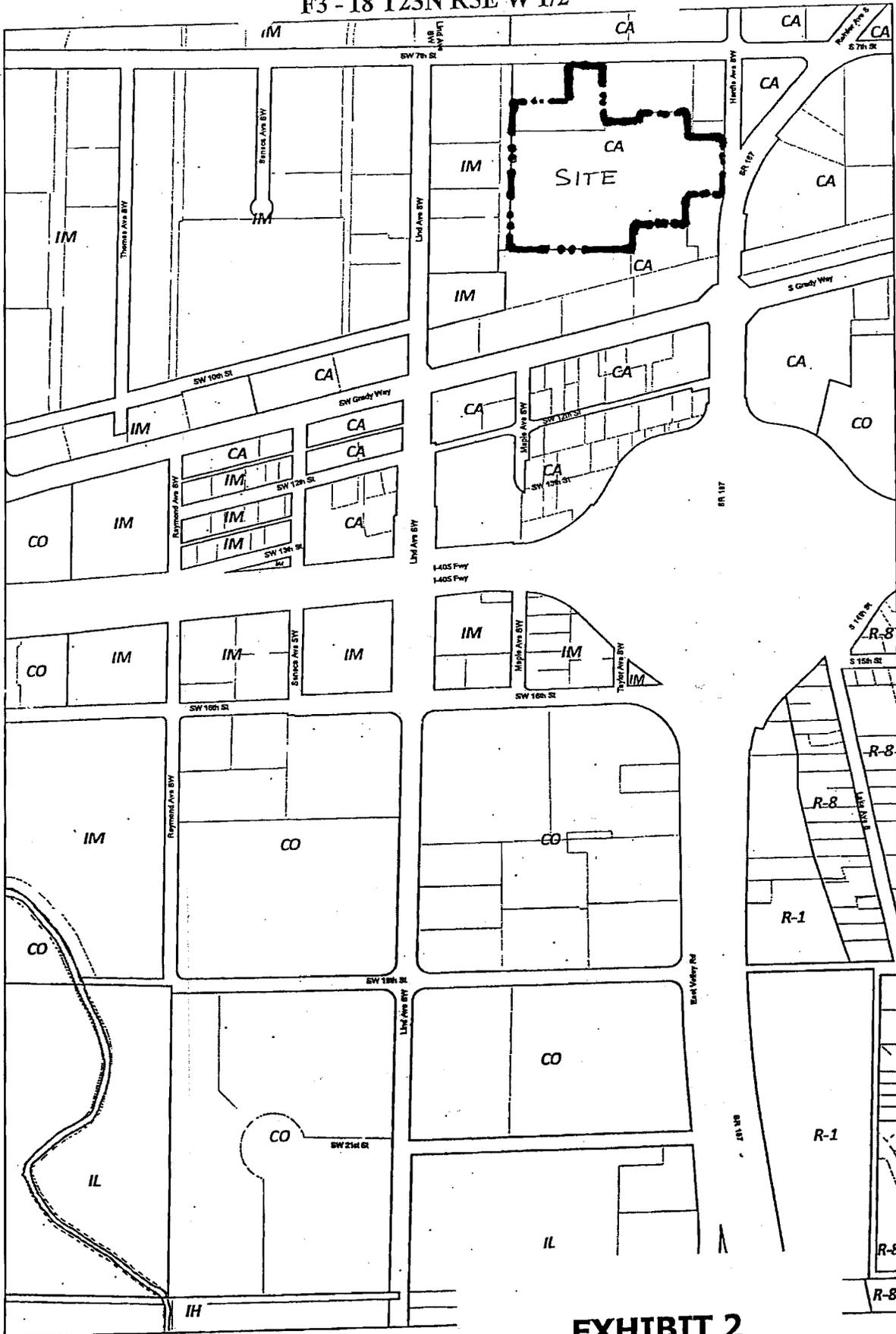


EXHIBIT 2

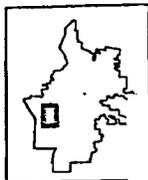
33

ZONING MAP BOOK
PW TECHNICAL SERVICES
PRINTED ON 11/13/09

This document is a graphic representation, not
guaranteed to survey accuracy, and is based on
the best information available at the time shown.
This map is intended for City display purposes only.



H3 - 30 T23N

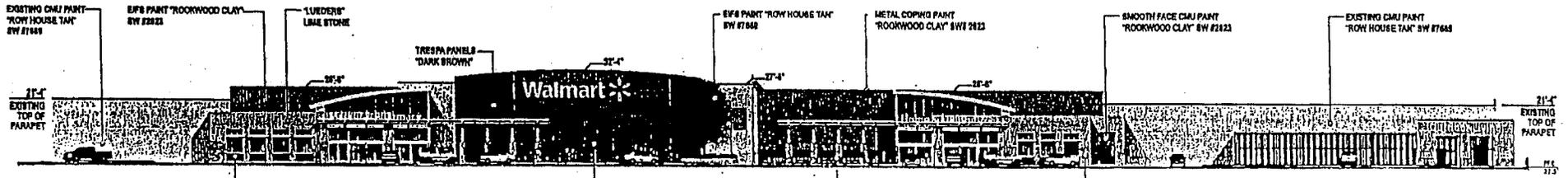


CP 1007

9 T23N R5E W 1/2

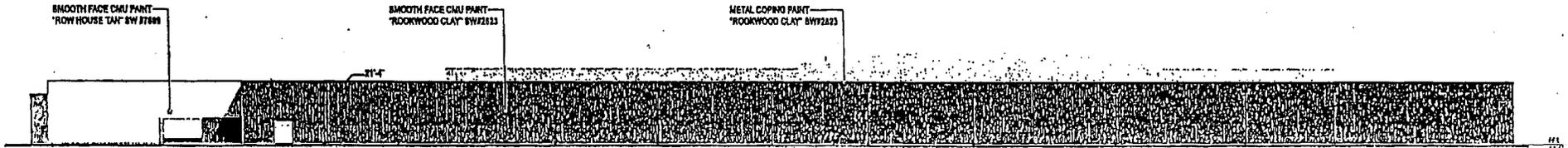
5319

CP 1009



Front Elevation

Rainier Ave (East)



Rear Elevation

(West)

EXHIBIT 6



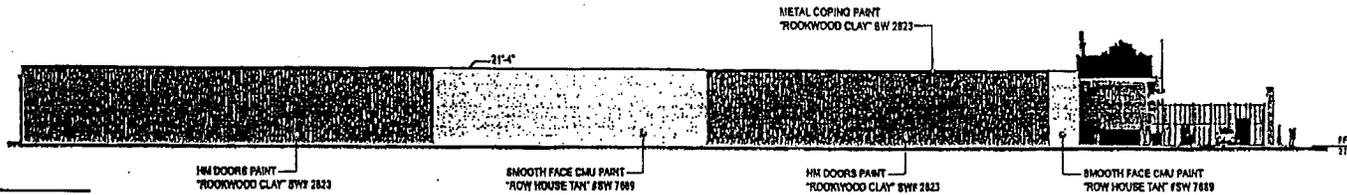
	March 29, 2010	Renton, WA #2516	City of Renton Planning Division	5
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APR 19 2010

RECEIVED

CP 1010

Left Elevation
SW Grady Way (South)



Right Elevation
SW 7th St. (North)

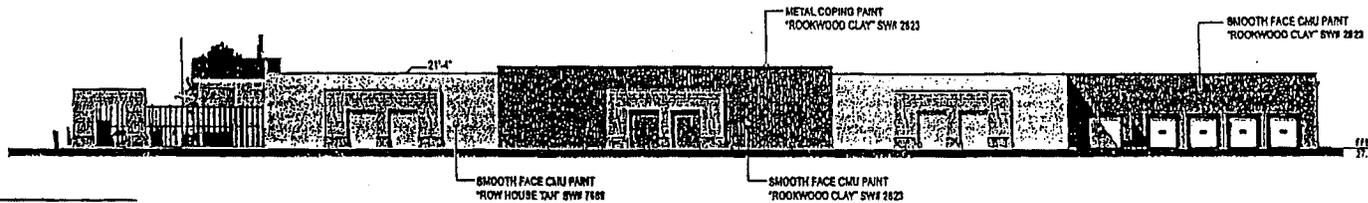


EXHIBIT 7

Walmart 

City of Renton
Planning Division.

	March 29, 2010
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Renton, WA #2516

6

APR 19 2010

RECEIVED

Denis Law
Mayor



City of Renton



Department of Community and Economic Development
Alex Pietsch, Administrator

April 20, 2010

Jeff Chambers
PACLAND
1505 Westlake Avenue N #305
Seattle, WA 98109

**SUBJECT: Walmart Expansion
LUA10-009, ECF, SA-H**

Dear Mr. Chambers:

This letter is to inform you that the appeal period ended April 16, 2010 for the Environmental Review Committee's (ERC) Determination of Non-Significance. *Mitigated for the above-referenced project.*

No appeals were filed on the ERC determination, therefore, this decision is final. The applicant must comply with all ERC Mitigation Measures outlined in the Report and Decision dated March 22, 2010.

Also, a *Hearing Examiner Public Hearing has been scheduled for April 27, 2010*, where Site Plan Conditions may be issued. The applicant or representative(s) of the applicant are required to be present. Enclosed is a copy of the Preliminary Report to the Hearing Examiner for your review.

If you have any questions, please feel free to contact me at (425) 430-7219.

For the Environmental Review Committee,

Rocale Timmons
Associate Planner

Enclosure

cc: Peter Bonnell - Bonnell Family, LLC / Owner(s)
See attached / Party(ies) of Record

PARTIES OF RECORD

WALMART EXPANSION

LUA10-009, SA-H, ECF

Jeff Chambers
PACLAND
1505 Westlake Avenue N ste:
#305
Seattle, WA 98109
tel: (206) 522-9510
eml: jchambers@pacland.com
(contact)

Peter Bonnell
Bonnell Family, LLC
10047 Main Street ste: #509
Bellevue, WA 98004
tel: (425) 453-1414
(owner / applicant)

Jeremy Smith
Manager
Walmart #2516
743 Rainier Avenue S
Renton, WA 98057
tel: (425) 227-0407
eml: jksmith.s02516.us@wal-
mart.com
(party of record)

Sharon Ajibade
Assistant Manager
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

Huy Tran
Assistant Manager
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

Luena Layapox

(party of record)

Anapogi Toleafoa
I.C.S. Loader
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

Sophorn Chan
Associate
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

Tilesa L. Swehla
Department Manager - Foods
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

Traffaney Black
Department Manager -
Electronics
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

Brandi Hansen
Department Manager -
Automotive
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

Sierra Schavrien
I.C.S. Associate
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

Mark Goodman
Walmart
743 Rainier Avenue S
Renton, WA 98057
tel: (425) 227-0407
(party of record)

Tomasita Quinsay

(party of record)

Tauasi Paaga
Human Resources
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

Nancy Chase
Department Manager
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

William B. Carey, Jr.
Safety Team Lead
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

Francis Canapi
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

PARTIES OF RECORD
WALMART EXPANSION

LUA10-009, SA-H, ECF

Cheryl Harrelson
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

Benjamin Gonsalves
,
(party of record)

Josh Smith
Department Manager -
Pets/Chemicals/Paper Goods
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

Levan
Department Manager
Walmart
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Abram Sparrow
Department Manager
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743 Rainier Avenue
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(party of record)

Valerie Reyes
I.C.S. Lead Supervisor - 2nd Shift
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

Jose O. Martinez
,
(party of record)

Irish Joy E. Layador
Entertainment Zone Merchandise
Supervisor
Walmart
743 Rainier Avenue S
Renton, WA 98057
(party of record)

APPENDIX B

Hearing Examiner's Decision On Reconsideration



Denis Law, Mayor

CITY OF RENTON

Hearing Examiner
Fred J. Kaufman

June 10, 2010

Claudia M. Newman
Bricklin & Newman, LLP
1001 Fourth Ave., Ste. 3303
Seattle, WA 98154

Re: Walmart Expansion, LUA-10-009, SA-H, ECF
Request for Reconsideration

Dear Ms. Newman:

This office received a request for reconsideration in this matter.

As the request notes, the parties seeking reconsideration did not attend the hearing. Since no members of the group represented by the request are identified individually, it is hard to determine if any of them submitted individual comments that are contained in the file but since these parties claim "they were not aware of the proposal at that time" (First full paragraph) it seems that they were not involved in the comment or public hearing. At the public hearing there was no testimony in opposition to the request and no one asked any neutral questions. It would appear that opposition to the application is newly minted in this request. The public hearing was legally convened. There is no allegation that the legal notice was deficient.

The request raised two main issues regarding the approval. The first issue was that traffic counts underestimated the amount of traffic the proposal would generate. This challenge or request for additional information is untimely. The issues should have been raised during the course of the public hearing or in comments submitted in advance of the hearing. Subsequent to the close of the public hearing, the only new information that may be submitted is information that was not reasonably available at the public hearing. If the traffic counts were indeed wrong, that was information that would have been reasonably available at the time of the public hearing and should have been introduced in a timely fashion. In any event their request does not show that the projections were erroneous. The only thing submitted was conjecture about the projections. These parties seeking reconsideration appeared after the public hearing with no showing that they were deprived of an opportunity to timely comment or question the facts surrounding the proposal.

The second issue raised in the request for reconsideration was whether the proposal meets the criteria of Renton's Code. This portion of the request can be divided into two subcategories. One: Whether the proposal meets the Design District D guidelines? Two: Whether the proposal was an improper expansion of a legal non-conforming use? The answers to both questions are governed by the language of the Design District Overlay provisions.

The Design District Guidelines are "overlay" provisions and govern properties within their boundaries regardless of the underlying zoning and other zoning provisions. The overlay guidelines provide that projects be reviewed with an eye toward flexibility to forward the main thrust of the guidelines - to create better designed and integrated projects. The guidelines allow different or creative ways to achieve those principles. Section 4-3-100(A)(2) states:

2. This Section lists elements that are required to be included in all development in the zones stated in subsection B1 of this Section. Each

element includes an intent statement, standards, and guidelines. In order to provide predictability, standards are provided. These standards specify a prescriptive manner in which the requirement can be met. In order to provide flexibility, guidelines are also stated for each element. These guidelines and the intent statement provide direction for those who seek to meet the required element in a manner that is different from the standards.

a. The determination as to the satisfaction of the requirement through the use of the guidelines and the intent statement is to be made by the Administrator of the Department of Community and Economic Development or designee.

b. When the Administrator of the Department of Community and Economic Development or designee has determined that the proposed manner of meeting the design requirement through the guidelines and intent is sufficient, the applicant shall not be required to demonstrate sufficiency to the standard associated with the guideline that has been approved.

Section 4-3-100(D) states:

D ADMINISTRATION:

1. Review Process: Applications subject to design regulations shall be processed as a component of the governing land use process.
2. Authority: The Reviewing Official shall have the authority to approve, approve with conditions, or deny proposals based upon the provisions of the design regulations. In rendering a decision, the Official will consider proposals on the basis of individual merit, will consider the overall intent of the minimum standards and guidelines, and encourage creative design alternatives in order to achieve the purposes of the design regulations.

(emphasis supplied)

The provisions cited above allow sufficient latitude to permit the proposed expansion as conditioned in the decision.

Those guidelines also govern properties that might be considered legal non-conforming uses or "big box retail." Code permits them to be developed in accordance with the guidelines rather than the more general regulations governing properties outside of a District governed by overlay regulations. Sections 4-3-100(B)(1)(a)(v) and (b) contain the following language:

B APPLICABILITY AND CONFLICTS:

1. Applicability:

- a. The following development activities shall be required to comply with the provisions of this Section:
 - i. All subdivisions including short plats;
 - ii. All new structures;
 - iii. Conversion of vacant land (e.g., to parking or storage lots);
 - iv. Conversion of a residential use to a nonresidential use;
 - v. Alterations, enlargements, and/or restorations of nonconforming structures pursuant to RMC 4-10-050.
- b. Any of the activities listed in subsection B1a of this Section and occurring in the following overlay areas or zone shall be required to comply with the provisions of this section. Big box retail as outlined below shall also be required to comply with the provisions of this section.

So, not only is the redevelopment of non-conforming uses permitted under these regulations but

they, in the language of the code, "shall be required to comply with the provisions of this Section."

In conclusion, there is no reason to alter the original decision nor the conditions attached to that decision.

The parties seeking reconsideration in this matter has already filed an appeal and that appeal will be handled by the City Council. If other parties are not satisfied with this decision, they, too, may appeal to the City Council no later than June 24, 2010.

If this office can provide any further assistance, please feel free to write.

Sincerely,



Fred Kaufman
Hearing Examiner
City of Renton

FK/nt

cc: Chip Vincent, Planning Director
Jennifer Henning, Current Planning Manager
Peter Bonnell, Bonnell Family LLC, Owner
Jeff Chambers, Contact
All Parties of Record

APPENDIX C

City Council Decision

Denis Law
Mayor

City of
Renton



City Clerk - Bonnie I. Walton

August 17, 2010

Renton Neighbors for Health Growth
c/o Cindy Wheeler
425 SW 5th Pl.
Renton, WA 98057

Re: Wal-Mart Expansion Site Plan; LUA-10-009, SA-H, ECF
743 Rainier Ave. S.

Dear Ms. Wheeler:

At the regular Council meeting of August 16, 2010, the Renton City Council adopted the recommendation of the Planning and Development Committee affirming the decision of the Hearing Examiner. A copy of the approved Committee report is enclosed.

For additional information or assistance, contact City Clerk Bonnie Walton.

Sincerely,

A handwritten signature in cursive script that reads "Jason A. Seth".

Jason A. Seth
Deputy City Clerk

Enclosure

cc: Mayor Denis Law
Council President Don Persson
Neil Watts, Development Services Director
Parties of Record (26)

CP 695

PLANNING & DEVELOPMENT COMMITTEE
COMMITTEE REPORT

APPROVED BY
CITY COUNCIL
Date 8/16/2010

August 16, 2010

Wal-Mart Expansion Site Plan Appeal
LUA-10-009 SA-H, ECF
(Referred July 12, 2010)

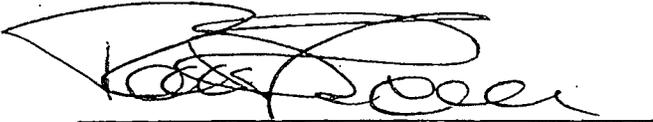
The Planning & Development Committee recommends that the full Council find that the Hearing Examiner committed no errors of fact or law in this matter and that his decision be affirmed.



Terri Briere, Chair



King Parker, Vice-Chair



Rich Zwicker, Member

cc: Alex Pietsch
Chip Vincent
Jennifer Henning
Rocale Timmons

Jack McCullough
McCullough & Hill
701 5th Avenue, Ste. 7220
Seattle, WA 98104

Peter Bonnell
Bonnell Family LLC
10047 Main Street, Ste. 509
Bellevue, WA 98004

Huy Tran, Asst. Mgr
Walmart #2516
743 Rainier Ave S
Renton, WA 98057

Tilea L. Swehla, Mgr. Foods
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Jeff Chambers
PACLAND
1505 Westland Ave N., Ste. 305
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Walmart #2516
743 Rainier Ave S
Renton, WA 98057

Claudia M. Newman
Bricklin & Newman, LLP
1001 Fourth Ave., Ste. 3303
Seattle, WA 98154

Usunobun Osagie
Larry D. Craighead Architects
211 N Record Street, Ste. 222
Dallas, TX 75202

Sharon Ajibade, Asst. Mgr.
Walmart #2516
743 Rainier Ave S
Renton, WA 98057

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Valerie Reyes, ICS Lead Supv.
2nd Shift
Walmart #2516
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Renton, WA 98057

- ◆ Finding 14 should be amended to read: "The tree inventory showed 101 significant trees on the subject site. Code requires the retention of 25 trees whereas the applicant proposes retaining 24 trees. The replacement ratio is six (6) trees for each one removed that should have been retained. Six new trees would be planted mainly in the open space corridors."
- ◆ Finding 16 should be amended by adding a sentence that reads: "The revised plan submitted with the request for reconsideration would move this open space area to the western portion of Lot 12, adjacent to lots in the Geneva Court Plat."
- ◆ Finding 29 should be renumbered as Finding 19, and should be amended to read: "The revised plan submitted with the request for reconsideration substantially reduced the wall to approximately 6 - 8 feet in height and moved the location of the wall away from the Geneva Court property lines."
- ◆ Conclusion 1 should be amended to read: "The Wilson Park Preliminary Plat with Lot 12 designed as proposed in the Applicant's request for reconsideration appears to serve the public use and interest."
- ◆ Conclusion 2 should be amended by substituting the word "twelve" for the word "eleven" when referring to the number of lots in the preliminary plat.
- ◆ Conclusion 5 should be stricken in its entirety.
- ◆ The Recommendation section should be altered by changing the introductory sentence to read: "The City Council should approve a TWELVE LOT plat of the subject site subject to the following conditions:"
- ◆ Recommendation 3 should be amended by substituting the following language for the first sentence thereof: "A Native Growth Protection Easement (NGPE) should be recorded over the western portion of proposed Lot 12, as shown in the revised plan submitted with the request for reconsideration, and Tracks B, C and D." The remainder of Recommendation 3 should remain as drafted.
- ◆ Recommendation 5 should be amended to read: "The applicant shall establish a Homeowners' Association for the maintenance of the NGPE and the stormwater vault and each home shall have an undivided interest in the western retaining wall and the retaining walls associated with the road. The appropriate documents shall be reviewed and approved by the Planning Division project manager prior to the recording of the final plat."

MOVED BY BRIERE, SECONDED BY ZWICKER, COUNCIL CONCUR IN THE COMMITTEE REPORT. CARRIED.

Appeal: Wal-Mart Expansion
Site Plan, Renton Neighbors
for Healthy Growth, SA-10-009

Planning and Development Committee Chair Briere presented a report recommending that the full Council find that the Hearing Examiner committed no errors of fact or law in this matter and that his decision be affirmed.

MOVED BY BRIERE, SECONDED BY ZWICKER, COUNCIL CONCUR IN THE COMMITTEE REPORT. CARRIED.

PLANNING & DEVELOPMENT COMMITTEE
COMMITTEE REPORT

APPROVED BY
CITY COUNCIL
Date 8/16/2010

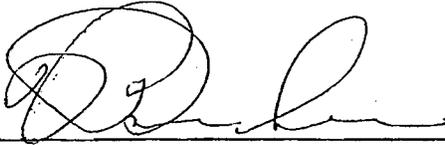
August 16, 2010

Wal-Mart Expansion Site Plan Appeal
LUA-10-009 SA-H, ECF
(Referred July 12, 2010)

The Planning & Development Committee recommends that the full Council find that the Hearing Examiner committed no errors of fact or law in this matter and that his decision be affirmed.



Terri Briere, Chair



King Parker, Vice-Chair



Rich Zwicker, Member

cc: Alex Pietsch
Chip Vincent
Jennifer Henning
Rocale Timmons

APPENDIX D

Urban Design Regulations RMC 4-3-100 (Current Version)

4-3-100 URBAN DESIGN REGULATIONS:

A. PURPOSE:

1. These urban design regulations are established in accordance with and to implement policies established in the Land Use and Community Design Elements of the Renton Comprehensive Plan. These standards are divided into seven areas:

- a. Site design and building location;
- b. Parking and vehicular access;
- c. Pedestrian environment;
- d. Recreation Areas and Common Open Space;
- e. Building Architectural Design;
- f. Signage;
- g. Lighting.

2. This Section lists elements that are required to be included in all development in the zones stated in subsection B1 of this Section. Each element includes an intent statement, standards, and guidelines. In order to provide predictability, standards are provided. These standards specify a prescriptive manner in which the requirement can be met. In order to provide flexibility, guidelines are also stated for each element. These guidelines and the intent statement provide direction for those who seek to meet the required element in a manner that is different from the standards.

a. The determination as to the satisfaction of the requirement through the use of the guidelines and the intent statement is to be made by the Administrator of the Department of Community and Economic Development or designee.

b. When the Administrator of the Department of Community and Economic Development or designee has determined that the proposed manner of meeting the design requirement through the guidelines and intent is sufficient, the applicant shall not be required to demonstrate sufficiency to the standard associated with the guideline that has been approved. (Ord. 5029, 11-24-2003; Ord. 5124, 2-7-2005; Ord. 5286, 5-14-2007; Ord. 5355, 2-25-2008; Ord. 5531, 3-8-2010)

B. APPLICABILITY AND CONFLICTS:

1. Applicability:

a. The following development activities shall be required to comply with the provisions of this Section:

- i. All subdivisions including short plats;
- ii. All new structures;
- iii. Conversion of vacant land (e.g., to parking or storage lots);
- iv. Conversion of a residential use to a nonresidential use;
- v. Alterations, enlargements, and/or restorations of nonconforming structures pursuant to RMC 4-10-050.

b. Any of the activities listed in subsection B1a of this Section and occurring in the following overlay areas or zone shall be required to comply with the provisions of this section. Big box retail as outlined below shall also be required to comply with the provisions of this section.

i. Mapped Overlays: This Section shall apply to all development occurring in design districts as indicated on the Urban Design Districts map, subsection B3 of this Section. To clarify the map, the Center Downtown (CD) Zone is located in District 'A,' South Renton and the Residential Multi-Family (RMF) zone located within the Center Village Land Use Designation are District 'B,' and the Urban Center – North Zones are located within District 'C.' District 'C' also includes the Commercial/Office/Residential (COR) Zone. Areas within Center Village Land Use Designation zoned Center Village (CV) shall comprise District 'D.'

ii. Big Box Retail: This Section shall also apply to big-box retail use. In the Commercial Arterial (CA) zone, big-box retail uses are subject to compliance with design regulations applicable to District 'D,' except in the Employment Area – Valley (EAV) south of Interstate 405, where big-box retail uses must comply with design standards and guidelines specific to the Urban Center – North (District 'C').

Big-box retail uses in the EAV south of Interstate 405 outside of the CA zone are not subject to Urban Design Regulations.

iii. CA Zone: This Section shall also apply to all development in the Commercial Arterial (CA) Zone. For the purposes of the design regulations, the zone shall be in District 'D.'

2. Conflicts: Where there are conflicts between the design regulations of this Section and other sections of the Renton Municipal Code, the regulations of this Section shall prevail. Where there are conflicts between the map in subsection B3 of this Section and the text in this Section, the text shall prevail.

3. Urban Design Districts Map:

2. Aircraft Manufacturing: Structures related to the existing use of aircraft manufacturing in District 'C.' (Ord. 5124, 2-7-2005; Ord. 5286, 5-14-2007)

D. ADMINISTRATION:

1. Review Process: Applications subject to design regulations shall be processed as a component of the governing land use process.

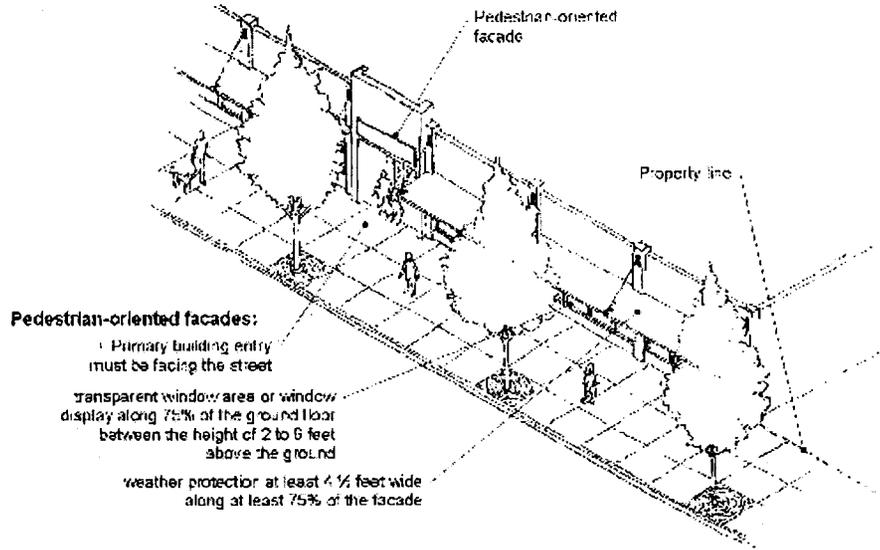
2. Authority: The Reviewing Official shall have the authority to approve, approve with conditions, or deny proposals based upon the provisions of the design regulations. In rendering a decision, the Official will consider proposals on the basis of individual merit, will consider the overall intent of the minimum standards and guidelines, and encourage creative design alternatives in order to achieve the purposes of the design regulations. (Amd. Ord. 4991, 12-9-2002; Ord. 5029, 11-24-2003; Ord. 5124, 2-7-2005; Ord. 5286, 5-14-2007)

E. REQUIREMENTS:

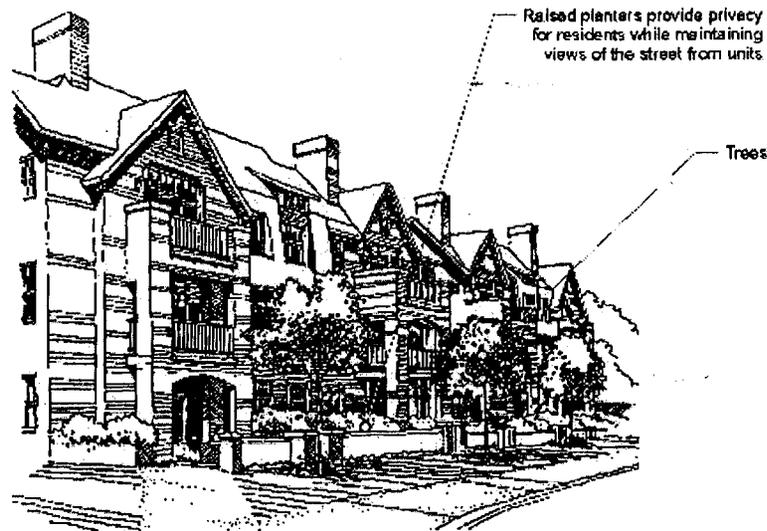
1. Site Design and Building Location:

Intent: To ensure that buildings are located in relation to streets and other buildings so that the Vision of the City of Renton can be realized for a high-density urban environment; so that businesses enjoy visibility from public rights-of-way; and to encourage pedestrian activity.

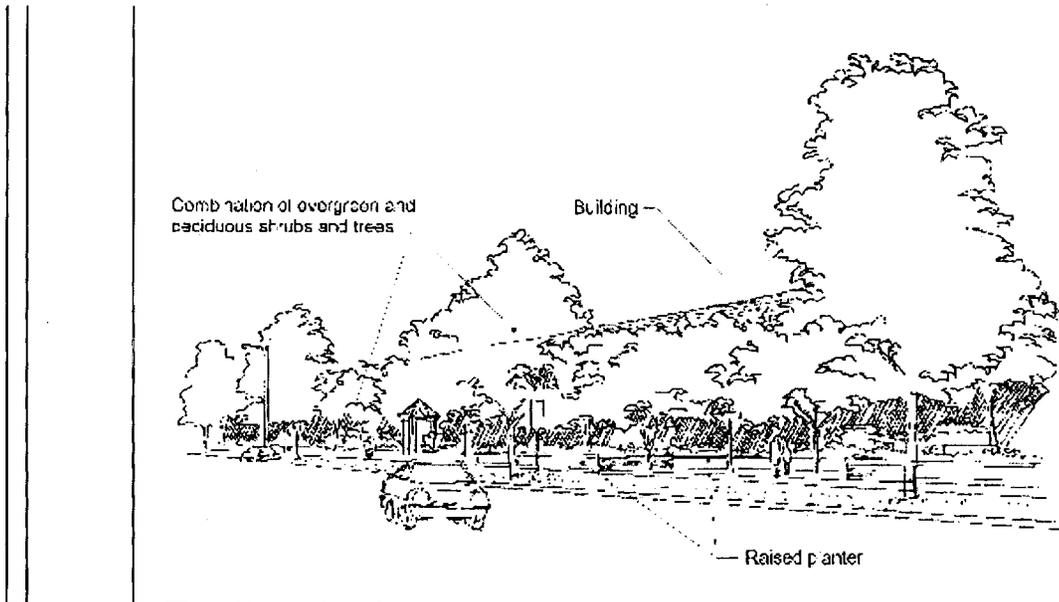
BUILDING LOCATION AND ORIENTATION	
Intent: To ensure visibility of businesses and to establish active, lively uses along sidewalks and pedestrian pathways. To organize buildings for pedestrian use and so that natural light is available to other structures and open space. To ensure an appropriate transition between buildings, parking areas, and other land uses; and increase privacy for residential uses.	
Guidelines: Siting of a structure should take into consideration the availability of natural light (both direct and reflected) and direct sun exposure to nearby buildings and open space (except parking areas). Ground floor residential uses located near the street should be raised above street level for residents' privacy.	
Standards:	
Districts A, B, and D	Both of the following are required: 1. Buildings shall be oriented to the street with clear connections to the sidewalk. 2. The front entry of a building shall be oriented to the street or a landscaped pedestrian-only courtyard.
District C	All of the following are required: 1. Buildings shall contain pedestrian-oriented uses, feature "pedestrian-oriented facades," and have clear connections to the sidewalk (illustration below).



If buildings do not feature pedestrian-oriented facades, they shall have substantial landscaping between the sidewalk and building. Such landscaping shall be at least ten feet (10') in width as measured from the sidewalk (illustration below).



- Buildings shall be located abutting the sidewalk, except where pedestrian-oriented space is located between the building and the sidewalk. Parking between the building and the street is prohibited.
- Nonresidential buildings may be located directly abutting any street as long as they feature a pedestrian-oriented facade.
- Buildings containing street-level residential uses and single-purpose residential buildings shall be set back from the sidewalk a minimum of ten feet (10') and feature substantial landscaping between the sidewalk and the building (illustration below).



BUILDING ENTRIES

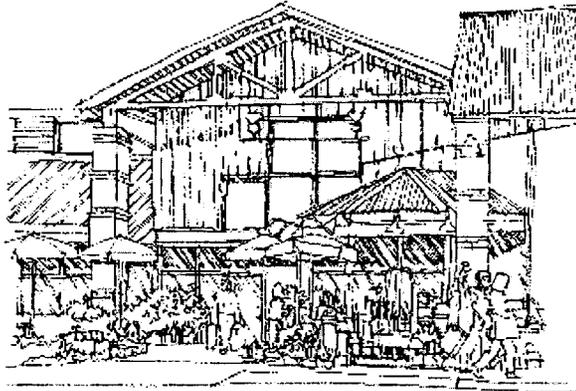
Intent: To make building entrances convenient to locate and easy to access, and ensure that building entries further the pedestrian nature of the fronting sidewalk and the urban character of the district.

Guidelines: Multiple buildings on the same site should provide a network of pedestrian paths for access within the site and access to the site from the surrounding area. For projects that include residential uses, entries and/or front yards should provide transition space between the street and the residence. Ground floor units should be directly accessible from the street or an open space. Features such as entries, lobbies, and display windows should be oriented to a street or pedestrian-oriented space; otherwise, screening or decorative features should be incorporated. Entries from the street should be clearly marked with canopies, architectural elements, ornamental lighting, or landscaping. Secondary access (not fronting on a street) should be subordinate to those related to the street and have weather protection.

Standards:

<p>Districts A, B, and D</p>	<p>All of the following are required:</p> <ol style="list-style-type: none"> 1. A primary entrance of each building shall be located on the facade facing a street, shall be prominent, visible from the street, connected by a walkway to the public sidewalk, and include human-scale elements. 2. Multiple buildings on the same site shall provide a continuous network of pedestrian paths and open spaces that incorporate landscaping to provide a directed view to building entries. 3. Ground floor units shall be directly accessible from the street or an open space such as a courtyard or garden that is accessible from the street. 4. Secondary access (not fronting on a street) shall have weather protection at least four and one-half feet (4-1/2') wide over the entrance or other similar indicator of access. 5. Pedestrian access shall be provided to the building from property edges, adjacent lots, abutting street intersections, crosswalks, and transit stops.
<p>District C</p>	<p>All of the following are required:</p> <ol style="list-style-type: none"> 1. The primary entrance of each building shall be located on the facade facing the street.

2. On non-pedestrian-oriented streets, entrances shall be prominent, visible from surrounding streets, connected by a walkway to the public sidewalk, and include human-scale elements.
3. All building entries abutting to a street shall be clearly marked with canopies, architectural elements, ornamental lighting, and/or landscaping (illustration below). Entries from parking lots should be subordinate to those related to the street.



4. Weather protection at least four and one-half feet (4-1/2') wide shall be provided over the primary entry of all buildings and over any entry abutting a street. Buildings that are taller than thirty feet (30') in height shall also ensure that the weather protection is proportional to the distance above ground level.
5. Pedestrian pathways from public sidewalks to primary entrances or from parking lots to primary entrances shall be clearly delineated.

TRANSITION TO SURROUNDING DEVELOPMENT

Intent: To shape redevelopment projects so that the character and value of Renton's long-established, existing neighborhoods are preserved.

Guidelines: Careful siting and design treatment should be used to achieve a compatible transition where new buildings differ from surrounding development in terms of building height, bulk and scale.

Standards:

Districts A, B, and D	<p>At least one of the following design elements shall be used to promote a transition to surrounding uses:</p> <ol style="list-style-type: none"> 1. Setbacks at the side or rear of a building may be increased by the Reviewing Official in order to reduce the bulk and scale of larger buildings and/or so that sunlight reaches adjacent and/or abutting yards; or 2. Building proportions, including step-backs on upper levels in accordance with the surrounding planned and existing land use forms; or 3. Building articulation to divide a larger architectural element into smaller increments; or 4. Roof lines, roof pitches, and roof shapes designed to reduce apparent bulk and transition with existing development.
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District C	<p>Both of the following are required:</p> <ol style="list-style-type: none"> 1. For properties along North 6th Street and Logan Avenue North (between North 4th Street and North 6th Street), applicants shall demonstrate how their project provides an appropriate transition to the long-established, existing residential neighborhood south of North 6th Street known as the North Renton Neighborhood. 2. For properties located south of North 8th Street, east of Garden Avenue North, applicants must demonstrate how their project appropriately provides transitions to existing industrial uses.
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SERVICE ELEMENT LOCATION AND DESIGN

Intent: To reduce the potential negative impacts of service elements (i.e., waste receptacles, loading docks) by locating service and loading areas away from pedestrian areas, and screening them from view in high visibility areas.

Guidelines: Service enclosure fences should be made of masonry, ornamental metal or wood, or some combination of the three (3).

Standards:

All Districts	<p>All of the following are required:</p> <ol style="list-style-type: none"> 1. Service elements shall be located and designed to minimize the impacts on the pedestrian environment and adjacent and/or abutting uses. Service elements shall be concentrated and located where they are accessible to service vehicles and convenient for tenant use (illustration below). 2. In addition to standard enclosure requirements, garbage, recycling collection, and utility areas shall be enclosed on all sides, including the roof and screened around their perimeter by a wall or fence and have self-closing doors (illustration below). <div style="text-align: center;"> </div> <ol style="list-style-type: none"> 3. The use of chain link, plastic, or wire fencing is prohibited. 4. If the service area is adjacent to a street, pathway, or pedestrian-oriented space, a landscaped planting strip, minimum three feet (3') wide, shall be located on three (3) sides of such facility.
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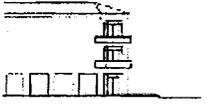
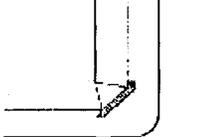
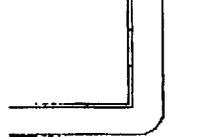
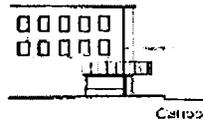
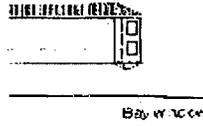
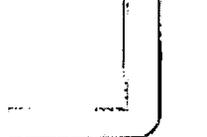
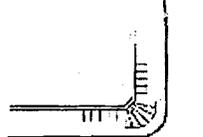
GATEWAYS

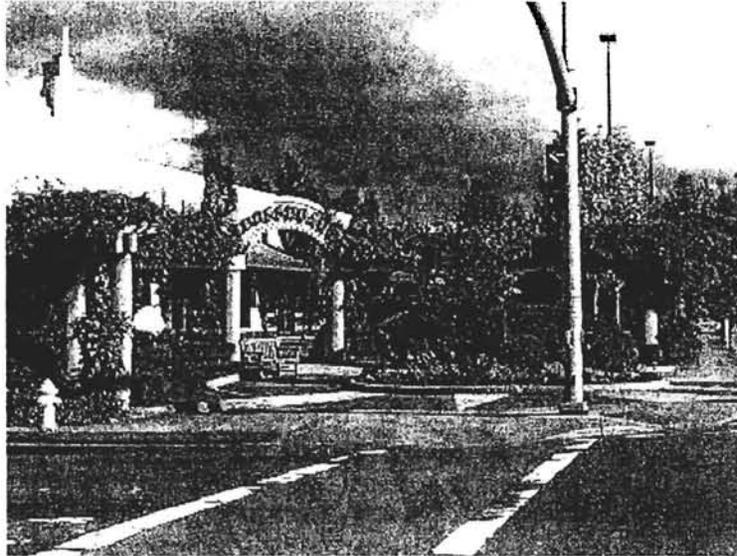
Intent: To distinguish gateways as primary entrances to districts or to the City, special design features and architectural elements at gateways should be provided. While

gateways should be distinctive within the context of the district, they should also be compatible with the district in form and scale.

Guidelines: Development that occurs at gateways should be distinguished with features that visually indicate to both pedestrians and vehicular traffic the uniqueness and prominence of their locations in the City. Examples of these types of features include monuments, public art, and public plazas.

Standards:

District C and D	<p>All of the following are required:</p> <p>1. Developments located at district gateways shall be marked with visually prominent features (illustration below).</p>		
	 Balconies	 Turret	 Corner cantilevered roof
			
	<p>Note: Ensure that building does not block clear vision area at intersections.</p>		
	 Distinctive use of materials	 Canopy	 Bay window
			
	<p>2. Gateway elements shall be oriented toward and scaled for both pedestrians and vehicles (illustration below).</p>		



3. Visual prominence shall be distinguished by two (2) or more of the following:
- a. Public art;
 - b. Special landscape treatment;
 - c. Open space/plaza;
 - d. Landmark building form;
 - e. Special paving, unique pedestrian scale lighting, or bollards;
 - f. Prominent architectural features (trellis, arbor, pergola, or gazebo);
 - g. Neighborhood or district entry identification (commercial signs do not qualify).

2. Parking and Vehicular Access:

Intent: To provide safe, convenient access; incorporate various modes of transportation, including public transit, in order to reduce traffic volumes and other impacts from vehicles; ensure sufficient parking is provided, while encouraging creativity in reducing the impacts of parking areas; allow an active pedestrian environment by maintaining contiguous street frontages, without parking lot siting along sidewalks and building facades; minimize the visual impact of parking lots; and use access streets and parking to maintain an urban edge to the district.

SURFACE PARKING

Intent: To maintain active pedestrian environments along streets by placing parking lots primarily in back of buildings.

Guidelines: Parking lots should be located on the interior portions of blocks and screened from the surrounding roadways by buildings, landscaping, and/or gateway features as dictated by location. A limited number of parking spaces may be allowable in front of a building, provided they are for passenger drop-off and pick-up and they are parallel to the building facade.

Standards:

The following is required:

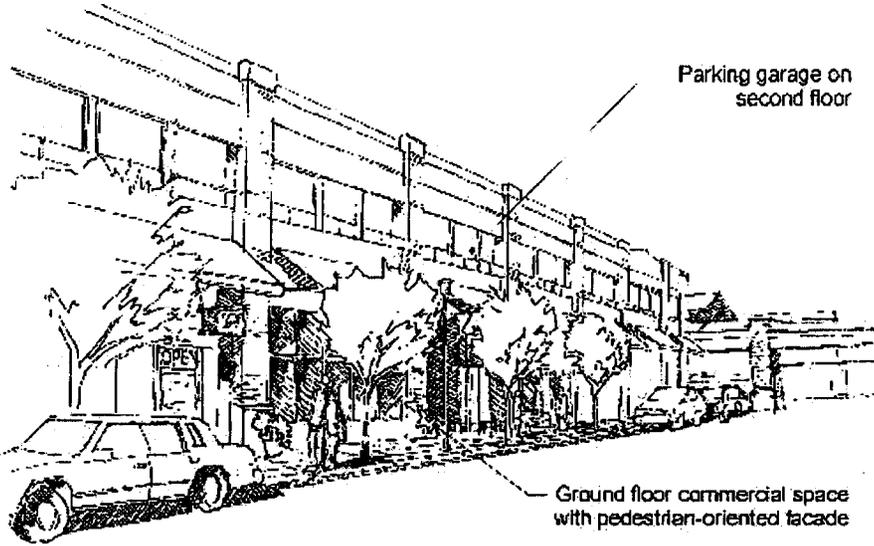
District A, B, and D	Parking shall be located so that no surface parking is located between a building and the front property line, or the building and side property line, on the street side of a corner lot.
District C	<p>Both of the following are required:</p> <ol style="list-style-type: none"> 1. Parking shall be at the side and/or rear of a building. However, if due to the constraints of the site, parking cannot be provided at the side or rear of the building, the Administrator of the Department of Community and Economic Development or designee may allow parking to occur between the building and the street. If parking is allowed to occur between the building and the street, no more than sixty feet (60') of the street frontage measured parallel to the curb shall be occupied by off-street parking and vehicular access. 2. Surface parking lots shall be designed to facilitate future structured parking and/or other infill development. For example, provision of a parking lot with a minimum dimension on one side of two hundred feet (200') and one thousand five hundred feet (1,500') maximum perimeter area. Exception: If there are size constraints inherent in the original parcel.

STRUCTURED PARKING GARAGES

Intent: To promote more efficient use of land needed for vehicle parking; encourage the use of structured parking; physically and visually integrate parking garages with other uses; and reduce the overall impact of parking garages.

Guidelines: Parking garage entries should not dominate the streetscape. They should be designed to be complementary with adjacent and abutting buildings and sited to complement, not subordinate, the pedestrian entry. Similar forms, materials, and/or details to the primary building(s) should be used to enhance garages. The parking entry should be located away from the primary street, to either the side or rear of the building. Parking within the building should be enclosed or screened.

Standards:

District C and D	<p>All of the following are required:</p> <ol style="list-style-type: none"> 1. Parking structures shall provide space for ground floor commercial uses along street frontages at a minimum of seventy five percent (75%) of the building frontage width (illustration below).  <ol style="list-style-type: none"> 2. The entire facade must feature a pedestrian-oriented facade.
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3. Facades shall be articulated and vehicular entrances to nonresidential or mixed use parking structures shall be articulated by arches, lintels, masonry trim, or other architectural elements and/or materials (illustration below).

Articulation of facade components to reduce scale and add visual interest

Decorative trellis structure for vines

Raised planting bed adjacent to sidewalk



4. Parking structures not featuring a pedestrian-oriented facade shall be set back at least six feet (6') from the sidewalk and feature substantial landscaping. This landscaping shall include a combination of evergreen and deciduous trees, shrubs, and ground cover. This setback shall be increased to ten feet (10') when abutting high visibility streets.
5. The Administrator of the Department of Community and Economic Development or designee may allow a reduced setback where the applicant can successfully demonstrate that the landscaped area and/or other design treatment meets the intent of these standards and guidelines. Possible treatments to reduce the setback include landscaping components plus one or more of the following integrated with the architectural design of the building:
- Ornamental grillwork (other than vertical bars);
 - Decorative artwork;
 - Display windows;
 - Brick, tile, or stone;
 - Pre-cast decorative panels;
 - Vine-covered trellis;
 - Raised landscaping beds with decorative materials; or
 - Other treatments that meet the intent of this standard.

VEHICULAR ACCESS

Intent: To maintain a contiguous and uninterrupted sidewalk by minimizing, consolidating, and/or eliminating vehicular access off streets.

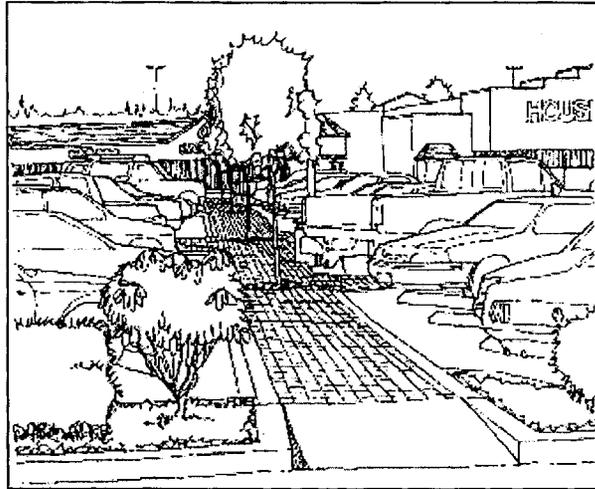
Guidelines: Parking lots and garages should be accessed from alleys or side streets and when accessed from a street, pedestrian circulation along the sidewalk should not be impeded. Driveways should be located to be visible from the right-of-way, but not to impede pedestrian circulation. Where possible, the number of driveways and curb cuts should be minimized.

Standards:	
District B	The following is required: Parking lots and garages shall be accessed from alleys, when available.
District C	Both of the following are required: 1. Parking garages shall be accessed at the rear of buildings. 2. Parking lot entrances, driveways, and other vehicular access points shall be restricted to one entrance and exit lane per five hundred (500) linear feet as measured horizontally along the street.

3. Pedestrian Environment:

Intent: To enhance the urban character of development by creating pedestrian networks and by providing strong links from streets and drives to building entrances; make the pedestrian environment safe, convenient, comfortable, and pleasant to walk between businesses, on sidewalks, to and from access points, and through parking lots; and promote the use of multi-modal and public transportation systems in order to reduce other vehicular traffic.

PATHWAYS THROUGH PARKING LOTS	
Intent: To provide safe and attractive pedestrian connections to buildings, parking garages, and parking lots.	
Guidelines: Pedestrians should be provided with clearly delineated safe routes for travel from their vehicle and/or the surrounding area to the building.	
Standards:	
Districts C and D	Both of the following are required: 1. Clearly delineated pedestrian pathways (i.e., raised walkway, stamped concrete, or pavers) and/or private streets shall be provided throughout parking areas. 2. The pathways shall be perpendicular to the applicable building facade and no greater than one hundred and fifty feet (150') apart.
PEDESTRIAN CIRCULATION	
Intent: To create a network of linkages for pedestrians to improve safety and convenience and enhance the pedestrian environment.	
Guidelines: Pathways should be provided and should be delineated by material treatment such as texture, color treatment, and/or stamping. Mid-block connections are desirable. Between buildings and between streets through-block connections should be made.	
Standards:	
District A, C, and D	All of the following are required: 1. Developments shall include an integrated pedestrian circulation system that connects buildings, open space, and parking areas with the sidewalk system and abutting properties. 2. Pathways shall be located so that there are clear sight lines, to increase safety. 3. Sidewalks located between buildings and streets shall be raised above the level of vehicular travel. 4. Pedestrian pathways within parking lots or parking modules shall be differentiated by material or texture from abutting paving materials (illustration below).

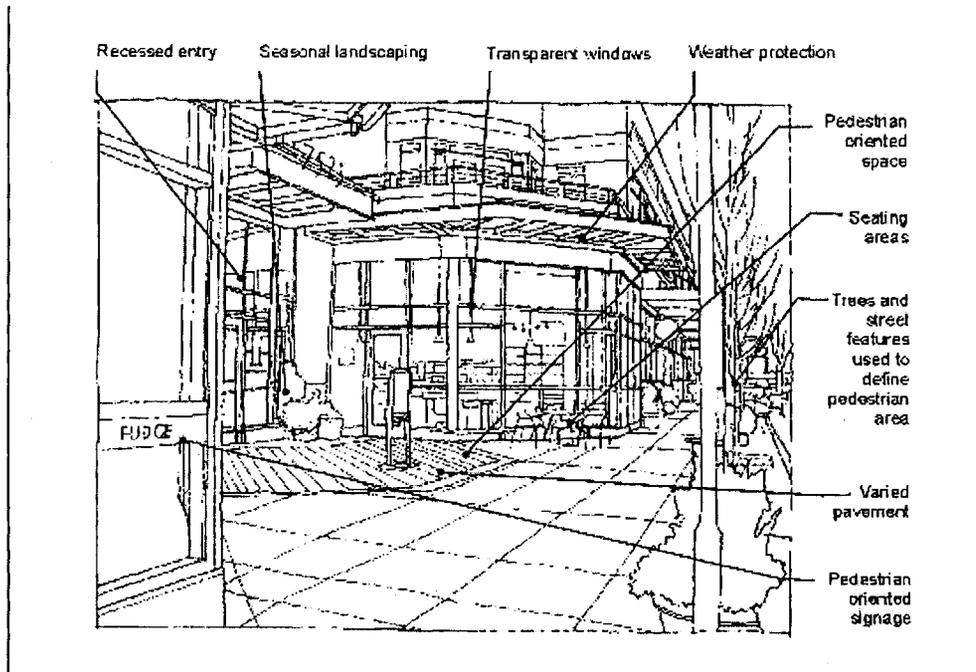


5. Sidewalks and pathways along the facades of buildings shall be of sufficient width to accommodate anticipated numbers of users. Specifically:
- a. Sidewalks and pathways along the facades of mixed use and retail buildings one hundred (100) or more feet in width (measured along the facade) shall provide sidewalks at least twelve feet (12') in width. The walkway shall include an eight-foot (8') minimum unobstructed walking surface.
 - b. Interior pathways shall be provided and shall vary in width to establish a hierarchy. The widths shall be based on the intended number of users; to be no smaller than five feet (5') and no greater than twelve feet (12').
6. All pedestrian walkways shall provide an all-weather walking surface unless the applicant can demonstrate that the proposed surface is appropriate for the anticipated number of users and complementary to the design of the development.

PEDESTRIAN AMENITIES

Intent: To create attractive spaces that unify the building and street environments and are inviting and comfortable for pedestrians; and provide publicly accessible areas that function for a variety of year-round activities, under typical seasonal weather conditions.

Guidelines: Amenities such as outdoor group seating, kiosks, fountains, and public art should be provided. Amenities such as transit shelters, benches, trash receptacles, and street furniture should also be provided. Architectural elements that incorporate plants, particularly at building entrances, in publicly accessible spaces, and at facades along streets should be included (illustration below).



Standards:

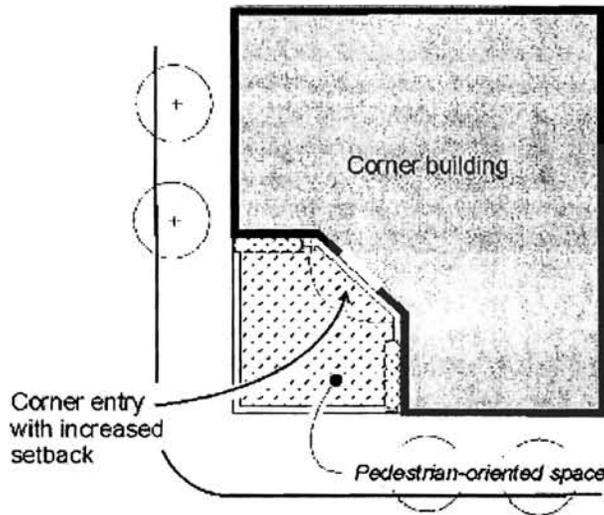
District B	<p>Both of the following are required:</p> <ol style="list-style-type: none"> 1. Site furniture shall be provided and shall be made of durable, vandal - and weather-resistant materials that do not retain rainwater and can be reasonably maintained over an extended period of time... 2. Site furniture and amenities shall not impede or block pedestrian access to public spaces or building entrances.
District C and D	<p>All of the following are required:</p> <ol style="list-style-type: none"> 1. Site furniture shall be provided and shall be made of durable, vandal - and weather-resistant materials that do not retain rainwater and can be reasonably maintained over an extended period of time. 2. Site furniture and amenities shall not impede or block pedestrian access to public spaces or building entrances. 3. Pedestrian overhead weather protection in the form of awnings, marquees, canopies, or building overhangs shall be provided. These elements shall be a minimum of four and one-half feet (4-1/2') wide along at least seventy five percent (75%) of the length of the building facade facing the street, a maximum height of fifteen feet (15') above the ground elevation, and no lower than eight feet (8') above ground level.

4. Recreation Areas and Common Open Space:

RECREATION AREAS AND COMMON OPEN SPACE
Intent: To ensure that areas for both passive and active recreation are available to residents, workers, and visitors and that these areas are of sufficient size for the intended activity and in convenient locations. To create usable and inviting open space that is accessible to the public; and to promote pedestrian activity on streets particularly at street corners.

Guidelines: Common space should be located to take advantage of surrounding features such as significant landscaping, unique topography or architecture, and solar

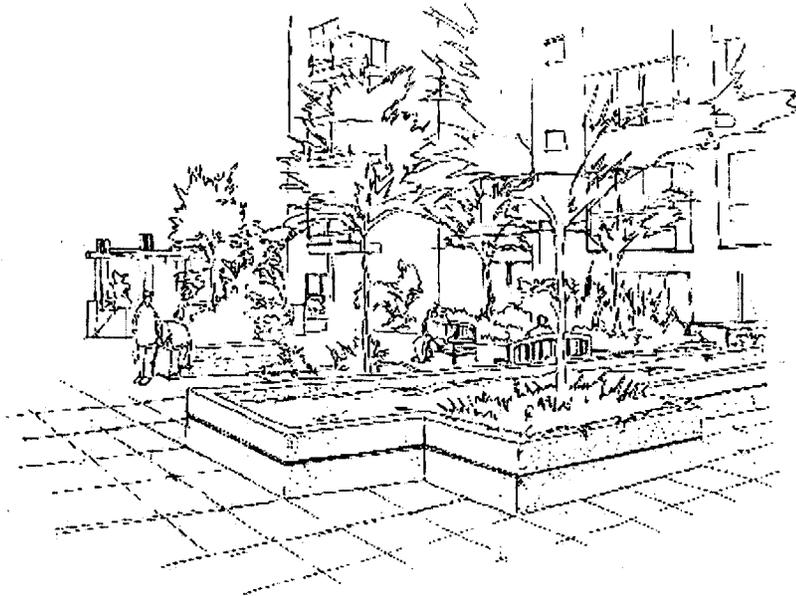
exposure. Developments located at street intersections should provide pedestrian-oriented space at the street corner to emphasize pedestrian activity (illustration below). Projects that include residential, common space and children's play areas should be centrally located near a majority of dwelling units and visible from surrounding units. Play areas should also be away from hazardous areas like garbage dumpsters, drainage facilities, streets, and parking areas.



Standards:

<p>District A, C, and D</p>	<p>Both of the following are required:</p> <ol style="list-style-type: none"> 1. All mixed use residential and attached housing developments of ten (10) or more dwelling units shall provide common opens space and/or recreation areas. <ol style="list-style-type: none"> a. Amount to be provided: at minimum fifty (50) square feet per unit. b. The location, layout, and proposed type of common space or recreation area shall be subject to approval by the Administrator of the Department of Community and Economic Development or designee. c. Open space or recreation areas shall be located to provide sun and light exposure to the area and located so that they are aggregated to provide usable area(s) for residents. d. Open space or recreation area required elements. At least one of the following shall be provided in each open space and/or recreation area (the Administrator of the Department of Community and Economic Development or designee may require more than one of the following elements for developments having more than one hundred (100) units). <ol style="list-style-type: none"> i. Courtyards, plazas, or multi-purpose open spaces;
	<ol style="list-style-type: none"> ii. Upper level common decks, patios, terraces, or roof gardens/peapatches. Such spaces above the street level must feature views or amenities that are unique to the site and are provided as an asset to the development; iii. Pedestrian corridors dedicated to passive recreation and separate from the public street system;

- iv. Recreation facilities including, but not limited to, tennis/sports courts, swimming pools, exercise areas, game rooms, or other similar facilities; or
- v. Children's play spaces.
- e. The following shall not be counted toward the common open space or recreation area requirement:
 - i. Required landscaping, driveways, parking, or other vehicular use areas;
 - ii. Required yard setback areas. Except for areas that are developed as private or semi-private (from abutting or adjacent properties) courtyards, plazas or passive use areas containing landscaping and fencing sufficient to create a fully usable area accessible to all residents of the development (illustration below);



- iii. Private decks, balconies, and private ground floor open space; and
 - iv. Other required landscaping and sensitive area buffers without common access links, such as pedestrian trails.
2. All buildings and developments with over thirty thousand (30,000) square feet of nonresidential uses (excludes parking garage floorplate areas) shall provide pedestrian-oriented space.
- a. The pedestrian-oriented space shall be provided according to the following formula: 1% of the site area + 1% of the gross building area, at minimum.
 - b. The pedestrian-oriented space shall include all of the following:
 - i. Visual and pedestrian access (including barrier-free access) to the abutting structures from the public right-of-way or a nonvehicular courtyard; and
 - ii. Paved walking surfaces of either concrete or approved unit paving; and
 - iii. On-site or building-mounted lighting providing at least four (4) foot-candles (average) on the ground; and

	<ul style="list-style-type: none"> iv. At least three (3) lineal feet of seating area (bench, ledge, etc.) or one individual seat per sixty (60) square feet of plaza area or open space. c. The following areas shall not count as pedestrian-oriented space: <ul style="list-style-type: none"> i. The minimum required walkway. However, where walkways are widened or enhanced beyond minimum requirements, the area may count as pedestrian-oriented space if the Administrator of the Department of Community and Economic Development or designee determines such space meets the definition of pedestrian-oriented space. ii. Areas that abut landscaped parking lots, chain link fences, blank walls, and/or dumpsters or service areas. d. Outdoor storage (shopping carts, potting soil bags, firewood, etc.) that does not contribute to the pedestrian environment is prohibited within pedestrian-oriented space.
<p>District B</p>	<p>The following is required:</p> <p>All attached housing developments shall provide at least one hundred fifty (150) square feet of private usable space per unit.</p> <ul style="list-style-type: none"> 1. At least one hundred (100) square feet of the private space shall abut each unit. 2. Private space may include porches, balconies, yards, and decks.
<p>All Districts</p>	<p>All of the following are required:</p> <ul style="list-style-type: none"> 1. At each corner of the intersections listed below, a public plaza shall be provided. 2. The plaza shall measure no less than one thousand (1,000) square feet with a minimum dimension of twenty feet (20') on one side abutting the sidewalk. 3. The public plaza must be landscaped consistent with RMC 4-4-070, including at minimum street trees, decorative paving, pedestrian-scaled lighting, and seating. 4. These public plazas are to be provided at intersections identified on the Commercial Arterial Zone Public Plaza Locations Map. Those locations are at all of the following intersections: <ul style="list-style-type: none"> a. Benson Area: Benson Drive S./108th Avenue S.E. and S.E. 176th. b. Bronson Area: Intersections with Bronson Way North at: <ul style="list-style-type: none"> i. Factory Avenue N./Houser Way S.; ii. Garden Avenue N.; and iii. Park Avenue N. and N. First Street. c. Cascade Area: Intersection of 116th Avenue S.E. and S.E. 168th Street. d. Northeast Fourth Area: Intersections with N.E. Fourth at: <ul style="list-style-type: none"> i. Duvall Avenue N.E.; ii. Monroe Avenue N.E.; and iii. Union Avenue N.E. e. Grady Area: Intersections with Grady Way at:

	<ul style="list-style-type: none"> i. Lind Avenue S.W.; ii. Rainier Avenue S.; iii. Shattuck Avenue S.; and
	<ul style="list-style-type: none"> iv. Talbot Road S.
	<ul style="list-style-type: none"> f. Puget Area: Intersection of S. Puget Drive and Benson Road S.
	<ul style="list-style-type: none"> g. Rainier Avenue Area: Intersections with Rainier Avenue S. at: <ul style="list-style-type: none"> i. Airport Way/Renton Avenue S.; ii. S. Second Street; iii. S. Third Street/S.W. Sunset Boulevard; iv. S. Fourth Street; and v. S. Seventh Street.
	<ul style="list-style-type: none"> h. North Renton Area: Intersections with Park Avenue N. at: <ul style="list-style-type: none"> i. N. Fourth Street; and ii. N. Fifth Street.
	<ul style="list-style-type: none"> i. Northeast Sunset Area: Intersections with N.E. Sunset Boulevard at: <ul style="list-style-type: none"> i. Duvall Avenue N.E.; and ii. Union Avenue N.E.

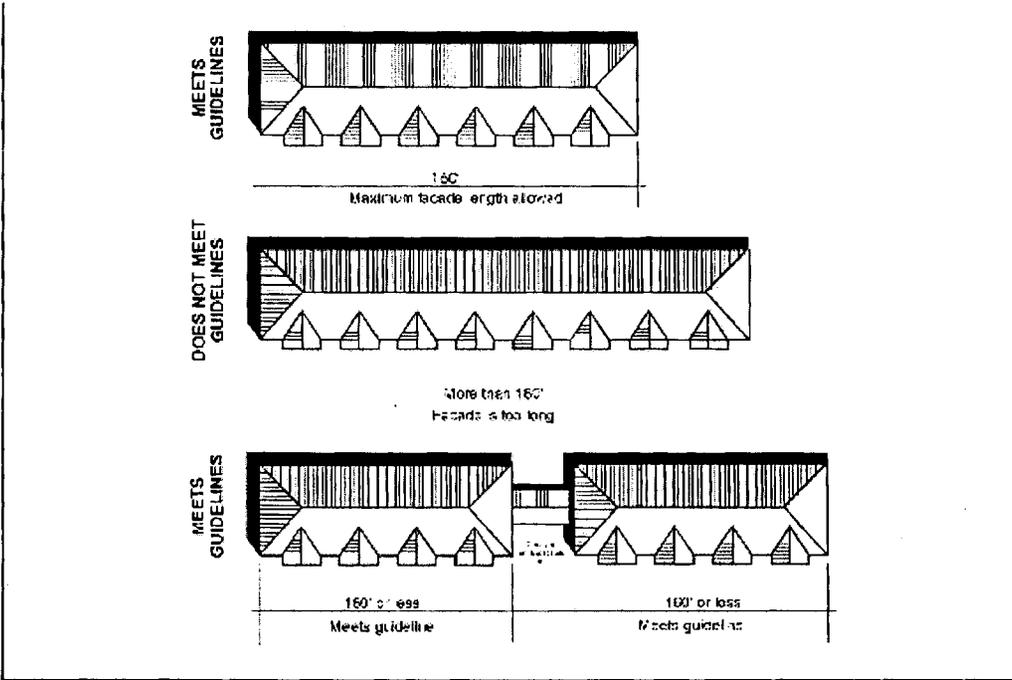
5. Building Architectural Design:

Intent: To encourage building design that is unique and urban in character, comfortable on a human scale, and uses appropriate building materials that are suitable for the Pacific Northwest climate and to discourage franchise retail architecture.

BUILDING CHARACTER AND MASSING

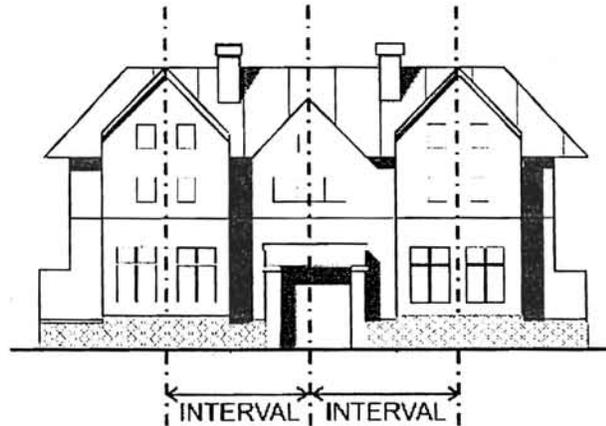
Intent: To ensure that buildings are not bland and so that they appear to be at a human scale, as well as to ensure that all sides of a building which can be seen by the public, are visually interesting.

Guidelines: Building facades should be modulated and/or articulated to reduce the apparent size of buildings, break up long blank walls, add visual interest, and enhance the character of the neighborhood. Articulation, modulation, and their intervals should create a sense of scale important to residential buildings. Buildings greater than one hundred and sixty feet (160') in length should provide a variety of modulations and articulations to reduce the apparent bulk and scale of the facade (illustration below); or provide an additional special design feature such as a clock tower, courtyard, fountain, or public gathering.



Standards:

<p>District A and D</p>	<p>Both of the following are required:</p> <ol style="list-style-type: none"> 1. All building facades shall include modulation or articulation at intervals of no more than forty feet (40'). 2. Modulations shall be a minimum of two feet (2') deep, sixteen feet (16') in height, and eight feet (8') in width.
<p>District B</p>	<p>Both of the following are required:</p> <ol style="list-style-type: none"> 1. All building facades shall include modulation or articulation at intervals of no more than twenty feet (20'). 2. Modulations shall be a minimum of two feet (2') in depth and four feet (4') in width.
<p>District C</p>	<p>All of the following are required:</p> <ol style="list-style-type: none"> 1. All building facades shall include measures to reduce the apparent scale of the building and add visual interest. Examples include modulation, articulation, defined entrances, and display windows (illustration below).



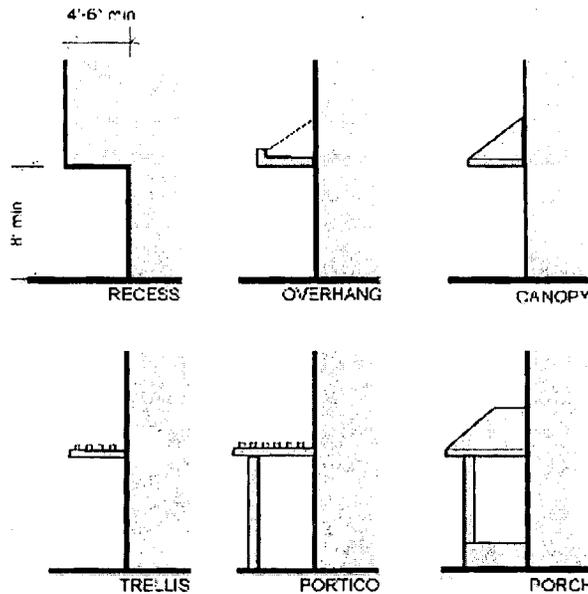
2. All buildings shall be articulated with one or more of the following:
 - a. Defined entry features;
 - b. Bay windows and/or balconies;
 - c. Roof line features; or
 - d. Other features as approved by the Administrator of the Department of Community and Economic Development or designee.
3. Single purpose residential buildings shall feature building modulation as follows (illustration below):
 - a. The maximum width (as measured horizontally along the building's exterior) without building modulation shall be forty feet (40').
 - b. The minimum width of modulation shall be fifteen feet (15').
 - c. The minimum depth of modulation shall be greater than six feet (6').



GROUND LEVEL DETAILS

Intent: To ensure that buildings are visually interesting and reinforce the intended human-scale character of the pedestrian environment; and ensure that all sides of a building within near or distant public view have visual interest.

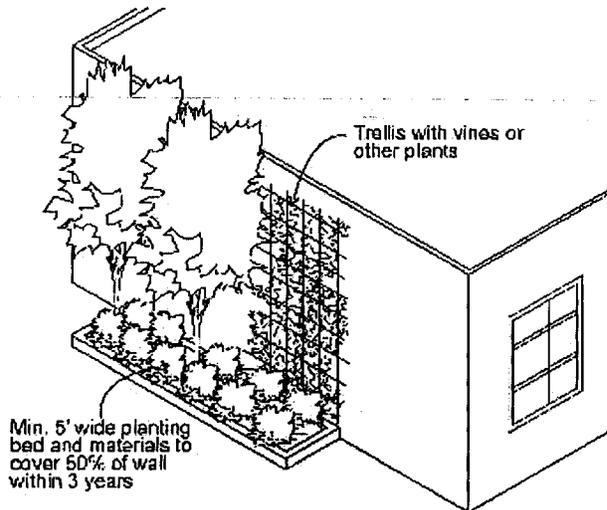
Guidelines: The use of material variations such as colors, brick, shingles, stucco, and horizontal wood siding is encouraged. The primary building entrance should be made visibly prominent by incorporating architectural features such as a facade overhang, trellis, large entry doors, and/or ornamental lighting (illustration below). Detail features should also be used, to include things such as decorative entry paving, street furniture (benches, etc.), and/or public art.



Standards:

<p>All Districts</p>	<p>All of the following are required:</p> <ol style="list-style-type: none"> 1. Human-scaled elements such as a lighting fixture, trellis, or other landscape feature shall be provided along the facade's ground floor. 2. On any facade visible to the public, transparent windows and/or doors are required to comprise at least fifty percent (50%) of the portion of the ground floor facade that is between four feet (4') and eight feet (8') above ground (as measured on the true elevation). 3. Building facades must have clear windows with visibility into and out of the building. However, screening may be applied to provide shade and energy efficiency. The minimum amount of light transmittance for windows shall be fifty percent (50%). 4. Display windows shall be designed for frequent change of merchandise, rather than permanent displays. 5. Where windows or storefronts occur, they must principally contain clear glazing. <p>All of the following are prohibited:</p> <ol style="list-style-type: none"> 1. Tinted and dark glass, highly reflective (mirror-type) glass and film. 2. Untreated blank walls visible from public streets, sidewalks, or interior pedestrian pathways.
----------------------	---

- a. A wall (including building facades and retaining walls) is considered a blank wall if:
 - i. It is a ground floor wall or portion of a ground floor wall over six feet (6') in height, has a horizontal length greater than fifteen feet (15'), and does not include a window, door, building modulation or other architectural detailing; or
 - ii. Any portion of a ground floor wall has a surface area of four hundred (400) square feet or greater and does not include a window, door, building modulation or other architectural detailing.
- b. If blank walls are required or unavoidable, they shall be treated. The treatment shall be proportional to the wall and use one or more of the following (illustration below):
 - i. A planting bed at least five feet (5') in width containing trees, shrubs, evergreen ground cover, or vines abutting the blank wall;
 - ii. Trellis or other vine supports with evergreen climbing vines;
 - iii. Architectural detailing such as reveals, contrasting materials, or other special detailing that meets the intent of this standard;
 - iv. Artwork, such as bas-relief sculpture, mural, or similar; or
 - v. Seating area with special paving and seasonal planting.



BUILDING ROOF LINES

Intent: To ensure that roof forms provide distinctive profiles and interest consistent with an urban project and contribute to the visual continuity of the district.

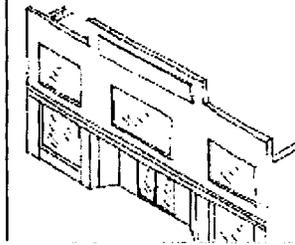
Guidelines: Building roof lines should be varied to add visual interest to the building. Roofs should be dark in color. Roof mounted mechanical equipment should not be visible to pedestrians. Buildings containing predominantly residential uses should have pitched roofs with a minimum slope of one to four (1:4) and should have dormers or intersecting roof forms that break up the massiveness of an uninterrupted sloping roof.

Standards:

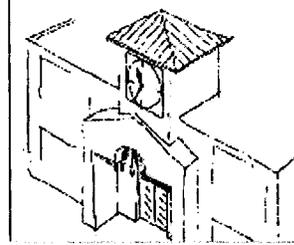
District A, C, and D	The following is required: At least one of the following elements shall be used to create varied and interesting roof profiles (illustration below):
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1. Extended parapets;
2. Feature elements projecting above parapets;
3. Projected cornices;
4. Pitched or sloped roofs.

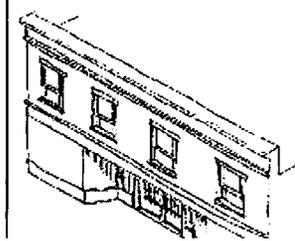
Extended parapets



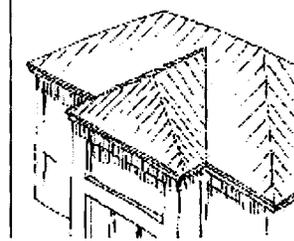
Feature elements projecting above parapets



Projected cornices



Pitched or sloped roofs



BUILDING MATERIALS

Intent: To ensure high standards of quality and effective maintenance over time and encourage the use of materials that reduce the visual bulk of large buildings, as well as to encourage the use of materials that add visual interest to the neighborhood.

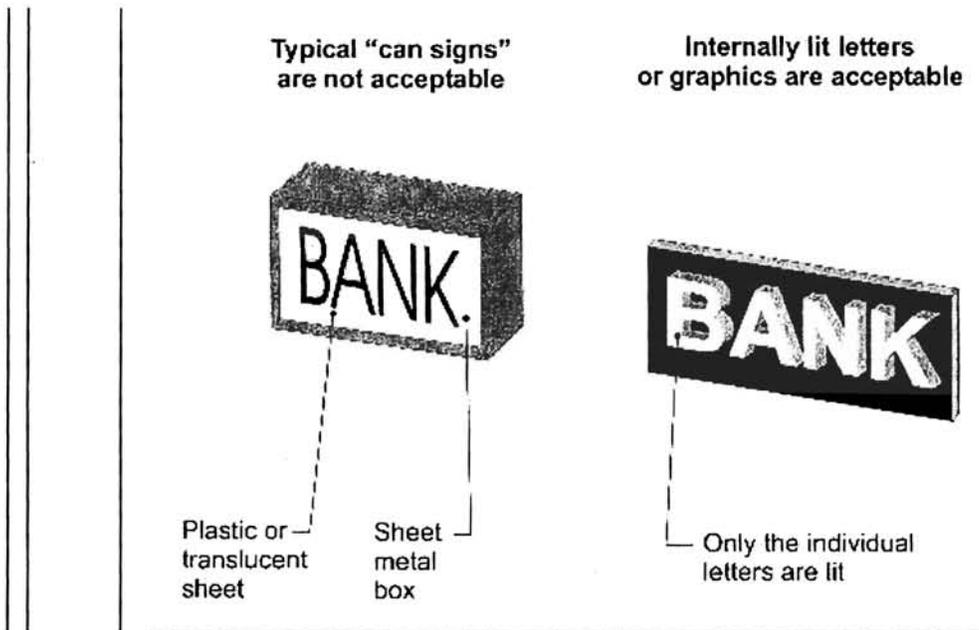
Guidelines: Buildings should use material variations such as colors, brick or metal banding or patterns, or textural changes. Building materials should be attractive, durable, and consistent with more traditional urban development, such as brick, integrally colored concrete masonry, pre-finished metal, stone, steel, glass, and cast-in-place concrete. If concrete is used, walls should be enhanced by techniques such as texturing, reveals, and/or coloring with a concrete coating or admixture. If concrete block walls are used, they should be enhanced with integral color, textured blocks and colored mortar, decorative bond pattern and/or incorporate other masonry materials.

Standards:

All Districts	<p>All of the following are required:</p> <ol style="list-style-type: none"> 1. All sides of buildings visible from a street, pathway, parking area, or open space shall be finished with the same building materials, detailing, and color scheme. A different treatment may be used if the materials are of the same quality. 2. Materials, individually or in combination, shall have texture, pattern, and be detailed on all visible facades. 3. Materials shall be durable, high quality, and reasonably maintained.
Districts A, C, and D	<p>The following is required:</p> <p>All buildings shall use material variations such as colors, brick or metal banding, patterns, or textural changes.</p>

6. Signage:

SIGNAGE	
Intent: To provide a means of identifying and advertising businesses; provide directional assistance; encourage signs that are both clear and of appropriate scale for the project; encourage quality signage that contributes to the character of the City; and create color and interest.	
Guidelines: Front-lit, ground-mounted monument signs are the preferred type of freestanding sign. Blade type signs, proportional to the building facade on which they are mounted, are encouraged on pedestrian-oriented streets. Alteration of trademarks notwithstanding, corporate signage should not be garish in color nor overly lit, although creative design, strong accent colors, and interesting surface materials and lighting techniques are encouraged.	
Standards:	
District C and D	<p>All of the following are required:</p> <ol style="list-style-type: none"> 1. Signage shall be an integral part of the design approach to the building. 2. Entry signs shall be limited to the name of the larger development. 3. Corporate logos and signs shall be sized appropriately for their location. 4. In mixed use and multi-use buildings, signage shall be coordinated with the overall building design. 5. Freestanding ground-related monument signs, with the exception of primary entry signs, shall be limited to five feet (5') above finished grade, including support structure. All such signs shall include decorative landscaping (ground cover and/or shrubs) to provide seasonal interest in the area surrounding the sign. Alternately, signage may incorporate stone, brick, or other decorative materials as approved by the Administrator of the Department of Community and Economic Development or designee.
	<p>All of the following are prohibited:</p> <ol style="list-style-type: none"> 1. Pole signs. 2. Roof signs. 3. Back-lit signs with letters or graphics on a plastic sheet (can signs or illuminated cabinet signs). Exceptions: Back-lit logo signs less than ten (10) square feet are permitted, as are signs with only the individual letters back-lit (illustration below).



7. Lighting:

LIGHTING	
Intent: To ensure safety and security; provide adequate lighting levels in pedestrian areas such as plazas, pedestrian walkways, parking areas, building entries, and other public places; and increase the visual attractiveness of the area at all times of the day and night.	
Guidelines: Accent lighting should be provided at focal points such as gateways, public art, and significant landscape features such as specimen trees. Additional lighting to provide interest in the pedestrian environment may include sconces on building facades, awnings with down-lighting, decorative street lighting, etc.	
Standards:	
District A, C, and D	<p>All of the following are required:</p> <ol style="list-style-type: none"> 1. Pedestrian-scale lighting shall be provided at primary and secondary building entrances. 2. Lighting shall also be provided on building facades (such as sconces) and/or to illuminate other key elements of the site such as specimen trees, other significant landscaping, water features, and/or artwork. 3. Downlighting shall be used in all cases to assure safe pedestrian and vehicular movement, unless alternative pedestrian scale lighting has been approved administratively or is specifically listed as exempt from provisions located in RMC 4-4-075, Lighting, Exterior On-Site (i.e., signage, governmental flags, temporary holiday or decorative lighting, right-of-way-lighting, etc.).

(Ord. 5029, 11-24-2003; Ord. 5124, 2-7-2005; Ord. 5286, 5-14-2007; Ord. 5531, 3-8-2010)

F. MODIFICATION OF MINIMUM STANDARDS:

The Administrator of the Department of Community and Economic Development or designee shall have the authority to modify the minimum standards of the design regulations, subject to the provisions of RMC 4-9-250D, Modification Procedures, and the following requirements:

- 1. The project as a whole meets the intent of the minimum standards and guidelines in subsections E1, E2, E3, E4, E5, E6, and E7 of the design regulations;
- 2. The requested modification meets the intent and guidelines of the applicable design standard;
- 3. The modification will not have a detrimental effect on nearby properties and the City as a whole;
- 4. The deviation manifests high quality design; and
- 5. The modification will enhance the pedestrian environment on the abutting and/or adjacent streets and/or pathways. (Ord. 5531, 3-8-2010)

G. EXCEPTIONS FOR DISTRICTS 'A' AND 'B':

Modifications to the requirements for the building location and orientation and building entry in subsection E1 of this Section are limited to the following circumstances:

- 1. When the building is oriented to an interior courtyard, and the courtyard has a prominent entry and walkway connecting directly to the public sidewalk; or
- 2. When a building includes an architectural feature that connects the building entry to the public sidewalk; or
- 3. In complexes with several buildings, when the building is oriented to an internal integrated walkway system with prominent connections to the public sidewalk(s). (Ord. 5124, 2-7-2005; Ord. 5286, 5-14-2007; Ord. 5531, 3-8-2010)

H. VARIANCE:

(Reserved). (Ord. 5124, 2-7-2005; Ord. 5286, 5-14-2007; Ord. 5531, 3-8-2010)

I. APPEALS:

For appeals of administrative decisions made pursuant to the design regulations, see RMC 4-8-110, Appeals. (Ord. 4821, 12-20-1999; Amd. Ord. 4971, 6-10-2002; Ord. 5029, 11-24-2003; Ord. 5124, 2-7-2005; Ord. 5286, 5-14-2007; Ord. 5531, 3-8-2010)

This page of the Renton Municipal Code is current through Ordinance 5556, passed October 11, 2010.
 Disclaimer: The City Clerk's Office has the official version of the Renton Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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 (<http://rentonwa.gov/>)
 City Telephone: (425) 430-6502
 Code Publishing Company
 (<http://www.codepublishing.com/>)

APPENDIX E

**Excerpts from Commercial Development
Standards (Underlying CA Zone)
RMC 4-2-120(A), (C)**

4-2-120A

DEVELOPMENT STANDARDS FOR COMMERCIAL ZONING DESIGNATIONS			
	CN	CV	CA
LOT DIMENSIONS			
Minimum Lot Size for lots created after Nov. 10, 2004	5,000 sq. ft.	25,000 sq. ft.	5,000 sq. ft.
Minimum Lot Width/Depth for lots created after Nov. 10, 2004	None	None	None
LOT COVERAGE			
Maximum Lot Coverage for Buildings	65% of total lot area or 75% if parking is provided within the building or within an on-site parking garage.	65% of total lot area or 75% if parking is provided within the building or within an on-site parking garage.	65% of total lot area or 75% if parking is provided within the building or within an on-site parking garage.
DENSITY (Net Density in Dwelling Units per Net Acre)			
Minimum Net Residential Density⁹	None	20 dwelling units per net acre.	10 dwelling units per net acre.
Maximum Net Residential Density⁹	4 dwelling units per structure. Assisted living bonus: 1.5 times the maximum density may be allowed subject to conditions of RMC 4-9-065.	80 dwelling units per net acre. Assisted living bonus: 1.5 times the maximum density may be allowed subject to conditions of RMC 4-9-065.	60 dwelling units per net acre.
SETBACKS			
Minimum Front Yard¹⁸	10 ft. The minimum setback may be reduced to 0 ft. through the site plan development review process, provided blank walls are not located within the reduced setback.	10 ft. The minimum setback may be reduced to 0 ft. through the site plan development review process, provided blank walls are not located within the reduced setback.	10 ft. The minimum setback may be reduced to 0 ft. through the site plan development review process, provided blank walls are not located within the reduced setback.
Maximum Front Yard¹⁸	15 ft. ¹⁵	15 ft. ¹⁵	15 ft. ¹⁵



4-2-120C

**CONDITIONS ASSOCIATED WITH
DEVELOPMENT STANDARDS TABLES FOR
COMMERCIAL ZONING DESIGNATIONS**

1. Includes principal arterials as defined by the Arterial Street Plan and depicted in RMC 4-2-080E.
2. The following table indicates the maximum requested size/standard change that may be allowed by an Administrative conditional use permit. Increases above these levels may not be achieved by a variance or the conditional use permit process.

APPLICABLE ZONE	STANDARD CHANGE REQUEST
CN	Uses restricted to 3,000 gross s.f. – increases: Between 3,000 – 5,000 s.f.
CN	Uses restricted to 5,000 gross s.f. – increases up to: 20% or 1,000 gross s.f.
All of the CV Zone	Uses restricted to 65,000 gross s.f. – increases up to: 40% or 26,000 gross s.f.

3. These provisions may be modified by the Reviewing Official through the site development plan review process where the applicant can show that the same or better result will occur because of creative design solutions, unique aspects or use, etc., that cannot be fully anticipated at this time.

4. Reserved.

5. The Reviewing Official may modify the sight-obscuring provision in order to provide reasonable access to the property through the site development plan review process.

6. In no case shall building height exceed the maximum allowed by the Airport Compatible Land Use Restrictions, for uses located within the Federal Aviation Administration Airport Zones designated under RMC 4-3-020.

7. Abutting is defined as "Lots sharing common property lines."

8. Adjacent is defined as "Lots located across a street, railroad or right-of-way, except limited access roads."

9. Use-related provisions are not variable. Use-related provisions that are not eligible for a variance include: building size, units per structure/lot, or densities. Unless bonus size or density provisions are specifically authorized, the modification of building size, units per structure, or densities requires a legislative change in the code provisions and/or a Comprehensive Plan amendment/rezone.

10. Heights may exceed the maximum height under an Administrative conditional use permit.

In consideration of a request for a conditional use permit for a building height in excess of ninety five feet (95') the Administrator of the Department of Community and Economic Development and/or designee shall consider the following factors in addition to the criteria in RMC 4-9-030, Conditional Use Permits, among all other relevant information:

a. Location Criteria: Proximity of arterial streets which have sufficient capacity to accommodate traffic generated by the development. Developments are encouraged to locate in areas served by transit.

b. Comprehensive Plan: The proposed use shall be compatible with the general purpose, goals, objectives and standards of the Comprehensive Plan, the zoning regulations and any other plan, program, map or regulation of the City.

c. Effect on Adjacent Properties: Buildings in excess of ninety five feet (95') in height at the proposed location shall not result in substantial or undue adverse effects on adjacent property. When a building in excess of ninety five feet (95') in height is adjacent to a lot designated residential on the City Comprehensive Plan, then setbacks shall be equivalent to the requirements of the adjacent residential zone.

d. Bulk: Buildings near public open spaces should permit public access and, where feasible, physical access to the public open space. Whenever practicable, buildings should be oriented to minimize the shadows they cause on publicly accessible open space.

e. Light and Glare: Due consideration shall be given to mitigation of light and glare impacts upon streets, major public facilities and major public open spaces.

11. Freestanding signs are restricted to monument signs in the Commercial Arterial (CA) Zone of the Rainier Avenue Commercial Corridor Comprehensive Plan land use designation.

12. Heights may exceed the maximum height by up to fifty feet (50') with bonuses for plazas and other amenities, subject to an Administrative conditional use permit.

13. A reduced minimum setback of no less than fifteen feet (15') may be allowed for structures in excess of twenty five feet (25') in height through the site development plan review process.

14. Reserved.

15. The maximum setback may be modified by the Reviewing Official through the site development plan review process if the applicant can demonstrate that the site development plan meets the following criteria:

a. Orients development to the pedestrian through such measures as providing pedestrian walkways beyond those required by the Renton Municipal Code (RMC), encouraging pedestrian amenities and supporting alternatives to single occupant vehicle (SOV) transportation; and

b. Creates a low scale streetscape through such measures as fostering distinctive architecture and mitigating the visual dominance of extensive and unbroken parking along the street front; and

c. Promotes safety and visibility through such measures as discouraging the creation of hidden spaces, minimizing conflict between pedestrian and traffic and ensuring adequate setbacks to accommodate required parking and/or access that could not be provided otherwise.

Alternatively, the Reviewing Official may also modify the maximum setback requirement if the applicant can demonstrate that the preceding criteria cannot be met; however, those criteria which can be met shall be addressed in the site development plan:

d. Due to factors including but not limited to the unique site design requirements or physical site constraints such as critical areas or utility easements the maximum setback cannot be met; or

e. One or more of the above criteria would not be furthered or would be impaired by compliance with the maximum setback; or

f. Any function of the use which serves the public health, safety or welfare would be materially impaired by the required setback.

16. The following height requests may be allowed by an Administrative conditional use permit:

APPLICABLE ZONE	HEIGHT CHANGE REQUEST
All of the CV Zone	Exceed height of 50 feet
	Exceed height of 45 feet when abutting R-8 or R-10 Zone
All of the CA Zone	Exceed maximum height



APPENDIX F

Hearing Examiner Transcript (Excerpts)

OFFICE OF THE HEARING EXAMINER
FOR THE CITY OF RENTON

IN RE: WALMART EXPANSION
SITE PLAN APPROVAL

FILE NO.: LUA 10-009, ECF, SA-H

TRANSCRIPT OF PROCEEDINGS
CITY OF RENTON HEARING EXAMINER PUBLIC HEARING
TUESDAY, APRIL 27th, 2010
RENTON, WASHINGTON

APPEARANCES:

Presiding: FRED KAUFMAN
For the Applicant: JACK McCULLOUGH
For Development Services: ROCALE TIMMONS

CERTIFICATION OF TRANSCRIBER

I, Kristina Wescott, prepared the attached transcript from CD recordings of the above-identified proceeding. I certify under penalty of perjury under the laws of the State of Washington that the attached is a true, correct and complete transcript of those proceedings to the best of my ability.

DATED this 17th day of December, 2010.


Kristina Wescott
32079 State Hwy 104
PO Box 255
Port Gamble WA 98364
360.621.0315

1 square feet which would result in a hundred and fifty thousand square foot retail facility and
2 approximately seven hundred and forty-five parking stalls. In addition to the sixteen thousand
3 square foot addition, the applicant is proposing a reduction in the garden center from nine
4 thousand to approximately four thousand square feet in area as well as an area would be set aside
5 just north of the expansion area for outdoor retail sales. If I could refer to Exhibit Number 3 to
6 show that area. So the exhibit before you – the expansions would be depicted in yellow – the
7 outdoor sales area would be located just north of that expansion area or the yellow area on the
8 northern portion of the structure.

→ 9 HEARING EXAMINER: May – I don't know if this is the appropriate time – what
10 triggers conforming or non-conforming – there are a number of areas in the project where you've
11 indicated things are non-conforming – parking would be one of them, the size of the stalls, there
12 are some light standards and some other aspects of the project. Can a non-conforming – legal
13 non-conforming use be expanded under our Code? And is there some trigger factor?

14 TIMMONS: As long as it's not more than a fifty percent expansion.
15 With relation to the parking stalls, there are approximately six hundred and eighteen that are
16 existing. The applicant is only proposing a hundred and twenty-seven new parking stalls. In
17 terms of the actual structure, we have a hundred and forty thousand square foot structure
18 existing. The applicant is only proposing a sixteen thousand square foot addition.

19 HEARING EXAMINER: Okay. I may have some specific questions about why or
20 why they cannot increase landscaping or landscape spacing in the parking areas as we get to
21 those different criteria, so –

22 TIMMONS: Okay. And as you alluded to, the applicant is also
23 proposing improvements to existing landscaping, lighting and drainage onsite. Access would

1 continue to be provided via existing curb cuts along the perimeter streets and as part of the
2 proposal, the applicant is not proposing to change the access. The environmental review
3 committee met in March of 2010 and issued a determination of non-significance mitigated along
4 with six mitigation measures. Those measures pertain to erosion control, geotechnical issues,
5 noise, archeological artifacts and then fire and traffic mitigation – these were also a part of those
6 mitigations. In April of 2010, or April 16th, the appeal period ended and no appeals were filed.
7 Staff is recommending as a condition of approval the Hearing Examiner adopt all six mitigation
8 measures as issued by the environmental renew committee. As mentioned before, the project is
9 located within the commercial corridor comprehensive plan designation. The proposal does
10 comply with all policies within that designation. As it relates to the development regulations of
11 the project, the project is located within the commercial arterial zoning designation. A big-box
12 retail and outdoor sales areas are outright permitted within that zone.

13 HEARING EXAMINER: What are outdoor retail sales?

14 TIMMONS: So, it – outdoor retail sales, as –

15 HEARING EXAMINER: As opposed to the gardening type, so on –

16 TIMMONS: It would be specifically for the garden center.

17 HEARING EXAMINER: Okay.

18 TIMMONS: Lot coverage for this site is limited to sixty-five percent.

19 The applicant is proposing a hundred and forty thousand square foot footprint on the sixteen acre
20 site – oh, I'm sorry – not sixteen acre site – 13.6 acre site and that results in a lot coverage of
21 25.3 percent. In terms of setbacks, the CA zone requires a ten foot minimum front yard setback
22 and a maximum fifteen foot front yard setback. There are no other side or rear yard setbacks in
23 this zone. For the purposes of this review, the front yard setback would be assessed from Hardy

1 Avenue Southwest and Rainier Avenue South. The proposal does not comply with the
2 maximum front yard setback, however, the proposal to expand does increase the conformity of
3 the project, in that it moves closer – even if it’s just by a couple of feet towards to Hardy Avenue
4 and Rainier Avenue South, thereby not requiring the applicant to apply for a variance. In
5 addition, a recent short plat has been approved for the site which would allow the Wal-Mart to
6 site its structure on its own building pad however the short plat has not been recorded therefore
7 Staff recommended as a condition of approval the applicant record the short plat or alternatively
8 depict lot lines as they are when the building permits come in.

9 HEARING EXAMINER: And do you have a depiction of the short plat, then, or - ?

10 TIMMONS: I can enter is as Exhibit Number 8 –

11 HEARING EXAMINER: We’re separating off, what, the bank property and the other
12 property in the front - ?

13 TIMMONS: Correct.

14 HEARING EXAMINER: - or east?

15 TIMMONS: Do we need to enter into the record at this moment, or
16 would you like it to see it depicted on the overhead?

17 HEARING EXAMINER: We don’t have it in the exhibits so why don’t we enter it as
18 Exhibit Number, I think it’s 8, right?

19 FEMALE VOICE: (Inaudible) –

20 TIMMONS: Exhibit 8 will include nine pages of the prepared short plat.

21 HEARING EXAMINER: Why don’t you just show it visually right now – just the
22 general outline of how the short plat will affect, I guess, the properties between Rainier and the
23 western edge of this site – it’s 7th and Grady on the north and south.

1 landscaping – as much landscaping as possible on the perimeter of the site and that’s how we
2 achieved a fifty-five foot landscape width along Rainier Avenue South and Southwest 7th Street,
3 a twenty foot landscape strip there.

4 HEARING EXAMINER: But breaking up asphalt in the, you know, large – and it is a
5 large parking lot –

6 TIMMONS: It is.

7 HEARING EXAMINER: It seems like it might be also appropriate to accomplish.

8 TIMMONS: Well, I will let the applicant speak to whether or not that is
9 possible.

10 HEARING EXAMINER: Okay. Obviously, there would be a trade off. Parking
11 stalls would have to be lost if you wanted to try increasing the landscaping in the sea of asphalt.

12 TIMMONS: Based on Staff recommendation, we just thought that the
13 perimeter landscaping was sufficient and that it would buffer the parking lot sufficiently. With
14 regard to the parking analysis, the applicant is required to provide a minimum of six hundred
15 parking stalls and a maximum of seven hundred and fifty-one parking stalls. The applicant has
16 proposed seven hundred and forty-five of which six hundred and eighteen are existing. As
17 mentioned before, the hundred and twenty-seven stalls would comply with the new – with
18 dimensional requirements of the Code however the existing stalls do not comply with
19 dimensional requirements. However, as the situation is existing, Staff found that there was no
20 need to require a parking modification.

21 The applicant has applied for a parking modif – or a refuse modification – I’m sorry – in
22 order to reduce the refuse area from fifteen hundred square feet to thirty cubic yards. The
23 modification was granted administratively due to the proposed compactor which has been

1 engineered for high volume usage. The appeal period for this modification ended on April 16th
2 and no appeals were filed.

3 HEARING EXAMINER: Any trial period to make sure this new equipment works
4 appropriately and provides the amount of recycling refuse that's need for the site?

5 TIMMONS: Staff has not at this time recommended a trial period.

6 HEARING EXAMINER: Okay.

7 TIMMONS: The applicant did not provide screening detail for that
8 refuse and recycle area, therefore, Staff is recommending as a condition of approval, the
9 applicant provide screening detail which is compliant with the refuse and recycle standards as
10 well as the design standards of the Renton use code. As for the site plan review analysis, Staff
11 does anticipate adverse impacts to surrounding properties or the site due to the scale of the site.
12 The structure would not take up more than a quarter of the proposed – or the resulting site after
13 the short plat. Expansions are confined to the same general area as you see before you – just to
14 the northern portion of the existing retail store and then slight additions or small additions to the
15 eastern portion of the store. Staff has found that the proposed expansion would not affect the
16 compatibility with the existing uses – with existing use and surrounding uses of the site.
17 However, it is challenging to get a large, big-box retail facility to be compatible with smaller
18 retail structures which surround the site. The applicant has proposed several architectural
19 elements along the eastern façade – referring back to Exhibit Number 6 – these elements include
20 canopies, extended parapets, clerestory windows – there is a large planter box that you see at the
21 center of the elevation with an iconic tree as well as benches and smaller human scale elements
22 along the front façade.

23 HEARING EXAMINER: I liked, an iconic tree –

1 additional water quality treatment has been provided in the form of a new bioswale which is just
2 north of the expanded parking lot area.

3 The proposal is not expected to cause deterioration or blight. With regard to the design
4 district standards, the applicant is located within the design district D, as in David, which
5 includes a minimum design standard that are to be met and if they cannot be met, the applicant
6 must demonstrate how they meet the intent of the Code. The proposal complies with the Urban
7 Design District as long as conditions of approval have been met.

8 With regard to site design, if I could refer back to Exhibit Number 6 - the eastern and
9 western elevations - the proposed elevations meet the site design and building location minimum
10 standards with the exception of refuse and recycle elevations. Staff has already recommended
11 that the applicant provide screening detail for the refuse and recycle. The proposal does not
12 comply with the minimum standards for parking and vehicular access, mainly due to the location
13 of existing surface parking and that is because it is located in between the building and the street
14 referring back to - this is actually Exhibit Number 4. However, the situation is existing and the
15 applicant has met the intent to reduce the visual impacts of the parking lot through the use of
16 landscaping, mainly accomplished through the retention and enhancement of existing
17 landscaping as well as the enhanced landscaping along Rainier Avenue and Southwest 7th Street.
18 The proposal does comply with the minimum standards for all minimum standards within the
19 pedestrian environment.

20 With respect to landscaping, the applicant has met most of the minimum design standards
21 as long as the landscaping maintenance (inaudible) device is provided as well as an irrigation
22 plan. Staff has recommended both the (inaudible) device and an irrigation plan be submitted.
23 There is also a requirement to plant one tree per every six parking stalls which cannot be

1 complied with for existing parking stalls due to the retention of existing vegetation however all
2 new stalls would be planned – would have landscaping planted at every intervening sixth stall.

3 With regard to architecture – referring back to Exhibit Number 6 – the applicant has
4 found –or Staff has found that the applicant has provided a very creative design with respect to
5 the front elevations of the store. Many of the minimum standards for building architecture and
6 design were still not met. Staff only looked at the two street-facing elevations in that the other
7 elevations were not being altered. Specifically, the building cannot be modulated every forty
8 feet. Blank walls were provided in the public realm as well as seventy-five percent of the front
9 elevation did not consist of transparent windows. Finally, it was not clear whether or not the
10 color of rooftop equipment would match the color of the exposed roof. Staff has recommended
11 as a condition of approval that the applicant match the rooftop equipment with the exposed
12 portions of the roof. As for building architecture, there are many limitations based on the need to
13 alter an existing structure therefore Staff has found that the intent for the front elevation has been
14 met due to the visual interest provided with the exception of a human scale element and while
15 there are pedestrian amenities provided within a plaza area located just south of the north
16 entrance, Staff has found that additional elements could be provided in that area so Staff is
17 recommending as a conditional of approval the applicant provide additional human scale
18 elements. While there are many ways to achieve this human scale character, Staff would not like
19 to limit the options but highly recommends the applicant either provide artwork, additional
20 glazing or landscaping or some type of planter box just to enhance human scale character of that
21 area. As for the other street-facing façade which is the northern elevation – and this is Exhibit
22 Number 7 – proposed treatments appear to be very uniform in nature and do not do much to
23 break up the monotony of that façade, therefore Staff is recommending as a condition of

1 approval that the applicant provide revised elevations with additional elements that could either
2 enhance the pilaster elements provided or replace them all together. Finally, Staff is
3 recommending the applicant provide a building materials and colors board in order to ensure that
4 quality materials have been provided.

5 In summary, Staff recommends approval of the Wal-Mart expansion with ten conditions.

6 Would you like me to list them?

7 HEARING EXAMINER: Why don't you do that. You don't have to read them all in
8 detail but sort of summarize what they require.

9 TIMMONS: The applicant is – oh, I'm sorry – Staff is recommending
10 that the applicant comply with all six mitigation measures issued by the Environmental Review
11 Committee; the applicant will be required to record the short plat or alternatively depict lot lines
12 as they are when building permits come in; screening detail for the refuse and recycle area shall
13 be provided; Condition Number 4, the applicant will require to provide a lighting plan; Condition
14 Number 5, the applicant will be required to provide a maintenance (inaudible) devise; Condition
15 Number 6, the applicant will be required to provide a irrigation plan; Exhibit Number 7, revised
16 elevation shall be provided for the northern façade which depict alternative methods to mask and
17 treat the façade; Condition Number 8, revised elevations for the eastern façade shall be provided
18 which include a human scale or additional human scale elements; Condition Number 9, rooftop
19 equipment shall match the color of the exposed portions of the roof; and then finally, Condition
20 Number 10, a materials and colors board shall be provided.

21 HEARING EXAMINER: Thank you. The applicant or representative?

22 McCULLOUGH: Thank you, Mr. Examiner. My name is Jack McCullough.
23 My address is 701 Fifth Avenue, Suite 7220, Seattle, Washington, 98104.

APPENDIX G

City Council Hearing Transcript

OFFICE OF THE HEARING EXAMINER
FOR THE CITY OF RENTON

IN RE: WALMART EXPANSION
SITE PLAN APPROVAL

FILE NO.: LUA 10-009, ECF, SA-H

TRANSCRIPT OF PROCEEDINGS
CITY OF RENTON PLANNING DEVELOPMENT COMMITTEE
THURSDAY, AUGUST 12, 2010
RENTON, WASHINGTON

APPEARANCES:

Presiding: CHAIR TERRI BRIERE, KING PARKER & RICH ZWICKER
For the Appellant: CLAUDIA NEWMAN
For the Applicant: JACK McCULLOUGH
For Development Services: ROCALE TIMMONS

CERTIFICATION OF TRANSCRIBER

I, Kristina Wescott, prepared the attached transcript from CD recordings of the above-identified proceeding. I certify under penalty of perjury under the laws of the State of Washington that the attached is a true, correct and complete transcript of those proceedings to the best of my ability.

DATED this 19th day of December, 2010.


Kristina Wescott
32079 State Hwy 104
PO Box 255
Port Gamble WA 98364
360.621.0315

1 BRIERE: Good afternoon, everyone. We're – let's get started. My
2 name is Terri Briere, I'm chair of the Planning Development Committee, and King Parker is vice
3 chair on my left, and Rich Zwicker, who is a member, and on my right is the City attorney, Larry
4 Warren. And today we are going to be hearing an appeal for the Wal-Mart expansion plans. So
5 if I could have Staff start and then we'll have the appellant. So if you could give us a summary
6 of what's going on. Thank you.

7 TIMMONS: Good afternoon, Chair, members of the committee. For the
8 record, my name is Rocale Timmons. I am an Associate Planner representing the Department of
9 Community and Economic Development and I will be presenting a very brief presentation on the
10 applicant's proposal as well as Staff's recommendation to the Hearing Examiner. Including in
11 my presentation are two exhibits that were entered into the record as part of the public hearing –
12 Exhibits 3 and 6 – the site plan and the front and rear elevations of the proposed structure.
13 Before you on the overhead is the site plan depicting a 13.6 acre site with an approximately one
14 hundred and thirty-five thousand square foot structure that is currently the existing Wal-Mart
15 facility. Along with the existing facility are associated improvements such as parking and
16 landscaping. The applicant is proposing a sixteen thousand square foot addition to the east and
17 then two vestibules along – I'm sorry – to the north and then two vestibules located on the
18 eastern façade of the existing structure. Also associated with the proposed expansion is a
19 reduction of four thousand square feet for the garden center as well as an increase in parking as
20 well as architectural, pedestrian landscaping and infrastructure improvements.

21 The project is located within our commercial arterial and industrial medium zoning
22 designations however, as a majority of the portion of the site is located in the commercial arterial
23 zoning designation, those are the standards that were applicable for Staff's review. Specifically,

1 the CA zone requires a ten foot minimum front yard setback and also requires a maximum fifteen
2 front yard setback. However, within the City's Code, there is an allowance for an increase in the
3 maximum setback if certain criteria can be met. To describe that criteria briefly, the project
4 would need to include enhanced pedestrian connections, as well as distinctive architecture along
5 the front façade, mitigation of the visual dominance of a parking lot and then mitigation of
6 conflicts between vehicles and pedestrians. The applicant has proposed the retention and
7 enhancement of existing landscaping onsite, mainly throughout the parking area to the east of the
8 existing structure. Additionally, they've enhanced the front – the frontage landscaping along
9 Rainier Avenue and Hardy Avenue Southwest in the amount of fifty-five feet in width as well as
10 there is a twenty foot width of landscaping provided along Southwest 7th Street. There is an
11 internal pedestrian connection that connects the eastern façade of the structure to Rainier Avenue
12 South and that pedestrian connection is also being proposed to be enhanced along with – or,
13 which would include a widening of the pedestrian connection as well as pedestrian lighting. The
14 applicant has also proposed pedestrian amenities along the eastern façade which include a
15 pedestrian plaza, pedestrian-scale lighting and then benches as well.

16 And then if I could refer to Exhibit Number 6, which depicts the eastern façade – kind of
17 challenging to see on the overhead – the applicant has proposed several architectural elements
18 along this façade which were used to distinguish two new building entrances. Elements include
19 clerestory windows, extending parapets, canopies, two vestibule locations located at the
20 entrance, ornamental lighting and then a large planter box in the center with an iconic tree.
21 These elements along with the increased setbacks ironically divide the building's mass into
22 increments that increase the relativity to the street as well as to surrounding structures beyond
23 what's existing. Based on the proposal, along with conditions of approval, Staff found that the

1 applicant complied with the criteria to increase the maximum setback of the zone. Additionally,
2 the reviewing official may also modify the maximum setback requirement if the physical site
3 constraints can cause the setback requirement to not be met. And given the existing
4 improvements reasonably preclude the maximum setback requirement from being met, and that
5 it would take more than six hundred linear feet of expansion to comply, the maximum setback
6 requirement was modified. This proposal is also located within Design District D, which
7 includes a minimum design standards that are to be met and if those standards can't be met, the
8 applicant must demonstrate how the intent of the Code must be met.

9 From Staff's perspective, there are many aesthetic elements provided, as I just
10 mentioned, which are part of a modest expansion to a relatively large structure and the applicant
11 is obviously operating with constraints due to the siting of the existing facility so in conclusion,
12 Staff found the building to be well-designed with proposed pedestrian, landscaping, and
13 infrastructure improvements. We found that the proposal enhanced the building's existing
14 appearance as well as the site's functionality and the reviewing official, the City's Hearing
15 Examiner, concurred with Staff's recommendation and found that while the applicant's proposal
16 doesn't comply with the prescriptive standards of the Design District, it does comply with the
17 intent therefore satisfying the design district requirements. And that's all, unless you have any
18 questions of me.

19 BRIERE: Questions? Mr. Zwicker? Mr. Parker?

20 MALE VOICES: No.

21 BRIERE: All right. Thank you very much, Rocale. All right, next if
22 we could hear from the appellant

23 NEWMAN: Good afternoon, Chair and members of the committee. My

1 name is Claudia Newman and I'm the attorney for Renton Neighbors for Healthy Growth and
2 thank you very much for the opportunity to be here. I appreciate it. I'll try to brief. What I am
3 going – I have been told that you have reviewed the materials and I'm just doing a quick
4 summary of what you've seen. The reason we have appealed this Wal-Mart expansion is that it
5 is an expansion of – an illegal expansion of a non-conforming use. It's a violation of the
6 maximum setback requirement and there are many violations of the design regulations. And
7 there are also improper estimates of the traffic generation of the proposal. And I want to start
8 just focused on the non-conforming issue because that's the most straightforward and I think
9 pretty dramatic issue here that I was very surprised to see an approval because I think it is rather
10 clear cut that this is an illegal expansion of a non-conforming use. RMC 4-10-050 states that a
11 non-conforming structure shall not be enlarged unless the enlargement is conforming. And so
12 the Renton Code states that you cannot expand your non-conforming structure unless it will
13 bring it into conformance. And there's no dispute here that the facility is being expanded. The
14 project will expand the existing Wal-Mart from approximately one hundred and thirty-four
15 thousand square feet to one hundred and fifty thousand square feet. And the enlargement is not
16 conforming. The enlargement violates the maximum frontage setback requirement of fifteen feet
17 – that's in the Hearing Examiner's decision – he states that as such. And the proposal will be
18 setback approximately five hundred and fifty-five feet from the frontage which was defined as
19 Hardy Avenue and Rainier Avenue South. This is substantial legal error. This is clearly a
20 violation of the Code. There's also the violation just on its own of the maximum frontage
21 setback that justifies the denial. I have heard for the first time, I believe, the Staff's
22 recommendation based on the criteria that allows for an exception to the maximum setback. I
23 want to point out that that, as far as I can see, was not reviewed by the Examiner. The Examiner

1 doesn't include that consideration in his opinion and so any exception to the front-back criteria –
2 this is new discussion that's happening here tonight.

3 The applicant and the Examiner's response to the arguments that I just made are that the
4 mere fact that the design regulations apply to this project somehow excuse the proposal from
5 having to follow the other provisions in the Code. For example, a non-conforming structure can
6 expand to be non-conforming if the design regulations apply – and this is an argument that has
7 absolutely no basis in the Code. And there is no credibility to this argument. There is nothing in
8 the Code that says that – the provision that they refer to states that alterations, enlargements and
9 restorations of non-conforming structures pursuant to RMC 4-10-050 – which is the non-
10 conforming provision – must comply with the design regulations. All it says is that they have to
11 comply. There is no place where they're excused from - the project - that it has to comply with
12 design regulations is excused from these other regulations. And also, I – you know – it's a
13 really, really ironic argument, frankly, because I guess the point of it is saying, well, if we follow
14 design regulations and we're in sync with the design regulations, then we don't have to follow
15 setback requirements and we don't have to follow non-conforming restrictions and what's ironic
16 about that is that Wal-Mart is not following the design regulations and the intent of the design
17 regulations are not being met by this project. In fact, this project is precisely the opposite of
18 what the City has envisioned for the future of this area.

19 I just want to read a little bit from the intent and goals of the design regulations. The
20 intent is to ensure that buildings are located in relation to streets and other buildings so that the
21 vision of the City of Renton can be realized for high-density urban environment so that
22 businesses enjoy visibility from public rights of way and to encourage pedestrian activity
23 throughout the district. To ensure visibility of businesses, establish active lively uses along

1 sidewalks and pedestrian pathways, organize buildings in such a way that pedestrian use of the
2 district is facilitated. To make building entrances convenient to locate and easy to access, ensure
3 that building entries further the pedestrian nature of the fronting sidewalk in the urban character
4 of the district – so you can get the picture here – to encourage building design that is unique and
5 urban in character, comfortable on a human scale and uses appropriate building materials that are
6 suitable for the Pacific Northwest climate, to discourage franchise retail architecture – that’s the
7 intent and you can start envision what we are talking about – a vibrant, walkable downtown area
8 that is pedestrian friendly, that’s not oriented towards cars. And what we have here is franchise
9 architecture with an enormous parking lot in front of the store rather than having the building
10 right up within fifteen feet of the sidewalk. We have a car-oriented development that is clearly
11 more focused on people driving to the store rather than walking to the store. So, generally it’s an
12 ironic statement to say, well, you know the design regulations allow us to violate the other
13 regulations in the Code when they are not meeting the design regulations in the first place.

14 And I did give quite a bit of detail in the briefing about what design regulations are not
15 being met and I just want to quickly respond to the applicant and the Examiner’s response to
16 those arguments. There is an argument that the design regulations allow flexibility and they
17 allow different approach to design to meet the end goal. And that is true – it is prescriptive
18 requirement – I mean, well, rather than performance-based, we have a prescriptive – I’m sorry,
19 we have performance-based requirement rather than prescriptive and so there is allowing some
20 sort of – they have a regulation that’s required and this is the intent and the goal, and what the
21 regulations say, essentially, is you can have some flexibility in how you get to that goal but you
22 have to meet the requirement. And here the requirements just simply were not met. And so the
23 flexibility isn’t this option, oh, we either can follow them or not follow them – we have choice –

1 the flexibility is, yes, you must follow these requirements but you may have some flexibility in
2 how to get there. And if you look at the briefing; if you look at the Hearing Examiner's decision
3 very closely, you see that they just didn't get there. They didn't get any compliance with the
4 design regulations.

5 Now, finally, with the standing issues and the exhaustion of administrative remedies, I
6 think that we've brought up some very strong issues on the merits and I think there is an attempt
7 to distract away from those by raising - challenging our ability to even raise those issues before
8 you and those attempts fail. The Renton Code is unambiguous in allowing any interested person
9 to appeal to the City Council. There is no requirement that that person have attended the public
10 hearing before the Examiner and the only reason the group did not attend the hearing is they
11 were not aware of the project until after the hearing occurred. The Washington State law - I
12 provided some case law in there that demonstrates this is true. There is a distinction between any
13 interested person versus a party to the proceeding being allowed and the Code clearly allows any
14 interested person.

15 The administrative record below does not have evidence in it about the appellants - us -
16 being aggrieved parties but that is not at issue whatsoever. On appeals, which I think most
17 attorneys recognize that when you are going up to a new court and you're filing an appellant
18 appeal, you have a right to submit evidence to show that you can get through the door to get the
19 jurisdiction of that appellate court. The information or evidence on whether or not we are an
20 aggrieved party was not even necessary before the Examiner because there is no time or
21 requirement for us submit evidence showing that we are in aggrieved party. The first time that
22 you have an need or requirement to submit evidence that you are an aggrieved party is before the
23 City Council and that's what we have done. We have submitted that adequate evidence to show.

1 And finally, on exhaustion, Wal-Mart argued that we had not exhausted our
2 administrative remedies because we had not attended the hearing. As I have said before, that is
3 not a requirement of the Code and also, exhaustion of administrative remedies is a judicial
4 doctrine that's created by the Washington State Superior Courts and that is a requirement that
5 before going to court, the appellant must go through the process that is set forth in the City Code
6 and that's what we are doing right now. So we are in the process of exhausting our
7 administrative remedies. We also did raise the issues before the Examiner. The idea of
8 exhaustion is not necessary procedural; there is a Washington State court case that makes it clear
9 that this is a substantive doctrine which what I mean by that is you need to have raised the issues
10 below, not necessarily attended all the hearings and so we did raise all of the issues to the
11 Hearings Examiner that we are raising to the City Council and therefore we exhausted our
12 remedies. Thank you.

13 BRIERE: Thank you. All right, next the applicant.

14 McCULLOUGH: Thank you very much, Madam Chair and members of the
15 committee. We had a longer presentation but I have been advised that it might be nice to keep it
16 brisk this afternoon so I'm going to do so.

17 BRIERE: All right. Could you just stat your name for the record?

18 McCULLOUGH: My name for the record is Jack McCullough. My address
19 is 701 Fifth Avenue, Suite 7220, Seattle, 98104.

20 BRIERE: And you're representing the Wal-Mart?

21 McCULLOUGH: And I'm representing Wal-Mart. And we were here in
22 front of the City about seventeen years ago when first getting approval for the existing store out
23 there and happy to see now after this period of time that we are able to bring, we hope, a better

1 store design, architecture, store layout to the City.

2 There are really three issues – you are all familiar with the site and the record and have
3 read, I know, all the pleadings here – there are three issues before you: traffic, design review,
4 and the issue of the setback. I'm going to address those. Obviously, as the Council knows, you
5 have to apply the standard of review that is set forth in the Code and that is a substantial error in
6 law or fact exists or that – for legal issues – for factual issues, that there is substantial evidence in
7 the record to support the fact-finding that's below. So on traffic, counsel didn't spend time
8 addressing traffic in the opening statement but it is well, I think, addressed in the brief.
9 Obviously, the City – ERC – issued an environmental determination on this project, imposed
10 conditions as associated with the payment of impact fees on traffic which is intended under City
11 Code to fully mitigate the traffic impacts. Appellants did not appear in that proceeding, didn't
12 provide comments, didn't appear in the proceedings below and suggests now that the Council
13 should reverse this action on the basis of what's called known – in quotes – information about
14 traffic from this project. Well, you have to look at the record. We've asked you to strike or
15 disregard the information on page 14 of the opening brief of the appellants that tries to insert this
16 extra record evidence now into the Council proceeding; it doesn't belong there. The record
17 supports the findings of the Hearing Examiner and we think that the decision on that issue should
18 be upheld.

19 On the design issue, we just have a fundamental disagreement here. You know, the Code
20 – or the comp plan, I think, is clear. The City's land use policies are clear about dealing with
21 non-conforming issues and large issues, the community design policies and the land use policies
22 of the Code that design should be flexible and the approach to dealing with non-conforming
23 structures and uses should be flexible to try to achieve a higher degree of conformity and

1 compliance as projects move forward. So, you know, I think what it boils down to in the context
2 of the design issue is one particular provision of the Code, which is not addressed by the
3 appellants but is addressed by us in our pleadings, and that is Section 4-8-100(g)(b)(2), the
4 design regulations – it says when the administrator or designee has determined that the proposed
5 manner of meeting the design requirements through the guidelines, an intent is sufficient. The
6 applicant shall not be required to demonstrate sufficiency to the standard associated with the
7 guideline that has been approved. And it goes on in the following section to describe the purpose
8 of this is to encourage creative design alternatives in order to achieve the purpose of the design
9 regulation. So these are really – it's intended to be a living and flexible document and the
10 suggestion you've heard from appellants is that there is a prescriptive standard. You have to
11 meet the standard and then once you meet the standard you can be flexible. Well, that doesn't
12 really make any sense. The Staff did what the Staff has always done under the design guidelines
13 since they've been enforced in Renton. They applied them flexibly in this case and the Hearing
14 Examiner's decision supports that.

→ 15 Finally, there is the issue of this setback. I think there are two ways to look at this.
16 Under either way, it's – the project complies. One is as suggested by Staff this afternoon, that
17 you can look at the Code at Section 4-2-120(c)(15) and there is a process for applying criteria
18 that would allow the expansion of the maximum setback and those criteria would apply in this
19 case. The other which was employed by the Hearing Examiner is to look at the Urban Design
20 Overlay regulations which were intended to implement the policies established in the
21 Comprehensive Plan. Now, what the appellants are saying here, again, is it's – you have an
22 inflexible set of regulations. You have to meet this standard with a non-conforming structure.
23 Well, actually, if you look at the Urban Design Overlay regulations, they are expressly intended

1 to apply to non-conforming structures and they are expressly intended to apply to big-box retail –
2 that's under 4-3-100(b)(1). And what appellants in their presentation to the Council, in their
3 pleadings presented to the Council, have failed to note is the clear language of Section 4-3-
4 100(b)(2), on which the Examiner relied, which said that where there are conflicts between the
5 design regulations of these overlay guidelines and other sections of the Renton Municipal Code,
6 which obviously includes the setback requirements, then the regulations of this section – *i.e.* the
7 design decision made by the Staff and upheld by the Hearing Examiner – shall prevail. So that
8 design decision in cases of dealing with non-conforming structures or big-box retail provides the
9 Staff and the Examiner an avenue by which modification to the standards can be made and the
10 expansion of non-conforming structures like this one can occur. So, it's just provision that is
11 simply not addressed in the pleadings before that are presented by appellants and it's the one that
12 the Examiner relied on. Either that or the provision that Staff has mentioned here will support
13 that. So we think that, under the standards that you have to apply, the decision of the Examiner
14 on the site plan should be upheld. Thank you very much.

15 BRIERE: All right. Thank you. Questions?

16 ZWICKER: Hhmmm....

17 BRIERE: Questions, Mr. Zwicker?

18 WARREN[?]: Is that a no from King?

19 PARKER: I'm thinking

20 BRIERE: He's thinking so if you would like to go ahead –

21 WARREN[?]: No, I was going to close the appeal, so I'll wait.

22 PARKER[?]: The traffic issue – so we collect traffic mitigation fees –

23 BRIERE: Are you asking this of Staff?

1 PARKER[?]: I know, yes, I am. Okay, Rich – (inaudible) –

2 TIMMONS: Rocale Timmons for the record, Planning Division –

3 PARKER[?]: Okay.

4 TIMMONS: Traffic impact fees or mitigation fees were require as part

5 of the environmental review determination of non-significance. If that was your question that

6 you were asking.

7 PARKER[?]: Okay, so we collect a fee and then we say, hey, it's okay

8 because we've looked it over and (inaudible) –

9 TIMMONS: Based on the number of trips that generated by the

10 proposed expansion.

11 PARKER[?]: And how do we make that determination? I mean, how

12 (inaudible) -

13 TIMMONS: They provide a traffic analysis and maybe Kayren Kittrick

14 – I'm not sure if she is in – in the

15 PARKER[?]: She's nodding her head yes

16 BRIERE: She is, yes.

17 TIMMONS: But she – our development services division and

18 transportation division reviews that analysis and then concurs or asks for supplemental

19 information and obviously it was concurred with.

20 PARKER[?]: So, okay, so otherwise the expanded building (inaudible)

21 and they anticipate that there will be that many more traffic trips and we figure that out and give

22 them a charge for it?

23 TIMMONS: Correct.

1 PARKER[?]: And then it's a-ok?

2 TIMMONS: Correct.

3 PARKER[?]: So we went through the appropriate process for that?

4 TIMMONS: Correct.

5 PARKER[?]: Okay. Just on general purposes, I – the setback issue is

6 confusing to say the least, in my estimation, however, I –

7 BRIERE Are you asking a question?

8 PARKER[?]: No, yeah, I'm asking – no I'm not – I'm making a

9 statement, alright?

10 BRIERE: Okay.

11 PARKER[?]: Never mind.

12 BRIERE: All right.

13 PARKER[?]: I'm not going to make any more statements.

14 BRIERE: Do you have any more –

15 WARREN[?]: Ask any more questions –

16 BRIERE: Do you have any more questions?

17 WARREN[?]: Do you have any more questions?

18 PARKER[?]: No more questions.

19 BRIERE: All right.

20 WARREN[?]: Madam Chairman, I move the appeal be closed.

21 PARKER[?]: Second.

22 BRIERE: Okay, the appeal is closed and we'll deliberate.

23 WARREN[?]: Now make your statements.

1 BRIERE: Now you can make your statements.

2 PARKER[?]: Now I can say anything you want?

3 WARREN[?]: Now you can say whatever you want.

4 ZWICKER: Well, Mr. (inaudible) – you'd better not say anything

5 (inaudible) –

6 PARKER: These attorneys they always gang up on me for some

7 reason or another.

8 ZWICKER: One on one is gang, isn't it?

→ 9 BRIERE: Well, you understand that the setback is an existing issue.

10 PARKER: That's right – I mean, it's there.

11 BRIERE: Right. The only way they could get by that would be to

12 tear the building down and redevelop -

13 PARKER: Right.

14 BRIERE: - the entire parcel.

15 PARKER: Yeah, quite frankly which isn't even reasonable in

→ 16 estimation. I think they have given us a satisfactory explanation of how that's interlinked with

17 the design guidelines in order to make that happen. That's all I have. I don't have any problems.

18 WARREN: Mr. Zwicker?

19 ZWICKER: No, I'm good. The Hearing Examiner's decision is fine.

20 BRIERE: All right.

21 PARKER: I'd uphold the Hearing Examiner's decision.

22 BRIERE: All right and I will too. All right. So our recommendation

23 is we're going to be making a motion – or that we'll have a committee report that appears –

1 upholds the Hearing Examiner's decision and that will come forward to the City Council at
2 Monday's night meeting for their consideration. Okay? Thank you. Thanks to everyone.

3 [TRANSCRIBER'S NOTE: END OF PROCEEDING]

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STATE OF WASHINGTON
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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

RENTON NEIGHBORS FOR)
HEALTHY GROWTH,)
) NO. 66874-9-I
Appellant,)
)
v.) DECLARATION OF SERVICE
)
PACLAND; JEFF CHAMBERS,)
P.E.; BONNELL FAMILY, LLC;)
PETER BONNELL; CITY OF)
RENTON,)
)
Respondents.)
)
and)
)
WAL-MART STORES, INC.)
)
Intervenor-Respondent)

I hereby certify and declare under penalty of perjury under the
laws of the State of Washington, that on this 11th day of August, 2011, I

served a true and correct copy of the following:

1. Corrected Response Brief of Intervenor-Respondent Wal-Mart Stores, Inc.; and
2. Declaration of Service

upon the following via email and U.S. Mail:

Claudia Newman
Bricklin & Newman, LLP
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154
newman@bnd-law.com

Garmon Newsom II
City of Renton Attorney
City of Renton
100 South 2nd Street
P.O. Box 626
Renton, WA 98057
Gnewsom@Rentonwa.gov

EXECUTED this 11th day of August, 2011 at Seattle, Washington.


Donna S. Spaulding