

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF BAINBRIDGE ISLAND**

In the Matter of the Application of	)	No. PLN-50880 SPR/CUP
	)	
<b>Michael &amp; Darden Burns, LLC,</b>	)	
<b>On Behalf of Madison Avenue</b>	)	Winslow Hotel SPR/CUP
<b>Development, Inc.</b>	)	
	)	
For Approval of Major Site Plan/ Design Review and Approval of A Major Conditional Use Permit	)	<b>DECISION ON ROGER VAN GELDER’S REQUEST FOR RECONSIDERATION</b>

**BACKGROUND**

The Hearing Examiner issued a decision in this matter on February 28, 2020, granting a request for a conditional use permit. On March 13, 2020, the Hearing Examiner received a Request for Reconsideration of the Hearing Examiner’s decision from Roger van Gelder. Mr. van Gelder’s request identifies alleged errors of law concerning the applicability of certain design guidelines to the proposed development.

Bainbridge Island Municipal Code (BIMC) 2.16.100(C)(7) governs motions for reconsideration of the Hearing Examiner’s decision, and provides:

A motion for reconsideration may be filed to correct substantive errors. Such motion shall be filed in writing 10 days from the date the hearing examiner’s decision was filed. The motion shall be decided on the record unless, at the hearing examiner’s discretion, further public hearing is necessary. If a timely and appropriate request for reconsideration is filed, the appeal period shall begin from the date the decision on the reconsideration is issued.

Additionally, Section 1.9.5 of the Rules of Procedure for the Hearing Examiner states:  
The Hearing Examiner shall respond to the request for reconsideration within five (5) working days by affirming in writing the previous decision, reopening the record and hearing process, or taking further action as appropriate. Prior to granting a request for reconsideration, the Hearing Examiner may request a response from all parties of record. No response from parties of record is necessary prior to a denial of a request for reconsideration.

**ANALYSIS**

The requestor, Mr. van Gelder, contends in his reconsideration motion that the Applicant, the City, and the Hearing Examiner erred when determining that the proposed development was not required to strictly conform to certain design guidelines because the design guidelines are

*Decision on Roger van Gelder’s Request for Reconsideration  
City of Bainbridge Island Hearing Examiner  
Winslow Hotel SPR/CUP  
No. PLN 50880 SPR/CUP*

intended to be applied with an attitude of flexibility.<sup>1</sup> The Hearing Examiner’s February 28, 2020, decision listed several design guidelines applicable to the proposed development in the Mixed Use Town Center, Central Core (MUTC-CC) zoning district that are set forth in the Design Guidelines for Mixed Use Town Center and High School Road Zoning Districts.<sup>2</sup> The City code provision in effect during the Design Review Board’s review of the proposed development provided that “[d]evelopment, redevelopment, or exterior renovation in the Mixed Use Town Center overlay districts . . . shall comply with regulations contained in ‘Design Guidelines for Mixed Use Town Center and High School Road Zoning Districts.’” *Former BIMC 18.18.030.E (2017)*. As noted in the Hearing Examiner’s decision, the introductory section to these guidelines provides that the guidelines “are not intended to be like quantitative, fixed zoning standards. They are to be applied with an attitude of flexibility.” *Design Guidelines for Mixed Use Town Center and High School Road Zoning Districts, pages 1 and 2*. Mr. van Gelder acknowledges this introductory language but argues that this introductory section does not apply to other design guidelines considered by the Design Review Board when recommending approval of the proposed building design. The source of these other guidelines is not identified. Apart from being described in the Design Review Board Design Guideline Checklist filled out by the Applicant, they do not appear in City code or other source referenced by City code.<sup>3</sup> In the absence of legal authority that expressly clarifies that these guidelines are

---

<sup>1</sup> Although Mr. van Gelder alleges that the Applicant erred, it is the City's Planner Director who has the authority to interpret the code as the one charged with its implementation. As discussed in detail in his response to Kjell Stoknes’s Request for Reconsideration, it is an axiom of administrative law that deference is given to the administrator of the law under review when applying it to a specific application. Here, the Planning Director did not agree with the approach suggested by Mr. van Gelder, but relied upon a flexible interpretation of the Design Guidelines when making her recommendation.

<sup>2</sup> On September 24, 2019, the City Council passed Ordinance No. 2019-25, which became effective on October 2, 2019. The ordinance amended BIMC 18.18.030 to require design review to comply with the requirements of the City’s 2019 design review manual, “Design for Bainbridge.” As noted in the Hearing Examiner’s February 28, 2020, decision, the City had deemed the Applicant’s CUP and major site plan/design review application complete on January 24, 2019, well before the effective date of Ordinance No. 2019-25. That decision also noted that the Design Review Board had reviewed the Applicant’s proposed development at several meetings before entering its findings that the proposed development would be consistent with applicable design guidelines on June 7, 2019, well before the effective date of Ordinance No. 2019-25. No party or witness testifying at the January 23, 2020, open record hearing asserted that the amended provisions of BIMC 18.18.030 or the “Design for Bainbridge” design review manual apply to the proposed development. Rather, all parties and testifying witnesses appear to agree that the City code provisions in effect prior to BIMC 18.18.030’s amendment and the design guidelines set forth in the “Design Guidelines for Mixed Use Town Center and High School Road Zoning Districts” apply to the proposed development.

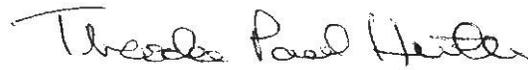
<sup>3</sup> For example, the Design Review Board “Design Guideline Checklist” states general guideline number 7 as intending “[t]o reduce overall scale of the building into multiple building masses,” and provides a description of that guideline in part as “[f]açades over 128’ in length shall be separated by pedestrian passage or open space.” *Exhibit 20*. This language regarding façades exceeding 128 feet does not appear in City code or in the “Design Guidelines for Mixed Use Town Center and High School Road Zoning Districts” manual referenced by former BIMC 18.18.030.E. Although not entirely clear, the description

mandatory, no error can be shown by the failure to strictly enforce their provisions. Accordingly, no substantive error has been shown warranting reconsideration of the Hearing Examiner's February 28, 2020, decision.

**DECISION**

Because no substantive error regarding the applicability of design guidelines to the proposed development has been shown, the motion for reconsideration is denied, and the February 28, 2020, decision is affirmed.

So ordered this 19<sup>th</sup> day of March 2020.



---

THEODORE PAUL HUNTER

Hearing Examiner  
Sound Law Center

---

appears to be used merely as a tool for the Design Review Board to determine a project's consistency with the specific design guidelines set forth in the manual, such as "[b]uilding frontages along a street shall include elements to avoid long, monolithic façades." *Design Guidelines for Mixed Use Town Center and High School Road Zoning Districts, page 47.* Regardless of the purpose of this or of other descriptions of design guidelines in the checklist that are not found in City code or code referenced material, there has been no legal authority presented to support the proposition that these guidelines are mandatory and that strict compliance with their terms are required.

*Decision on Roger van Gelder's Request for Reconsideration  
City of Bainbridge Island Hearing Examiner  
Winslow Hotel SPR/CUP  
No. PLN 50880 SPR/CUP*