

Request for Reconsideration re: the Winslow Hotel

Roger E. van Gelder

*Note (1): All references to specific wording in the code, including in the adopted design regulations and guidelines are as contained in the code in force at the time of the application, as provided by the City of Bainbridge Island under Public Records Request #20-47.*

*Note (2): Three independently approved sets of “Design Guidelines” were considered applicable by the City. A short descriptive name (in parentheses) is given here for each set, following the official title. The short descriptive names will be used in the discussion following.*

- 1) *“Guidelines for Commercial and Mixed Use Projects” (General)*
- 2) *“Design Guidelines for Mixed Use Town Center and High School Road Zoning Districts” (MUTC/HSR)*
- 3) *“Design Guidelines Applicable to the Central Core Overlay District” (Core)*

Thank you for considering this request for reconsideration. I also appreciated being able to speak at the hearing. I am a member of Winslow Neighbors and live near the subject property.

I raise here three points of law contained in the BIMC in force at the time of permit application, that were interpreted incorrectly by the Applicant and City and as a result led to an improper decision regarding the project.

- 1. The Applicant, City and Hearing Examiner incorrectly applied language regarding “an attitude of flexibility” that appears solely in the introduction to the MUTC/HSR Guidelines. to the other two sets of Guidelines (which do not contain that same language) to justify the project’s departure from two highly specific standards.**

The MUTC/HSR Guidelines include language calling for “an attitude of flexibility” in applying the “design criteria contained *in this document*” (i.e in the MUTC/HSR Guidelines). Highlighting this “attitude of flexibility”, only one guideline out of the fourteen contained within this set includes the word “shall.”

The other two sets of Guidelines (“General” and “Core”) were adopted separately from the MUTC/HSR Guidelines and are equally pertinent. The hotel is required to meet all three independent sets.

Neither the “General” nor the “Core” Guidelines include any language regarding an “attitude of flexibility.” Within the “General” Guidelines, ten out of sixteen contain the word “shall”, and within the “Core” Guidelines, ten out of eleven contain the word “shall.” Additionally, the “Core” Guidelines refer to “guidelines and standards.”

“Standards” is taken to refer to those “*design regulations and guidelines*” which are objectively specific and which include the word “shall,” Using this definition the hotel does not comply with two highly specific and objective “*standards*” or “*design regulations*”, including one in the “General” Guidelines and one in the “Core” Guidelines.

The code explicitly states that these “Guidelines” may contain “regulations” under BIMC 18.18.030:

***18.18.030 Specific design regulations and guidelines.*** *All development shall comply with the design regulations and guidelines applicable to that type of development as set forth in this section and the reference documents, which are adopted as part of this title by reference.*

***C. Commercial and Mixed Use – General.*** *Development, redevelopment, and exterior renovation in commercial and mixed use projects in all zoning districts except the B/I district shall comply with the general guidelines in “Guidelines for Commercial and Mixed Use Projects – Including Guidelines for Lynwood Center, Island Center, and Rolling Bay,” as well as any specific guidelines applicable to that type of development in the subsections below.*

***E. Mixed Use Town Center and High School Road Districts.*** *Development, redevelopment, or exterior renovation in the Mixed Use Town Center overlay districts and the High School Road districts shall comply with regulations contained in “Design Guidelines for Mixed Use Town Center and High School Road Zoning Districts.”*

By applying document-specific instructions contained within the introduction to the MUTC/HSR Guidelines to the “General” and the “Core” Guidelines, the City and Applicant are granting themselves a permission that does not exist.

The Examiner adopted the applicant’s and City’s erroneous reading of the law and based his decision on that legal error. *See, e.g., Decision at page 9.* The decision should be reconsidered without inappropriate reliance upon document-specific instructions regarding an “attitude of flexibility” that was incorrectly assumed to apply to the “General” and “Core” Guidelines.

2. **The City and Applicant neglected to apply BIMC18.18.030 which states:**  
***“In the event of a conflict between two or more design standards or regulations, the more specific shall apply.”***

This relates to “Core” guideline E.2 and E.3 which state:

2. Flat, unembellished roofs are not desired. However, flat roofs may be appropriate for green building purposes, for example to accommodate green roofs or solar panels.

3. Buildings located within 100 feet of residential zones outside of the Core **shall** incorporate pitched roofforms, **with slope between 4:12 and 12:12** in order to create a transition in development pattern.

E.3 is clearly the more specific of these two guidelines. Therefore, it is the one that must apply.

The applicant also argues that the following statement contained in the introduction to the “Core” guidelines allows them to ignore “Core” guideline.E.3:

*None of the design elements recited in these guidelines are intended to deter or prevent the construction of buildings that utilize or exemplify green building or low impact development standards. Such standards are encouraged.*

Using a pitched roof does not in any way deter or prevent the use of solar panels. One sees solar panels on pitched roofs all over Bainbridge. In fact, there are solar panels on the Marge Williams center right next door to the proposed hotel. Pitched roofs, if appropriately designed, are often considered to be more appropriate for solar, as they do not require the added expense (and associated unsightliness) of the added scaffolding otherwise needed to pitch the panels at the appropriate angle to the sun (which is typically somewhere between 4:12 and 12:12 at this latitude). Furthermore, just as much sunlight (and rainwater) may be collected from an appropriately designed pitched roof, as from a flat roof.

Nowhere has the applicant claimed that they have complied with this standard.

The Decision includes an error of law in concluding that the roof slope provisions quoted above do not apply in this case. The Examiner should reconsider his decision and find that the proposed roof does not comply with the guidelines, as required under BIMC 18.18.030.

- 3. The Applicant and the City used a dictionary definition of “façade” to justify east and west walls that do not meet “General” Guideline #7 instead of using the meaning of “façade” that is used in other guidelines contained within that very same set of guidelines.**

“General” Guideline #7 states: *“Facades over 128’ in length shall be separated by pedestrian passage or open space.”*

The Applicant and the City argue that the “façade” is “the front of a building” and therefore only the north face of the hotel is a “façade.” In their view, the east and west walls, which are each close to 250’ long and 40’ in height, are not “facades.” This is

incorrect. The word “façade” is used twice in the very same set of guidelines to clearly indicate that a façade can be any outward-facing wall of a building:

“General” Guideline #3: *“Blank walls shall not be visible to public spaces. Blank facades should otherwise be limited to the back of buildings or where required by the building code.”* Clearly a back wall of a building can be a “façade.”

General Guideline #5: *“Facades facing public ways shall incorporate setbacks or articulation that establishes a pattern of bays or window openings.”* This indicates that the sides of a building not facing public ways are also “facades.”

Therefore, the Applicant and City are wrong to say that the east and west facades of the building do not need to meet General guideline #7 which says “facades over 128’ in length shall be separated by pedestrian passage or open space.” Both of those facades are significantly longer than 128’ and therefore “shall” incorporate pedestrian passageways or open space in order to comply. Nowhere has the applicant claimed that they have complied with this standard with regard to the east or west façade.

What is also important here is the intent of this guideline, which is: *“To reduce overall scale of the building into multiple building masses.”*

This guideline exists specifically to prevent massive structures in the downtown Core. In fact, if you look around the Core, you will see that there are many large buildings, but all have been broken up into smaller elements in order to accommodate this guideline. The result is development that is “harmonious and compatible in design, character and appearance” with the surrounding area.

Given that both the east and west facades are significantly longer than 128’, close to 40’ in height, with no “separation by pedestrian passage or open space,” and given that the east façade is highly visible from the street – indeed, from the direction of downtown it is arguably the most visible façade of the whole building - the building does not meet the stated intent of this guideline, which is to *“To reduce overall scale of the building into multiple building masses.”*

The Examiner committed an error of law in construing this guideline as being inapplicable to the east façade. The Examiner should reconsider his decision, correctly construe the guideline as being applicable, and thereupon, determine that the design does not comply with this guideline, as required under BIMC 18.18.030.

### **My final thoughts:**

If this project could be required to fully comply with these two standards (roof slope and façade massing), I believe it would result in a project, that while not perfect in many ways, would nonetheless be a better project, and one which would fit in better with the neighborhood than would otherwise be the case.

As a civil engineer, I have learned great appreciation and respect for the type of clear language used in the code. I also feel it is extremely important that the intent of the code be followed, as stated. At the hearing I was asked, after briefly speaking to this matter of non-compliance with specific guidelines and standards, what might I propose as a remedy, and if perhaps it should be remanded back to the Design Review Board to correct.

My answer at the time was that it appeared to me that these failures had been caught by the Planning Commission in their review of the Design Review Board's recommendations, and that appropriate action had been taken. If I were asked the same question now, my answer would be the same. I strongly believe that the issues raised here still need to be addressed, if the clear wording of the code is to be respected and followed as written.

On reconsideration, if you required those two highly specific "standards" contained within the "General" and "Core" Guidelines to be fully complied with, as required by code, without unsupported reliance on an "attitude of flexibility" which is associated solely with the MUTC/HSR Guidelines, the project would be much better than it is now.

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