

**CITY OF OLYMPIA
OLYMPIA HEARING EXAMINER
STAFF REPORT
October 8, 2014**

Case: Tanasse Mixed Use Building Land Use and SEPA DNS Appeal, Case No. 14-0025

Appellant: Bigelow Neighborhood Association; John Bay; Maile Bay; Tim Walker

Representative: Allen T Miller
1901 West Bay Drive NW STE 205
Olympia WA 98502

Applicant: Gretchen Van Dusen
409 Rogers ST NW
Olympia WA 98502

Project Location: 924 State Avenue N

SEPA Determination: Determination of Non-Significance issued on July 7, 2014.

Public Notification: Notice of administrative appeal public hearing was mailed to parties of record, property owners within 300 feet, and recognized neighborhood associations; posted on the site and published in the Olympian in conformance with OMC 18.78.020, Public Notification.

I. INTRODUCTION

Project Description and Context

The project proposal is for development of a mixed use commercial and residential three story building on a 6,300 square foot vacant lot. The proposed uses are medical office (chiropractic) and residential (two units above ground floor), both permitted uses in the Professional Office/Residential Multifamily (PO/RM) zoning district, Olympia Municipal Code (OMC) 18.06.040.

The proposed gross floor area of the building is 6,970 square feet, of which approximately 3,000 square feet is for the commercial use located primarily on the first floor. The second floor contains a two bedroom apartment, and secondary rooms associated with the commercial use. The third floor is one three bedroom apartment.

The building's height to the roof of the third floor is 33'3". The rooftop will be configured for use as an uncovered patio with outdoor seating and a roof garden. The roof plan includes a 14'7" elevator/mechanical enclosure. The overall height to the top of that enclosure is 47'10."

The project requires 10 parking stalls. The site will accommodate seven off-street parking spaces

accessed from the alley. Three parking spaces are within the covered garage, the remaining four spaces are surface parking. Three on-street parking spaces are included in the total parking spaces required and proposed. Required long and short-term bicycle parking spaces are provided in storage lockers in the garage, and under-canopy at the front entry off State Avenue.

Surrounding land uses consist of a blend of residential and commercial in residential style buildings (converted or unaltered) and contemporary office buildings. Commercial uses line the corridor of State Avenue (west bound one-way) and 4th Avenue (eastbound one-way). The primarily single family detached and multifamily attached uses and building types occupy areas north of the development site in the residential zoning districts.

Keeping the one-way arterials of State Avenue and 4th Avenue in mind, commercial zoning extending along the corridor includes the Urban Waterfront District (UW), the Downtown Business District (DB), the Professional Office/Multifamily District (PO/RM), the General Commercial District (GC), and the High Density Corridor 1 District (HDC-1). Examples of single-use commercial businesses along the corridor include the R L Ray Violin Shop, LLC, and the Quality Muffler & Brake service center directly across from the vacant lot. North and south of this major City corridor are several residential zones: from the lower density Residential 4-8 (R 4-8) to the Residential Mixed Use District (RMU) (Attachment 23: Zoning Map).

The subject site is within the Downtown Design Review District (Attachment 23: Design Review Districts), and within both the Olympia Downtown Neighborhood and the Bigelow Neighborhood (Attachment 23: Neighborhood Associations).

The Bigelow Historic District exists north of the site across the alley (Attachment 23: Bigelow Historic District). Ten of the structures are listed in the local register of historic properties; two are listed on the National Register of Historic Properties. The project site is neither adjacent to a historic property, nor is it within the historic district.

Procedural Background

• Application Received by Community Planning & Development	February 26, 2014
• Revised Notice of Application (v2) Transmitted	March 20, 2014
• Neighborhood Meeting 1	March 25, 2014
• Early Comment Review Letter from SPRC to Applicant	April 7, 2014
• Neighborhood Meeting 2	April 15, 2014
• CONCEPT Design Review Board Public Meeting	May 15, 2014
• Combined Information Request from SPRC to Applicant	June 3, 2014
• Applicant Revisions to CPD	June 14, 2014
• Land Use Approval SEPA DNS Issued	July 7, 2014
• Appeal of Administrative Decision to Hearing Examiner	July 28, 2014
• Notice of Administrative Appeal Hearing (v3)	September 23, 2014

Applicable Regulations

OMC 14.04 Environmental Protection: SEPA Authority, Hearing Examiner Authority, and Appeals
 OMC 18.02 Basic Provisions of the Unified Development Code
 OMC 18.06 Commercial Districts
 OMC 18.60 Land Use Review and Approval
 OMC 18.72 Administration

OMC 18.75 Appeals/Reconsideration
OMC 18.82 Hearing Examiner
OMC 18.100 Design Review
OMC 18.110 Basic Commercial Design Criteria
OMC 18.120 Commercial Design Criteria Downtown

Public Comment

The Community Planning and Development Department (CPD) received a substantial amount of written and oral comment from the community (Attachments 17, 18, 20). Neighborhood meetings were held on March 25, 2014 and on April 15, 2014.

II. STAFF ANALYSIS

This is an appeal of the City of Olympia Land Use Approval and SEPA Determination of Nonsignificance (with conditions) for the Tanasse Mixed Use Building (Case No. 14-0025), issued on July 7, 2014. Timely Notice of Appeal was filed on July 28, 2014.

The standards for granting an appeal are set forth in Olympia Municipal Code (OMC) 18.75.040, as follows:

F. Standard of Review. In reviewing a decision including a recommendation of the Design Review Board, the Examiner shall give substantial weight to the recommendation of the Board. With regard to decisions of city staff, the Examiner shall accord due deference to the expertise and experience of the staff rendering such decision. The Examiner shall only grant the relief requested by an appellant upon finding that the appellant has established that:

1. the staff engaged in unlawful procedures or failed to follow a prescribed procedure;
2. the staff's decision was an erroneous interpretation of the law;
3. the decision is not supported by substantial evidence within the context of the whole record;
4. the decision is a clearly erroneous application of the law to the facts;
5. the decision is outside the authority or jurisdiction of the decision-maker;
6. the decision violates the constitutional rights of the party seeking relief; or
7. the decision is clearly in conflict with the City's adopted plans, policies or ordinances.

1. Basis of Appeal

Item 1 of the Appeal raises a number of general and specific issues, most of which can be addressed by reference to the correct City policies and regulations, and need no interpretation (Attachment 19). Others are matters that can be resolved by reference to decisions of the appellate courts of Washington and their interpretations of the land use laws of the state. The specific appeal points and staff responses are organized by the appellant and listed items 2a through 2p below.

2.a. The City of Olympia Land Use approval and SEPA DNS of July 7, 2014 on the Tanasse Mixed Use Building, Case No. 14-0025 fail to comply with the Olympia Comprehensive Plan

because it is incompatible with surrounding structures and neighborhood, blocks scenic views, and denigrates historic neighborhoods and is specifically inconsistent with, among others: LU 1.3; LU 2.1; LU 2.2; [...]"

A comprehensive plan is a guide, not a document designed to make specific land use decisions. A comprehensive plan does not have site-specific effect and does not directly regulate permit applications. Instead, a comprehensive plan is implemented indirectly, through a jurisdiction's zoning and development regulations.

Conflicts between a comprehensive plan and development regulations concerning whether a use is allowed are resolved in favor of the more specific development regulations. *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 874 (1997); *Cougar Mountain Assocs. v. King County*, 111 Wn.2d 742, 757 (1988). If a comprehensive plan prohibits a particular use but the zoning code permits it, the use is permitted. *Weyerhaeuser v. Pierce County*, 124 Wn.2d 43 (1994). Similarly, if a comprehensive plan recognizes permissible uses, but also makes general statements prohibiting similar uses, and the zoning code allows those uses, the local jurisdiction's law regulating development is not ambiguous, and any apparent conflict should be resolved in favor of what the zoning code allows. *Lakeside Industries v. Thurston County*, 119 Wn. App. 886, at 898-99, *review denied*, 152 Wn.2d 1015 (2004).

The foregoing rules are tantamount to recognizing that if a proposed development complies with applicable zoning regulations, it presumptively complies with the Comprehensive Plan. It is only where a zoning code expressly requires a particular proposed use to comply with both the development regulations and the comprehensive plan that the proposal must satisfy both. *Cingular Wireless, LLC v. Thurston County*, 131 Wn. App. 756, at 770 (2006), *citing Lakeside Industries v. Thurston County*, 119 Wn. App. at 895 (special use permit standards required both comprehensive plan and development regulation compliance).

OMC 18.02.040 provides that:

It is the purpose of this Development Code to promote the health, safety and general welfare by guiding the development of the City consistent with the comprehensive plan which is, in part, carried out by the provisions of this title. It is further intended to provide regulations and standards which will lessen congestion on the streets, encourage high standards of development, prevent the overcrowding of land, provide adequate light and air, avoid excessive concentration of population and facilitate adequate provisions for transportation, utilities, schools, parks and other public needs.

OMC 18.02.100 provides:

This Development Code is a principal tool for implementing the goals and policies of the Olympia Comprehensive Plan, pursuant to the mandated provisions of the Growth Management Act of 1990, RCW 58.17, Subdivision Act, State Environmental Policy Act, and other applicable State and local requirements. All development within the city incorporated boundary - and the urban growth area shall be consistent with Olympia's Comprehensive Plan.

The subdivision provisions of this Development Code are intended to supplement and implement RCW 58.17 and the Subdivision Ordinance of the City. If the provisions of this Development Code conflict with any provision of Revised Code of Washington (RCW) 58.17, the RCW shall prevail.

No land shall be subdivided or developed for any purpose which is not in conformance with the Comprehensive Plan, any zoning ordinance or other applicable provisions of the Olympia Municipal Code.

In *Lakeside Industries v. Thurston County*, 119 Wn. App. at 895-96, the Court considered development regulations that generally required compliance with the County's Comprehensive Plan, similar to those of the City of Olympia quoted above. Other comprehensive plan provisions arguably disapproved of the kind of development under consideration. *Id.*, at 896. However, specific development regulations allowed the use. *Id.*, at 895-96. The Court of Appeals ruled that the "specific zoning laws controlled over general purpose growth management statements," (*Id.*, at 897), and reversed denial of the sought-after development permit.

Where specific zoning and development regulations allow the proposed use, the comprehensive plan does not override those regulations and prohibit it. Instead, Olympia's Comprehensive Plan provisions are general, not regulatory, in connection with a specific permit application, as they were in *Cingular Wireless, supra*. Therefore, the Comprehensive Plan does not impose design, size, or "consistency" standards on the development approval at issue here.

Given the foregoing rules, the "consistency" language of Olympia's Comprehensive Plan should be recognized as having been implemented through the City Council's adoption of specific zoning and development regulations of the OMC which apply to the PO/RM zoning district. Indeed, the Growth Management Act requires development regulations to be consistent with the Comprehensive Plan, RCW 36.70A.040(3)(d) & (4)(d), and applicable development regulations have not been challenged as inconsistent with that Plan to the Growth Hearings Board.

2.b. "The proposed Tanasse Mixed Use Building, Case No. 14-0025 is located in the Professional Office/Residential Multifamily (PO/RM) zone. The City of Olympia Land Use Approval and SEPA DNS of July 7, 2014 on the Tanasse Mixed Use Building, Case No. 14-002 fail to comply with the purpose and intent of the zone to provide a transitional area, buffering residential areas from more intensive commercial uses. OMC: 18.06.020.A.9."

OMC Section 18.06.020 B. 9. states that:

"[The PO/RM] district is intended to:

- a. Provide a transitional area, buffering residential areas from more intensive commercial uses. Development within this district should be compatible with residential uses and generate low vehicular traffic characteristic of less intrusive uses.
- b. Provide for a compatible mix of office, moderate- to high-density residential, and small-scale commercial uses, in order to provide opportunities for people to live, work, and recreate in a pedestrian-oriented area."

The development proposal is for a combined, or mixed, medical office and residential commercial use, which are each permitted uses, by right, in the PO/RM zoning district. Permitted uses in the Commercial Code (18.06), as laid out in Table 6.01 (OMC 18.06.040) reflect the commercial zoning districts general purposes and the specific zone's intent by virtue of their existence in Table 6.01, as adopted by the Council. Simply put, when the use is permitted outright in the PO/RM zoning district, then it legally meets not only the intent of the zone, but the general purposes of the commercial zoning district.

This Council-designated PO/RM zoning district, like the RMU zoning district south of the commercial corridor (Attachment 23: Zoning Districts), provides the transitional area between the residential development and development along the corridor. The zone provides residents direct access to transportation links and services, while buffering residential zones to the north from noise, traffic, and activities.

2.c. “The City of Olympia Land Use Approval and SEPA DNS of July 7, 2014 on the Tanasse Mixed Use Building, Case No. 14-0025 fail to comply with OMC Section 18.100.100 and sections 18.175.020 through 18.175.060 requiring infill to be compatible with adjacent residential structures.”

AND

2.d. “The City of Olympia Design Review Commission failed to consider and apply OMC Section 18.100.100 and Sections 18.175.20 through 18.175.060 which require infill to be compatible with adjacent residential structures to the Tanasse Mixed Use Building, Case No. 14-0025.”

The project is not subject to the regulations in Chapter 18.175 Infill and Other Residential, as the appellants claim, because the development site itself is not within that specific design review district (Attachment 23: Design Review Districts).

The design proposal is subject to design review, because it is within the Downtown District design review district (OMC 18.100.060 and 18.100.080), and it does not meet the criteria for exceptions to design review (OMC 18.100.060.B). All commercial projects within this downtown district are then subject to 1) the Basic Commercial Design Criteria, OMC 18.110, as well as 2) the district-specific requirements found in the applicable chapter, which in this case is the Commercial Design Criteria Downtown (OMC 18.120).

To summarize:

- The site is within the **Downtown Design Review District**;
- The proposed use within this district is a **commercial use**;
- Commercial uses within this district, at this location, are subject to the **Basic Commercial Design Criteria**, and the **Downtown District Design Criteria**.

Based on the Design Review Board’s recommendation to the Site Plan Review Committee (SPRC) on May 15, 2014, the design of the building meets the requirements of both the Basic Commercial Design Criteria and the Commercial Design Criteria Downtown save for the following two aesthetic modifications that shall be reflected in the architectural plan set at the next stage of review (Attachment 8):

- Provide more visual screening to the balcony railings above the garage and at the second floor level (the area below the handrail) for an increased level of privacy for residents across the alley.
- Consider adding landscape elements along the roofline to further break the appearance of the flat/horizontal roof line.

2.e. “The City of Olympia Design Review Commission failed to discharge its duties and responsibilities under OMC Section: 18.100.40 by, among other things, failing to act to preserve the special character and quality of Olympia by maintaining the integrity of those areas which have a discernible character or are of special historic significance.”

Once it is determined that the project requires design review, the next question becomes whether the Design Review Board, or a Joint Review Committee, or City staff will review the proposal.

City staff does not review this type of design proposal because it falls within the Downtown Design (design review district) (OMC 18.100.090.A.1.a); all projects that fall within this district are viewed by a full design review board.

The Joint Review Committee (JRC) does not review the project because the site of the new structure is not located in a district that is listed on the Washington Heritage Register, the National Register of Historic Places or the Olympia Heritage Register. The vacant development site is also not listed in the City’s inventory as a historic property, has not been identified as a historic place, and is not within a Historic District (OMC 18.12.055, 18.12.070, 18.12.090).

In Olympia, specific design regulations applicable to buildings in the PO/RM district are implemented through the design review process. This review and approval process implements the Comprehensive Plan’s “consistency” provisions. Design Review Board members are appointed by the City Council. The Board is comprised of building and landscape architects, citizens, business representatives, and a Planning Commission member. The Board is charged with making recommendations to the SPRC relating to the appearance and character qualities of proposed developments in the City (OMC 18.76.010). With respect to design review criteria, the recommendation of the Board shall always be accorded substantial weight by the decision-maker (OMC 18.72.080.C).

The duties and responsibilities of the Design Review Board are described in the Rules and Procedures for the Olympia Design Review Board (Attachment 21). On May 15, 2014, the Design Review Board held a regular meeting per the schedule adopted by the Design Review Board; a quorum of members were present; City staff, the applicants, and two members of the public attended the meeting; and a written record of the meeting, as well as a recorded record of the meeting (available upon request), were kept (Attachment 8).

The Design Review Board strives to not only maintain the integrity of those areas which have a discernible character or are of special historic significance, the Board must also see that development proposals and the design review program merge to do much more, including:

- promote those qualities in the natural environment which bring value to the community;
- foster the attractiveness and functional utility of the community as a place to live and work;
- raise the level of community expectations for the quality of the built environment;
- encourage originality and creativity in site planning and architecture;
- communicate these purposes to the applicant and to assist the applicant in achieving these purposes;

- preserve and enhances property value;
- ensure that new developments maintain or improve neighborhood character and livability; and
- consider the applicants' needs and goals and the broader public impact of any proposal.

With respect to the currently proposed building at 924 State Street, the Design Review Board gave its unanimous approval of the conceptual context plan, preliminary site and landscape plan, and preliminary building design, together with recommendations, that were adopted by the Site Plan Review Committee and became conditions of the approval that is the subject of this appeal. A detailed design review of the project, that considers in more depth the site plan, landscape plan, building elevations, and colors and materials, occurs (later) at the time of building permit application.

2.f. “The City of Olympia Land Use Approval and SEPA DNS of July 7, 2014 on the Tanasse Mixed Use Building, Case No. 14-0025 fail to comply with Basic Commercial Design Criteria, Chapter 18.110 and OMC 18.110.060 – View preservation by blocking views of the Capitol Building from public rights of way.”

Section 18.110.060 View Preservations states:

- A. REQUIREMENT: In order to protect the existing outstanding scenic views which significant numbers of the general public have from public rights-of-way, applicants for development must consider the impact their proposal will have on views of Mt. Rainier, the Olympia Mountains, Budd Inlet, the Black Hills, the Capitol Building, and Capitol Lake or its surrounding hillsides. All development must reserve a reasonable portion of such territorial and immediate views of these features for significant numbers of people from public rights-of-way, and shall provide lookouts, viewpoints, or view corridors so that visual access to existing outstanding scenic vistas is maintained.

Refer to the Scenic Vista overlay zoning maps available at the Community Planning and Development Department (Attachment 23).

In terms of view protection in Olympia, except for projects within the shoreline jurisdiction, the City does not protect *private* scenic views. The City does however protect certain scenic views of the Capitol Dome, Budd Inlet, Mount Rainier, the Black Hills, Capitol Lake and the Olympia Mountains from specified *public rights-of-way* (Attachment 23). The project on the north side of the road does not infringe on the protected public scenic views of the Black Hills (to the west) and the Capitol Buildings (to the southwest) as observed from the State Avenue NE right-of-way.

2.g. “The City of Olympia Land Use Approval and SEPA DNS of July 7, 2014 on the Tanasse Mixed Use Building, Case No. 14-0025 fail to comply with Basic Commercial Design Criteria, Chapter 18.110 and OMC 18.110.080 by using design elements to maintain a human scale on the street that is similar to the neighborhood buildings and fails to use design features to reduce the apparent size of such a large building.

Section 18.110.080 Maintaining human scale states:

- A. REQUIREMENT: Use design elements to maintain a human scale at the street. Projects requiring a conditional use permit in a residential zone must incorporate elements that relate to existing buildings in the neighborhood.

The Tanasse Mixed Use Building project proposal is permitted as of right in the zoning district, and the use does not require a conditional use permit; the zoning district is a commercial zoning district, and therefore the building design is not required to incorporate elements that relate to existing buildings in the neighborhood.

Staff feels that the design meets the requirements of Section 18.110.080, both along the street frontage of State Avenue NE and along the alley (Attachment 5). The building's massing, or organization of the building's overall volume, is broken into various wall sections that are well-modulated and articulated; material choices are durable and attractive; the pedestrian connection from the sidewalk to the private practice is maintained through thoughtful placement of landscaping, infrastructure such as bicycle parking, seating, ornamental yard features; and visibility into the building is provided. Additionally, the sidewalk in front of the office will be widened and tree grates or planter boxes will be placed around the street trees.

As discussed under item 2.J, the site plan exceeds the minimum side and rear yard setback requirements. For example, there are no minimum side yard setback requirements, however the building is set back in the east yard (over) ten feet, and set back in the west yard eight feet. The rear yard setback requirement is 15 feet, plus five feet for every story above two stories; the building is set back from the rear property line 23 feet, and another 20 feet above the single story garage (Attachments 3 and 14).

2.h. "The City of Olympia Land Use Approval and SEPA DNS of July 7, 2014 on the Tanasse Mixed Use Building, Case No. 14-0025 fail to comply fail to comply with the Commercial Design Criteria Downtown, Chapter 18.120 and OMC 18.120.060 by failing to maintain the character of existing downtown buildings.

Section 18.120.060 Building Materials states:

- A. REQUIREMENT: Maintain the character of the existing downtown buildings by using similar enduring materials such as stone, brick, and stucco.

The Olympia Design Review Program generally consists of two stages of review, the Concept stage of review and the Detailed stage of review. At concept(ual) design review the Board reviews the preliminary site plan, the preliminary landscape plan, and preliminary building elevations, among other things. The Board is generally interested in the overall programming of the site – the interplay of multiple elements such as site suitability, proposed locations and configurations of parking and the building, and evaluating issues and opportunities with the conceptual design. The Department 'takes in' the conceptual design review packet at the land use application stage of review – the initial stage of application.

It is at the detail design review stage that the Board considers the building materials, colors, planting choices – location and spacing of proposed plantings, details of windows – framing and glazing, door details, roof details, light fixture details, building trim, and so on. The Department 'takes in' the detail design review application later in the review process at the time of building permit application. In the case of the Tanasse project, the detail design review packet has not been submitted for review. The Design Review Board has yet to review the detailed elements of the proposal.

Based on the architectural drawings submitted to date, the materials appear to consist of corrugated metal siding, cedar siding, and cement board panels, all of which are materials found on Olympia downtown buildings, particularly newer buildings such as the City Hall building. Notwithstanding, the

issue of materials will not be fully resolved until the Board reviews the detail design review submittal.

2.i. “The City of Olympia Land Use Approval and SEPA DNS of July 7, 2014 on the Tanasse Mixed Use Building, Case No. 14-0025 approve a building that exceeds the allowable height limits set forth in OMC sections 18.06.080 and 18.06.100 in that a) roof of the structure is greater than 35 feet above the grade plane and rooftop structures are greater than 48 feet above the grade plane, and b) portions of the structure above 35 feet are not only and exclusively mechanical and elevator equipment and are being used to create storage, rooftop gardens, and/or other habitable space.”

The applicable development regulations include specific size, siting and design provisions. In this case, the proposed building meets all of those regulations. Nothing about the proposed building is prohibited. No ambiguous ordinances need to be interpreted. *Food Servs. of Am. v. Royal Heights*, 123 Wn.2d 779, 784-85 (1994). Accordingly, the applicable regulations should be applied according to their plain meaning. *State v. Villarreal*, 97 Wn. App. 636, 641-42 (1999). No variances or other exceptions have been sought for the proposal, and no interpretations based upon past applications of a regulation by the City are necessary to the analysis of this proposal.

The proposed heights comply with the applicable regulations. See OMC 18.06.080 (Table 6.02); and 18.06.100 A. 1. (roof structures for housing elevators may extend above the allowable roof height up to 18 feet above height limit for district).

The development standards of the underlying zone establish that buildings within 100 feet of a low density residential zone (R 4, R 4-8, or R 6-12) may not exceed 35 feet in height. The proposal meets this requirement (Attachment 14). Roof structures, unless providing additional floor space, habitable space, may extend 18 feet above the height limit of the district (OMC 18.06.100.A.1). Roof structures include the housing of elevators, stairways, tanks, ventilating fans and similar equipment required to operate and maintain the building, fire or parapet walls, skylights, towers, flagpoles, chimneys, smoke stacks, wireless masts, TV antennas, and steeples.

IBC 202 defines Habitable Space as:

A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.

IBC 202 defines Occupiable Spaces as:

A room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes or in which occupants are engaged at labor, and which is equipped with means of egress and light and ventilation facilities meeting the requirements of this code.

Occupied roofs are permitted per IBC regulations where roofs have the minimum required number of exits. Examples of buildings in Olympia with occupiable rooftop space include City Hall, and the Department of Enterprise Services building (DES).

2.j. “The City of Olympia Land Use Approval and SEPA DNS of July 7, 2014 on the Tanasse Mixed Use Building, Case No. 14-0025 fail to comply with the Commercial District Development Standards set forth in Section 18.06.080 that require a side yard setback of 15’ minimum + 5’ for each building floor above 2 stories next to an R 4-8 district.”

The building is subject to, and complies with, a 10-foot minimum front yard setback, a 20-foot rear yard setback, and no minimum side yard setback. It is subject to and complies with the 70% lot coverage limitation. OMC 18.06.080 (Table 6.02). Note: the side yards of this building are “interior” yards, not “on a flanking street.” Also, those side yards are not “next to an R 4-8 district.” Although such a residential district begins across the alley adjacent to the building’s rear, that district is not adjacent to the building’s sides. Therefore, the 15-foot side yard setback plus 5’ per story above two stories’ side yard setback regulation does not apply to this building. The building complies with all applicable setback regulations.

2.k. “The City of Olympia Land Use Approval and SEPA DNS of July 7, 2014 on the Tanasse Mixed Use Building, Case No. 14-0025 will harm the Appellants’ Bay by blocking the air and light to their property at 916 State Avenue NE, reducing its potential for solar energy and diminishing its value and the use and enjoyment of the property by its residents and users.”

Staff feels that this issue is primarily a property value argument, and while that is of great interest to the Department, at the project level staff must rely on development standards and regulations at-hand – permitted uses, densities, setback requirements, height limitations, lot size requirements, building development coverage limitations – that combine to protect the community’s interests as a whole. At this time the Comprehensive Plan provides limited direction to consider solar energy access and the zoning regulations do not contain any specific direction. City does not have specific solar energy standards for individual development, outside of the International Building Code (IBC), which contains provisions for installing solar energy saving facilities on buildings (weight limitations, attachment requirements, and electrical specifications).

The applicants submitted a solar study for the project depicting the impacts of the building on neighboring structures on June 21, September 21, and December 21. The findings indicated (Attachment 16):

“The south facing roof surfaces (possible locations for PV panels) of the two adjacent buildings will continue to receive direct solar gain during most hours of the day through the year. The south facing main roof of the adjacent property to the east will be partially shaded in the late afternoon during the fall and winter months. The property to the west has south facing roof surfaces on the porch and the garage. The porch roof will continue to have full sun exposure. The garage roof will be shaded in the early morning of the winter months.

Direct solar gain through existing windows of the adjacent properties will be altered on the building elevations that face the site at 924 State Avenue NE. The south and west elevations of the building to the east will receive adequate and generous daylight, but less direct sunlight in the afternoon hours. On the east elevation of the adjacent building to the west, the four existing east-facing windows will continue to received daylight from the approximately 15 foot space between the buildings, but will receive less direct sunlight in the morning hours.”

2.l . “The City of Olympia Land Use Approval and SEPA DNS of July 7, 2014 on the Tanasse Mixed Use Building, Case No. 14-0025 fail to comply fails to meet the minimum parking requirements set forth in OMC 18.38 in that the use does not qualify for the “Shared Use” exceptions and in that the plans, as drawn, do not comply with minimum space sizes and/or are not feasible on the actual project site.”

The following code sections apply to this development proposal:

OMC 18.38.060K. On-street credit – Non-residential. Upon the applicant’s request, non-residential uses located adjacent to a public right-of-way where on-street parking is permitted shall receive credit for one off-street parking space for each twenty (20) linear feet of abutting right-of-way, exclusive only of curb cuts and regardless of the actual and particular on-street parking provisions.

Three (3) parking space credit, on-street.

OMC 18.38.100 Vehicle and bicycle parking standards. (Table 38.01) Mixed Uses. Shared parking standards shall be used to calculate needed parking. This calculation is based upon gross leasable area (GLA) for each shop or business and does not include atriums, foyers, hallways, courts, maintenance areas, etc. See shared parking 18.38.180 [Shared parking facility].

Business/General Office – 3035 sq.ft. of gross floor area (GFA): 1 space for each 300 sq.ft. – 10.11 stalls, or **10 parking stalls required for the commercial use** (rounding of fractions, OMC 18.38.060.L).

Single Family to Include Duplex and Townhouse – Two (2) spaces per unit. Note: parking spaces may be placed in tandem (behind the other). DB, CSH, AND RMH zone districts require one (1) space/unit. Two units = **4 parking stalls required for the residential units.**

OMC 18.38.120 handicapped parking requirements. Total parking spaces in Lot or Garage: 1-25 = **1 accessible parking space required.** This requirement is met.

OMC 18.38.180.A.2.a. Shared parking facility. Allocation. Shared parking. When two (2) or more land uses, or uses within a building, have distinctly different hours of operation (e.g., office and church), such uses may qualify for a shared parking credit. Required parking shall be based on the use that demands the greatest amount of parking.

The commercial parking requirements demand the greatest amount of parking, at ten (10) spaces.

The proposal shows a total of ten parking spaces provided, as required:

Three (3) stalls enclosed in the garage;
Four (4) surface parking stalls between the building and garage;
Three (3) parking stalls available on-street with the on-street credit.

OMC 18.38.060.J. Compact Parking. No more than thirty (30) percent of total required parking may be devoted to compact cars, provided the design standards in Section 18.38.220 are met.
Two compact car spaces are provided, stalls 7 and 8.

The subject site falls within the Olympia Downtown neighborhood, and as such the downtown structured parking dimensions apply to the subject site (OMC 18.38.220.A.8).

	Compact Car Dimension	Standard Car Dimension
Standard Stall Width	8-foot	9-foot

Standard Stall Depth	16-foot	16-foot
Standard Aisle Width	24-foot	24-foot
Standard Wall-to-Wall	57-foot	57-foot

The proposal meets the City's Parking & Loading general regulations and design standards.

2.m. “The City of Olympia Land Use Approval and SEPA DNS of July 7, 2014 on the Tanasse Mixed Use Building, Case No. 14-0025 fail to comply with the Minimum Lot Size requirements of the Commercial District Development Standards set forth in OMC 18.06.080.”

The minimum lot size requirements in the PO/RM zone, are as follows:

No minimum for commercial uses, except 6,000 sq.ft. for duplex, which the City interprets as two-unit residential units. Table 18.06, Commercial Districts' Development Standards.

There is no minimum lot size for the proposed building that is built commercial standards. OMC 18.06.080 (Table 6.02). It is not subject to the lot size standards for duplexes, because “duplex” is defined by OMC as: “[o]ne building containing two single-family dwelling units totally separated from each other by a one-hour fire wall or floor.” OMC 18.02.180 D. a. vii. While the proposed building will include two dwelling units, it is not limited to residential uses. Therefore, it is not a “duplex.” Accordingly, the lot size and other regulations pertaining to duplexes are not applicable.

2.n. “The City of Olympia Land Use Approval and SEPA DNS of July 7, 2014 on the Tanasse Mixed Use Building, Case No. 14-0025 will create excessive storm water runoff that will cause harm and erosion to the down-slope properties and in the alley right-of-way and otherwise do not meet stormwater control standards.”

Consistent with the general timing of land use, engineering, and building permit reviews, the applicants have not submitted an application for engineering review. However, as part of the land use review and approval preliminary plans are routed to engineering sections for a first-phase review, or substantial review. The conclusion by City engineers state (Attachment 9):

Item 7. Clearing/Grading/Erosion Control Plan. The clearing/grading and erosion control plan submitted appears to meet City standards and will be further reviewed for detail approval following Land Use Approval as part of the detailed engineering plan review.

Item 8. Stormwater System and Drainage Report (hydra & work map). The City has capacity for this development's anticipated stormwater discharge. Detailed review will occur prior to engineering permit issuance.

Stormwater on the site, pursuant to the Engineering Design and Development Standards (EDDS), must be captured, treated, and released to the public system. The City's stormwater system is sized to facilitate this project. Further review will occur at the engineering plan review.

2.o. “The City of Olympia Land Use Approval and SEPA DNS of July 7, 2014 on the Tanasse Mixed Use Building, Case No. 14-0025 fail to meet American for Disabilities Act (ADA) 42 USC 12181-12189 requirements for access for mixed use facilities. There is, among other challenges, no apparent compliant Clear Path of Access (CPA) to the front door or to either street and there is no apparent ADA compliant access to the second story commercial space.

Consistent with the general timing of land use, engineering, and building permit reviews, the applicants submitted an application for building permit review on July 24, 2014, *after* the land use review and approval date of issuance on July 7, 2014. This means that the project had not received a review of ADA accessible circulation routes internal or external to the building by a Building Plans Examiner.

However, the project has since received a preliminary building permit review and meets the standards of the International Building Code (IBC) pertaining to accessible circulation routes (Attachment 15).

2.p. “The City of Olympia Land Use Approval and SEPA DNS of July 7, 2014 on the Tanasse Mixed Use Building, Case No. 14-0025 contain incomplete and misleading information, including, Environmental Checklist Item 6.b denying that the project would affect the potential use of solar energy by adjacent properties, and Item 13.a. denying that there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site.

City staff use the SEPA checklist to help determine whether the environmental impacts of the proposal are significant. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination.¹

The applicants filed a SEPA Environmental Checklist on February 26, 2014, along with other application materials required for the land use review portion of the proposal. During the analysis of the checklist staff determined that the checklist was incomplete. On April 7, 2014, staff sent the applicant a request for additional information (Attachment 11) which included a number of SEPA checklist items that needed additional information (16), including a more detailed response to item B.13.a., as the appellants assert.

On June 26, 2014, the Department received a Combined Information Request –Response (Attachment 13). The letter was a response to not only the SEPA Checklist items, but other planning, engineering, fire, and addressing issues identified by City departments and sections in an early review of the project proposal. Staff viewed the amended response to all SEPA-related items, including item B.13.a, as sufficient to move forward in the land use review and approval process.

III. CONCLUSION

When the correct regulations and analysis are applied to the proposed building, the appellants’ challenges are clearly insufficient to support reversal of the decision approving the Tanasse proposal. The appellants have not satisfactorily established that the SPRC decision is in error (as outlined in OMC 18.75.040.F.1-7) and that relief should be granted. Should an error be determined by the Examiner, the Examiner has the authority and power to “modify such mitigating measures” (OMC 14.04.155) or reverse or affirm, wholly or in part, or may modify the requirements, decision, or determination.

IV. RECOMMENDATION

Deny the appeal of the Tanasse Mixed Use Building Land Use and SEPA DNS determination.

¹ SEPA Environmental Checklist (WAC 197-11-960).

Submitted By: Catherine McCoy, Associate Planner

Staff Contact: Catherine McCoy, Associate Planner
360.570.3776
cmccoy@ci.olympia.wa.us

Date Issued: October 2, 2014

V. ATTACHMENTS

2. Land Use Approval and SEPA DNS 7-22-14
3. APPROVED Site Plan 7-7-14
4. APPEAL of Administrative Decision to HEX 7-28-14
5. CONCEPT COMBINED DRB Checklists 5-15-14
6. SEPA Checklist 2-26-14
7. CONCEPT DR Staff Report 5-15-14
8. CONCEPT DR Memo 5-15-14
9. ENG RVW_1 4-7-14
10. ENG RVW_2 6-24-14
11. Early comment Rvw Ltr 4-7-14
12. Substantive Review Letter 6-3-14
13. Combined Info Request Response 6-24-14
14. ARCHITECTURAL BLDG Permit Set 7-2014
15. BLDG RVW 8-14-14
16. SOLAR STUDY
17. PUBLIC COMMENT – 1
18. PUBLIC COMMENT – 2
19. STAHLEY & BAY LTRS
20. PUBLIC COMMENT – 3
21. DRB Rules of Procedure 3-28-96
22. HISTORIC Properties Map
23. Tanasse Maps