

Planning Commission Meeting  
September 24, 2015  
Verbatim Excerpt

SEA 84-M-012-02 – QUAN Q. NGUYEN & NGAN T. NGUYEN

Decision Only During Commission Matters  
(Public Hearing held on September 17, 2015)

Commissioner Strandlie: Thank you, Mr. Chairman. Mr. Chairman, tonight we are back to make a decision on SEA 84-M-012-02 on Mr. Nguyen. Dr. Nguyen, if you would come down, please – come down to the podium. The – everyone should've received a memo this afternoon from staff, further explaining that the legislative history of the Comprehensive Plan – so I won't go into that. I'll go ahead and make my statement and then affirm the conditions. So we'll go ahead. Tonight, we're back to make a decision on SEA 84-M-012-02 – Dr. Nguyen's application to build a new professional medical office on the same site where his practice has been located since 1984. His medical office is currently housed in a single-family dwelling built in 1941 and is the sole remaining one-story detached structure that remains on this street. The professional office is allowed under a previously-granted Special Exception. He seeks – seeks a special exemption to continue this use in a new structure. Last week, following the staff report and public hearing, several Commissioners voiced concern with language in the long-ago enacted Comprehensive Plan. The Plan language states that professional offices could be maintained in existing – emphasis added – structures, provided that these structures and their lots retain their single-family residential appearance. There's a question of whether the Comprehensive Plan Amendment should've been amended to allow this use since the medical practice would no longer be housed in an existing structure. This section of Evergreen Lane, which is substantially commercial, has a long history in planning, zoning, and construction. In addition to the information included in the previously-published staff report, staff prepared a planning history akin to a legislative history, if you will, that provides additional background information on this plot. The memo was circulated among Commissioners and submitted for the record. As explained by staff, after careful consideration, that determine was – a determination was made that, despite the word, "existing," the stability of the neighborhood was better-served by maintaining the current Plan language. The staff's position was that the word, "existing," does not hold as much importance as the stated intent of the plan, which is to provide for transitional uses in the area and to protect adjacent residential uses from commercial development. Further, the word, "existing," was used to ensure conformity with a neighborhood, as it existed in 1984. I agreed with the staff determination in this case and plan to move for approval. I believe that the new residential-looking professional office will more closely conform to the existing neighborhood look and feel than the existing 1941 one-story dwelling. There will be no change in existing use. The building will continue to house a medical practice, which serves the community – and, in particular, a senior center located steps away. The structure will continue to provide a transition between the three – and perhaps four – residences on the south side. In fact, with new buffering and a fence, the transition should be improved. The Mason District Land Use Committee reviewed the application twice. And the only concern was making sure the building maintained a residential appearance. That was accomplished in both the drawings and the conditions. And there is no community opposition that I know of to this application. Therefore, I'd like to ask the applicant to confirm the conditions for the application.

Quan Nguyen, Applicant/Title Owner: Yes. I confirm that the building architecture shall generally conform to the conceptual building elevations included on Sheet 4 of the SEA Plat and exterior materials shall be of high quality – no vinyl siding – and compatible with neighboring residential properties.

Chairman Murphy: Thank you. Would you identify yourself for the record, please? Give us your name so we'll know that-

Mr. Nguyen: Yes. My name is Quan Nguyen and I am the owner of the property.

Chairman Murphy: Okay. Thank you very much.

Mr. Nguyen: Thank you.

Commissioner Strandlie: And that is on the memo dated September 24<sup>th</sup>, correct?

Mr. Nugyen: Yes. Yes.

Commissioner Strandlie: Thank you. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SEA 84-M-012-02, SUBJECT TO THE CONDITIONS SET FORTH IN THE MEMO DATED SEPTEMBER 24<sup>TH</sup>, 2015.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion of the motion?

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Mr. Hart.

Commissioner Hart: Thank you. I appreciate the level of effort that has gone into the justification of staff's conclusion following the public hearing, but I still cannot agree with it. I think in a situation where we have extraordinarily specific Plan text, we run the risk of seeming arbitrary when, out of expediency or whatever other justification, we disregard Plan text like this. We make a lot of people jump through a lot of hoops for all kinds of applications. A lot of people need Plan Amendments or they have to, as we've seen, file FDPAs for patios in P-Districts and things. And it becomes difficult to tell the next person that comes along with a – with a good application with a positive use that benefits the community with an attractive building – that is just simply not in conformance with what the Plan text calls for. A situation like this where we have an existing commercial use, which is expressly authorized in an existing building – we have an application to expand the size of the building by four or five times and expand the parking area adjacent to undeveloped residential, which hasn't come in yet. This application should've had a Plan Amendment and I think most applications like this – staff would insist on a Plan Amendment. Once we take this new approach, it becomes very difficult to say no to the next person. I recognize, also, that may be an unintended consequence of some of what's happened with Fairfax Forward. We've made it very difficult for people to get a Plan Amendment – or a

Plan Amendment in any reasonable amount of time. And I sense that under the – those types constraints, it makes it more important to single out certain cases and, perhaps, look the other way when we have Plan text saying no. I think that's a very bad idea. I think we're going to have problems justifying that to the citizens and we ought not be doing that. So I won't be able to support the motion. And I would agree with Commissioner Ulfelder's comments – he's not here tonight – Commissioner Ulfelder's comment at the previous hearing. Thank you, Mr. Chairman.

Chairman Murphy: Further discussion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SEA 84-M-012-02, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioner Hart: Abstain.

Commissioner de la Fe: I'll abstain.

Chairman Murphy: And the Chair abstains. And Mr. de la Fe abstains.

Commissioner Flanagan: One more.

Chairman Murphy: And Mr. Flanagan abstains – not present for the public hearing. The motion carries. Thank you very much.

Commissioner Strandlie: I also have one further. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVE THE WAIVERS AND CONDITIONS LISTED IN THE STAFF REPORT, which also was distributed to you on a sheet DATED SEPTEMBER 17<sup>TH</sup>, 2015.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Same abstentions. Okay? Same abstentions. Thank you very much.

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(Each motion carried by a vote of 5-0-4. Commissioners de la Fe, Flanagan, Hart, and Murphy abstained. Commissioners Lawrence, Litzenberger, and Ulfelder were absent from the meeting.)

JLC