Livable Phinney, a Washington non-profit corporation, requests interpretation of the meaning and application of the code sections addressed below.

I. The Director should have required the upper level setbacks required in SMC 23.47A.014.B.3.

The Decision approved this project with 10-foot upper level setbacks in the northeast portion of the building instead of the 15-foot upper level setbacks required in SMC 23.47A.014.B.3 (Setbacks).

SDCI applied the version of SMC 23.47A.014.B.3 in effect on September 3, 2015, the date the Application was deemed complete, to this project.[1]

On that date, SMC 23.SMC.014.B.3.a required:

> "For a structure containing a residential use, a setback is required along any side or rear lot line that abuts a lot in a residential zone . . . , as follows" [specifying 15-foot upper level setback](emphasis added).

The 6726 Greenwood Avenue property is located on an NC2-40 parcel and shares a rear boundary with two single family homes. This is typical of virtually all commercial parcels in the Phinney Ridge neighborhood where the NC zone extends a half-block deep on the east and west sides of the Greenwood Avenue arterial, and the single family zone extends east and west from the shared rear property lines of the commercial parcels.

The zoning line separating the NC2-40 zone from the SF5000 zone is, in almost all locations, a straight N/S line drawn at 100 feet deep that corresponds to the shared rear property lines on almost every parcel in Phinney Ridge.

On a handful of commercial parcels, however, which are less than 100 feet deep, the rear lines do not match the zoning line because the zoning line remained at 100 feet even where an isolated commercial lot is not that deep. In those locations, the zoning line runs through a portion of the rear yards of the single family homes, resulting in a split-zoned lot.

The 6726 parcel, at 80 feet deep, is one of the few commercial parcels in Phinney Ridge that shares a rear boundary with split zoned lots. These lots have single family homes,

[1] This code language was modified effective September 21, 2015, after the Application date, to make it abundantly clear, without need to reference numerous code definitions, that this section required upper level setbacks when a commercial parcel abutted a split-zoned lot. Although, as explained in Section II below, Appellants believe that SDCI mistakenly applied the old version of SMC 23.47A.014 to this project, that position does not affect this analysis that SDCI applied the old code language incorrectly.

are occupied by single families, and are otherwise indistinguishable from any other home in the surrounding single family zone.

SDCI refused to require upper level setbacks because it determined, mistakenly, that SMC 23.47A.014.B.3 did not apply when a commercial parcel shared a rear boundary with a split-zoned lot. As a result of SDCI's error, the family living behind the northern portion of the 6726 project would have the upper three floors of the 6726 building looming over 45 feet high, just 10 feet from their property line.

A. SDCI ignored the plain and unambiguous code language that requires a 15-foot upper level setback regardless of whether the zoning line separating commercial and single family zones follows precisely along the shared rear property line.

The defined terms used in SMC 23.47A.014.B.3 demonstrate that the 15-foot upper level setback should have been applied here.

This section requires a setback "along any side or rear lot line that abuts a lot in a residential zone." (emphasis added).

The applicable defined terms are:

"Abut" means to border upon. SMC 23.84A.002

"**Lot**" means …a parcel of land that qualifies for separate development or has been separately developed. A lot is the unit that the development standards of each zone are typically applied to. A lot shall abut upon and be accessible from a private or public street sufficiently improved for vehicle travel… .SMC 23.84A.024

"**Lot lines**" means the property lines bounding a lot. SMC 23.84A.024

"**Lot line, rear**" means a lot line that is opposite and most distant from the front lot line. SMC 23.84A.024

A "**residential zone**" defined in the code under **"Zone, residential"** means a zone with a classification that includes any of the following: SF9600, SF7200, SF5000, RSL, LR1, LR2, LR3, MR, HR, RC, DMR, IDR and SM/R, . . ."SMC 23.84A.048

See also "**Zone, single family" or "SF zone**" means a zone with a classification that includes any of the following: SF5000, SF7200 and SF9600; and "**Zone, neighborhood commercial" or "Zone, NC**" means a zone with a classification that includes any of the following: Neighborhood Commercial 1 (NC1), Neighborhood Commercial 2 (NC2), ... SMC 23A.84A.048.

Substituting the plain and unambiguous definitions for the defined terms in SMC 23.47A.014.B.3, this section requires a setback "along any rear property line that borders upon a parcel of land that qualifies for separate development in a SF 5000 (single family) zone."

It is undisputed that the two single family homes that share a rear boundary with the 6726 parcel are "lots" as defined in SMC 23.84A.024, and that they could only be developed pursuant to the development standards for single family zones, notwithstanding the few feet of NC2-40 in their backyards. Therefore, they are "lots in a residential zone." The 6726 Greenwood parcel "abuts" these lots. The 15-foot upper level setback in SMC 23.47A.014.B.3, accordingly, is required, and the Director erred in refusing to impose the required 15-foot upper level setback.

SDCI's refusal to apply this setback provision when a commercial parcel abuts a split-zoned lot misreads the plain and unambiguous code language. It eliminates the word "lot" from the text of SMC 23.47A.014.B.3. Instead of requiring setbacks along a rear property line that "abuts a lot in a residential zone," SDCI's approach requires a setback only where the rear property line abuts the residential zone itself. According to SDCI's rationale, when a commercial parcel abuts a split-zoned lot, it "abuts" the NC portion of that lot, which is not a residential zone, and therefore no setbacks are required in this situation because SMC 23.47A.014.B.3 would not apply. SDCI's approach, however, cannot be squared with the plain and unambiguous code language. The Director's decision to ignore this code provision must be reversed.

B. Even if the language of SMC 23.47A.014.B.3.a were considered ambiguous, SDCI's reading of the statute would contravene legislative intent because adjacent parcels would be treated differently.

The commercial parcel immediately south of the 6726 parcel is a deeper lot and the zoning line there aligns with the rear property line. SDCI's application of SMC 23.47A.014.B.3 would lead to the absurd result that no upper level setbacks would be required on the 6726 parcel, but upper level setbacks would be required on the commercial parcel immediately south. And the single family homes behind the 6726 parcel could be stuck with a 40+ foot wall rising from their rear property line with no additional upper level setback, while their southern neighbor, whose backyard border corresponds to the zoning line, would benefit from15-foot upper level setbacks required on the adjacent parcel.

It is unlikely that the Council intended such disparate impacts on neighboring single family homes simply because the zoning line was not modified around the handful of parcels in Phinney Ridge that do not conform to the otherwise uniform 100-foot deep commercial lots.

SDCI, therefore, should have applied the 15-foot upper level setbacks to the 6726 parcel, and the MUP application should be revised with appropriate setbacks.

C. If this Interpretation results in a determination that the 15-foot upper level setbacks in SMC 23.47A.014.B.3.a apply to this project, the additional setbacks in SMC 23.47A.014.B.3.b for portions of the structure above 40 feet also apply.

An additional setback would be required pursuant to SMC 23.47A.014.B.3.b, which requires "[f]or each portion of a structure above 40 feet in height, additional setback at a rate of 2 feet of setback for every 10 feet by which the height of such portion exceeds 40 feet."

The proposed project is more than 40 feet high, and therefore the eastern portion of the building that requires a 15-foot setback would also require an additional setback above the 40-foot height.

Because the grade of the 6726 parcel is several feet lower in the northeast portion of the 6726 parcel, the building heights in that area, as measured from the grade in that area, are higher than the stated heights in the MUP drawings.

If SDCI determines in its Interpretation that these above-40-feet setbacks are required, Livable Phinney requests that SDCI specify from what point the 40 foot height limit of SMC 23.47A.014.B.3.b is measured: (1) the actual elevation at the shared boundary, or (2) the average grade used in the height calculations.

II. Even if SDCI determines the old version of SMC 23.47A.014.B.3 does not require upper level setbacks (Item #I, above), it still must apply the 15-foot upper level setbacks pursuant to the revised setback code language in effect at the first EDG meeting, based on the applicable provisions of SMC 23.76.026.C.2 and the facts of this case.

If SDCI agrees with Livable Phinney on Question I above that the old version of SMC 23.47A.014.B.3 required15-foot upper level setbacks, this question about which law applies may be unnecessary because it would result in the same requirement for 15-foot setbacks regardless of whether the new or old setback law was applied to this project.

If however, SDCI continues to insist that the old setback language does not compel upper level setbacks, the issue of whether SDCI should have applied the new setback code – which took effect shortly after the application date and was in effect at the first EDG meeting – must be addressed. It is undisputed that the new setback language, if applied to this project, would require 15-foot upper setbacks.

As a threshold matter, Livable Phinney does not believe that that determination is subject to interpretation. But in the event SDCI disagrees, Livable Phinney addresses the issue here.

If SDCI agrees that this issue is not subject to the interpretation requirements of SMC 23.88.020 and should instead be argued directly to the Examiner, Appellants request that SDCI confirm that position in its Interpretation and not address the substance of this issue at this time.

A. The issue of which law applies in this case requires a threshold determination of whether SMC 23.76.026.C.2 is subject to the code interpretation process.

SMC 23.76.026.C specifies which law applies to a project, based on the events specified in each subsection. But SMC Chapter 23.76, contained in Title IV of the Administration section of Title 23, regulates procedures for MUPs.

SMC 23.88.020.A identifies an "interpretation" as "a decision by the Director as to the meaning, application or intent of any development regulation in Title 23…as it relates to a specific property… ." It specifically states that "[p]rocedural provisions and statements of policy are not subject to the interpretation process." *Id.*

Appellants are aware of at least one Interpretation where SDCI has determined that SMC Chapter 23.76 is not a development regulation subject to the interpretation requirement.

If SDCI takes the position that SMC 23.76.026.C.2 is not a development regulation, it then would not be subject to the interpretation requirement of SMC 23.88.020.A, and the issue of which setback law applies to this project should be resolved directly, as necessary, by the Hearing Examiner, as raised in Livable Phinney's concurrent appeal.

B. If SDCI determines that this issue is subject to interpretation, the interpretation should conclude that SDCI should have applied the version of SMC 23.76.026.C.2 that was in effect on the application date, a determination that would have required this project to be reviewed under the revised setback language of SMC 23.47A.014.B.3.

In abundance of caution, and to prevent any future argument that Livable Phinney failed to exhaust its administrative remedies on this issue, it includes within this interpretation request the issue of which version of SMC 23.76.026.C.2 applies to this project.

The issue of which law applies to this case arose because the Applicant rushed in a bare bones application on September 3, 2015, shortly before the effective date of legislation that changed several provisions of the Land Use Code including the applicable code language regarding upper level setbacks (SMC 23.47A.014.B.3) and which law applies if more than one EDG meeting was required during the design review process (SMC 23.76.026.C.2).

On September 3, 2015 (the application date), SMC 23.76.026.C.2 stated that if more than one EDG meeting was required, the complete MUP "shall be considered under the Land

Use Code and other land use control ordinances in effect at the time of the first meeting. . . .” (Emphasis added.)

On September 21, 2015, after the application date, Ordinance 124843 (the Land Use omnibus legislation) took effect. That ordinance changed not only the code language for upper level setbacks, but also the applicable language of SMC 23.76.026.C.2 regarding which law applies if more than one EDG meeting was required.

The new version of SMC 23.76.026.C.2 stated that if more than one EDG meeting was required, the complete MUP “shall be considered under the Land Use Code and other land use control ordinances in effect on the date a complete application for the early design guidance process is submitted to the Director. . . .” (Emphasis supplied.)

In this case, it matters which version of SMC 23.76.026.C.2 applies. The first EDG meeting occurred on October 19, 2015. The Design Review Board required a second EDG meeting. The new setback language of SMC 23.47A.014.B.3 was in effect on that date.

Therefore, according to the version of SMC 23.76.026.C.2 in effect on the application date, the 6726 project would be subject to the Land Use Code, including new setback language, in effect at the first EDG meeting. It is undisputed that the new code language required 15-foot upper level setbacks.[2]

SDCI, however, applied the new version of SMC 23.76.026.C.2 retroactively. This allowed the 6726 project to proceed under the old setback language in effect on the application date. As noted in Question #1 above, SDCI then misapplied that code language and allowed this project to proceed with inadequate setbacks.

SDCI should not have applied the new SMC 23.76.026.C.2 retroactively to this case. This project should have been governed by all of the land use code provisions in effect on the application date.

The tables on the next page show the applicable code provisions at the key dates:

[2] The new SMC 23.47A.014.B.3 stated: “For a structure containing a residential use, a setback is required along any side or rear lot line that abuts a lot in a residential zone . . . , **or that abuts a lot that is zoned both commercial and residential if the commercial zoned portion of the abutting lot is less than 50 percent of the width or depth of the lot** as follows…[specifying upper level setback distances].” (New language emphasized in bold.)

Setback language of SMC 23.47A.014.B.3

Setback language of SMC 23.47A.014.B.3 on application date (September 3, 2015):	**Setback language of SMC 23.47A.014.B.3 effective September 21, 2015, and in effect at first EDG meeting on October 19, 2015:**
"For a structure containing a residential use, a setback is required along any side or rear lot line that abuts a lot in a residential zone . . . , as follows" . . .[specifying upper level setback distances]	"For a structure containing a residential use, a setback is required along any side or rear lot line that abuts a lot in a residential zone . . . , **or that abuts a lot that is zoned both commercial and residential if the commercial zoned portion of the abutting lot is less than 50 percent of the width or depth of the lot** as follows" . . .specifying upper level setback distances] (new language in bold)

SMC 23.76.026.C.2 (which law applies), before and after Application Date of project

Which law applies (SMC 23.76.026.C.2), in effect on application date, 9-3-2015:	**Which law applies (SMC 23.76.026.C.2) effective September 21, 2015 (after application date):**
"If more than one early design guidance public meeting is held, then a complete application for a Master Use Permit that includes a design review component **shall be considered under the Land Use Code and other land use control ordinances in effect at the time of the first meeting,** " [provided the MUP is filed in the specified time].	"If more than one early design guidance public meeting is held, then a complete application for a Master Use Permit that includes a design review component **shall be considered under the Land Use Code and other land use control ordinances in effect on the date a complete application for the early design guidance process is submitted to the Director,** " [provided the MUP is filed in the specified time]

III. The alleged "clerestories," that extend four feet above the building height for almost the entire west side of the building on Greenwood Avenue do not meet the definition of "clerestory" in SMC 23.84A.006, and the Director should not have allowed extra height for these structures pursuant to SMC 23.47A.012.C.2.

The alleged clerestories on this project are two, flat-topped, four-foot high rectangular structures that collectively span approximately 75 feet of the 100-foot west façade along Greenwood Avenue, and extend more than 20 feet of the depth of the building. *See e.g.,* MUP plan set drawing A3.01, west elevation (October 5, 2016, most recent plan set available on SDCI website). The northern structure is approximately 25 feet long, and the southern structure is approximately 50 feet long.

These alleged clerestories create a 48-foot tall building in a NC2-40 zone. They add additional height to the tiny, west-facing, fourth floor dwelling units and enable the addition of "mezzanines" in those units. The Director granted this additional height for these alleged clerestories pursuant to SMC 23.47A.012.C.2 (additional height for specified rooftop features).

A. The alleged clerestories on the 6726 building do not meet the definition of clerestory.

SMC 23.84A.006 defines "Clerestory" as "an outside wall of a building that rises above an adjacent roof of that building and contains vertical windows. Clerestories function so that light is able to penetrate below the roof of the structure." (emphasis added)

The eastern walls of the purported clerestories in the 6726 building do not contain any windows, and they are not part of an outside wall of a building. *See e.g.,* Sheet A3.02 of MUP set dated October 5th, 2016 (east elevation). Instead, they are four-foot high, solid walls that protrude upward from the interior section of the roof extending along almost the entire roofline, adding four more feet to a building already granted four extra feet of height under SMC 23.012.A.1.a.1.a (additional four feet of height for a 13 foot first floor commercial use).

These substantial roof structures create a 48-foot tall building that looks like a five-story building in a NC2-40 zone as viewed from Greenwood Avenue. These massive flat-topped structures with a windowless wall that span almost the entire length of the building should not have been allowed because they do not meet the definition of "clerestory."

B. The alleged clerestory structures on the 6726 building are not the type of "clerestory" envisioned in SMC 23.47A.012.C.2 that allows extra height for specified rooftop features.

The Director granted an additional four feet of height for these alleged "clerestory" structures pursuant to SMC 23.47A.012.C.2, which allows additional height for specified rooftop features including "[o]pen railings, planters, skylights, clerestories, greenhouses, solariums, parapets, and firewalls" (emphasis added).

Even if a clerestory could technically contain a windowless wall, the massive, flat-topped structures on the 6726 building are not the clerestories that fit within this section.

With the exception of firewalls, none of the listed items in SMC 23.47A.012.C.2 describe a feature that would erect a four foot, virtually solid wall across almost the entire length of the building as do the "clerestory" structures that SDCI allowed on the 6726 building. Instead, SMC 23.47A.012.C.2 identifies rooftop features that are either clear (e.g., open railings, greenhouses), or intermittent design features (e.g., planters, skylights, parapets). Accordingly, the Director erred in granting four additional feet of height under this section, particularly after already allowing four feet of additional height under SMC 23.47A.1.a,1.a. The clerestories, as depicted in the Decision and accompanying MUP drawings, should be removed.

C. The Director lacked sufficient evidence to demonstrate that the clerestory structures, even if allowed under other provisions of the code, could be located within 10 feet of the north edge of the building.

SMC 23.47A.012.C.7 requires that specified rooftop features, including clerestories "shall be located at least 10 feet from the north edge of the roof unless a shadow diagram is provided that demonstrates that locating such features within 10 feet of the north edge of the roof would not shade property to the north on January 21st at noon more than would a structure built to maximum permitted height and FAR."

The required shadow studies were not provided until November 1, 2016, long after the design review process was completed, despite repeated public comments (including at design review meetings) about this omission. The shadow studies finally provided are too inconclusive and potentially inaccurate to support the Director's Decision to allow the massive clerestory structures within 10 feet of the north edge of the building.

IV. The extra height from the clerestories was combined unlawfully with the extra height provided in SMC 23.47.012.A.1.a.1.a to allow for an extra mezzanine level in the fourth floor units beneath the clerestories in violation of SMC 23.47A.012A.1.a.2.

The Director allowed the 6726 building an extra four feet of height above the applicable 40-foot height limit because the building purports to provide a floor-to-floor height of at

least 13 feet for non-residential uses at the street level. *See* SMC 23.47A.012.A.1.a.1.a.. Such extra height, however, is only allowed if it "will not allow an additional story beyond the number that could be built under the otherwise applicable height limit." SMC 23.47A.012.A.1.a.2 (emphasis added).

The 6726 building has unusually low floor-to-floor heights on the second and third floors (9'-1 ¼"), and a substantially higher floor-to-floor height on the fourth floor (11'5"). The clerestories then add four additional feet of height to the fourth floor for a 15'5" floor-to-floor height on the west side. *See e.g.*, MUP elevation drawings A3.01 – 3.04. That extra height was used to incorporate "mezzanine" levels into the west-facing fourth floor units. *See e.g.* MUP set drawing A2.15.

SMC 23.84A.036 defines "Story" as "that portion of a structure included between the surface of any floor and the surface of the floor next above, except that the highest story is that portion of the structure included between the highest floor surface and the ceiling or roof above." (Emphasis added.)

The extra height of the clerestories combined with the extra height allowed for a 13-ft first floor enabled the Applicant to create an additional story beyond the number of stories that could otherwise be built in a NC2-40 zone. The Decision to allow the extra height under SMC 23.47A.012.A.1.a.1.a violated the conditions for such extra height in SMC 23.47A.012.A.1.a.2.

V. SDCI lacked sufficient information to determine whether the additional height allowed for the building would unlawfully block protected views.

The Decision approved a 48-foot tall building in a NC2-40 zone without adequate or accurate information to determine whether the additional height would block protected views.

SMC 23.47A.012.A.1.c requires that "[t]he Director shall reduce or deny the additional structure height allowed by this subsection 23.47A.012.A.1 if the additional height would significantly block views from neighboring residential structures of any of the following: Mount Rainier, the Olympic and Cascade Mountains, … [and] Green Lake… ." (Emphasis added.)

The 6726 parcel is located at the top of Phinney Ridge. Buildings in the immediate vicinity enjoy views of Mt. Rainier, the Olympic and Cascade Mountains, and Green Lake, all of which are protected views under SMC 23.47A.012.A.1.c.

The Decision granted four feet of additional height pursuant to SMC 23.47A.012.A.1.a.1.a, and an additional four feet of height for the massive clerestory structures pursuant to SMC 23.47A.012.C.2, creating a 48 foot tall building in the protected view-sheds of the neighboring residential structures. The Decision contains no specific finding that the additional height would not block protected views of Green

Lake, the Cascade Mountains, or Mt. Rainier, all of which can been seen from adjacent mixed use buildings, including the Fini Condos at 6801 Greenwood Avenue N and the Isola condos, currently under construction at 6800 Greenwood Avenue N. The Decision at 28 simply asserts, without substantiation, that height, bulk and scale of the project and its relationship to nearby structures and uses were addressed in Design Review and no further SEPA mitigation is required.

The alleged view studies included in the October 5, 2016 MUP set are incomplete, misleading, and inaccurate, and otherwise insufficient to determine that the 6726 building would not block protected views.

These view studies contain a number of obvious errors, including: (1) the viewing angles used to determine potential view blockage from the Fini Condos to the west are not identified as is typically done in view studies, so their accuracy and assumptions are unknown; (2) the applicant failed to provide any view angle studies from the Isola building to the north, but only offered the conclusory statement that "with or without the additional height, any views will be impacted;" (3) the drawing of the Isola building mislabels the roof elevation at 373', an elevation three feet higher than indicated on the Isola plans; (4) the drawing used to support the conclusory statement about the Isola building shows a height change from 44 to 48 feet, not 40 to 44 feet as required in the code; (5) the computer-generated images against a cloudy background with the Cascade Mountains drawn in and Green Lake barely visible are misleading and do not match the actual views from the Fini; and (6) the computer-generated images do not depict the impact of increasing the height from 40 to 44 feet.

These substantial errors and omissions prevented SDCI from making an informed decision about whether to allow any additional height to this building for either the height bonus for a 13-foot first floor or the massive clerestory structures or both. The Decision to allow additional height must be reversed until comprehensive and accurate information about view impacts is provided.

VI. SDCI erred in allowing the elevator shaft to reach 60 feet above grade level because it calculated the starting height from the wrong elevation in violation of 23.47A.012.A.

The Decision approved an elevator shaft that is 60 feet above grade (elevator penthouse elevation of 386.11 feet; AGP of 326.11. The maximum height of the elevator shaft should have been 56 feet above AGP (382.11 feet elevation, based on the AGP in the drawings). The approved elevation of the elevator shaft is four feet too high.

SDCI erred because it calculated the 16-foot extra height allowed for an elevator shaft from the wrong starting point, and as a result approved a building with an elevator shaft that is 4-feet too high.

SMC 23.47A.012.C.4 allows stair and elevator penthouses to "extend above the applicable height limit up to 16 feet." SMC 23.47A.012.C.4.f (emphasis supplied).

"Applicable height limit," the starting point referenced in this elevator height extension provision, refers to the 40-foot height of the NC zone. *See* SMC 23.47A.012.A ("The height limit for structures in NC zones . . . is 30 feet, 40 feet, 65 feet [etc]. . . . Structures may not exceed **the applicable height limit**, except as otherwise provided in this Section 23.47A.012"). (Emphasis supplied.)

Because the elevator height extension provision (SMC 23.47A.012.C.4.f) authorizes an extension above the "applicable height limit," the extension must be measured from a height of 40 feet. The elevator extension, accordingly, would reach a maximum height of 56 feet above grade (not 60 feet as allowed in the Decision).

Because SDCI had already granted a four-foot height extension (to 44 feet, shown in drawings at AGP 370.11 "ht max") pursuant to SMC 23.47A.012.A.1.a.1.a (for 13-foot first floor), it could not add the full 16 foot elevator extension on top of the height extension it already awarded. But that is what it did. It added a 16-foot elevator on top of a 44-foot roof, and as a result, SDCI approved an elevator shaft that extends 20 feet above the applicable height of 40 feet, when the applicable code allows only a 16-foot extension. *See e.g.,* MUP plan set at A3.01-04 (elevations). SDCI should have allowed the elevator shaft only 12 feet additional height above the 44-foot rooftop. The elevator shaft, therefore, should have reached only 382.11 feet elevation instead of 386.11 feet as approved in the Decision.

VII. SDCI lacked adequate information to conclude that the "frequent transit service" exclusion authorized no on-site parking for this 57 unit building.

SDCI refused to require onsite parking for this 57-unit building because "[t]his site is located in an Urban Village within 1,320 feet of frequent transit service" and therefore, "regardless of the parking demand impacts, no SEPA authority is provided to mitigate impacts of parking demand from this proposal." Decision at 29 (emphasis supplied). The SEPA errors raised by this conclusion are part of Livable Phinney's appeal to the Hearing Examiner. The errors under Title 23 are part of this interpretation request.

SMC 23.54.015.A imposes minimum parking requirements. Table B, Item M of this section authorizes a "no minimum parking requirement" for "[a]ll residential uses in commercial and multifamily zones within urban villages . . . if the residential use is located within 1,320 feet of a street with **frequent transit service**, measured as the walking distance from the nearest transit stop to the lot line of the lot containing the residential use." (Emphasis supplied.)

"Frequent transit service," defined in 23.84A.038 ("Transit service, frequent"), means "transit service headways in at least one direction of 15 minutes or less for at least 12

hours per day, 6 days per week, and transit service headways of 30 minutes or less for at least 18 hours every day."

SDCI lacked adequate information to conclude that the frequent transit service exception applies to the 6726 site. It relied exclusively on a 2015 Metro bus schedule provided by the Applicant in October 2015 to satisfy the frequent transit service exception. It did not investigate or require additional information to determine if the headways indicated in the schedule were actually achieved at that time, or were achieved more than a year later when it issued the Decision.

SDCI's previous Director's Rule on this topic was rescinded after it was declared unlawful in 2014, and Appellants are not aware of any revised Director's Rule on this topic since that time. SDCI's reliance on a bus schedule alone, without further evidence of reliability, is not sufficient to demonstrate that nearby transit service actually meets the specific criteria for consistent regularity that the Council required. Accordingly, the frequent transit exclusion should not have been applied to this project.