

FINDINGS AND RECOMMENDATION  
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Application of

R. D. MEBUST

FILE NO. 8405213  
CC-84-021  
C.F. NO. 293593

for a council conditional use  
pursuant to the provisions of  
Title 24, Seattle Municipal Code,  
(Zoning Ordinance 86300, as amended)

Recommendation: The application should be CONDITIONALLY GRANTED.

Introduction

Applicant, R. D. Mebust, as agent for the Shelter Group is applying for a Council Conditional Use to allow establishment of a 16-unit apartment building in a CG zone at 3507 S.W. Alaska Street.

The Director's report, submitted by the Department of Construction and Land Use (DCLU), recommended that the application be conditionally granted.

Letters and testimony in opposition were entered in the record.

This matter was heard before the Hearing Examiner on January 3, 1986, and the record was held open until January 15, 1986, for the purpose of allowing a vicinity resident, who had no direct notice of the hearing, the opportunity to submit further documents.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 24, unless otherwise indicated.

After due consideration of the evidence presented by the applicant, the information provided by the Director and all evidence elicited during the public hearing, the following shall constitute the findings, conclusions of law and recommendation of the Hearing Examiner on this application.

Findings of Fact

1. The subject site is located at the southwest corner of 35th Avenue S.W. and S.W. Alaska Street. The 11,299 square foot lot has 114 feet of frontage on 35th Avenue S.W., to the east, and 98 feet of frontage on S.W. Alaska Street, to the north. The legal description of record is incorporated herein.

2. The lot is presently developed with two single family residences and a detached garage. The proposal is to demolish the existing structures and to construct a four-story, 16-unit apartment that will be 33.5 feet in height. Sixteen basement garage parking spaces have been proposed with access to the garage from S.W. Alaska Street.

3. Properties to the south are zoned SF 5000 and developed with single family residences. To the west and north, the properties are in the CG zoned area and developed with a clinic on the west and to the north with a motel and a barber shop.

4. From the credible testimony, the Hearing Examiner finds that a wide variety of both nonresidential and residential uses exists in the CG zone, that small scale, nonintensive uses surround the site, that no special features such as railroads exist and that the site is at the corner boundary of the CG zone where it abuts the SF 5000 zone.

5. From the credible testimony, the Hearing Examiner does not find intensive commercial uses such as manufacturing plants or the like in the immediate CG zone that would adversely affect the desirability of utilizing the site for living purposes.

6. From the record and through credible testimony of the Director's representative, the Hearing Examiner finds the subject site's topography to be hilly and steep with a 17-foot fall from the south to north lot boundaries. Because of the topography, the proposed structure will appear as a three-story structure above grade.

7. Through credible testimony, the Hearing Examiner finds that the proposed development's orientation will be to the north and that the orientation of residences in the abutting single family zone is east. The residences fronting 35th Avenue S.W. have their views to the east and west unobstructed.

8. The applicant's architect stated that the proposed structure will have a modulated facade which will be tasteful and in compliance with RM 800 bulk requirements. The Hearing Examiner finds that the proposed structure will serve as a buffer to the abutting single family residences.

9. Through credible testimony of the Director's representative, the Hearing Examiner finds that commercial development at the site could, with the CG designation, be higher in height, unmodulated in bulk and constructed without setback from the property boundaries.

10. A vicinity resident in opposition to the project stated, and the Hearing Examiner finds, that the proposed project will aggravate the demand for on-street parking on the residential streets due to the present lack of parking in the area and on the S.W. Alaska Street and 35th Avenue S.W. arterials.

11. The Hearing Examiner finds that applicant's voluntary proposal at the hearing to provide four more basement garage parking spaces is an attempt to address the residents' concerns about parking but at the same time, the Hearing Examiner finds that applicant's 16 parking spaces initially proposed fulfill code requirements.

12. Residents' testimony found credible by the Hearing Examiner establishes that residences abutting to the south of the proposed development will have their northern views to Elliott Bay and downtown Seattle either blocked or altered by the construction of the four-story structure.

13. The Hearing Examiner is not persuaded by residents' statements that the family residences will decrease in value by 25 percent because of the construction of the proposed residential development, nor that the new additional residents will cause a detrimental impact in the area.

14. The Hearing Examiner does not find credible the testimony of a vicinity resident who stated that commercial development would be the best suited development for the site. The resident based her opposition to the applicant's proposal upon her deceased husband's decision not to construct a similar type of residential development in the vicinity. (See Ron Turner Construction, X-78-028.)

15. The Hearing Examiner finds that the land use application referenced by the resident was for a variance. The variance was conditionally granted on April 21, 1978. The proposal was not constructed for reasons other than those stated by the resident in the record.

16. The same resident requested the Hearing Examiner to suspend his decision in this matter pending the resolution of her lawsuits filed in Superior Court challenging the ownership of the subject site. The Hearing Examiner is without authority to comply with this request absent an injunction issued by the court.

17. From the record, the Hearing Examiner finds that the Director of the Department of Construction and Land Use has conditionally granted approval as follows:

- A. Landscaping shall be provided per approved plan prior to final occupancy of the building. Maintenance of the landscaping shall be the responsibility of the owner(s).
- B. Loud equipment, including but not limited to, pavement breakers, pile drivers, jackhammers, sandblasting tools, crawlers, tractors, compactors, drills, graders, compressors and other similar equipment is strictly limited to normal working hours (7:30 a.m. to 6:00 p.m.) on weekdays.
- C. Grade the property line on the unimproved alley abutting to the south per a Building Grade sheet (obtainable from Hank Herano at 625-2365).
- D. Lighting on site will be directed and shielded so as not to cause glare off the subject property.

Note: Prior to issuance of a Master Use Permit or Building Permit, evidence of unencumbered title to the east one-half of the abutting vacated alley shall be provided to the satisfaction of the Department of Construction and Land Use.

18. From the record, the Hearing Examiner finds that although timely written notice was mailed to residents and all interested persons, a vicinity resident did not receive direct notice of the hearing. That resident's request for additional time to supplement the record was granted so that a full and complete record could be presented for the consideration of the Hearing Examiner.

#### Conclusions of Law

1. The considerations for conditional use authorization are whether the use will be materially detrimental to the public welfare or injurious to other properties and whether the authorization of the use will be consistent with the spirit and purpose of the zoning code. Seattle Municipal Code 24.74.010.

2. In regard to dwelling units in a CG zone, the code sets three conditions, Seattle Municipal Code, Section 24.52.100:

- A. Nearby or associated uses and other conditions in the immediate environs are not of the type to create a nuisance or adversely affect the desirability of the area for living purposes.
- B. The residential development will not usurp land which is needed for or better suited to commercial usage by virtue of special attributes such as railroad access and proximity of established commercial development.
- C. Structural bulk incident to residential use will not adversely affect surrounding development, and in no event exceed RM 800 bulk provisions.

3. In that the nearby and associated uses in the area of the site are a mix of nonresidential and residential with no intensive commercial use in the immediate area, the Hearing Examiner concludes that said uses are not of a type to create a nuisance or adversely affect the desirability of the proposed residential use. Seattle Municipal Code, Section 24.52.100(A).

4. As uses in the CG zone are a mix of small scale, nonintensive commercial development mixed with residential use, as no special commercial attributes exist and because the subject property is situated at the corner boundary of the CG zone where it abutts the SF 5000 zone, the Hearing Examiner concludes that the residential development does not usurp land which is better suited for commercial development. Seattle Municipal Code, Section 24.52.100(B).

5. Because permissible commercial development at the site could be higher and more massive in bulk, the Hearing Examiner concludes that the applicant's proposed residential development will not adversely affect the surrounding development, but, rather, will buffer the surrounding development.

6. The Hearing Examiner concludes on-street parking will be further aggravated by applicant's development, and therefore, recommends that applicant provide the four (4) additional parking spaces as volunteered at the public hearing.

7. The Hearing Examiner concludes that residences abutting to the south will have their northern views either blocked or altered, but that the residents will have their east-west views unaffected. Due to the topography and 17-foot fall of the property, other residents in the area will not, however, be presented with a four-story building, but a three-story building.

8. Although the hearing did not address a specific State Environmental Policy Act (SEPA) challenge, Seattle Municipal Code 25.05.902(7)(v), (Seattle SEPA Ordinance) addresses the subject matter of views and views that are protected:

...The City has developed particular sites for the public's enjoyment of views of mountains, water and skyline and has many other public places where such views enhance one's experience; it is the policy of the city to:

- (a) Reasonably protect views from such public places; and
- (b) Reasonably protect the view of certain designated historic landmarks...

9. The Hearing Examiner concludes that views from private residences are not per se protected, and the Hearing Examiner declines to recommend limiting or conditioning applicant's development on the basis of preservation/protection of views from private residences.

10. From the record, the Hearing Examiner concludes that the new residents of the development will not create an undue impact of overcrowding in the area nor that the surrounding property values will decrease by a factor of 25 percent because of the residential development.

11. In consideration of the testimony and record herein, the Hearing Examiner concludes the conditional use will not be materially detrimental to the public welfare or injurious to other properties in the area and that the use will be consistent with the spirit and purpose of the zoning code. Seattle Municipal Code 24.74.010.

12. From the record, the Hearing Examiner concludes that timely written notice was given to residents and to all interested persons and that additional time was allowed to give them ample opportunity to present a full and complete record in this proceeding.

13. Finally, the Hearing Examiner concludes that he is without authority to suspend his recommendation pending resolution of other lawsuits absent a court-ordered injunction.

Recommendation

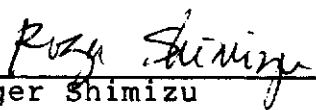
For each of the above reasons, the recommendation of the Hearing Examiner to the City Council is as follows:

That the petition be granted upon the following conditons:

1. Applicant provide a total of 20 parking spaces.
2. Landscaping shall be provided per approved plan prior to final occupany of the building. Maintenance of the landscaping shall be the responsibility of the owner(s).
3. Loud equipment, including but not limited to, pavement breakers, pile drivers, jackhammers, sandblasting tools, crawlers, tractors, compactors, drills, graders, compressors and other similar equipment is strictly limited to normal working hours (7:30 a.m. to 6:00 p.m.) on weekdays.
4. Grade the property line on the unimproved alley abutting to the south per a Building Grade Sheet (obtainable from Hank Herano at 625-2365).
5. Lighting on site will be directed and shielded so as not to cause glare off the subject property.

Note: Prior to issuance of a Master Use Permit or Building Permit, evidence of unencumbered title to the east one-half of the abutting vacated alley shall be provided to the satisfaction of the Department of construction and Land Use.

Entered this 29th day of January, 1986.

  
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Roger Shimizu  
Hearing Examiner Pro Tempore

Notice of Right to Petition  
for Further Consideration

Pursuant to Section 23.80.10.E, Seattle Municipal code, any person substantially affected by or interested in this recommendation may submit a petition in writing to the City Council requesting further consideration. The petition must be filed with the Council within fourteen days of the date of this recommendation and should be addressed to the City Council, Land Use Committee, Municipal Building, Seattle, Washington 98104.

The petition should clearly identify specific objections to this recommendation and the relief sought; however, the petitioner should not include any additional evidence or exhibits as the Council's consideration will be based upon the record of the Hearing Examiner's hearing. If the Council determines that a factual error exists in the record or that important information is missing, the Council may have the record supplemented pursuant to Section 23.80.10.E.3 or 23.80.10.E.4. At its public meeting, the Council may allow oral or written arguments based on the record.