

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

In the Matter of the Appeal of

K.L. BOEHOLT, et al.

FILE NO. MUP-81-033(V,W)  
APPLICATION NO. X-81-052

from a decision of the Director of  
the Department of Construction and  
Land Use on a Master Use Permit  
application

Introduction

Appellants K.L. Boeholt and Mrs. K.L. Boeholt appeal the decision of the Director of the Department of Construction and Land Use granting a variance to exceed the maximum permitted height and the findings and decision of the Director of the Department of Construction and Land Use to impose environmental conditions on the proposed Queen Anne Palisades development, located at 1920 Taylor Avenue.

The appellants exercised their right to appeal pursuant to Chapter 24.84, 25.04 and 24.30, Seattle Municipal Code.

Parties to the proceedings were: appellants, represented by Steve Navaretta and Edward Merges, Attorneys at Law; the Director of the Department of Construction and Land Use (Director) represented by James Fearn, Assistant City Attorney; and Pacific Townhouse Builders represented by Richard R. Wilson.

This matter was heard before the Hearing Examiner on September 1, 1981.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The Director of the Department of Construction and Land Use (Director) issued his decision to grant an application for a use permit subject to enumerated conditions for the Queen Anne Palisades project located at 1920 Taylor Avenue. The Director found that "although the proposal in its final form does not eliminate every adverse impact..., it is my judgment that the merits of the proposal...outweigh the adverse environmental impacts which cannot be mitigated." The Director also granted an application requesting a variance to exceed the maximum permitted height.

2. Appellants appeal both decisions alleging that the permit and the variance should have been denied.

3. An environmental impact statement was prepared for the proposed site. The initial environmental impact statement was remanded by the Hearing Examiner for additional analysis and preparation of a supplemental environmental statement. The final supplemental environmental impact statement was prepared and was found to be adequate by the Hearing Examiner.

4. The builders propose to demolish a duplex and fourplex presently situated on the subject site and to construct thereon a four story, 31-unit condominium structure with four levels of below-grade parking. The original proposal was to build two structures on the site, housing 36 condominium units. The project in its present form provides for 42 parking spaces with access from a 20 ft. wide drive on Taylor Avenue N. across from

an existing easement running diagonally across the property. The revised proposal resulted in a lowering of the project on the up-hill portion of the site by 8½ ft. However, the revised proposal exceeds the maximum height limit. The revised proposed height is 53.5 ft.; the maximum permitted is 35 ft.

5. The Director found that the revised proposal would result in reduced environmental impacts from those which were previously identified in the area of view blockage and parking and, therefore, a revised environmental impact statement was not required.

6. The appellants are owners of a three story 24 unit apartment building located at Newton and Taylor. The appellants' property contains approximately 12 view apartments providing a view of Lake Union, Lake Washington, Mt. Rainier and other scenic sites. The appellants have owned said property for 22 years and have found that the view apartments are seldom vacant and are the most easily rented. The appellants contend that the construction of the proposed project will result in view blockage and traffic congestion. The environmental impact statement identified adverse impacts involving increased noise levels, air quality deterioration, traffic congestion during demolition and construction, loss of six units of lower cost rental housing, increased traffic and parking demand and view blockage.

7. Topographically, the subject site slopes steeply from Taylor Avenue N. down to Sixth Avenue N. The steepness of the slope of the site was one of the considerations given in the decision to revise the original proposal to allow for a stepped-up construction rather than two separate structures. The newly proposed structure is 9-15 ft. above grade on Taylor Avenue.

8. The Director found that the grant of the variance would not adversely affect the Comprehensive Plan of Seattle. The Multi-Family Policies now provide for a new method of calculating the height of a building that consider the particular need of designing a stepped-up building on a steep slope such as the one proposed herein.

### Conclusions

1. Except on elements of variance, administrative conditional use or special exception when no deference shall be accorded the Director's determination, the Director's decision is to be given substantial weight. The appellant must show clear error in order to overcome that substantial weight.

2. The appellants contend that the Director's decision regarding both the variance and the findings and decision to impose environmental decisions were incorrect for two primary reasons:

- a. That the view blockage occasioned by the proposed project results in the economic and aesthetic degradation of the appellants' apartment building;
- b. that the construction of the proposed 31-unit project would result in excessively congested traffic in the area of the subject site.

3. Regarding the Master Use Permit, the appellant has failed to show by the record that the Director was incorrect in his analysis and decision regarding the granting of the Master Use Permit. Specifically, appellants' two major objections as stated above are not sufficient to overcome the substantial weight to be given the Director's decision.

4. Concerning appellants' first concern, view blockage is considered an appropriate basis for denying a Master Use Permit only when said blockage upsets the view of or from a public site. While it is clear that the view blockage will affect the aesthetic and, less clearly, the economic status of the appellants' property, there has been no evidence rebutting the Director's consideration of these and other factors in determining the grant of the Master Use Permit.

5. Regarding the congestion and increased traffic, the appellant K.L. Boeholt testified that the traffic congestion was more bothersome to him than the view blockage. Mr. Boeholt testified that at the present time parking is nearly impossible on Taylor Street; that all the traffic must come into Taylor; and that the increase of 31 units with their guests would necessarily add to the traffic area congestion and parking difficulties. While this argument is certainly of merit, it does, however, overlook the fact that this 31 unit structure will provide 42 off-street parking spaces, eleven more spaces than required in the zoning code. The record indicates that the traffic congestion would not be unduly affected by the existence of said project.

6. Regarding a grant of variance, the record indicates that the subject property represents a unique condition in its topography. The steep slope of the property makes construction of the site difficult at best and would result in a hardship if the strict application of the code applied.

7. Granting the height variance which would allow for the construction of 31 condominium units on the subject property does not go beyond the minimum necessary for relief. Without said variance the applicant will be unduly restricted in the use and construction of the subject site.

8. The granting of the variance would not be materially detrimental to the public welfare or injurious to the property in the zone or vicinity. The stepped-up design of the property will actually result in a lower height along Taylor Avenue N. and also a higher percentage of landscaped area. Further, as noted in the Director's report,

because of the low profile the building along Taylor and its stepped configuration, the proposal would in no way reduce the amount of light and air available to the public along the sidewalk or adjacent properties.

9. The approval of this variance would not adversely affect the Comprehensive Plan of the City of Seattle. In light of the Multi-Family Policies referred to above, a new method of calculating heights of buildings on a slope has been developed. The applicants' building is within the intent of the new policy which requires

the height of a building to reflect the natural contours of the land and to maintain a consistent maximum height throughout the building envelope in order to maintain scale relationships with adjacent buildings and under varying topographic conditions, and protect views....

Decision

For each of the above reasons the decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 15th day of September, 1981.

Philip Aaron  
Philip Aaron  
Hearing Examiner Pro Tempore

Notice of Right to Appeal

Pursuant to Chapter 25.04, Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth (15th) day after the date the decision appealed from is filed with the SEPA Public Information Center. The appeal must be filed with the City Clerk on the 1st floor of the Municipal Building. Rules have been adopted by the City Council governing the appeal procedure and should be reviewed prior to filing an appeal.

The City Council will only review issues relating to compliance with Chapter 25.04 of the Seattle Municipal Code.