

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

In the Matter of the Appeal of

SQUIRE PARK COMMUNITY COUNCIL

FILE NO. MUP-83-022(W)
APPLICATION NO. 82-0369

from a decision of the Director of
the Department of Construction and
Land Use on a master use permit
application

Introduction

Squire Park Community Council, appellant, appeals the Director of the Department of Construction and Land Use (Director) master use permit decision of declaration of nonsignificance with conditions (environmental impact statement (EIS) not required) for the project at 1401 East Jefferson.

The appellant exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: appellant, Squire Park Community Council represented by William Knowles, William Upton, Stephanie Shiblack; applicant, the Jefferson Street Company, by Judson Todd, Bob Stasny, Harvey Dodd and Associates; and the Director, Department of Construction and Land Use by Jim Barnes.

This matter was heard before the Hearing Examiner on May 13, 1983.

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

Findings of Fact

1. The subject property is located at the southeast corner of the intersection of E. Jefferson Street and 14th Avenue, extending 120 ft. east of 14th Avenue and 140 ft. south of Jefferson Street. The northerly 100 ft. of this site is CG zoned and the southerly 40 ft. single family (SF) 5000 zoned. The property slopes uphill to the east and downhill to the south with an approximate 19 ft. elevation change. The site at present is vacant.

2. The project applicant, the Jefferson Street Company, proposes to construct a new six-story building on the CG zoned portion of the site with 1,850 sq. ft. for restaurant, 1,155 sq. ft. for retail space, 46,820 sq. ft. for office space and 56 parking spaces beneath the building. Applicant's earlier version utilized the south 40 ft. of the site, now zoned SF 5000, but applicant's revised application for the south 40 ft. is now for a green area to serve as a buffer to the adjacent property owners.

3. Appellant states that the area is in transition to single family residential development and the Examiner finds through testimony found credible that the present development in the area is mixed: to the south and east is single family residential development; to the north is Seattle University playfield and gym; to the northwest is a Metro bus storage lot and barn; to the west are small businesses (on southside of E. Jefferson Street); to the southwest is the King County Youth Service Center.

4. The Department of Construction and Land Use's final declaration of non-significance in regards to applicant's project constituted the threshold determination for State Environmental Policy Act (SEPA) requirements for environmental concerns and was based on the following:

- (a) impacts associated with construction were identified as earth, air, noise and transportation;
- (b) impacts associated with occupancy were identified as water, light and glare, land use, population, transportation, services, energy, utilities and flora.

The impacts were found to be not significant on the Director's checklist and it was acknowledged that the proposed building would not be in character with present development in regards to height, but that the building was in compliance with existing zoning; and that the building would not significantly alter the present or planned commercial land use for the area.

5. Appellant filed an appeal from this decision of non-significance. In addition to the presentation and testimony on behalf of appellant and witnesses, several letters in opposition to the decision were of record. Objections were in the following nature:

- (a) incorrect zoning, wrongful use of spot zoning, lack of consideration of future adoption of aspects of the Comprehensive Plan;
- (b) lack of consideration of blockage of natural ventilation;
- (c) lack of consideration of solar impact, i.e., shadows;
- (d) lack of consideration of residential and height guidelines;
- (e) lack of consideration of traffic and parking;
- (f) lack of consideration of socio-economic impact.

As presented by appellant, the proposed building will block the prevailing winds in the area; cast shadows onto neighboring lots, i.e., to the east where a garden is located; and establish a trend for construction of tall buildings in the area.

6. Testimony by the applicant's architect and Director that no change in air movement will be caused by applicant's proposed building because there would be no impact to the prevailing winds in the area was found credible by the Examiner. The Examiner finds appellants' lay presentation regarding significant and substantial change in air movement to be less sufficient. Through testimony by applicant's architect, found credible by the Examiner, shadows, as a result of the sun's angle and position of the building on the lot, would be none to negligible to the neighboring lots. By comparison, appellants presentation that shadows would be cast onto and past lots on 16th Avenue was found to be not sufficient. As the Examiner finds the impacted area as outlined by appellants testimony to be mixed rather than all residential, testimony found credible by the Examiner is consistent with project applicant's presentation that the proposed building is not inconsistent with present development in the area.

7. Applicant's architect offered in credible testimony in regards to traffic and parking that inasmuch as the business hours will be such that building usage will occur when residents of the area are themselves at work; and due to projections that the 100 daily trips by the building occupants would be adequately provided for by the 56 parking stalls beneath the building; because the restaurant clientele would be generally the building occupants; and in that retail and commercial occupants would have parking provided and not cause an increased demand for parking; this impact would not be significant. The architect, by credible testimony, discounted parking and traffic congestion that appellant alleged would be created by medical service professionals in the building and the proximity of medical facilities available at Providence Medical Center. It was acknowledged that parking demand is already aggravated by students attending Seattle University.

8. Appellant urges the consideration of socio-economic impacts in resolving a challenge to the Director's threshold declaration of non-significance. The Examiner finds the questions in the environmental checklist to be exclusive and thus, the socio-economic impact is not a necessary consideration for the Examiner's decision. (WAC 197-10-360).

9. The Hearing Examiner finds that appellants presentation regarding the Director's lack of consideration of the proposed Comprehensive Plan, soon to be adopted by the City of Seattle, and the incorrect zoning at the site to have been addressed in the checklist wherein it is noted that the planned land use of the area will have a lower height restriction. The Examiner finds that the planned use in the subject area will not be significantly different from present land use.

Conclusions

1. Section 23.76.26B.7 requires the Hearing Examiner to give substantial weight to the Director's decision in regards to threshold determinations. The burden of proving a contrary position to the Director's decision is upon the appellant.

2. An environmental impact statement is required when there is an action which would have a significant adverse impact on the environment, i.e., "whenever more than a moderate effect on the quality of the environment is a reasonably probability". Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267 (1976).

3. In order for the Hearing Examiner to require an EIS in this case, the appellant must show that the Director's decision was clear error.

4. In making a threshold determination, only the questions in the environmental checklist shall be used. WAC 197-10-360.

5. Based on the above, the Director's decision is affirmed. The record reflects that the nature of the existing environment was considered by the environmental specialist and impacts found to be nonsignificant. WAC 197-10-360(2). The height and usage of the project was considered and found to be in compliance with existing zones and further the usage was found not to be significantly different from present and planned commercial land use.

6. Appellant differed in opinion with the environmental specialist and applicant in regards to environmental impacts but the difference in opinion did not rise to the level of significant adverse impact as a matter of law. The appellant has not overcome the substantial weight accorded to the Director's decision and the decision of the Director is accordingly, affirmed.

Decision

The determination of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 26 day of May, 1983.

Roger H. Shimizu
Roger H. Shimizu
Hearing Examiner Pro Tempore

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.