

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MARY FLEENOR, ET AL.

FILE NO. MUP-83-027 (W,DD)
APPLICATION NO. 83-091

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

Introduction

Applicant proposes to demolish an existing single family residence and construct a 12 unit residential building at 3429 Burke Avenue North. Appellants here contest the Department of Construction and Land Use declaration of nonsignificance (DNS) and the design departure approval relating to location of required open space.

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

This matter was heard before the Hearing Examiner on June 1, 1983. The record remained open until June 2, 1983, for submittal of materials on the intent of open space code provisions.

Parties to the proceedings were: appellants by Karen Morgan, Ann Veraldi, pro se; project applicant by Larry Craig; the Director of the Department of Construction and Land Use (Director) by Diane Althaus.

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

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 3429 Burke Avenue N. It is zoned Lowrise (L-) 2.
2. The 6,840 sq. ft. area lot has 50 ft. of frontage along east adjacent Burke Avenue N. The east-west lot depth is 114 ft.
3. Topographically, the vicinity property elevation increases northward with the distance from Lake Union. Two vacant lots are south adjacent of the subject property.
4. The project site is currently developed with a single family residence proposed for demolition and replacement by a 12 unit residential building. The proposed building has a modulated front, and is a "walk-up" apartment that will meet code bulk requirements except for the location of open space. Eight of the units will be 480 sq. ft. studio units. The design departure application states that condominiums are intended. The building footprint approximates 2,790 sq. ft. Twelve on-site parking spaces would be provided to the rear of the structure.
5. The applicant is proposing 1,450 sq. ft. of rooftop open space so that residents may take advantage of the territorial view of Lake Union, to the south. The open space on grade would be landscaped.

6. Section 23.45.30.A.2 of the Land Use Code provides that at least 30 percent of the L-2 lot areas shall be provided as "usable, landscaped open space at ground level". The Director conditionally approved the applicant's proposal to locate 60 percent of the open space on the rooftop and the remaining 40 percent at ground level. The Director based his approval on Section 23.40.10, concerning design departures. The Director also issued a declaration of nonsignificance (DNS), with conditions, for the project.

7. Appellants submitted this appeal. Several appellants were unaware that design departures from L-2 open space requirements were specifically provided for in the Land Use Code. And some opponents voiced displeasure at the bulk, scale and density of the proposed structure. Several comments described the vicinity as primarily single family. The key objection was that, in view of appellants, the proposal contradicted the spirit and intent of the Land Use Code open space, design departure and related provisions.

8. The environmental checklist and MUP decision noted environmental impacts such as earth disruption, increased noise, traffic and on-street parking demand, and increased residential density. Appellants expressed general concern with respect to the impacts themselves. Specific questions were raised as to whether the 12 proposed on-site parking spaces would be sufficient.

9. Also, Burke Avenue N. is frequently used as a pedestrian path to Gasworks Park. Some residents complain that the on-street parking premium will be worsened by the addition of 12 units as proposed.

10. The subject site is between N. 34th and 35th Streets on Burke Avenue N. Immediately north of 35th the property is zoned single family.

11. One alternative plan calls for a 16 unit building area footprint of 3,300 sq. ft. Sixteen parking spaces would be located below grade. A driveway would separate open space sectors of 440 and 560 sq. ft. along Burke N. The remaining 1,532 sq. ft. of open space would be located to the rear. Exhibit 8.

12. Another alternate site plan calls for a 3,208.5 sq. ft. building footprint for 12 units.

Conclusions

1. Section 23.40.10.A provides that in multi-family zones departures may be permitted to accomplish "better development than would be allowed under the development standards of the applicable zone". Any one of the enumerated reasons may support a design departure application, e.g., "to provide better amenities on the site for common use of the residents".

2. Section 23.40.10.B.6 specifically notes that a design departure may be sought from "open space requirements". The Land Use Code continues by specifying the circumstances under which design departures may not be permitted or authorized. Section 23.40.10.C.D.

3. A Master Use Permit is required for Director's design departure approval. Section 23.76.06. The Director's discretionary decision on a design departure may be appealed, Section 23.76.30, which appeal shall be filed with the Hearing Examiner, Section 23.76.36.

4. On variance, conditional use or special exception matters the Director's decision is given no deference. However, for other matters, such as design departure and environmental reviews, the Director's determination is afforded substantial weight. Section 23.76.36.B.7.

5. The site is currently zoned for multifamily use. No variance is being sought to provide the number of units proposed. Accordingly, the issue is not whether the site should be zoned or developed along single family guidelines.

6. The Hearing Examiner concludes that appellants have not overcome the weight accorded the Director's decision. As to the threshold environmental determination (DNS), projected parking, density, noise and other environmental impacts factors were noted by the analyst and by the Decision. Appellants disagreed with the consideration of the impacts, but did not show the requisite clear error such that the more detailed environmental impact statement should be required. It is noted in this regard that eight of the 12 proposed units will be studio units, suggesting fewer potential residents and cars than would be expected under a different, more intense proposal. The 12 parking spaces planned have not been shown to be inadequate in number. The vicinity will experience the impacts identified in the checklist; however, they do not rise to the level required for reversal of the Director's decision. Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267 (1976) requires a reasonable probability of "more than a moderate effect on the quality of the environment".

7. Concerning the design departure, appellants have shown that they disagree with the proposed building bulk; impacts; and precedential and other impacts. However, they have not shown, as is their burden, that applicant's proposal is not a "better development" which would provide better on-site amenities. The Lake Union view is an amenity which can be enjoyed for common use of the building residents with the rooftop garden design. The proposed building is modulated; will have ground level landscaping; and will be less bulky than the alternatives. The Director should impose additional conditions regarding the roof garden to ensure the safety and pleasure of residents of all ages.

8. Appellants have cited several policies and code sections which suggest a contrary result. It is true, for example, that for the L-2 zone, the code states that at least 30 percent of the lot area "shall be provided as usable, landscaped open space at ground level". (Emphasis added.) Section 23.45.30.A.2. And that Policy 6, Open Space, suggests that open space should be at ground level (Implementation Guideline 2) and designed to maintain existing street patterns of "landscaped front yards". Section 23.16.02.42.

9. However, as noted in Conclusions 1 and 2, above, specific legislative provisions have been made for departures from open space requirements in L-2 and other multifamily zones. The more specific provisions control.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED, as modified by Conclusion 7, above.

Entered this 16th day of June, 1983.


Leroy McCullough
Hearing Examiner

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.