

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of The Appeals of

STEPHEN H. DUNPHY AND
PETER CERVENAK

FILES NO. MUP-83-038 (W) AND
MUP-83-039 (W)

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

APPLICATION NO. 83-278

Introduction

Eastlake Ventures applied for a master use permit to demolish three single family residences and establish the use for future construction of a twenty unit condominium at 2012 Eastlake Avenue East. The Director, Construction and Land Use (Director), issued a declaration of non-significance and conditioned the project. Appellants, Stephen H. Dunphy and Peter Cervenak, each appealed the Director's decisions.

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

These matters were heard together before the Hearing Examiner on August 22, 1983.

Parties to the proceedings were: appellants, Stephen H. Dunphy, pro se, and Peter Cervenak, pro se; the Director by Hermia Ip; the applicant, Eastlake Ventures, by Jan Kofranek and Ralph McLean.

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 these appeals.

Findings of Fact

1. The subject property is a 122 ft. by 110 ft. westerly sloping site at 2012 Eastlake Avenue East. Three single family residences occupy the property which is zoned Lowrise 2 (L-2).

2. The site is in the Eastlake community. The immediate vicinity has a mix of housing types. The subject property is surrounded by fourplexes and single family houses. Nearby are larger structures such as ones with 24 and 22 units across Eastlake.

3. The applicant proposes two structures joined by a glass-railed bridge or outdoor hallway. The building would have a basement and three stories. Seventeen parking stalls would be located in the basement garage and three in the open. Access to the parking and the building's main entrance would be off of the alley behind the property.

4. There are proposed to be two studio units, eleven one-bedroom units and seven two-bedroom units in the development.

5. A 10 ft. wide view corridor between the buildings will be available, however, the view of Lake Union to the west, now enjoyed from the Dunphy property, will be eliminated.

6. Apparently alleys in the neighborhood are used for travel because of the congested condition of the streets.

7. A "dead end" sign appears near the entrance to the alley.

8. The alley, with a 20 ft. wide right of way, has a dead end at Newton Street. The alley is used by the abutting properties for access to parking which lines the alley. It is unpaved except for some areas of asphalt applied by several of the property owners. Yards and plantings encroach on the right of way at some locations and the lane for travel narrows south of the subject property.

9. Available on-street parking is very limited in the area. No parking is permitted on the east side of Eastlake. On-street parking on Franklin and Boston is heavily used and Newton is not easily accessible to the main entrance to the subject property.

10. Four bus lines between downtown Seattle and the University District serve Eastlake. Pedestrian access to the structure from Eastlake will be provided.

11. The condominium purchasers are likely to be without second cars or recreational vehicles because of the limited provision for parking. Guests will compete with others for the limited street parking and may have to walk some distance.

12. Provision of more parking on site would require the reduction of landscaping now proposed for the alley side.

13. The goals of the Eastlake Community provide for a diversity of housing types.

14. Other properties in the immediate vicinity have greater density than is proposed for the subject property including the 24 and 22 unit buildings.

15. The design of the structures includes greater modulation than required in the L-2 classification to reduce the appearance of bulk.

16. The proposed structure with its rooftop amenities is within the height restrictions of the zone. The height of trees is not restricted by the code however the applicant has agreed to eliminate from the plans the planting of trees on the rooftop.

17. The Director recognized several adverse environmental impacts which would result from the proposed project. Those relevant to the issues of the appeal cited by the Director's representative, Ms. Ip, were that the project would generate additional traffic and demand for parking and the height of the structure would cause view blockage.

18. The Director found the impact on traffic and parking to be not significant because of the site's proximity to downtown and bus service, the pedestrian walkway to Eastlake and the high proportion of studio and one bedroom units which would result in fewer residents.

19. The view blockage was deemed not significant because of the mitigation by the view corridor.

20. Appellant Dunphy's concerns focused on inadequate provision for parking for residents, guests and service vehicles, improvement of the alley which he fears would "act like a wick drawing traffic in," the height of the structures, the scale of the structures and the change in neighborhood character.

21. The issue of appellant Cervenak's appeal is the condition imposed by the Director which seemed to allow the applicant to pave only that part of the alley abutting upon its property.

22. The Director imposed the condition that the applicant improve and pave the alley abutting the subject site to Engineering Department standards. The Director's interpretation of that requirement, as explained at hearing, is that the alley must be graded and a 16 ft. width paved to standards the full length of the alley to the south property line of the subject property.

23. The improvement of the alley past the entrance to parking on the site would require the removal of some mature vegetation and yards.

24. All parties agree that alley improvement is not needed or desirable south of any access to parking on the subject property and that the Director's condition should be modified to reflect that agreement.

Conclusions

1. An environmental impact statement must be prepared where it is reasonably probable that a proposed action will have more than a moderate adverse impact on the environment. Norway Hill v. King County Council, 87 Wn.2d 267 (1976). The Director's decision to issue a declaration of non-significance, i.e. that the proposed action would not have significant adverse impacts, is to be accorded substantial weight by the Hearing Examiner. Section 23.76.36, Seattle Municipal Code. Neither appellant has shown the Director to be incorrect in that assessment, as to either the adverse effects he has acknowledged or effects of scale and on diversity of the housing stock which he determined not to be adverse.

2. The Director may not deny a permit unless there are significant impacts which cannot be mitigated. Section 25.04.190. As concluded above, the Director's determination that there are not such significant impacts is correct.

3. As to adverse impacts recognized in the environmental documents Section 25.04.190 allows the Director to impose reasonable conditions to mitigate those effects. Appellant Cervenak had urged that the entire alley, from its entrance to the access to the subject property, be developed to Engineering Department standards. The departmental interpretation at the time of hearing agreed with that appellant's position.

4. Appellant Dunphy urges mitigating conditions regarding traffic in the alley, parking, scale, view blockage, etc. The modification of condition No.1, imposed by the Director, to require improvement and paving of the alley only to the southernmost access to parking on the site, has been agreed to by the parties. The condition is reasonable in that it meets the code requirement for alley access while lessening the loss of vegetation and discouraging traffic. No reasonable mitigating measure for any parking overflow was shown to be available. As to view blockage, the Director is not permitted to impose conditions to mitigate view loss from private property. Section 25.04.550. The design has included some attempts at reducing the loss. The scale of the structure and the housing type were not shown to be out of character for the area and no adverse impact on land use is recognized in the environmental documents, therefore mitigating conditions cannot be imposed.

Decision

The declaration of non-significance is affirmed. The decision to condition the permit is modified as follows:

Condition No.1. The applicant shall improve and pave the abutting alley to Engineering Department standards to the southernmost point of access to parking on the subject property.

Entered this 30th day of August, 1983.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal Declaration of Non-significance Decision

The decision of the Hearing Examiner as to the declaration of non-significance 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.

Notice of Right to Appeal Compliance with Section 26.04.190
(Substantive Authority to Condition or Deny Proposal)

Pursuant to Section 25.04.210, Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the 14th 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.