

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JEAN R. ELMER

FILE NO. MUP-83-077

APPLICATION NO. 83-400

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

#### Introduction

Lakewind properties proposes to construct four residential structures, for a total of 10 residential units, at 2364 Fairview Avenue East. Appellant, a project neighbor, challenged the adequacy of proposed parking.

The appellant exercised her 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 December 13, 1983.

Parties to the proceedings were: appellant; project applicant by James Potter; and the Director of the Department of Construction and Land Use by Jim Barnes, for Amy Luersen.

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 project applicant proposes to develop an L-shaped lot at 2364 Fairview Avenue East with four residential structures, two duplexes and two triplexes. Each of the ten residential units will offer two bedrooms, a living/dining area and 1.5 bathrooms. Floor area will not exceed 1200 sq. ft. Ten on-grade parking spaces are proposed.

2. The subject lot, approximately 15,237 sq. ft. in area, is an upland parcel located on the eastern side of Lake Union. The more westerly 6012 sq. ft. of the lot is zoned General Commercial (CG) and the more easterly portion Lowrise 1 (L-1). The shoreline environment is Urban Stable/Lake Union (US/LU). The units will be constructed on the L-1 portion of the lot.

3. To the west of the subject site is Fairview Avenue East, then Lake Union and its waterways, piers, houseboats and other activity. Minor Avenue East is located east of the site. Continuing east is north-south oriented Yale, then Eastlake Avenues East. The applicant's lot is roughly mid-block between East Roanoke Street, north, and East Lynn Street, south.

4. Public transit is available on Eastlake Avenue. Appellant, who resides at a houseboat moorage directly across the street from the subject site, considers the transit line as practically four or five blocks away, considering the development to be circumvented en route.

5. Generally, there is little or no available vicinity parking, either on-street or private. A significant contributing factor is the development of Lake Union floating home moorages without requisite parking. See appellant's Exhibit 1, report by the Department of Community Development Office of Neighborhood Planning (1980). The Director's witness offered that the subject report was considered in the Legislative Department's adoption of the Land Use Policies and Code.

6. Regarding "Transportation/Circulation," the DCLU analyst modified the applicant-prepared checklist to state that the proposal would affect "existing parking facilities, or demand for new parking," and to state that ten parking spaces would be provided. Proponent had indicated no effect, although acknowledging the generation of "additional vehicular movement in the immediate neighborhood" and the potential increase in the "use of public transportation systems" as a result of the proposal.

7. As to parking, the Director's decision at issue concluded:

Ten parking spaces will be provided... this may not accommodate all of the parking needs due to visitors and the potential of more than one car per unit; however, due to the scale of this project, this is an adequate number of spaces...

In hearing, the Director's representative also asserted that the Land Use Code requirement of one parking space per unit is in conformance with and embodies the dictates of SEPA. Section 16.02.050. That representative also testified that on his one site visit, approximately 4:00 p.m., some parking was available along Minor Avenue.

8. The DCLU declaration of non-significance (DNS) included no conditions regarding transportation/circulation.

9. Appellant recommended as a condition to project approval two parking spaces per unit, with additional spaces for guests. Applicant speculated that following appellant's suggestion 4200 sq. ft., or roughly 1/3 of total site area would be devoted to parking. Appellant conducted no parking survey or needs assessment, stating that the 1980 DCD study was sufficient. The cited portion of the study included no specific parking needs projections, but made the following points:

- the average Eastlake household owns more than one automobile per dwelling unit
- Eastlake business and commercial parking spills over into alleys and streets parallel to Eastlake, including Franklin and Yale Avenues East
- floating homes have been located on Lake Union prior to zoning code requirements of one parking space per unit
- parking along Fairview is at full capacity during all hours of the day
- "the overall finding of fewer off-street residential spaces than housing units is to be expected given Eastlake's early development history, prior to zoning code requirements of parking spaces."

### Conclusions

1. Section 25.04.190 (A) mandates that the "city and its departments" appropriately exercise the authority, under the State Environmental Policy Act (SEPA), to "deny or reasonably condition any proposal so as to mitigate or prevent adverse environmental impacts." The denial or conditioning shall be based on policies adopted pursuant to SEPA, RCW 43.21C.060. 25.04.190(D).

2. The policy relating to "parking and traffic" is found at Section 25.04.520. There it is stated that the city policy is to encourage public transit, vanpools, carpools and bicycles; modify off-street parking requirements to mitigate adverse impacts; and "make other requirements as necessary to assure reasonable access and flow." After examination of the likely vehicle use pattern and guest and service parking needs, the city official may balance those needs against existing traffic patterns, for example, and may in fact require mitigating measures.

3. Significantly affected persons may appeal the Director's environmental determinations, including the failure to condition or deny a project pursuant to SEPA. Section 23.76.30(I), 23.76.36.B. The Director's decision, however, shall be given substantial weight Section 23.76.36.(B)(7), and the burden of proving a contrary position rests with the appellant. Section 25.04.200(C).

4. Appellant did not show by independently gained data that the proposed development would require more than the ten parking spaces proposed. However, the record clearly supports the appellant's assessment that there is a severe parking shortage in the subject area. For example, the DCD report of record reflects parking spillovers into alleys; that the absence of parking for floating home residents exacerbates the parking shortage; that the average Eastlake household owns more than one automobile per dwelling unit; and that parking along Fairview is "at full capacity during all hours of the day". The subject site is roughly mid block between Roanoke Street on the north and East Lynn Street on the south. Thus, a reasonable pedestrian distance to the Eastlake Avenue busline would be, as a practical matter, greater than two blocks. The Hearing Examiner acknowledges the evidence that some parking was available along Minor Avenue East at 4:00 p.m. the one occasion that the DCLU witness visited the site.

5. Policy 8, Quantity of Required Off-street Parking, does not state an intent, as suggested by the DCLU witness, to supercede or replace the requirements of SEPA, Chapter 25.04.

6. Where these circumstances are present, and where the Director has acknowledged the potential of unmet parking needs of visitors and residents, is the failure to condition the project with additional traffic-parking measures clear error? The Hearing Examiner concludes in the affirmative, and the case is accordingly remanded to the Director for specific compliance with Section 25.04.520. Particular attention should be given to methods of encouraging alternatives to private automobile use.

Decision

The decision is remanded in accordance with the conclusion above. Jurisdiction is retained by the Office of Hearing Examiner. Appellant or applicant may file a written request for review of the subsequent DCLU decision within 14 days of the mailing of that decision. The Hearing Examiner decision shall be based on the record of this proceeding, the Director's new decision and any request for review submitted by appellant or applicant.

Entered this 15<sup>th</sup> day of December, 1983.

  
Leroy McCullough  
Hearing Examiner