

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

In the Matter of the Appeal of

KATHERINE PLOEGER ET AL.

FILE NO. MUP-84-016(W)
APPLICATION NO. 83-659

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

Introduction

Project applicant proposes to demolish a single family dwelling and construct on-site a 12 unit apartment building at 420 North 39th Street. Appellants challenge the declaration of nonsignificance issued by the Director of the Department of Construction and Land Use (DCLU).

The appellants exercised the 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 March 19, 1984.

Parties to the proceedings were: appellant by James Driscoll, attorney at law; applicant Donn Bodine by Melvin Buol, attorney at law; the DCLU Director by land use specialist Jim Barnes.

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. Donn Bodine proposes to construct a 12 unit apartment building on property addressed as 420 North 39th Street. Appellant submitted this appeal from the DCLU Director's issuance of a declaration of non-significance (DNS).

2. The subject site is presently developed with a single family structure with driveway entrance from south abutting North 39th Street. The existing structure would be demolished and replaced by a four story apartment building of 12 one bedroom units.

3. In deference to DCLU applicant proposes access to the new apartment from north abutting North Bowdoin Place. Twelve on site parking spaces are proposed. The subject lot extends from North 39th to North Bowdoin Place.

4. North 39th Street is considered a major arterial, boasting an average weekday volume of approximately 9000 vehicles. It is paved to a width of approximately 32 ft. Parking is restricted to the south side of this street.

5. The abutting segment of Bowdoin deadends at the east and west ends of the subject "block," which is bounded on the west by Phinney Avenue North and on the east by Dayton Avenue North. Although the Bowdoin right-of-way is 40 ft. the paved area itself is approximately 22 ft. wide. Parking is allowed only on the north side of Bowdoin Place.

6. Phinney and Dayton Avenues North have paved street areas roughly 25 ft. in width. Parking occurs on both sides of these streets. One new resident of the area prefers to avoid the north-south steepness and therefore usually parks along Bowdoin.

7. With limited exception all development within the "block" is modest single family, in the traditional mode of 1920-30's. A duplex is located at the southeast corner. Property at the northeast corner is the subject of a proposal for four additional units.

8. The proposed apartment building will be out of scale with the single family development in the "block." The new structure is not expected to replicate the "heavy pitched roofs, masonry or fenestrations" of the existing development although it will meet contemporary L-3 development standards.

9. However, the proposal site is in an area mixed with single family, duplex, triplex and moderate apartment buildings. Directly across North 39th is a concentration of multi-family residences. Other nearby apartments are east, west and south. A Single Family 5000 zone begins immediately north of North Bowdoin Place.

10. Properties immediately east, west and south are of the subject property are L-3 zoned. Three "blocks" west of Phinney and north of North 39th Street have their southern portions L-3 zoned and the northern portions zoned SF 5000.

11. The proposal will yield a net increase of eleven dwelling units which units could accommodate up to two persons each.

12. The site is not indicated as environmentally sensitive. The consulting soils engineer report of record revealed the absence of surface indications of groundwater. The report also concluded that the soils, "of high shear strength and negligible compressibility" would provide "more than adequate" support for the proposed apartment building.

13. One neighbor to the proposed development was generally apprehensive regarding the effect on noise levels, since the site occupancy would be increasing from one family to a maximum of twelve. The noise and other construction, demolition and grading impacts will be temporary.

14. The proposal will result in some additional vehicular movement, demand for parking, and traffic hazards. Applying Institution of Transportation Engineers (ITE) figures, appellant projected an overflow of four to six cars, i.e., 1.32-1.5 autos per unit x 12 units, that Bowdoin would be unable to accommodate. Since bus and commercial service to the immediate area is limited, appellant and neighbors speculate that property ownership and use of vehicles will be increased.

15. Exhibit 17a is a parking survey of "available parking spaces within a one block radius of 460 North 39th Street," which includes the subject property. It showed a minimum of two empty spaces per identified segment. The survey showed that of the 89 possible, on one occasion up to 47 on street parking spaces were available.

16. Exhibit 17b is a parking survey by appellant and Kathleen Ward utilizing the same block designations of parking areas as in Exhibit 17a. Exhibit 17b determined that 83 spaces were available. On several occasions, Exhibit 17b showed, from 1-4 parking spaces were vacant. Only in one instance, December 27, 1983, 7:30 p.m., "North 39th, Dayton east to alley," was no parking space shown.

17. Applicant submitted Exhibit 8, a parking survey showing that in the designated area on street parking was 35-40% occupied.

18. Three houses facing North Bowdoin Place are without on-site parking.

19. The current Fremont Neighborhood Improvement Plan shows the subject site as medium density residential. The Plan also observed, however, that an excessive amount of the Fremont area was zoned for apartment use.

20. No City decision has been made on the petition to rezone the subject "block" to SF 5000.

21. By conditions imposed by DCLU to the DNS, construction workers' vehicles are prohibited from using Bowdoin Place on-street parking. Use of loud construction related equipment is limited to 8:00 a.m. - 5:00 p.m. weekdays. Exterior lighting is to be shielded and directed downward. DCLU also required a "view obscuring wall or fencing at least 6 ft. above the parking area grade" on both sides of the parking area. The last condition is designed to protect Bowdoin residences from excessive auto light and glare.

22. The DCLU decision did not discuss the shadow impact of the proposal; nor was the issue addressed in the original or annotated environmental checklist.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.76, Seattle Municipal Code.

2. Section 23.76.36.B.7. requires that the Director's environmental determination be accorded substantial weight.

3. Washington Administrative Code (WAC) Chapter 197-10 includes guidelines "interpreting and implementing the State Environmental Policy Act (SEPA)." WAC 197-10-340 provides that if the lead agency determines that a proposal "will not have a significant adverse impact on the quality of the environment, it shall prepare a ... declaration of nonsignificance..."

4. WAC 197-10-360 requires the lead agency to apply the questions in the environmental checklist (Cf. Director's Exhibit 7) "to determine whether the proposal will result in a significant adverse impact upon the quality of the environment." The section continues with the admonition that

(T)he questions contained in the environmental checklist are exclusive, and factors not listed in the checklist shall not be considered in the threshold determination.

WAC 197-10-360(1).

5. The number of affirmative (yes) answers in the checklist does not necessarily determine whether an environmental impact statement (EIS) is required. WAC 197-10-360(2).

6. Further, the test at this threshold level is not whether benefits outweigh adverse impacts. WAC 197-10-360(3) provides that "no test of balance shall be applied at the threshold determination level."

7. Finally, this state's Supreme Court has determined that a proposed action will significantly affect the environment so as to require an EIS "whenever more than a moderate effect on the quality of the environment is a reasonable probability," Norway Hill v. King County Council, 87 Wn.2d 267, at 278 (1976). The question on review is whether the DNS decision is "clearly erroneous". Brown v. Tacoma, 30 Wn. App 762(1981).

8. Applying the law to the facts of this case, the Hearing Examiner first observes that the (relatively small) size of the apartment does not exempt the proposal from SEPA review. Minor new construction, defined at WAC 197-10-170(1)(a) to include "the construction or location of any residential structure of four dwelling units or less," is categorically exempt (emphasis supplied). Thus it is of marginal relevance whether any other unit of the size of this proposal has been required to prepare an EIS.

9. Appellants have not, however, overcome the weight accorded the Director's negative threshold determination, and the Director's decision therefore must be affirmed.

10. Briefly addressing some key elements of the appeal, the Director has imposed conditions to protect adjacent properties from site surface drainage. Additional compliance with the City's drainage and grading ordinance is expected to detract from the urgency of an EIS. The only soils report of record shows that the site is capable of supporting the proposed load. The site is not designated as environmentally sensitive.

11. The Director sufficiently analyzed the proposal's expected impacts on air, water, flora, and fauna. As to noise, the majority of the increase will be construction related and hence of temporary duration. Some change in the on-going noise level is probably anticipated since the single family dwelling will be replaced by a 12 unit apartment building; however, especially given the location of the project on an arterial, the impact is not such as would require an EIS.

12. Auto and other increased light and glare is also a reasonable expectation addressed sufficiently in the checklist and by the conditions imposed by the Director, specifically the screening along the north (Bowdoin) side of the property.

13. As to land use, the site is zoned L-3, and the proposal consistent with that zoning. The Fremont Neighborhood Improvement Plan calls for medium density residential use. The present use of the area is mixed residential, although the subject "block" is clearly single family in orientation. No City decision has been rendered on the petition to rezone the "block" to single family. Thus, the record does not show that the proposal will result in any change in the "present or planned land use" of the area.

14. Some increase in vicinity population is expected by the apartment construction and habitation. The units proposed, however, are one bedroom units. The net increase of 22 persons maximum to this mixed residential area is not shown to be a "significant" adverse impact.

15. Testimony showed concern with shadows and solar impacts resulting from construction of this four story structure. The checklist per se has no "solar energy" category. To the degree

that the subject fits under energy, or light and glare the record only shows a general apprehension, insufficient to overcome the weight of the Director's decision. No data was presented, for example, of specific thermal impacts on adjoining properties.

16. No substantial issue was raised with respect to the other checklist items, excepting transportation. The incompatibility of architecture does not equate to the "creation of an aesthetically offensive site open to public view" as that term is meant in the WAC.

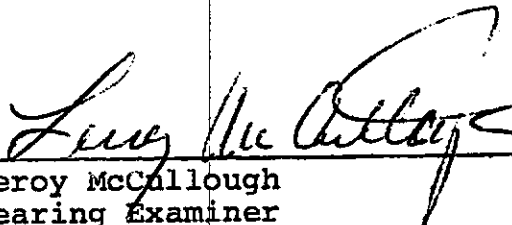
17. The record here reflects that applicant agreed to DCLU's decision that vehicle egress and ingress to the apartment be via Bowdoin Place. And it is evident from the record that the addition of any vehicle trips to this segment of Bowdoin will have some negative impact. The standard for an EIS, however, is whether a "significant" adverse impact is presented.

18. Taken together, the surveys of area parking show that occasionally only 1-4 parking spaces are available. On the other hand the surveys alternatively show occasions of moderate use of existing on-street parking. Only on one occasion does the evidence show the total absence of on-street parking. With this evidence the Hearing Examiner is unable to conclude that appellants have met the burden of proving a "significant adverse impact" or of showing that the Director's decision to issue the DNS was "clearly erroneous." No more than a moderate effect has been shown by the impacts, considered cumulatively or singly.

Decision

The determination of the Director is Affirmed.

Entered this 2nd day of April, 1984.


Leroy McCullough
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11). Should such request 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.