

FINDINGS AND DECISION

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In the Matter of the Appeal of

SHERRILL J. SLICHTER

FILE NO. MUP-84-086 (W)
APPLICATION NO. 8405064

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

Introduction

Appellant, Sherrill J. Slichter, appeals the decisions of the Director, Department of Construction and Land Use, to issue a declaration of non-significance and not to condition further the permit for a proposed 20 unit apartment building at 524 12th Avenue East.

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 January 10, 1985, and continued to January 16, 1985.

Parties to the proceedings were: appellant, Sherrill J. Slichter, represented by Helen Johansen, attorney at law; the Director by Leslie Lloyd, associate land use specialist; and the applicant, Bob Miller, pro se.

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 applicant applied for a master use permit to demolish a single family residence and to establish use for future construction of a four story, 20 unit apartment building with underground parking at 524 12th Avenue East. The Director issued a declaration of non-significance and imposed a condition on the permit that proposed landscaping be provided and maintained. Appellant filed an appeal of those decisions.

2. Early project notice was issued in the Land Use Information Service, the general mailed release, on October 11, 1984. A large sign was posted at the site on October 9, 1984. The comment period expired on October 28, 1984. No comment was received by the Department of Construction and Land Use from appellant.

3. The site for the proposal is located on 12th Avenue East and is a 90 by 100 ft. lot comprising about 20 ft. of Lot 10, all of Lot 11, and the south 10 ft. of Lot 12, Block 15. The property to the north, belonging to appellant has an ingress and egress easement on the north 7 ft. of the south 10 ft. of Lot 12. The site is zoned Lowrise 3 (L-3).

4. The area surrounding the subject site is developed with a mix of single family and multifamily residences. Immediately north of the subject site is appellant's fourplex. There are three single family residences, one triplex and one sixplex on that side of the street and block. Across the street are mostly single family residences and duplexes. To the east of appellant's property, in a lot abutting, is an apartment building of some six stories.

5. Appellant's building to the north is two stories above ground. She is considering solar heating for the building.

6. Twelfth Avenue is described by the land use specialist as "fairly heavily traveled". The Broadway Neighborhood Improvement Plan, Exhibit 2, states that 12th Avenue is carrying arterial traffic in as high a percentage of through traffic as is Broadway.

7. On-street parking on 12th is in great demand and limited supply.

8. The Director relied upon the Institute of Traffic Engineers (ITE) standards for traffic generation by the new development. The standard is ten trip ends per single family unit and 3.7 trip ends per apartment unit. Using those standards, the net increase of traffic resulting from the proposal would be 64 trip ends. This would be a one percent increase in southbound traffic and .7 percent increase in northbound traffic.

9. The Director expects that there will be an overflow from the parking provided for guests and second cars of residents. There is no reason to believe this will be greater than that from any other development in the area.

10. The ITE standards are based on surveys of trips from dwelling units on the East Coast and California, according to Lloyd's recollection, and may not accurately reflect the actual trip generation on Capitol Hill in Seattle. ITE standards are used by the Director in environmental review throughout the City.

11. The proposed structure will cast a shadow on appellant's fourplex.

12. The environmental checklist states that the project would not effect the potential use of solar energy by adjacent properties. The reason for the answer is that other properties can also maximize their height.

13. The south side of building is set back 5 ft. from the south property line with structural elements extending 3.5 ft. into that 5 ft. The setback from the north property line is 7 ft. 6 in. with two projections 3.5 ft. into that setback. Those overhangs extend 3 ft. into the easement beginning 16 ft. above ground. The plans initially approved provided for only 8 ft. of clearance which would have interfered with the use of the easement.

14. There would be a separation of approximately 15 ft. between the appellant's building and the proposed building.

15. Construction of the proposed building would involve excavation in the easement which would disrupt the use of that easement for its length. The applicant has offered alternative parking for the tenants of appellant's building further down the block.

16. The declaration of non-significance (DNS) recognized temporary construction related impacts and longer term impacts including increased domestic sewage output and surface water run-off, light from windows during darkness, increased parking demand and traffic and new utility hook-up.

17. The Director imposed the following condition on the permit: "Provide and maintain landscaping as proposed."

Conclusions

1. Section 23.76.14.D provides for early project notice when a project is subject to environmental review, which is true in the instant case. That notice is to be provided in a general mailed release and a large sign posting. The record shows that such notice was given so the ordinance requirements have been met.

2. The Director's decision on a master use permit is to be given substantial weight by the Hearing Examiner on review. Chapter 23.76.36.B.7. The burden is upon appellant to overcome that weight.

3. In making the threshold determination the Director shall consider only the elements in the environmental checklist. See Sections 25.05.315-335.

4. A DNS is appropriate if the Director determines that there will be no probable significant adverse impact on the environment. Section 25.05.340. An EIS must be prepared "whenever more than a moderate effect on the quality of the environment is a reasonable probability." Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267, 278, 552 P.2d 674 (1976).

5. Appellant urges that the Director did not properly consider the effect of the height of the proposed building on appellant's building, the effect of the closeness of the building on light and air circulation, the impact of additional traffic on 12th Avenue East, the effect of the increased demand for parking on the street and the loss of on-street parking spaces from a curb-cut and the effect of the setback and scale of building on the character of the area.

6. Though the answer in the checklist to the question about the effect of the project on the potential use of solar energy by adjacent properties is not correct for existing development, the explanation offered by the Director's representative that the property still has that potential because it too can maximize its height explains the acceptance of that answer. The shadow impact on the one property would not be considered more than a moderate impact on the environment. The proximity of the building to the lot line also adds to the shadow effect but it also cannot be considered more than a moderate impact on the environment.

7. While the Director's reliance on the ITE figures for trip generation was questioned by appellant, no standards more valid for Seattle or Capitol Hill were offered. Therefore, no error can be found and the conclusions of the Director that the percentage increase in traffic on 12th Avenue is not significant must be accepted.

8. Both parties were in agreement as to the heavy demand for on-street parking in the area and that there would be some demand for on-street parking from the proposed building. Again, appellant did not prove that the Director's determination that the increased demand would not be significant was in error.

9. The "character" of the neighborhood is not an element of the environment to be considered by the Director in making the threshold determination and no impact on that character was stated in the DNS though the Director's representative did agree that landscape condition was required due to the proposal's aesthetic incompatibility with the area.

10. Appellant requests imposition of conditions to mitigate the impacts caused by the height and closeness of the building, the additional traffic and parking demands and the alteration and the incompatibility of the character. Such mitigation measures must be based on policies formally designated in Section 25.05.902 as the basis for exercise of substantive authority. Section 25.05.660. No policy was found within that listing which would authorize requiring the building height to be reduced to maintain

existing solar access. While a parking and traffic policy has been adopted, no measures are authorized for mitigation of increased traffic on the street and the measures to mitigate parking demand do not include requiring additional parking for a 20 unit building.

11. Finally, appellant cites the Multifamily Land Use Policy which has been adopted as a SEPA policy. Policy 1: Multifamily Designation indicates that an objective of designating an area for a multifamily classification is to "insure that new development is compatible with neighborhood character". Policy 7: Setback Requirements states that "front yard setbacks shall maintain established setback patterns". The implementation of that policy involves establishing the minimum depth of the required front yard by averaging the setback of buildings on adjoining lots. In this case that amount has been reduced because of the slope of the site. No specific measures were suggested by appellant though from her presentation it can be assumed that greater setback and smaller scale would bring the proposed building into character with the neighborhood in her view.


12. An additional limitation on the authority to mitigate environmental impacts is that such mitigation measures shall be reasonable. Section 25.05.660(1)(C). The record is silent as to the reasonableness of reducing the height of the building and thereby the number of units or increasing the setback. Since the burden is on appellant to prove error in the decision, in the absence of that proof, that there are reasonable conditions to reduce scale, the Hearing Examiner has no authority to impose additional conditions.

13. The Director's decision to issue a DNS and to condition the permit only for landscaping must be affirmed.

Decision

The Director's decision is AFFIRMED.

Entered this 30th day of January, 1985.


M. Margaret Hockars
Deputy Hearing Examiner

Concerning Further Review

Pursuant to Section 25.05.680(2), Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fourteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.05.660. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure.

If an appeal is taken pursuant to Section 25.05.680(2), the time for filing a request for judicial review of the underlying governmental action and/or other SEPA issues is stayed until the City Council renders a final decision on this Section 25.05.680(2) appeal.

If no appeal is taken pursuant to Section 25.05.680(2), the decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review of the decision on the underlying governmental action must be filed in King County Superior Court within fourteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.37(B)(11); Akada v. Park 12-01 Corporation,

37 Wn. App. 221 (1984); JCR 73. Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review within 30 days after the date of this decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 400 Seattle Municipal Building, Seattle, Washington 98104, within fourteen days of the date of this decision. Section 25.05.680(3)(d).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost of preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, 5th Floor, Seattle, Washington 98104. As an alternative to the written transcript, RCW 43.21C.075(6)(b) provides that a tape may be used for court review. If a taped transcript is to be reviewed by the court the record shall identify the location on taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review.