

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

THOMAS W. CORDDRY and

APPLICATION NO. 8406146

JAMES ADDISON SMITH

FILE NOS. MUP-85-014(V,W) and

and

MICHAEL LINN

MUP-85-015(V,W)

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

Introduction

Appellant Linn contested the variance, administrative conditional use, and environmental determination for a proposal addressed as 4136 Meridian Avenue North. Appellants Corddry and Smith, project applicants, appealed from conditions imposed in the Director's approval. Applicants appeal was subsequently withdrawn.

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 April 29, 1985.

Parties to the proceedings were: all appellants, pro se and the DCLU Director by Patrick Doherty, land use specialist.

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 site is located in the Single Family 5000 (SF 5000) zone at the southeast corner of Meridian Avenue North and North 42nd Street. The proposal address is 4136 Meridian Avenue North.

2. The subject lot measures 131 ft. north to south and 114 ft. east to west. It is generally level.

3. The site is developed with a masonry-concrete 3-story building that was constructed in the 1920's to house telephone switching equipment that is now obsolete. The building is currently used for six dwelling units and two artist studios. Applicants propose to convert this building to a 7-unit apartment building.

4. The building's present entry is from west adjacent Meridian Avenue North. An interior stairway connects to this west entrance. The building's gross square footage is 19,650.

5. The south line of the otherwise rectangular building is indented by an 18 ft. wide by 35 ft. deep courtyard area. The plot plan, Exhibit 6, shows that immediately south of the courtyard area are 12 parking spaces. Applicants explained that potentially two other spaces could be used near the courtyard area for a total of 14 spaces.

6. Current and proposed lot and building specifics are as follows. The lot area is 14,963 sq. ft. and the existing building lot coverage 6,638 sq. ft. (44.3%). Applicants initially proposed expansion of the building to provide a view penthouse; to locate an exterior stairway/elevator assembly in the present courtyard and area, which would lead directly to the south parking area; and to add interior balconies. The proposal would expand the building, already nonconforming as to development standards (Section 23.44.82), and increase the lot coverage by 655 sq. ft. to 48.7%. The maximum permitted lot coverage permitted without special relief is 35%. Section 23.44.10(C).

7. The DCLU decision here at issue denied the variance to exceed maximum permitted height (related to the proposed penthouse) Sections 23.44.12(A); 23.44.82(B), but conditionally approved the expansion and lot coverage variances "only inasmuch as said lot coverage is required for the stairway/elevator/entry-way assembly." The administrative conditional use approval imposed a condition that the "number of units shall be limited to the on-site parking availability...a maximum of 12 units." Administrative conditional use approval is required to allow a structure in a single family zone to be used for other than single family use under provisions of Section 23.44.28.

8. Applicants appealed, Hearing Examiner File No. MUP-85-014, objecting to the decision to deny the height variance and to the condition "limiting the maximum number of units to 12." Applicants withdrew that appeal, however, prior to any hearing on the merits.

9. A second appeal was filed by a neighbor of the proposed development. This appeal, Hearing Examiner File No. MUP-85-015, requested denial of the variance for expansion of the building and recommended against administrative conditional use approval. To the degree that any conditional use should be approved, this appellant urged, a condition should be added to prohibit any commercial activity. The MUP-85-015 appeal raised specific concerns with the environmental impacts of a present dance and glass blowing operation on site; the appellant also urged that assurance be made that the on-site operations are "environmentally sound." Applicants have indicated that present activity notwithstanding, future activities will comply to code.

10. The DCLU environmental review did not consider dance studio and glass blowing activity.

11. The DCLU decision further stated that since the proposal had been determined to not have a significant adverse impact upon the environment, no environmental impact statement (EIS) was required. The analysis section preceding the determination noted construction as well as use related impacts such as increased vehicular movement, increased human activity and a potential increase in the demand for on-street parking. DCLU appended landscaping, sound protection and working hour limits to the declaration of non-significance (DNS).

12. DCLU received several comment letters on the proposal. Some expressed grave concern with increased traffic and parking congestion; with the dance studio and glass blowing (dubbed commercial) use extant; with the expected strain on existing utilities' capabilities; and with a feared negative precedent. A petition against the proposal is also of record. Other letters stated no objection to the proposed residential use. One such letter specifically opined that the proposed development would enrich "the fiber of life in the City of Seattle."

Conclusions

1. MUP-85-014, the appeal of applicants, is hereby dismissed. Applicants withdrew the appeal prior to the hearing on the merits of the case. Further references herein to "appellant" will be to appellant Linn, File No. MUP-85-015.

2. Concerning MUP-85-015, three categories of issues are presented. The first for Hearing Examiner consideration is the environmental question. Appellant requested that the environmental consequences be ascertained before approval.

3. The gravamen of appellant's concern with the declaration of non-significance relates to the present (and potential) studio and glass blowing activity on site, indeed with any "commercial" activity on-site. Those uses, however, are not the subject of the application here at issue. The application is specifically for conversion of the building to seven legal residential units. The applicants have indicated that they will comply with code specifications as far as any other (nonresidential) use is concerned. Accordingly, appellant did not show that the DCLU environmental analysis was improperly restricted to the topic of proposed residential use.

4. As to proposed residential uses, the DCLU environmental analysis pointed out that noise, parking and traffic levels could increase. And the declaration of non-significance was conditioned on implementation of noise reduction procedures. In light of the foregoing, appellants' and others' general assertions about traffic, parking and other items are insufficient to overcome the "substantial weight" accorded the DCLU Director's environmental determination (DNS), Section 23.76.36 (B)(7). The DCLU environmental decision is therefore affirmed.

5. The second category of the appeal concerns the administrative conditional use. The Land Use Code makes specific allowances for structures that are unsuited for single family use but are located within the single family zone. The criteria for allowing such a use, such as the one proposed, are at Section 23.44.28. The criteria are met by the subject property.

6. The design of this 1920's era steel and concrete structure makes it "not suitable for conversion to a use permitted outright in a single family zone," i.e., a single family dwelling. The structure "contains more than four thousand square feet." And the proposed use will provide a public benefit, i.e. reasonable residential use of a building that was constructed for housing of currently obsolete technology. This Examiner's conclusion on the public benefit issue, however, is based on the application and approval for seven units. Because the zone is single family, the conversion of the former exchange building to more than seven multi-family units could detract from the public benefit. The critical factor is not the number of pre-existing parking spaces, as is suggested by the DCLU decision on the conditional use which allows up to 12 units because of 12 parking spaces extant. This administrative conditional use is therefore approved on the condition that there be no more than seven residential units on site. The Examiner would also note that general notice to the public was that conversion was sought to a "7-unit multi-family apartment building." Since the approval is under Section 23.44.28, relating to uses in a single family zone, no further conditioning is deemed necessary to regulate "commercial" use of the building.

7. The third element of the appeal requests that the variance relief for expansion of the building be denied. The Examiner concurs with the DCLU assessment that the present interior stairway, and the location of the building in relation to the parking area and the abutting streets qualify as unusual property conditions supporting the variance relief granted by DCLU. Approval of the variances would be consistent with the spirit and purpose of the Land Use Code, specifically Section 23.24.28. The variance relief granted, to relocate the interior stair so as to facilitate direct parking area egress, does not exceed the minimum necessary for relief and will favorably impact the public welfare as it relates to off-street parking accessibility. Since the Land Use Code specifically allows a non-single use in the single family zone under conditions, denial of the

variance would constitute an undue and unnecessary hardship. For similar reasons comparable (residential) development privileges as meant by the drafters of the Code would be denied applicants in this case if the variances were not approved.

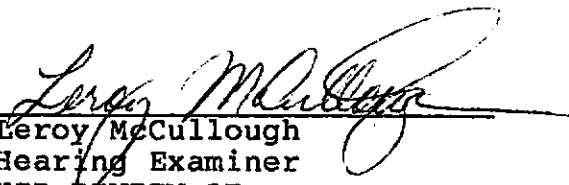
Decision

1. The decision of the DCLU Director to approve the variances is affirmed.

2. The decision of the DCLU Director to approve the administrative conditional use is modified to restrict the development to seven units.

3. The decision of the DCLU Director to issue a declaration of non-significance is affirmed.

Entered this 13th day May, 1985.


Leroy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW OF
HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

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 must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11).

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 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, Seattle, Washington 98104.

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 exercise of the City's substantive authority to condition or deny the proposal under SEPA as authorized by 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 23.76.36.(B)(11). Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying envi-

ronmental 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 the taped transcript of testimony and evidence to be reviewed. Parties are encouraged 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.