

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

In the Matter of the Appeal of

CAROL EYCHANER

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FILE NO. MUP-85-027(W)
APPLICATION NO. 8501354

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

Introduction

The appellant 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 July 10, 1985.

Parties to the proceedings were: Carol Eychaner, pro se; applicant by Bruce Selikoff, attorney at law; and the Director, Department of Construction and Land Use (DCLU), by Malli Anderson.

For purposes of this decision, all section numbers refer to the 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. Applicant proposes to develop an L-shaped lot near Boylston Avenue E. and E. Lynn Street with a four-story, 30 unit apartment building and basement parking. With conditions relating to landscaping and construction activity, the DCLU issued a declaration of non-significance (DNS) for the project and appellant submitted this appeal.

2. The subject property is addressed as 2311 Boylston Avenue East. It is zoned Lowrise 3 (L-3) and located immediately west of an Interstate 5 segment and east of an alley connecting E. Lynn and E. Louisa Streets. Franklin Avenue E. runs west parallel to Boylston Avenue E. Eastlake Avenue East is one block farther west.

3. The site is presently developed with an 8-unit corner apartment building, addressed 624 E. Lynn Street; a parking area; a single family residence; and a house which has been divided into three units. Under the terms of the proposal, the building at the corner of Lynn and Boylston would remain. The triplex and the single family house, both more northerly, would be demolished and in their stead would be located the 30 unit apartment building. Director's Exhibit 3, the Environmental Checklist, notes that approximately 65 people "would reside or work in the completed project".

4. Proposed are 38 parking spaces, accessed from the alley, that are to accommodate the new apartment structure and the existing corner structure. Applicant anticipates that coupled with the "excellent" available bus service in the vicinity that the 38 proposed spaces would be more than adequate. Eastlake Avenue is considered a major transit street with 11-45 buses per peak hour. East Lynn offers "minor" transit access with 1-10 buses per peak hour. The checklist, Exhibit 3, indicates 28 middle income units, but does not project the number of vehicular trips per day expected to be generated by the proposal.

5. Less than 40 percent of the units will have more than 1200 sq. ft. of living area.

6. One of appellant's key concerns is that present available on-street parking is outnumbered by the number of vehicles owned by residents. Appellant Exhibit 2. Considering the additional effects of commercial development and guest parking, appellant continues, and the question of the number of actual units in the corner unit (six vs. eight), the parking provisions are inadequate. Appellant does not assert that the project requires in excess of 1:1 parking. A severe impact on existing street system, specifically E. Louisa Street, is also alleged.

7. Seattle Engineering Department data, Applicant Exhibit 10, shows that E. Lynn Street, west of Boylston Avenue E., has an average eastbound daily traffic (ADT) of 3,813, and an average weekday traffic (AWDT) of 4,359; for E. Lynn east of Eastlake (westbound) the average daily traffic was 3,707. Boylston, north of E. Lynn Street, showed an average daily traffic total of 6,545 and an average weekday traffic total of 7,315; south of E. Lynn Street, an average daily traffic total of 4,309 and an average weekday traffic total of 4,792.

8. Appellant's further concerns were that (a) the adjacent alley usage would increase by more than 40 percent, and (b) that the grade shown by the architect inaccurately permits the height proposed. According to appellant, the proposed five-story building is unlike any other building in massing and bulk.

9. Appellant also complained that the proposal violates the goals of preserving structurally sound single family housing and other policies of the Eastlake neighborhood.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.76, Seattle Municipal Code. Section 23.76.36(B)(7) requires that substantial weight be accorded the DCLU Director's environmental determinations. See also Seattle Municipal Code Section 25.05.680(1)(c). Appellant's burden therefore is to show the DCLU decision to issue the DNS to be clearly erroneous. The burden of proof was not met in this case and the DCLU decision is affirmed.

2. Seattle Municipal Code Section 23.45.46 states that in the L-3 zone one off-street parking space per dwelling unit is required. The parking quantity exceptions of Section 23.54.20, which allow the DCLU Director to require up to 1.25 parking spaces per unit, is inapplicable since less than 40% of the units will offer more than 1,200 sq. ft. of living area.

3. In In RE Elmer, C.F. No. 293040, MUP-83-077, the Council stated that:

The legislative history of the multi-family policies and implementing land use code provisions indicates that DCLU's discretion to require additional off-street parking in multi-family zones was intended to be limited by Seattle Municipal Code Section 23.54.18...

As stated in the Council decision of In re the Appeal of Oden Investment and Kinnear Park Condominium Association, File Nos. MUP-84-057(W) MUP-84-058(W), C.F. No. 293557, the Elmer decision resolved that:

...in the case of parking there was clear legislative history showing that parking in multi-family areas was to be governed by the specific provisions in the multi-family code.

Therefore, it was not clearly erroneous for the DCLU Director to limit the parking requirement by a 1:1 ratio.

4. Further, Resolution 26072, recognizing the Goals and Policies of the Eastlake Neighborhood, was superseded by Resolution

26579, adopting land use policies for multi-family residential areas. Multi-Family Policy 8, "Quantity of Required Off-Street Parking," establishes a 1:1 parking ratio minimum and the guidelines for exceeding that ratio, codified in Seattle Municipal Code 23.45.46, supra.

5. As to traffic, the evidence fails to show that the increase in alley or vicinity street system traffic will be significantly adverse. Nearby Eastlake Avenue East is in major transit use. Transit service is also available on East Lynn. The average daily and average weekday traffic counts on East Lynn, Boylston or other nearby streets do not suggest that additional traffic to be generated by a proposal for 30 units will be significant.

6. Concerning the challenge to the proposed height, and the technique for the measurement, the Hearing Examiner here affirms the prior ruling that the issue as raised is beyond the scope of the DNS appeal. The issue of whether the proper grade was shown and the related effect on approved height appears to be an issue of a Land Use Code interpretation, Chapter 23.88, Seattle Municipal Code. And, Section 23.88.20 restricts the time within which a request for an interpretation may be made as follows:

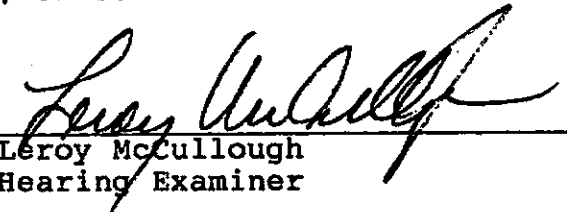
If there is public notice of a project, the request for an interpretation concerning a specific project shall be made before the expiration of any appeal period.

7. No other allegation was made that the L-3 zoning restrictions would be violated by the proposal, or that a reduction in scale was required by virtue of a rezoning oversight or location at the edge of a zone where transition is at issue. Cf. In re Oden Investment, supra. Finally, appellant made several references suggesting that the parking offered by applicant was at less than 1:1 based on applicant's prior covenants to provide parking on site for another parcel. The Hearing Examiner considers this issue as appropriate for direct DCLU review so that code compliance may be established and maintained, but cannot conclude that the decision to issue a DNS, which references the code parking requirement, was clearly erroneous. No probable significant adverse environmental impact has been shown. Seattle Municipal Code Section 25.05.340(1).

Decision

The DCLU decision is AFFIRMED.

Entered this 24th day of July, 1985.


Leroy McCullough
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 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 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 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.