

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

In the Matter of the Appeal of

JACQUELINE DARSTEIN, et al.

FILE NO. MUP-85-042(W)
APPLICATION NO. 8502439

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 September 3, 1985.

Parties to the proceedings were: Barbara Westling and Georgia Fleury for appellants; applicant Gary Gallagher, pro se; and the Director, Department of Construction and Land Use (DCLU) by Clay Leming.

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 property is located at 1720 N.W. 62nd Street in Seattle. Applicant proposes to demolish an existing single family residence and establish use for future construction for a six-unit apartment. With conditions relating to landscaping, construction activity and shielding of lighting, the DCLU issued a declaration of non-significance (DNS) for the project and appellant submitted this appeal.

2. The subject property is located on the north side of N.W. 62nd Street approximately 200 ft. west of 17th Avenue N.W. in a large Lowrise 2 (L-2) zone which extends generally from mid-block south of N.W. 60th Street to N.W. 65th Street and from 15th Avenue N.W. to 24th Avenue N.W. Northwest 62nd Street, between 17th Avenue N.W. and 20th Avenue N.W., is developed with five duplexes, one triplex, a church and 22 single family residences.

3. Letters from the community were received opposed to the project citing the lack of available parking; that the proposal is out of scale with existing development; and that traffic and noise will be increased.

4. There will be an increase in noise and a decrease in air quality during demolition, site preparation and construction. However, these impacts are temporary in nature and limiting the hours of construction will lessen the impact. A slight increase in ambient and nuisance noise levels over the long-term can be anticipated due to increased human activity on the site and additional vehicular movement.

5. The majority of complaints towards the project elicited during the hearing claimed that this project would increase vicinity parking problems.

6. While parking is restricted to the south side of the street only, the required on-site parking is anticipated to meet most demands, such that on-street parking demand would be slight. Basement parking for six cars is proposed.

7. DCLU determined that the off-street parking to be provided by the project would be set at a 1:1 ratio due to the fact that less than 40 percent of the units will have more than 1,200 sq. ft. of living area.

8. Testimony elicited during the hearing indicated speeding, congestion and other traffic problems at the nearby 17th Avenue N.W. and N.W. 62nd Street intersection. The community has submitted a proposal to the City to revise traffic control for this intersection.

9. There will be an increase in populations in the area, however, this is not expected to have an adverse impact on the overall neighborhood.

10. Some erosion potential during construction and an increase in impervious surfaces will increase the note and amount of storm water runoff. Compliance with the Grading and Drainage Ordinance will minimize erosion and control the rate of storm water runoff.

11. The amount of flora will be reduced due to vegetation removal associated with the site preparation. Landscaping should be required on the site per an approved landscaping plan.

12. Increased lighting levels due to normal building lighting and light emanating from window areas can be expected. Some head-light glare will be visible to nearby residences, however, no adverse impact has been identified.

13. While the proposed structure will be larger than the existing single family residences in the block, DCLU determined it will meet all development standards of the L-2 zone.

14. None of the above impacts are considered significant due to their temporary nature and/or minor degree, together with the mitigating measures listed as conditions for this project.

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 determination. See also Seattle Municipal Code Section 25.05.680(1)(c). Appellant's burden, therefore, is to show that DCLU's 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 23.45.32(A)(1) states that in the L-2 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 percent 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 Seattle City Council stated that:

The legislative history of the multi-family policies and implementing land use code provisions indicate 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 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. As to traffic, the evidence fails to show that any significant increase in traffic problems will be attributable to the project. In addition, the City has pending a proposal to revise the traffic control in the immediate vicinity.

5. The project zoning accommodates the proposed development. The City Council's Oden decision states that


...In order to justify a reduction in height below the zoned maximum, it must be shown either that the project presents unusual circumstances which would not have been contemplated as part of the rezoning of the area or that the project is on the edge of a zone where the problems of transition are not fully accommodated by the zoning...

As to scale Oden states that it is inappropriate to require a reduction "merely because the surrounding buildings are developed to a lower height...." No evidence was presented justifying a reduction in height or scale, nor requiring additional noise or other mitigating measures.

Decision

The decision of the Director, Department of Construction and Land Use, to issue a DNS with conditions, is AFFIRMED.

Entered this 16th day of September, 1985.


Alberto Velarde
Hearing Examiner Pro Tempore

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 findings. Any other party may designate additional portions of the taped transcript relating to issues raised on review.