

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

In the Matter of the Appeal of

MERLE E. and GERALDINE F. ARLAND

FILE NO. MUP-85-044(W)
APPLICATION NO. 8501980

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

Introduction

Appellants appeal the decision by the Director, Department of Construction and Land Use, to issue a determination of non-significance for and conditionally approve a proposal to demolish a single family residence and construct a nine unit apartment building at 2324 West Newton Street.

The appellants exercised their 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 11, 1985.

Parties to the proceedings were: appellants, pro se; the Director represented by Malli Anderson, land use specialist; the applicant, Robert Hall, architect for the property owners.

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 findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. An application for a master use permit was filed for a proposal to demolish a single family residence at 2324 W. Newton Street and to construct a nine unit building. The Director issued a determination of non-significant (DNS) pursuant to SEPA and approved the proposal subject to a condition requiring landscaping.

2. The subject site is located in Magnolia overlooking the Interbay area. The property is midblock on the north side of W. Newton Street next to an apartment building to its west, a single family residence to its east, a mixture of residential across the street to the south and appellants' single family residence to the north. The area is zoned Lowrise 2. General Industrial (IG) zoning begins east of the end of the block.

3. The area, and lot, slopes down from west to east and south. Many homes are afforded views because of the topography.

4. The proposed building will be three stories above parking set into the slope of the lot. The height will be 32.5 ft. above existing grade. Nine parking spaces are proposed. The units are to contain approximately 900 sq. ft. of floor area and fireplaces.

5. Appellants' home has been remodeled to put their living room on the south side to take advantage of the view. All their view would be obliterated by the proposed structure. Other homes to the west and north would lose part or all of the views they now have.

6. Fireplaces in existing apartments and houses are causing deterioration in the air quality in the area.

7. A parking survey of the immediate area showed at least 29 spaces unoccupied during the afternoons and evenings of the survey.

8. Traffic generated by the apartments would amount to some 49-63 trips per day or around six cars per hour during the peak hours.

9. An environmental checklist was prepared for the project. From that and comment letters the Director concluded that the proposal would increase overcovering of soil, run off, air emissions, energy consumption, traffic noise, traffic and parking, housing, population, and use of public services and utilities, would block views, and would require landscaping to offset aesthetic impacts. These impacts on the environment were determined not to be significant.

Conclusions

1. Appellants challenge both the DNS and the Director's failure to condition the proposal to reduce its impacts. The Hearing Examiner has jurisdiction over this subject matter.

2. The determinations made by the Director are to be given substantial weight by the Hearing Examiner. Section 23.76.26.B.7. Appellants have the burden of proving that those decisions are clearly erroneous.

3. A DNS is appropriate unless it is probable that adverse impacts on the environment would have more than a moderate adverse effect on the quality of the environment. Norway Hill v. King County Council, 87 Wn.2d 267 (1976). The DNS acknowledges decreased air quality, loss of views and increased demand for parking. Except for the effect on their view appellants have not shown the impacts to be more than moderate. While appellants' loss of view will be significant, that impact alone is not sufficient to make the overall impact of the project, given its small size and minor impacts in other areas, more than moderate. The DNS should be affirmed.

4. Appellants ask that the proposal be further conditioned or denied. Section 25.05.660 allows the Director to impose conditions to mitigate impacts clearly identified in an environmental document and based on policies designated by Section 25.05.902 as a SEPA policy. The only authority for view protection is Section 25.05.902(7) which authorizes mitigation of impacts on views from public places and of historic landmarks. Private views are not provided protection. Therefore, the Director could not have required that the building be reduced in size to lessen the view impact.

5. The addition to traffic would be too small to permit imposition of mitigating conditions.

6. As to parking, a City Council decision in MUP-83-077, Appeal of Jean Elmer, clarified Council intent as to the relationship between land use code parking requirements and SEPA. That decision stated that "...DCLU was to be prohibited from using SEPA policies to require more than one parkign space per dwelling unit for projects with twenty or fewer dwelling units". Therefore, the Director cannot require additional parking and there is no provision to allow requiring the reduction in the number of units where the minimum required parking can be provided.

7. Increased air emissions were noted in the DNS but no policy allowing imposition of a condition prohibiting fireplaces was cited by appellants or found by the examiner.

8. To deny a proposal, the Director must rely on significant adverse impacts identified in an environmental impact statement (EIS) which cannot be mitigated by reasonable conditions, and again, the denial must be based on a SEPA policy. No EIS is required so the Director cannot deny the proposal.

Decision

The Director's determinations are affirmed.

Entered this 19th day of September, 1985.

M. Margaret Klockars
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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 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 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.