

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

In the Matter of the Appeal of

VIRGINIA LEE MEYER

FILE NO. MUP-85-046(W)
APPLICATION NO. 8405974

from a decision of the Director of
the Department of Construction and
Land Use for 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 13, 1985. The record remained open until Tuesday, September 17, 1985, for applicant's reply to a comment letter.

Parties to the proceedings were: appellant by William Snell of Haggard, Tousley and Brain, applicant by Rolf Preuss, and the Department of Construction and Land Use (DCLU) Director by Malli Anderson.

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, and following personal inspection of the subject property and surrounding area, 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 on Roosevelt Way in the Community Business (BC) zone between N.E. 62nd and N.E. 63rd Streets. The property address is 6209 Roosevelt Way N.E.

2. Adjacent block faces to the north and south of the subject property that front on Roosevelt Way are also zoned BC.

3. A 15 ft. wide alley abuts the subject property to the rear (west). Across this alley are Lowrise 3 (L-3) zoned properties that have frontage on 9th Avenue N.E.

4. The subject lot, 37.5 ft. wide and 127 ft. deep, is developed with a building that houses a stereo repair shop at the lower level and a second story apartment unit.

5. The applicant proposes to convert the residential unit to storage use and construct a 37.5 ft. by 49.5 ft. addition to the west (rear) of the building for storage of equipment being repaired. The addition would be 22 ft. 7 inches in height, set back from the alley 8 in. and would be of concrete block construction. Loading and unloading of goods will occur inside the facility. Access will be via a garage entry for two vans to be parked on-site. Applicant plans to soften the appearance of the rear of the building by utilizing the setback for trellises and ivy. No aesthetic efforts are planned for the sides of the building.

6. The project is in accord with zoning code requirements. Further, applicant will be required to comply with the provisions of the City Housing Preservation Ordinance.

7. DCLU issued an environmental declaration of nonsignificance regarding this project on July 18, 1985, and appellant submitted this appeal.

8. Appellant resides in the house immediately north of the subject property at 6215 Roosevelt Way N.E. Her property also abuts the rear alley. North of appellant's residence is the 30 unit Roosevelt Manor apartment building. The Manor has several stories, most with some windows facing south. Appellant is very concerned that the proposed building height will block lower stories' southern (solar) exposure and views. Appellant and other commenters also stated concerns with improper DCLU posted notice; parking; access; and excavation related damage to her tree roots. Applicant disputes that the proposed action will destroy appellant's north adjacent trees and proposes adding trees to the Roosevelt frontage. Principally, appellant would like to see the proposed structure height lowered, and the "integrity of the neighborhood maintained".

9. Vicinity development includes a mix of multifamily and commercial uses along Roosevelt Way. The strip of Roosevelt Way near the subject site has at least two other concrete block buildings, including one across the street from the subject property. Alley uses include access, service, parking, and storage.

10. The Environmental Checklist (Exhibit 9) as annotated by DCLU indicates expectations of a slight increase in carbon monoxide from short term construction and long term auto use. Exhibit 9 also indicates no threatened plant specie on or near the site; some increase in construction and vehicular noise; and that no vicinity views would be altered or obstructed.

11. The record reflects no substantial increase in parking demand or in traffic generation expected from the proposal. Large scale cargo, transfer or other trucks are not expected to be used. Per applicant, deliveries will occur "6 - 7 times per year".

12. The DCLU Notice of Proposed Land Use Action provided the application number, a general schematic (without dimensions) and an address and telephone number for additional information. Photo Exhibit 3. The large sign was installed on site March 26, 1985. Exhibit 12.

13. The DCLU report states that site is proposed for a Neighborhood Commercial 2, 40 ft. height limit designation.

Conclusions

1. If a proposal may have probable significant adverse environmental impacts, a declaration of significance is required. Seattle Municipal Code Section 25.05.360(1). If, on the other hand, no probable significant adverse environmental impact is determined, a declaration of nonsignificance (DNS) is appropriate. Seattle Municipal Code Section 25.05.340. Significant has been read to mean "of more than a moderate effect". Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976).

2. The Director's environmental determination at issue in this case, the DNS, is accorded substantial weight, Seattle Municipal Code 23.76.36(B)(7), and the burden of establishing the contrary is appellant's. Seattle Municipal Code Section 25.05.680(1)(c). Appellant must therefore show the DCLU determination here at issue to be "clearly erroneous".

3. Although some negative impact is anticipated on southern views and exposure from the proposal, the record fails to support a conclusion that identified adverse impacts will be significant. No significant increase was shown to be expected either to the traffic count, or in hazard to the vicinity street system. The other more general concerns have been considered and in light of the existing vicinity environment are not significant. Therefore, no declaration of significance is required.

4. As to desired conditions on the proposal, such as a lower height, Seattle Municipal Code Section 25.05.660 requires that all mitigation measures or denials be based on specific plans or policies formally designated in Section 25.05.902. The view protection policy, Section 25.05.902(7), serves to protect views "of mountains, water, skyline, and greenery...from public places identified in Appendix B..." or "views of historic landmarks..." Seattle Municipal Code Section 25.05.902(7)(b)(i)(ii). Appellant's view to the south is a private view that is not protected by a designated policy. Therefore, no authority is presented for requiring a responsive change in height or bulk of the proposed development.

5. Similarly, the record presents no authority for imposition of additional conditions relative to increased landscaping or specific protection of adjoining vegetation, Seattle Municipal Code Section 25.05.902(5); relative to traffic and parking, Seattle Municipal Code Section 25.05.902(4); or cumulative impacts. Specific to the cumulative impacts, the proposed use will not adversely affect public facilities, public services or the capabilities of the air, water, light and land (natural) systems to absorb the proposal's impacts. Seattle Municipal Code Section 25.05.902(3).

6. Appendix A is also to be considered for authority to mitigate environmental impacts. Seattle Municipal Code Section 25.05.902(2)(b). Appellant urges consideration of Resolution 24283, Goals for Seattle - 2000 Commission Report. Resolution 24283 is one of several items delineated in Appendix A. Specifically, appellant argues that the subject proposal offers no transition in scale, no landscaping - quality design, and that the proposal fails to maintain the integrity of the neighborhood, all in violation of Seattle - 2000 Goals.

7. Resolution 27156 (adopted September 4, 1984) adopts Neighborhood Commercial Area Policies for commercial areas of the City. Page one of those Policies states under "Goals" that

The purpose of these Neighborhood Commercial Area Policies is to further the vision of our City contained in the report of the Seattle 2000 Commission...

The section continues by identifying the Seattle 2000 goals incorporated into the Policies. The identified goals principally include those on which appellant based her objections.

8. Goal 2 per the Neighborhood Commercial Area Policies calls for the "careful location of businesses in order to maintain the neighborhood integrity". In the instant case the business is already sited and is seeking to expand within the confines of a lot zoned for the commercial use. The Hearing Examiner is not persuaded that the addition will disrupt the "integrity" of the neighborhood, particularly in light of the existing alley and other vicinity uses.

9. Cited Goal 11 is the promotion of the area's pedestrian character. While the proposal does not appear to be designed as particularly supportive of this goal, there is some trellis and ivy landscaping proposed which will soften the concrete bulk appearance as viewed from the alleyway. Trees are also proposed for the front of the existing building. In sum, the Seattle 2000 Goals of Appendix A, referenced in Seattle Municipal Code Section 25.05.902, fail to provide a basis for further conditioning of this proposal.

10. The Hearing Examiner specifically declines to address the suggestion that the Neighborhood Commercial Policies supersede Seattle 2000 goals. The Neighborhood Commercial Policies were referenced herein primarily for citation to Seattle 2000 goals, and incidentally to show a Council effort to retain certain Seattle 2000 Goals via the Neighborhood Commercial Area Policies and adopting Resolution 27156.

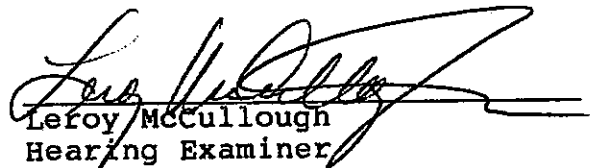
11. Relating to the appellant's complaint about the sign, Seattle Municipal Code 23.76.14(D) requires that when a project is subject to environmental review, notice be given via a general mailed release and by a "large sign...on the site at least fourteen days prior to a threshold determination". The Hearing Examiner was directed to no provision requiring more detailed signage than was provided in this case. Secondly, the posted sign provided the correct application number, proposal address, a reasonable schematic, and a telephone number for further information. Appellant presented no evidence that the sign misled her or otherwise rendered her incapable of understanding the nature of the process or proceeding at issue. Cf. North State Telephone Company, Inc. v. Alaska Utilities Commission, 522 P.2d 711 (1985). The sign was posted March 26, 1985, and the threshold determination here at issue was made July 18, 1985.

12. The DCLU Director's decision to issue a DNS conditioned on prior approved landscaping is therefore affirmed.

Decision

The DCLU decision is AFFIRMED.

Entered this 1st day of October, 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); 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 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 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.