

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

Gary Nothstein

FILE NO. MUP 85-063(W)
APPLICATION NO. 8502931

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

Introduction

Appellant challenges DCLU environmental approval of a proposal to construct a 24-unit apartment at 800 N. Allen Place.

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 October 31, 1985.

Parties to the proceedings were: Gary Nothstein, appellant, pro se; the Director of Department of Construction and Land Use represented by Arthur Lee, land use specialist; and Lyle Kussman, project architect, representing the applicant.

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 subsequent to the site inspection of the subject property and surrounding area by the Hearing Examiner, 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 in the Fremont area at the northeast corner of N. Allen Place and Linden Ave. N. The site address is 800 N. Allen Place.
2. The 10,000 sq. ft. area lot is zoned Lowrise 3 and is developed with two single family residences. A Community Business (BC) zone is east adjacent. Aurora Ave. N., one half block farther east, is lined with General Commercial (CG) zoned businesses.
3. The subject site is near an on-ramp to and an exit from Aurora Avenue. Other nearby major streets include Fremont Avenue, North 46th and North 45th Streets.
4. General street width is 25 ft. curb to curb although one segment immediately north is 18 ft. wide. The street width, combined with on-street parking, effectively makes some street segments one-lane.
5. In addition to intense resident or visitor parking demand there is work day parking spillover from Aurora Avenue businesses. More on-street parking is available on Sundays.
6. Appellant's Exhibit 3, a Seattle Engineering Department report of accidents for nearby intersections, shows 43 reported collisions between January 1, 1980 and March 31, 1985. Although most involved autos "in transport" several accidents involved parked cars. The owner-resident of the property at the southwest corner of Linden and Allen testified that he has experienced two hit-and-run collisions to his auto parked on Linden.

7. Applicant proposes to develop the subject site with a 24-unit, pitched roof apartment building. Four bicycle spaces and 27 underground auto spaces are also proposed with access from N. Allen Place. A housing demolition license will be required for the proposed removal of the residences on-site. Trees, shrubs and other landscaping is proposed for the perimeter of the development.

8. The applicant's plans call for eight one-bedroom units (610-650 sq. ft.); one two-bedroom unit at 750 sq. ft.; and 15 three-bedroom units between 840-950 sq. ft. in area.

9. Between five-six auto trips per day per unit, i.e. 120-144 vehicle trips, are expected to result from occupancy of the apartment.

10. In appellant's estimation there are some 69 apartment units within a two block radius of the site. Included in this count is a triplex built in 1905 that offers two on-site parking spaces. The property north adjacent to the subject site is developed with a 13-unit multi-family structure. East adjacent is the Purple Cross business and parking area that applicant is considering for additional parking. Two single family residences are to the northeast.

11. Because the subject site is less than 1.5 miles from the University of Washington campus and is "up the hill" from Seattle Pacific University, the developer anticipates that some renters could be students.

12. DCLU reviewed the proposal, annotated the environmental checklist and issued a declaration of non-significance, with conditions. The conditions restrict the use of loud construction equipment to normal working hours, require preservation or replacement of two street trees fronting the site in the N. Allen planting strip "at the expense of the applicant/owner(s)", and also require an approved landscaping plan. The fourth condition requires compliance with the Housing Preservation Ordinance before the existing on-site residences are removed. Fifth, on-site parking is to be provided for construction workers. Sixth, external or internal lighting is to be directed or shaded. The final condition states that "[o]ne parking space shall be allocated for each unit. Additional spaces shall be designated exclusively for guest parking."

13. Appellant submitted this appeal to the DCLU decision. Increased traffic and parking and accident hazards were appellant's key issues. Appellant and witnesses also were concerned with how the proposal would impact the "quality of the human environment" on the vicinity. The Fremont Neighborhood Council specifically noted Linden as some children's access route to nearby B.F. Day School, and indicated that "a minimum of 2.2 off-street parking places for each unit would be appropriate" in order to "prevent an already over-crowded street from becoming intolerable and dangerous for cars, drivers and children."

Conclusions

1. The Hearing Examiner has jurisdiction of this proceeding pursuant to Chapters 23.76 and 25.05, Seattle Municipal Code.

2. The Director's environmental determination 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. 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 no probable significant adverse environmental impact is determined, a declaration of non-significance (DNS) is appropriate. Seattle Municipal Code 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).

4. The site is near Aurora Avenue, a major north-south thoroughfare. It is also near Fremont Ave. and N. 45th. Some 120-144 vehicle trips per day are expected to be added to the vicinity traffic flow if the project is developed as proposed. The impact on the current traffic pattern was not shown to be significant.

5. As to parking, 27 on-site parking spaces are proposed for the 24 units; and the additional spaces will be designated exclusively for guest parking. The vicinity parking congestion stems in part from the Aurora business strip activity. This parking spill-over is eliminated or significantly reduced on Sundays. Therefore, the proposals on the parking environment will not be significant.

6. Finally, the L-3 zoned site is adjacent to a BC zone. A review of the foregoing evidence shows that although there will be an undisputed increase in auto and pedestrian traffic as a direct result of the proposed apartment, the hazard or other effects will not be "significantly" adverse, i.e. the evidence failed to overcome the substantial weight accorded the Director's decision. Accordingly, no EIS is required.

7. As to conditioning of the proposal, the Hearing Examiner is without authority to require parking in excess of the 1:1 ratio. The Seattle City Council decided in In re Elmer, C.F. 293040 (1984) that DCLU's discretion to require more than one parking space per unit was proscribed by the land use code, i.e. that environmental policy provisions gave no additional authority to require more parking. Turning to that Land Use Code, Section 23.54.20(D) allows DCLU to require up to 1.25 spaces per unit if all of the four stated criteria are met. One criterion requires that 40% of the units be in excess of 1200 sq. ft. in area. The largest units of the subject proposal will range from 840 to 950 sq. ft. in area. Therefore, although the record shows that one, two and three bedroom units are proposed; and that on-street parking is, more often than desired, at a premium, the proposal impacts will not be significantly adverse. Further, no authority is provided to require that applicant provide parking in excess of that proposed. The DCLU decision must therefore be affirmed.

Decision

The DCLU decision is AFFIRMED.

Entered this 14th day of November, 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.