

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

In the Matter of the Appeal of

DEANNE FOX

FILE NO. MUP 85-076(W)
APPLICATION NO. 8503542

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

Introduction

Deanne Fox appeals the decisions of the Director, Department of Construction and Land Use, on a master use permit application to construct a 14-unit apartment building at 1100 East Harrison Street.

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 December 27, 1985.

Parties to the proceedings were: Appellant, Deanne Fox, pro se; the Director represented by Leslie Lloyd, land use specialist; and Applicant, West Venture Group, represented by Rory Veal.

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. Applicant applied for a master use permit to demolish a single family residence and a triplex and to construct an apartment building at 1100 E. Harrison St. Design departure was requested. The Director approved design departure, issued a determination of non-significance (DNS) and imposed conditions. Appellant filed this appeal.

2. The proposed structure is to be four stories high with 14 units and 16 parking spaces in the basement. It meets Land Use Code requirements and standards for parking, open space, height, landscaping, and setbacks.

3. The DNS identifies temporary impacts from construction plus the following long term impacts: increase in air contaminant levels from increased traffic volume; shading; increased noise levels; housing displacement; introduction taller and larger building; obstruction of private views; increased source of nighttime light; increase in traffic volume; and increase in demand for on-street parking.

4. The Director found that: compliance with the Housing Preservation Ordinance would mitigate housing displacement; retention of street trees and proposed landscaping would mitigate height and bulk impacts; availability of transit and the proximity to services and goods may mitigate the increase in traffic volume.

5. The subject site is a lot at the corner of 11th Ave. E. and E. Harrison St. on Capitol Hill. The lot is part of a large Lowrise 3 (L-3) zone extending in all directions.

6. The blocks around the subject site show a mix of housing and architectural types. Unit counts range from one to 126 per building. On the two sides of 11th Ave. E. in the subject block the structures contain from one unit to twelve units.

7. The existing single family residence on the subject site is badly rundown. One of the three units in the triplex is in good shape. The two units of the triplex which had been occupied were rented at below market rates. All tenants have been relocated and paid required relocation fees.

8. Access to the proposed building's parking is to be from 11th Ave. E. because the site slopes down to the west and that is its lowest point. This allows parking to be underground.

9. Appellant urges that access to the garage be located on E. Harrison where it would be nearer to 12th Ave. E., an arterial. The traffic could then avoid making a left turn at the traffic circle at the intersection of 11th Ave. E. and E. Harrison.

10. The Engineering Department had an opportunity to review the proposal and voiced no concern with the location of the access.

11. On-street parking is in great demand in the area with residents of the area having to walk some distance to and from their cars. This is unsafe as well as inconvenient.

12. The proponent of the project describes the architectural style of the building as "neoclassic with deco influence." Appellant contends this design is not congruent with the historic nature of Capitol Hill.

13. Appellant asks that permit be denied to retain the existing housing, thus avoiding the impacts on housing, parking and aesthetics.

Conclusions

1. The Hearing Examiner has jurisdiction in this matter pursuant to Chapter 23.76.

2. The Director may deny a proposal because of environmental impacts only when those impacts have been identified in an environmental impact statement (EIS) and when the impacts cannot be mitigated by reasonable conditions. Section 25.05.660(1)(f).

3. The Director issued a DNS here instead of a determination of significance requiring an EIS having found no significant adverse impacts from the proposal. The Court has interpreted SEPA to require an EIS when it is reasonably probable that adverse impacts would have more than moderate effect. Norway Hill v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976). Appellant did not show that the impacts from the proposed building would be more than moderate. Therefore, an EIS is not required. Without an EIS there is no basis for denying the proposal.

4. Appellant asks that access be moved to E. Harrison St. Mitigating conditions must be based on impacts identified in the environmental documents. Section 25.05.660(1)(b). Since no adverse impact from access was identified in the documents the Director could not have imposed that condition. Further, the evidence presented at hearing does not show that the Director erred in failing to identify an adverse impact from the proposed access.

5. An increase in demand for parking on-street was identified in the DNS. However, the Director does not have authority to require more parking than required by the Land Use Code. In re Elmer, CF. No. 293040.

6. Housing displacement has been identified in the DNS as an adverse impact. The Director may impose mitigating conditions based on SEPA Policies. Section 25.05.660(1)(a). The Housing Policy, Section 25.05.902(10) provides that compliance with the Housing Preservation Ordinance (HPO) is compliance with the policies. Since the applicant has complied with the HPO there is no policy basis for imposing further conditions to mitigate displacement.

7. Appellant's objection to the design of the structure is more to the replacement of "congruent" buildings, which has been addressed above, than to the particular architectural style. She cited no policy basis for requiring a specific architectural style.

8. Appellant has not proved that the Director's decision is clearly erroneous as required to overcome the substantial weight to be given the decision. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981); Section 23.76.36(B)(7). Therefore, the decision must be affirmed.

Decision

The decision of the Director is AFFIRMED.

Entered this 17th day of January, 1986.

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 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.