

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

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MAR 30 1987

In the Matter of the Appeal of

ROOSEVELT NEIGHBORHOOD ASSOCIATION

S. E. P. A.
FILE NO. MUP
PUBLIC INFORMATION CENTER
APPLICATION NO. 8602351

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

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Introduction

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The Roosevelt Neighborhood Association appeals the decision of the Director, Department of Construction and Land Use, to issue a determination of non-significance and her failure to impose additional conditions of approval for the proposed 88-unit apartment development at 1016 N.E. 67th Street.

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 March 12 and 13, 1987.

Parties to the proceedings were: appellant represented by Patrick Strosahl; the Director, Department of Construction and Land Use, by Ed Somers, associate land use specialist; and the applicant, by his attorney, Keith Dearborn.

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 Director, Department of Construction and Land Use, hereafter "Director", issued a determination of non-significance (DNS) for the demolition of two, 6-unit apartment buildings and the construction of 88 units in two buildings with 107 parking spaces at 1016 N.E. 67th Street. This is a mitigated DNS in that an earlier proposal was modified by the applicant in response to the Director's conclusion that she would be required to issue a determination of significance based on the impacts of that proposed development.

2. The subject site is the south half of the block bounded by N.E. 67th and 68th Streets and Roosevelt Way N.E. and 12th N.E. except for the most easterly lot. The site is approximately 300 ft. long and 102 ft. deep and rises in elevation toward the north property line some 5 to 12 ft. varying over the lot. The lot is elevated above the street some 4 to 6 ft. because of a retaining wall along the periphery of the lot.

3. The easterly 90 ft. of the site is zoned L3/RC as is the lot to the east of it. The westerly 210 ft. is zoned NC3 65'.

4. The north half of the subject block is also divided with NC3 65' zoning for the westerly 90 ft. and SF 5000 zoning for the remainder of the block. Commercial zoning and uses extend north and south along Roosevelt Way and east and west at N.E. 65th Street. The single family zone is developed with single family houses. There are six houses on the SF 5000 lots adjacent to the north and two on the lot to the east.

5. The block south of the subject site is developed with a QFC food store and its accessory parking. To the east is Roosevelt High School and grounds. To the west is a 30-unit apartment building across Roosevelt. To the southwest is a SeaFirst Bank and accessory parking. To the northwest, west of Roosevelt in the block between N.E. 68th and 69th, is the Calvary Temple and its accessory parking.

6. The proposal consists of two buildings. The easterly building in the L3/RC zone would rise approximately 32 ft. above the street grade at the southeast corner and 23 ft. above grade at the northeast property line. That building would be set 12 ft. from the rear property line at the closest point. The second building would have the appearance of two buildings because of a deep entry courtyard and change in height and would be separated from the first building by 20 to 23 ft. The middle building, or eastern half of the second building, would be approximately 92 ft. long and would have a 3-story portion over the garage in the rear and two four story portions in the front. The most westerly building would be about 74 ft. wide with five stories in the rear rising to seven stories in the front. Both portions of this building would be over a garage partially excavated into the slope of the lot. The height from the street grade at the southwest corner to the highest portion of the building, not counting a pitched roof, would be approximately 66 ft. The height to that point above grade at the rear would be approximately 49 ft.

7. The structure proposed initially consisted of a 300 ft. long, 80 ft. deep building, housing 102 units with 102 parking spaces. The building was to have been four stories high over a street level garage for the entire length. Another story of penthouses was included for the NC3 portion.

8. The environmental determination by the Director lists the following environmental impacts from the proposal: excavation and overcovering of soil, dust and vehicle emissions during construction and in the long term, increased runoff, removal and addition of vegetation, increased energy consumption, shadowing of private properties, increased noise, added housing, obstruction of private views, additional light and glare, increased traffic and parking demand, increased use of public services and utilities and an increase in bulk and scale over other buildings in the area.

9. Two conditions were imposed on the approval to mitigate environmental impacts. One requires that approved landscaping be provided and maintained. The second relates to parking and requires that each unit be provided a free, assigned parking space, that at least ten spaces be designated as guest parking and that the remaining spaces be made available to tenants with more than one car.

10. The topography of the area rises slightly to the north and northeast affording views of the City to the south and southwest from upper levels of some houses.

11. Single family residences in the area are generally one to two stories in height. Commercial uses are also generally one to two stories. The Roosevelt Square building represents the greatest bulk in the area and is approximately 35 ft. high.

12. The Director's staff analyst found the modified project to provide "a sensitive increase in bulk and scale."

13. No views from the yards and first floors of houses on the north half of the subject block exist because of the existing 1-story apartment units. The corner house has some view which would be only slightly affected by the proposed development. Farther to the north and northwest where houses have views due to the slope the proposed buildings would appear in some views and

obstruct, to varying degrees, other views. The territorial view enjoyed from the second floor of one house on the south side of N.E. 69th would be obliterated by the proposed buildings.

14. No views from scenic places or routes designated in Chapter 25.05, Appendix B, would be affected by the proposed development. The structures would be barely visible from Froula Playfield, the only public open space in the immediate neighborhood.

15. The proposed buildings would be expected to cast shadows over the two westerly houses on the north half of the block and over the rear yards of the others at least some part of days when the sun shines for the late fall, winter and early spring months of the year.

16. Because there are units proposed for the north side of the structure and those units are planned to have balconies, the privacy enjoyed by the single family houses on the north half of the block will be reduced.

17. To measure probable change in population a neighbor counted the homes in a six block area and found there to be 114. An addition of 88 units would markedly increase the population.

18. Two arterials, Roosevelt Way N.E., which is one way south, and 12th Avenue N.E., which is one way north, serve the site. The average weekday traffic volume for each is approximately 14,000 vehicles. Peak hour volume on 12th N.E. is about 1,000 vehicles. The morning peak hour for Roosevelt is not given in the traffic report.

19. The applicant's traffic consultant based his trip generation projection on 6.1 trip ends per unit per day. The 88-unit development would be expected to generate some 540 trip ends per day. Some 53 would be expected to occur during the p.m. peak hour. Of the vehicles leaving the site, some 36.5 percent are expected to go north on 12th N.E. and some 63.5 percent south on Roosevelt of which some 73 percent will turn to the west.

20. The level of service (LOS) of the intersections near the project site has been determined to be as follows: at Roosevelt and N.E. 65th, B; at Roosevelt and N.E. 67th, A; at 12th Avenue N.E. and N.E. 65th, B; and at 12th Avenue N.E. and N.E. 67th, A. The traffic consultant predicted that the LOS for these intersections would not be reduced by the additional traffic from a 102-unit development so they would not change with the 88-unit proposal.

21. A neighbor described the difficulty that vehicles have who wish to leave a side street east of Roosevelt to turn right on N.E. 65th in that they must cross the lanes of traffic to the right hand lane when traffic is backed up from the light at N.E. 65th. These drivers sometimes anticipate the left turn and obstruct the intersection to those desiring to turn from Roosevelt into the side street. He is concerned that these movements create hazards and additional motorists attempting to make these turns would add to the hazard.

22. Northeast 67th Street is 26 ft. wide. The street width standard calls for a 30 ft. width.

23. The Director relied on the Engineering Department's view that the traffic generated would not create a traffic hazard. The opinion of appellant's lay witness cannot be given sufficient weight to overcome that given the experts' opinions.

24. The availability of on-street parking in the area is affected by demand from Roosevelt High School during the school year weekdays and evenings, Calvary Temple overflow on the weekends, restrictions during rush hours on the arterials, meters in

the Roosevelt business district two blocks to the south and restrictions to allow school bus parking along 12th N.E.

25. Applicant's traffic consultant, a transportation engineer, conducted studies to determine parking occupancy levels in the area. He visually estimated the number of parking spaces on Roosevelt and 12th N.E. from 66th to 69th and on 66th, 67th and 68th between 12th N.E. and Roosevelt, to be a total of 87 spaces. A later estimate covering less area resulted in an estimated supply of 102 spaces.

26. Appellant sponsored a survey where the total capacity was determined by actual measurement or a count of the parking meters, where appropriate. The total capacity by appellant's method was determined to be 86 spaces.

27. Applicant's consultant conducted a count of the parking utilization on a Friday evening in May. That count showed 36 to 58 available spaces. Later counts were done at the request of the Director and conducted on a Saturday and Wednesday in August, times when neither the high school nor church would create parking demand. Using the higher number of estimated spaces available, the count showed a surplus supply of 41 to 57 spaces on Wednesday during the daytime and Saturday during the daytime, 51 to 65 extra spaces.

28. Appellant's count, done by Patrick Strosahl, shows a low of ten extra spaces during the day on Friday and a low of 42 on Friday evening. On Saturday, the daytime low was 25 and evening low was 37. On Sunday, the fewest spaces, 30, were available at 11:30 a.m.

29. An estimate of vehicle ownership based on surveys done by the Seattle Engineering Department and by applicant's traffic consultant would be between .92 and 1.12 cars per unit for 81 to 99 vehicles needing parking. Guest demand is projected by applicant's consultant to be for not more than 12 to 18 stalls. The greatest demand, or worst case, then would be a demand for 117 spaces. With 107 spaces provided there would be 10 vehicles needing on-street parking.

30. At the worst case the overflow parking can be accommodated on-street, would not exceed a fair share of street parking and the impact on parking would not be more than moderate.

31. Appellant's witnesses and many of the comment letters express concern about the change in neighborhood character and diminution of property values which they believe the proposal would cause. They attribute the change in character to the physical scale of the development and the increased density, especially when the residents would be "transients", i.e., they would have lesser ties to the community than the property owners in the area. The belief that property values would diminish is based on the view and shade impacts, the loss of privacy and the change in character of the area.

32. Appellant introduced a plan for alternative development of the site to mitigate perceived environmental impacts. The proposed alternative would consist of two buildings with the appearance of three, the most easterly measuring 60 ft. by 68 ft. and 21 ft. above grade at the rear with three stories; the middle measuring 60 ft. by 98 ft. with three stories; the most westerly 80 by 78 ft. and 40 ft. above the grade of Roosevelt with four stories over parking. The buildings would be separated by 23 ft. and excavation would bring them down to street level. The buildings would all be shifted south to the lot line to create a 40 ft. rear setback. The reduction in bulk of the building is likely to reduce the number units to around 60.

33. One of the effects of moving the buildings as far south as possible would be to bury the rear, first level apartments in

the slope so they would look out on a high retaining wall. Another would be to provide no setback along the street front which is shared with single family development at the east end.

34. In addition to the alternative development plan proposed by appellant to mitigate impacts, members of appellant requested conditions limiting use of noisy construction equipment to the hours of 8:00 a.m. to 5:00 p.m. on weekdays; shielding security lighting during construction and permanent lighting away from neighboring residences; altering the street system to make all streets, 66th through 70th, eastbound between Roosevelt and 12th N.E. and all streets between 12th and 15th westbound; and require a 10 ft. wide landscaped area at the rear property line planted with fast growing evergreens.

35. The applicant offered a series of conditions as further voluntary mitigation:

Parking:

1. Parking Ratio shall be at least 1.21 stalls per unit.

Landscaping:

1. The applicant shall post a landscape bond to guarantee plantings for one year.
2. Street trees at least 6' high shall be planted on North (sic) 67th.
3. A cedar fence of residential design, at least 6' high shall be installed on the north and east property line.

Setback:

1. The eastern most structure in the L-3/R-C zone shall be set up to 5' closer to the street, if approved by DCLU upon application for design departure.

Noise:

1. Project work hours shall be 7:30 to 6:00 p.m., Monday through Saturday. Except in emergencies, no diesel or compression type construction equipment shall be operated only during project work hours.

Light and Glare:

1. Any exterior security lighting used during the construction period shall be screened, to the extent practicable, from views of adjacent residents.
2. Project exterior lighting for walkways and courtyards shall be screened, to the extent practicable, from view of adjacent residents.

Exhibit 21.

36. Appellant offered evidence which was not admitted to show that a mistake had been made by the City Council in rezoning a substantial portion of the site to NC3 65' which occurred June, 1986.

37. Appellant attempted to introduce evidence as to the size

of the structure and the number of dwelling units which would have been permitted under the prior BC zoning of the western part of the site. No definitive testimony was offered on that issue, however, most testimony indicated that fewer dwelling units would have been permitted than under the NC3 zoning.

Conclusions

1. If the Director determines there will be no probable significant adverse environmental impacts from a proposal she is to issue a DNS. Section 25.05.340. "'Significant' means a reasonable likelihood of more than a moderate adverse impact on environmental quality." Section 25.05.794. When the Director finds that a determination of significance is likely, the applicant is entitled to change the proposal to mitigate what appear to the Director to be significant impacts. Section 25.05.350. That procedure was followed in this case and resulted in the mitigated DNS.

2. Appellant contends that the combined impacts from the proposal, even after its modification, are significant, and therefore, require the preparation of an environmental impact statement. The record shows that the impacts from additional traffic and parking would be only minor. Perceived impacts on property values and neighborhood "character" are not cognizable under SEPA, nor is the effect on privacy. The remaining are areas where there was a clear showing of adverse impact, i.e., height, bulk and scale, shadow and view. The question to be resolved, then, is whether these impacts from the proposed development combined with the other marginal impacts are significant.

3. The shadows on the six houses to the north and the major view intrusion affecting a small number of houses certainly are significant to those houses. Those impacts, alone, however, do not constitute a significant impact on the environment.

4. The "height, bulk and scale" impact relates to the element of the environment, land use, and its subcategories, relationship to land use plans and aesthetics. While appellant desired to show that the current zoning designation is in conflict with the locational criteria of the land use policies, the City Council, by its zoning of the property, has interpreted its land use plan as it relates to this property. Since the proposed height, bulk and scale conform to the standards for that zoning, the proposal's relationship to the land use plans, one of the considerations under land use, cannot be said to represent a substantial adverse impact. As to the other subcategory, aesthetics, there is no evidence that the proposed structures would be offensive to the eye in themselves and conflicting opinions were offered about the relationship to existing structures. Neighboring residents overwhelmingly expressed, both in comment letters and testimony, the view that the scale, or relationship to existing structures, is offensive. The Director found that "the scaled down proposal does provide a sensitive increase in bulk and scale." While the opinions of persons who will live intimately with the structures must be respected, the legal standard which must followed on review requires giving the Director's determination substantial weight. Section 23.76.022. C.7. This means that appellant must show the determination to be clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981). The record shows that the Director was aware of and considered the proposal's traffic, parking, shadow and view impacts and that her opinion as to the degree of the land use (aesthetic) impact differed from that of appellant. Appellant has not proved, however, that her determination to issue a DNS was clearly erroneous. Therefore it must be affirmed.

5. The Director has authority to impose conditions to mitigate adverse impacts if the conditions relate to environmental impacts which have been clearly identified in an

environmental document, are based on policies designated in Section 25.05.902 as the basis for SEPA mitigation, are reasonable and impose responsibility only to the extent attributable to the identified impact of the proposal. Section 25.05.660A.

6. The Director has no authority to mitigate the impacts of interference with private views and shadows on private property. See Sections 25.05.902G and H.

7. Since the parking impacts from the proposal are minor because of the 1.21 spaces per unit proposed by the applicant and any overflow could be accommodated on-street and would not exceed a reasonable share of the street parking given the size of the site involved, it was not error for the Director not to require further mitigation of parking. Requiring adherence to the proposed ratio, as offered by applicant, is warranted.

8. The additional traffic to be generated was not shown to have any adverse effect on the street circulation system warranting mitigation.

9. An aesthetic impact from the height, bulk and scale of the proposed structures is identified in the environmental documents. The Director and appellant agree there is authority to mitigate that impact. The extent of that authority and the appropriateness of further mitigation are the chief issues in this appeal. The policy authority which would have been relied upon by the Director to require mitigation of the impact, had the applicant not modified his proposal, is Goal B.9 of the Neighborhood Commercial Policies: "Provide for a transition in scale and use between residential and commercial areas, buffering residential areas from the impacts of heavier commercial uses, wherever possible;... p.23-74.2. Policy 1 of the Multi-Family Residential Areas Policies also includes a similar objective: "sensitively increasing the scale and intensity of development while attempting to minimize the impacts on existing character." p.23-16. Since the proposed use is residential, the Director found no authority or need for a "use" transition. She found the stepping-up of the buildings from north to south and from east to west to provide sufficient transition in scale.

10. Appellant urges, however, that the policies require the Director to further reduce the height and bulk of the structures to be compatible with the existing character and scale of development. Appellant's argument has two bases. First, the General Commercial Area Designation Policies at II.B.1.b provide that "preferred configuration of commercial zones will not conflict with the preferred configuration in edge protection of residential zones as established in the single family policies, p.23-74.3. Goal B.1 is to "reinforce the objectives of the adopted Single Family Policies and Multi-Family Policies". p.23-74.1.

11. The second foundation for the argument is the locational criteria of the Neighborhood Commercial Areas Policies. Appellant points out that the Council expressly stated at p.23-74.73 that these policies shall apply for SEPA purposes. One locational criterion, "Physical Conditions Favoring Designation as NC3", p.23-74.51, lists separation from low density residential areas as a condition which is not met in this case. A locational criterion for height, at p.23-74.61, states that permitted height limits should be compatible with the predominate height of existing development and the zoned height of the adjacent area, again not met in this case. Appellant urges that application of those criteria would dictate L-2 or L-3 height and bulk for this location.

12. To use those locational criteria as the basis of conditions imposing L-2 or L-3 standards would be to disregard the decision made by the City Council only last year that the westerly portion of the site is appropriate for NC3 65' and its

standards. That decision by the City Council must be given some effect. The multi-family use and voluntary mitigation of height and bulk incorporated into the modified proposal does provide a degree of transition.

13. The applicant has offered additional mitigation measures which would further improve the transition including up to 5 ft. further separation if design departure can be approved and the cedar fence along the north property line. In addition, a condition, based on Section 20.05.902E, should be imposed requiring that evergreen trees be incorporated into the landscape plan and be planted along the rear lot line, or at the adjacent property owners' request, on the north side of the joint lot line. Requiring more, though effecting a better transition, would not be reasonable mitigation in that it would negate the fact of the NC3 65' designation of the site.

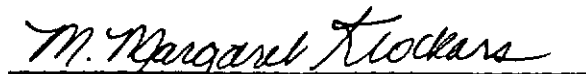
14. The Director's decision has not been shown to be clearly erroneous.

Decision

The Director's determinations are affirmed with the addition of the following conditions of approval:

1. The parking ratio shall be at least 1.21 stalls per unit.
2. The applicant shall post a landscape bond to guarantee plantings for one year.
3. Street trees at least 6 ft. high shall be planted on Northeast 67th.
4. A cedar fence of residential design, 6 ft. high, shall be installed on the north property line.
5. Evergreen trees shall be planted along the north property line or, at the adjacent property owner's request, on the north side of the property line.
6. The most easterly structure located in the L-3/R-C zone shall be moved up to 5 ft. closer to the south property line if design departure is approved by DCLU.
7. Exterior security lighting used during the construction period shall be screened, to the extent practicable, from adjacent residences.
8. Permanent exterior lighting shall be screened, to the extent practicable, from view from adjacent residences.
9. Project work hours shall be no longer than 7:30 a.m. to 6:00 p.m., Monday through Saturday.

Entered this 30th day of March, 1987.


M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

Pursuant to Seattle Municipal Code Section 25.05.680(C), a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth day after the date of the decision appealed from is filed with the

SEPA Public Information Center. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 25.05.680(C), 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(C) appeal.

If no appeal is taken pursuant to Section 25.05.680(C), 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 fifteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.22(C)(12)(c). 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 fifteen days of the date of this decision. Section 25.05.680(D)(4).

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.