

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

In the Matter of the Appeal of

LANCE MUELLER AND ASSOCIATES,
ARCHITECTS FOR B.L. PERKINS

FILE NO. MUP-87-048(W)

APPLICATION NO. 8601979

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

Introduction

This matter was heard by the undersigned on October 20, 1987.

On November 4, 1987, the undersigned remanded the matter for the Department of Construction and Land Use revision.

Except as may be modified herein, the November 4, 1987 Findings are incorporated herein by reference.

On December 4, 1987 the Hearing Examiner received the DCLU modified decision. This decision included adjustments to setback, height, modulation and landscaping.

Pursuant to an approved extension to consider mailing time, the Hearing Examiner received applicant's request for reconsideration on December 11, 1987. The Hearing Examiner opted to review the submittals without further hearing. DCLU submitted a reply to the applicant's request.

Findings

1. DCLU and applicant essentially disagree on the modulation and setback provisions for the 3rd floor and above. Per the DCLU decision "The line of the third floor walls and fourth floor roofline will be modulated...." The result is a stepped-back roofline from the single family zone to the east and a similar setback from the north and from the south. Each indentation would approximate 10 ft. x 25 ft.

2. Applicant's proposal includes no modulation, per se, but a choice of a sloped-roof connection from the second floor (Exhibit 2A) or a 90° 2nd story extension to the east and a greater 3rd and 4th floor setback from the east property line.

3. Applicant asserts and the Hearing Examiner finds that load bearing and other structural problems accompany the DCLU recommended "design."

4. Applicant asserts a loss of approximately 2000 sq. ft. of floor area. In fact the area affected by the modulation challenged is closer to 1000 sq. ft.

5. As noted in Finding 3 of the November 4, 1987, Hearing Examiner decision, "...the subject property is...included within a Neighborhood Commercial 2, 40 ft. height limit zone" that extends north from N.E. 67th Street along Roosevelt Way N.E. The area of the project that extends south to N.E. 69th is within that NC2/40' zone.

Conclusions

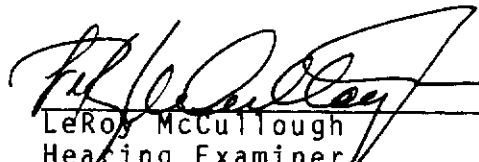
1. Except as may be modified herein, the Conclusions of the November 4, 1987 are incorporated herein by reference.

2. Seattle Municipal Code 25.05.660(A)(4) requires that mitigation measures be "reasonable and capable of being accomplished." In the context of this case, where the prevailing height of east adjoining, single family zoned residences is one-story, modulation of the floors above the second floor would prove of insignificant aesthetic benefit to the east adjoining residences. The challenged condition will likely present load bearing and space availability problems that offer little real mitigative effect on height, bulk and scale impacts. Under the circumstances the DCLU condition challenged by applicant is not reasonable.

Decision

The DCLU decision is MODIFIED. The second condition of DCLU's December 4, 1987 decision is affirmed. The first condition is modified to permit a 20 ft. setback from the east to the third floor and sloping a roof connection. The condition requiring the (north 25 ft. and south 25 ft.) indentation of the third floor and above walls and roofline is deleted.

Entered this 18th day of December, 1987.


LeRoy McCullough
Hearing Examiner
Office of Hearing Examiner
400 Yesler Building, 5th Floor
Seattle, Washington 98104
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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 for 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.

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FILE NO. MUP-87-048(W)
APPLICATION NO. 8601979

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

Introduction

Project applicant appeals the decision of the Director, Department of Construction and Land Use, to impose conditions of approval for a proposed warehouse development at 6902 Roosevelt Way N.E.

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 20, 1987.

Parties to the proceedings were: Intervenor Roosevelt Neighborhood Association by Patrick Strosahl, pro se; the Director, Department of Construction and Land Use by Jay Laughlin, associate land use specialist; and the applicant, by his architect Lance Mueller and pro se.

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. B.L. Perkins, applicant, proposes to demolish an existing dry cleaners/laundry facility and establish on site a mini-storage warehouse and retail building and parking garage.

2. The application to DCLU of April 15, 1986 indicates the new use would be a 4-story, 46,920 sq. ft. facility addressed as 6902 Roosevelt Way N.E. At the time of the application, the site was zoned General Commercial (CG), which among other items permitted a development height of up to 60 ft. It is undisputed that the project vests to the CG zoning privileges.

3. The subject property is located at the northeast corner of N.E. 69th Street and Roosevelt Way N.E. and is included within a Neighborhood Commercial 2, 40 ft. height limit zone that extends from Lake City Way south to approximately N.E. 67th Street along Roosevelt Way N.E. This zoning, applied to the area after the subject application, prohibits mini-storage use in excess of 15,000 sq. ft.

4. The subject lot has 102 ft. of frontage on Roosevelt Way and 120 ft. frontage on N.E. 69th. Total lot area is 12,240 sq. ft.

5. The vicinity development is mixed. North adjacent to the proposal site is a 3-story building that is owned by applicant and that is currently in use as a mini-storage warehouse use. A mailing service use occupies part of the ground floor. This structure generally extends to N.E. 70th Street.

Directly across N.E. 70th from this 3-story warehouse is a 4-story apartment structure.

6. Other vicinity development includes a 3-story apartment across Roosevelt from the proposal site and several single and 2-story retail and auto-related service uses along Roosevelt.

7. The commercial zone jogs easterly into the east adjacent SF 5000 zone by approximately 40 ft. from the subject property south to N.E. 68th Street. The single family development consists of small scale single and 2-story dwellings. One of those single family structures, east adjacent to the present warehouse use, faces N.E. 70th to the north and the warehouse wall to the west. The single family dwelling that faces N.E. 69th could be faced with a similar view of a warehouse wall.

8. The drawings that accompanied the initial application showed a warehouse east wall of some 50 ft. in height. After some discussion with DCLU, the plans were revised. The third revision was the one used in the DCLU decision here appealed.

9. As reported in the DCLU Analysis and Decision:

The applicant agreed to scale down the east elevation by setting the third and fourth floor walls 20 ft. back from the zone line and providing a 12:12 sloped roof on the fourth floor...(The) measures do not go far enough in achieving the transition alluded to by the NC Policies...The...project should be scaled down more...Conditions being required will include a series of graduated setbacks along the east elevation as follows: a 20 foot setback (from the zone line) of the second floor wall, a 45 foot setback (from the zone line) of the third and fourth floor walls, and a 12:12 sloped roof on the fourth floor.

Analysis, p.5.

10. As the Hearing Examiner understands the DCLU configuration, DCLU requires that applicant's first floor, along the east boundary, rise to a 15 ft. height maximum for a horizontal (east to west) dimension of 15 ft. At the 15 ft. point, the vertical dimension would be raised another 10 ft. The indentation would proceed west for 25 ft., then vertically for another 10 ft. before sloping to the west. At this point the roof line is approximately 48 ft. in height. See Exhibit 13, 16.

11. Applicant appealed the imposition of those conditions. In applicant's opinion the conditions "reduce the buildable area to approximately 67% of the proposed size, and about 50%" of the CG-zoned maximum. In applicant's further view, the restrictions "eviscerate" the essence of his vested CG zoning privileges. Therefore,

Applicant requests the proposal be approved as already modified...showing setbacks of 5 ft. from the zone line to first and second floors, 20 ft. to third floor, and providing a 12:12 sloped roof on the fourth floor.

Appeal letter, p.1. Under applicant's proposal, the roof would begin to slope west at a point some 20 ft. from the east property line, at an approximate elevation of 38 ft. The first 20 ft. would be at a height of approximately 27 ft.

12. Applicant initially put up the large project sign facing N.E. 69th. Per DCLU May 23, 1986 instructions applicant relocated the sign to face Roosevelt Way on or about June 25, 1986. Because of vandalism or other unauthorized acts, the sign was

removed on two occasions. When notified of the sign's absence, DCLU would notify applicant and applicant would generally respond by reposting. No evidence of record shows that specific harm or injury resulted from the problems with the sign, or that applicant intentionally impaired the signing.

13. The Roosevelt Neighborhood Association, limited intervenor to this proceeding, raised some concerns with the signage issue, but primarily focused on the objection to the proposed building's height, bulk and scale relative to the existing development pattern. According to the RNA representative, warehouses generally fill the envelope and deaden the commercial area with window-less, bleak-looking buildings; and further, that NC Policies prohibit mini-storage facilities of 15,000 sq. ft.

14. RNA expressed many of the sentiments of neighbors that the size and scale of the building would have a negative effect on the single family and other low-scale development in the vicinity. Another concern is that approval of this proposal would mean a block-long warehouse continuum from 69th to 70th along Roosevelt. However, proponent submitted the only appeal to the DCLU decision to approve with conditions the proposal.

15. DCLU observed in the Environmental Checklist that the proposed building's bulk and scale is larger than adjacent properties and that views to the north and east would be obstructed. The analysis points out that "the new structure will be approximately...36 to 40 feet higher than the one-story dry cleaner now located on the site."

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code. Per Seattle Municipal Code Section 23.76.22(C)(7), the DCLU determination must be given "substantial weight." Therefore, a challenge to the determination must show clear error. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

2. The only challenge before the Hearing Examiner is that by project applicant to certain conditions imposed by DCLU. There is no appeal before the Hearing Examiner which requests that an environmental impact statement be prepared or that the proposal be further mitigated or denied. (It is further noted that SEPA does not protect views to or from a private, unspecified location.)

3. Where adverse impacts have been identified in an environmental document the DCLU Director may impose conditions to mitigate those impacts. The mitigation measures must be "reasonable and capable of being accomplished." Seattle Municipal Code Section 25.05.660(A)(4). Further

Mitigation measures...shall be based on policies, plans, rules or regulations formally designated in Section 25.05.902 as a basis for the exercise of substantive authority and in effect when the DNS...is issued.

Seattle Municipal Code Section 25.05.660(A)(1).

4. The Environmental Checklist noted that the proposed building's bulk and scale is larger than adjacent properties and that views to the north and east would be obstructed. The analysis shows the relative height of the proposed structure. The adverse impacts of height, bulk and scale were therefore "identified in an environmental document".

5. In determining the need for conditions pursuant to

Section 25.05.660, the authorizing agency shall use environmental policies "adopted by the City Council in the form of resolutions, codes...or plans identified in Appendix A." Seattle Municipal Code Section 25.05.902(B)(2).

6. Appendix A includes the "Comprehensive Plan and modifications and updates thereafter" as well the "Zoning code and amendments thereafter." Accordingly, DCLU considered the Neighborhood Commercial Area Land Use Policies. Goal I.B.9 is stated below:

Provide for a transition in scale and use between residential and commercial areas, buffering residential areas from the impacts of heavier commercial uses...

7. The question of height control as a mitigation measure has arisen in several cases that have been reviewed by the City Council. In the case of In re SQAD, C.F. 294378, 294392, the Council noted that

The 30 foot height proposed is consistent with the zoning, and the L-2 height limit was clearly intended by the City Council to be a transitional height in areas immediately adjacent to single-family zones.

8. The Council stated in In re Thaden, concerning a relationship between NCL and adjacent single family zoning, that

...it is clear that, when...(we) enacted the NCA Policies and Code, the Council intended that the 30 foot height be the appropriate transitional height on the edge of a single family zone even where the prevailing heights in the single family zone are less than 30 feet.

MUP-86-078, Application No. 8603688, C.F. 295562 (July 1987).

9. In re Oden, C.F. 293357, provided in relevant part that

it is inappropriate to require a reduction in scale merely because the surrounding buildings in the same...zone are developed to a lower height...

10. The foregoing cases suggest that is inappropriate in this case to limit applicant to a 15 ft. east wall height. The application is therefore remanded to DCLU for modifications to conditions imposed relative to maximum height.

11. In addition to the question of height, there is the issue of bulk.

Here the project presents unusual circumstances which would not have been fully contemplated as part of the zoning; it also presents a problem of transition of zones. Together, these circumstances justify a reduction of bulk...

In re SQAD, C.F. 294378, 294392, citing In re Oden, C.F. 293357.

12. DCLU should therefore consider in their reevaluation an increase in the setback and modulation of the east facade and other measures to reduce the impact of height, bulk and scale. DCLU shall also consider and impose as reasonable specific landscaping conditions which will provide year-round vegetative

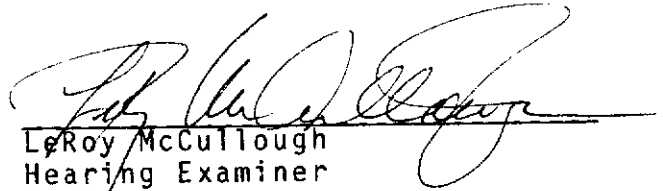
buffering between the subject property and the east adjacent zone. Any resulting mitigation measures must be consistent with the provisions of Seattle Municipal Code Section 25.05.660(A)(1)(3).

13. The remaining issues, including traffic, views and signage have been considered and the Hearing Examiner concludes that under the circumstances of this specific appeal no further action relative to those items is required.

Decision

The DCLU decision is Remanded for modifications consistent with this Hearing Examiner decision. DCLU shall present a supplemental decision on this application within 30 days of this decision. If applicant submits no further request for review within 5 business days of that decision, the findings and decision thereof shall be adopted by the Hearing Examiner. If applicant requests further review within the 5-day period, the Hearing Examiner will provide further information on the process of reconsideration.

Entered this 4th day of November, 1987.


LeRoy McCullough
Hearing Examiner