

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

In the Matter of the Appeal of

CROWN HILL INTERESTED NEIGHBORS-  
URBAN PLANNING

FILE NO. MUP-87-054(W)  
APPLICATION NO. 8703536

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

Introduction

Appellant, for area residents, appeals the decision of the Director, Department of Construction and Land Use to issue a declaration of non-significance (DNS) for a proposal to demolish a single-family residence and to construct a four (4) story, 18 unit apartment building at 1609 N.W. 85th in the north Ballard area of Seattle.

Appellant appealed pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on November 16, 1987.

Parties to the public hearing were: appellant, Crown Hill Neighbors by Richard Brown, pro se, the Director, Department of Construction and Land Use by Art Ward, and applicant by Warren Pollock of Pollock Lau and Associates.

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 site is located in a Lowrise-3 (L-3) zone 1 1/2 blocks west of the intersection of 85th N.W. and 15th N.W. The lot is presently developed with a single family residence that is proposed to be demolished to accommodate the proposal.

2. Located at mid-block, the lot has 68 ft. of frontage on 85th N.W. and is 99 ft. in depth. The area of the lot is 6,732 sq. ft. The site is flat but lies in a shallow valley between 19th N.W. and 15th N.W.

3. Eighty-fifth N.W. is stated in the record to be a minor arterial and the L-3 zoned area creates a corridor north and south on 85th N.W. that extends west along 85th N.W. from mid-block of 15th N.W. to 19th N.W. Utilization is mixed: from single-family residences, one (1) to four (4) story apartment buildings to a service station at the northeast corner of 17th N.W. and 85th N.W.

4. Abutting west of the site is a one (1) story duplex, further west across 17th N.W. is the gas station, north of the site across 85th N.W. are two (2) four-plexes, northeast across 16th N.W. is a four story apartment building, abutting east is a two (2) story 8 unit apartment, and southeast and southwest are single-family residences.

5. Lying to the south, west and north are single-family residences. Lying 1 1/2 blocks east of the site is 15th N.W. which was stated in credible testimony to be an intensely utilized commercial strip with fast food restaurants, a 7-11

convenience store, supermarkets and other commercial uses such as banks and retail shops.

6. Applicant's architect in testimony found credible by the Hearing Examiner stated that the site was zoned RM 800 in 1957 and zoned L-3 in 1982.

7. Statements of opposition to the proposal have been by individual letters, postal cards, and petitions. The most common complaint was that the proposal was out of character with the area in terms of bulk and scale. Adverse impacts due to an increased demand on parking, increased traffic in the residential areas, lack of safety, loss of views and privacy, drainage problems and noise were other complaints that were recorded. Lead appellant and a resident gave testimony at the hearing.

8. The proposed development will be a four (4) story apartment building with 18 units, most of which will be one bedroom, and having 18 parking spaces for tenant parking. Access to the site will be from 85th N.W. At a ratio of 1.5 x 18 apartment units, the proposal is expected to create demand for 27 parking spaces, and thus, 9 parking spaces would be the spillover demand for additional parking to the proposal site's surrounding streets.

9. The Director's representative introduced testimony which the Hearing Examiner finds credible that the parking utilization rate in the area is 36 percent of available parking within 800 ft. of the site. Along 85th N.W. between 19th N.W. and 15th N.W., 17 spaces were available and none was utilized; on 15th N.W. between 85th N.W. and 83rd N.W., 9 spaces were available and one space was utilized; on 16th N.W. between 85th N.W. and 83rd N.W., 29 spaces were available and 16 were utilized; on 17th N.W. between 85th N.W. and 83rd N.W., 39 spaces were available and 12 spaces were utilized; on 18th N.W. between 85th N.W. and 83rd N.W., 21 spaces were available and 12.5 spaces were utilized.

10. Lead appellant questioned the accuracy of the survey and indicated in credible testimony that his own survey resulted in determining 42 spaces and not 72 spaces were available for parking in the area. Considering lead appellant's survey, the Hearing Examiner finds that a nine space spillover demand for parking could be accommodated on the surrounding streets in the area.

11. The Director's representative in credible testimony stated that the average traffic flow along 85th N.W. for a workday week is 15,400. At a rate of 6.5 trips generated per apartment unit, the impact of 117 additional automobile trips per day on the existing traffic flow in the area was stated not to be major, and the Hearing Examiner so finds. The Hearing Examiner does not find, as lead appellant argued, that any increase to the traffic volume in the area would seriously impact the area.

12. Lead appellant introduced credible testimony that traffic flow on 16th N.W. was 196 northbound, 110 southbound; and on 17th N.W., 158 northbound, 110 southbound per day. Lead appellant argued that at the 6.5 trip generation per 18 apartment units, a 27 percent increase in the traffic flow to residential streets in the area would result and cause an unsafe condition for area residents. The Director's representative disputed lead appellant's presentation and the Hearing Examiner declines to make a finding as to this issue as no evidence or documentation was presented to support this presentation.

13. Lead appellant's presentation was premised on the assumption that tenants, westbound on 85th N.W., would avoid making left turns off 85th N.W. into the site due to the present backup of eastbound traffic on 85th N.W. at the signal for the intersection at 85th N.W. and 15th N.W. In this regard the Director's representative stated in credible testimony that his observation of the intersection at 85th N.W. and 15th N.W. was that traffic cleared at a regulated interval and that he observed only one backup in a sequence of 26 signal changes at the

intersection.

Lead appellant challenged the Director's representative's assertion that automobiles could drive around tenants who would be making left turns into the site from 85th N.W. As lead appellant's challenge was premised on a hypothetical positioning of stopped buses and autos in front of the driveway and parked autos opposite the proposal's driveway, the Hearing Examiner does not find this challenge to establish an adverse impact in this regard.

14. The Director's representative indicated and the Hearing Examiner finds that the permit process would require the applicant to widen the proposal's driveway from 10 ft. to 23 ft. to prevent any problems with simultaneous entry and exiting from the site. This will reduce the adverse impact on the traffic pattern and flow.

15. The Director's representative introduced in credible testimony a survey of automobile traffic accidents for areas of Seattle and that the survey indicated that the rate of accidents was low for the proposal area.

16. Applicant's architect in credible testimony indicated that design of the building was undertaken to aesthetically mitigate impacts to the surrounding single-family residences in the area. Orientation and siting of the building was toward 85th N.W. and front yard averaging was utilized to position the structure closer to 85th N.W. The rear yard setback was doubled to 20.6 ft. to lessen the impact of bulk and scale to the surrounding single-family residences abutting to the south. A 10 foot wide, landscaped buffer area with trees will be provided at this south border. Additionally, applicant has promised to utilize wood siding to soften the impact of bulk to the surrounding single-family residences. Testimony suggested that a fence at the rear of the site will mitigate the impacts of light and noise from the site. Applicant's architect presented contradicted testimony that the structure itself will act as a buffer and shield for traffic noise and light from 85th N.W. for the single family residences.

17. The applicant's architect in further credible testimony stated that the site's location in the flat portion of the shallow valley mitigates the impact of height, that the proposal will conform to drainage control requirements and that street trees will be provided to enhance the streetscape along 85th N.W.

18. Lead appellant presented no authority for his presentation of protection of his privacy and private views nor rationale for inclusion of this area into the City's land use study concerning Ballard.

### Conclusions

1. An environmental impact statement is required if the responsible official determines that a proposal may have a probable significant adverse impact on the environment. Seattle Municipal Code, Section 25.05.360. A significant impact is present "whenever more than a moderate effect on the quality of the environment is a reasonable probability." Norway Hill v. King County Council, 87 Wn. 2d 267, 278, 552 P.2d 674 (1976).

2. Area residents' submittals, testimony and lead appellant's presentation at the public hearing dispute the Director's decision that there are not significant impacts created by the proposal. There has been no showing that the factual bases for the Director's decision are in error. A difference of opinion without more is not a sufficient challenge.

3. The Hearing Examiner concludes that the impacts due to the bulk and scale of the proposal will not be significant adverse impacts because of the mitigation from the design and siting of the proposal.

4. The Hearing Examiner concludes that the automobile related impacts such as increased parking demand, traffic flow, traffic backup and delay, and safety are not significant adverse impacts as found from the Director's representative's presentation.

5. The Hearing Examiner, therefore, concludes that there is not a sufficient basis for reversal of the Director's decision given the standard of review of Seattle Municipal Code, Section 23.76.36(B)(7) which requires that the Director's decision be given substantial weight.

6. The Hearing Examiner concludes the proposal should be conditioned per the DCLU decision as follows:

A. Prior to Issuance of a Master Use Permit

1. The owner(s) and/or responsible party(s) shall submit landscape plans approved by the Land Use Specialist to help reduce height, bulk and scale.

B. During Construction

1. In addition to the Noise Ordinance requirements, to reduce the noise impact of construction on nearby properties, the owner(s) and/or responsible party(s) shall limit construction to the hours of 7:30 a.m. to 6:00 p.m. on non-holiday weekdays.

C. Prior to Occupancy

1. To reduce the impact of height and bulk, the owner(s) and/or responsible party(s) shall provide landscaping according to the plan approved by the Land Use Specialist. The owner(s) and/or responsible party(s) shall submit to the Construction Inspector an affidavit from a landscape professional that the landscaping is installed per plan.
2. In addition to the landscaping noted above, street trees shall be installed by the owner(s) and/or responsible party(s) to help reduce height, bulk and scale. The number of trees to be installed, their species and location will be determined by the Seattle Engineering Department arborist based upon issuance of a street use permit.
3. The owner(s) and/or responsible party(s) shall install a four ft. to six ft. high fence along the southerly property line and the southerly 64 ft. of the east and west lot lines. The fence shall have the appearance of being solid and accented with landscaping to help reduce headlight glare. Solid sheeting is not acceptable as fencing.
4. The owner(s) and/or responsible party(s) shall direct and shield illumination of parking areas and building exteriors so that all lighting is contained on the property and nearby properties or street traffic are not affected by light or glare.

D. Permanent for the Life of the Project

1. The owner(s) and/or responsible party(s) shall maintain all landscaping per approved plans.
2. The owner(s) and/or responsible party(s) shall direct illumination of parking areas or

building exteriors so that all lighting is contained on the property and nearby properties or street traffic are not affected by light or glare.

E. Additional:

1. Applicant shall provide a minimum 23 foot wide driveway.
2. Applicant should provide wood siding at the structure's south wall to mitigate the impact of bulk and scale of the structure.

Decision

The Director's decision to issue a DNS with permit conditions as modified is AFFIRMED.

Entered this 25th day of November, 1987.

Roger H. Shimizu  
Roger H. Shimizu  
Hearing Examiner Pro Tempore

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.