

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DAVID E. GRAY, ET AL.,

MUP-88-021(W)
APPLICATION NO. 8703458

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

Introduction

David Gray, et al., appeals the decision of the Director, Department of Construction and Land Use, on a master use permit application for a four-unit apartment building at 3512 South Leschi Place.

The appellants 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 May 31, 1988.

Parties to the proceedings were: appellants represented by David E. Gray; the Director, Department of Construction and Land Use, by Patrick Doherty, associate land use specialist; and the applicant, Nicholas Fedan, 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. The applicant applied for a master use permit to demolish a single family house and construct a four-unit apartment building at 3512 South Leschi Place. The Director issued a determination of nonsignificance (DNS) and approved the application subject to certain conditions. Mr. Gray filed a timely appeal of that decision.

2. The site of the proposed project is in a small pocket of L-3 zoned properties just off of Lakeside Avenue South, south of Leschi Park. The site contains 2,890 sq. ft. of area and the small house is located on the western of the two lots making up the parcel. The site itself slopes very gently down from the northwest to southeast.

3. The subject site is at the floor of a small valley with sides sloping steeply up to the north, west and south. Views of the lake and mountains are available from the structures on the hillsides and to some extent from the floor. Structures on all sides of the valley look down on the subject site.

4. Surrounding development includes two apartment buildings on Lakeside Avenue South at each side of South Leschi Place, the structure on the north containing either seven or ten units and on the south side, five units. Two small single family residences are located on the north side of South Leschi Place to the east of the subject site and one duplex is to the west of the subject site, separated from it by an alley. North of the site, from west to east along the south side of South Main Street, an unopened street right-of-way, are two duplexes, a single family house and another duplex. On the south side of South Leschi

Place, from east to west, is a single family house, vacant lots on one of which a new duplex is being built to replace a structure which had burned, a duplex and a single family house.

5. Properties north and west of the subject site, across the alley, are zoned SF 5000 as are two across South Leschi Place to the southwest.

6. South Leschi Place is 20 ft. wide and parking is restricted to one side. The street provides a connection with 35th Avenue South which, in turn, connects the lake and Yesler Way. The street is heavily used for parking because few of the residences have garages and the four buildings on South Main Street must rely on South Leschi Place and 35th for parking. The area also receives overflow parking from the commercial establishments and marina on Lakeside Avenue South.

7. The alley surrounds the property on two sides. It averages about 11 ft. in width but is not open to vehicular traffic. It is used by the neighboring residents for open space, gardens and storage.

8. The proposed four-unit building would be four stories high with parking and one bedroom on the first level and three floors of living area above. Five parking spaces would be provided on-site. The plans submitted with the master use permit application show a total height of 36 ft. The architect testified that the construction drawings show a 35 ft. high building because of some reductions in floor height that have been made. The structure would have a flat roof and modulation on the south and west wall. The zone permits a 37 ft. height.

9. The proposed structure would be much higher than the duplex to the west (two stories) and the single family houses to the east but, because of the steep slopes, would be the same height as the single family house to the north and lower than the other structures on South Main Street. Because of the slope, the structures on the north side of the alley which front on South Main Street appear to be 2 1/2 and three stories high, as viewed from Leschi Place, and the seven or ten unit apartment building at the entrance to South Leschi Place is about 3 1/2-4 stories high, as viewed from South Leschi Place.

10. The proposed building would have some 4,000 sq. ft. of living space. Only the seven or ten unit building on Lakeside would be larger than that. Some nearby houses are quite small, i.e., 600 to 700 sq. ft. The duplex to the north of the subject site contains about 2,500 sq. ft. of living space.

11. Environmental review was required for this application because the site lies within an area designated as environmentally sensitive due to slope or soils. The decision for the DNS identified temporary impacts during construction, potential earth impacts, drainage impacts, increase in noise, height, bulk and scale impacts, view impairment, light impacts, increase in traffic, and parking overflow of one space. The impacts were found not to be significant.

12. The proposed building would block the view from several units, such as from the lower unit in Gray's duplex and from the duplex immediately to the west of the site, and would sharply reduce the amount of sunlight received by several of the properties.

13. The project is expected to generate approximately 24 vehicle trips per day and would need six parking spaces. Since parking for five vehicles would be provided on-site, one additional car would be expected to park on the street.

14. DCLU did not require a parking study for the project because of its understanding that it has no authority to mitigate parking impacts.

15. The applicant conducted a parking survey and determined

that there are 155 parking spaces within 800 ft., theoretically, but revised the number to 124 to reflect actual conditions. The survey showed a maximum utilization on the evenings studied of 50 spaces and an average utilization of 41 spaces. Parking on South Leschi Place and 35th Avenue South was much more heavily utilized during the survey than on the other streets within the 800 ft. range.

16. The 800 ft. study area included portions of Lake Washington Boulevard within Leschi Park and Lakeside Avenue South. No parking is allowed on lower Lakeside Avenue South, north and south of South Leschi Place.

17. On occasion neighborhood residents have found that parking on South Leschi Place and 35th Avenue South is completely full. Parking on Lake Washington Boulevard in the park is not an option because of safety considerations. There is inadequate lighting, no houses and drug sales and other criminal activity occurs in the park.

18. Appellants are concerned not only with the scale of the structure, loss of view and sunlight and parking increase but also with the effect on the character of their small neighborhood. The pocket is a tightly knit community and the residents fear loss of that character with the addition of four families in a large structure.

19. Appellants seek conditions requiring a reduced bulk of the building through more modulation, stepping down of the roof, elimination of a unit or any other design change which would create more air space.

20. The Director imposed conditions on the approval of the application including the requirement of a landscape plan showing heavy vegetation in the setback areas with evergreen, shrub and tree specimens, conditions requiring that the landscaping be installed and maintained, restriction on the hours of construction, and a requirement that lighting of the building and parking areas be directed away from other properties and the street.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and is subject matter pursuant to Section 23.76.022.

2. The Director is authorized to impose conditions requiring mitigation measures provided that the environmental impacts to be mitigated are identified in the environmental document, there is policy designated pursuant to Section 25.05.902, authorizing imposition of the condition, the condition is reasonable and capable of being accomplished and responsibility for implementing the condition is imposed only to the extent the impact is attributable to the proposal. Section 25.05.660.

3. The environmental document identified the impact from the proposal of the demand for one additional on-street parking space. The Director found that Resolution 27708 ended any authority to impose mitigation measures as conditions for overflow parking where code requirements are met. The examiner agrees that the Director is without authority to impose further conditions to mitigate the parking impact.

4. The height, bulk and scale of the proposed building constitutes an adverse impact which is identified in the environmental document. The Director does have authority to impose conditions to mitigate adverse impact from height, bulk and scale pursuant to Multi-family Land Use Policies. The City Council has determined that authority to reduce bulk and height to improve scale relationship may be used only in special circumstances, i.e., on an "edge" between zones where the development standards do not provide adequately for transition between the zones or when there are circumstances that could not have

been anticipated by the Council in zoning the property. In re Oden, C.F. 293557 (1985). The subject site is on the edge between an L-3 zone and the single family zone across the alley. However, as the Director found, though the properties across the alley are zoned single family, most are in nonconforming use and, because of the change in elevation, are at the same or higher elevation. Therefore, conditions are not needed to provide for a transition between zones. She did require landscaping to soften the appearance of the bulk of the building.

5. The Hearing Examiner is required to give the decision of the Director substantial weight on appeal. Section 23.76.022. To overcome that weight appellants must prove that the decision is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981). Appellants have shown that the building would be larger than all but the seven or ten unit building; that it would be two stories higher than the duplex to the west and either lower in elevation or the same as the other structures in the single family zone to the north; that the bulk of the building would cause view blockage and shadowing; and that it will change the "feeling" of the small neighborhood. Even recognizing all of that evidence, the Hearing Examiner is unable to conclude that the Director had authority she did not use to require redesign of the building as suggested by appellants. Her decision was, therefore, not clearly erroneous.

Decision

The Director's decision is affirmed.

Entered this 15th day of June, 1988.

M. Margaret Klockars
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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 decision is filed with the SEPA Public Information Center the same day that the decision is signed by the Examiner. The SEPA Public Information Center telephone number is 684-8322. 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.