

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

In the Matter of the Appeal of

JEAN COLMAN, ET AL.

FILE NO. MUP-89-010(W)
APPLICATION NO. 8806581

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

Introduction

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 April 13, 1989.

Parties to the proceedings were: appellants Jean Colman, et al., pro se; the applicant by Steve Bollinger, pro se; and the DCLU Director by Corbitt Loch, land use specialist.

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, and following a visit to the project site and vicinity, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Applicant proposes to construct a six-unit, three-story apartment building on property addressed as 1431 - 19th Avenue. (Because of its more direct relationship to 18th Avenue, the site has also been known as 1819 East Pike Street.) The Department of Construction and Land Use (DCLU) determined that the proposal would not have a significant adverse impact upon the environment and therefore issued a determination of nonsignificance (DNS).

2. DCLU's two conditions to the master use permit required that adjacent alley access be protected by 1. prohibiting alley blockage by construction vehicles or equipment, and 2. prohibiting via lease agreement tenant parking in the alley.

3. Appellants, vicinity neighbors, challenged the adequacy of the DCLU analysis and the adequacy of the conditions imposed. Appellants request "reversal of the decision to approve" the project "or mitigation of adverse impact." Appeal letter, p.2.

4. The proposal site is a 60 ft. by 128 ft. lot that overlooks 19th Avenue from a dead end, cul-de-sac section of East Pike Street. A set of stairs connect this portion of East Pike Street to 19th Avenue. A low scale duplex is near the center of the site toward the east (19th Avenue) frontage. It is scheduled to remain on site.

5. As no interpretation request was made pursuant to Chapter 23.88, Seattle Municipal Code, the Hearing Examiner is without authority to resolve any legal query as to whether the existing duplex and the proposed six-plex can in fact co-exist on the one site. Within the L-2 zone, however, some "cluster" type development is anticipated.

6. The six-unit apartment and its seven parking spaces are proposed for the west sector of the site. Access for the six-plex is proposed via a 16 ft.-wide, unimproved alley that is

west adjacent to the site. This alley opens to the East Pike Street cul-de-sac and deadends south of the site. To the chagrin of the neighbors the alley has been used for illegal and undesirable activity.

7. The steep slope to 19th, east of the existing duplex, precludes access to the site from 19th Avenue.

8. The new building would offer four one-bedroom units of 500-640 sq. ft. each and two two-bedroom units of approximately 795 sq. ft. The applicant proposes a pitched roof for the new structure and a building height of 33 ft. above the grade of the alley. Although not able to specify estimated rent levels applicant projects that the new units will be middle and moderate income units. They will not be "Section 8" subsidized housing, per the applicant.

9. As the majority of the structures within the block are single and two-story structures, applicant's proposed three-story structure will modify the character to some degree. The new building will be separated from the 19th Avenue-fronting development by topography, however. And, the building proposed is within code setback, height, landscaping parameters.

10. The proposal site is at the western edge of a Lowrise 2 (multifamily) zone that extends several blocks north to East Madison Street and south to within one lot of East Union Street. Lowrise 3 zoning lies west of the site's west adjacent alley. The proposal is near the center of its L-2 zone. Between East Pine Street to the north and East Union Street to the south, the properties fronting 19th Avenue (including the subject site) are within the L-2 zone. The proposal site is adjacent to no single family or Lowrise 1 zone.

11. Vicinity development is mixed. Large homes single family in appearance are interspersed with duplexes and larger apartment buildings. Corner development at 18th on the north side of East Union Street includes the T.T. Minor elementary school site; a row of small enterprise developments such as the one for the League of Women Voters and another for a church. These uses are within the Neighborhood Commercial zone. South of East Union Street at 18th Avenue are apartments of some 24 and 34 units respectively. The properties fronting 19th Avenue are developed with single family residences and duplexes.

12. DCLU anticipated temporary soil erosion as a short term, construction-related impact. Also within this "short-term" category were such items as decreased air quality, and increased noise, vehicle-pedestrian conflict, and increased traffic and parking demand.

13. The East Pike cul-de-sac/dead end that is north adjacent to the site shows evidence of soil erosion to that street segment. Within the bulb are sediments of silt, sand or dirt. Applicant proposes to use a filtration system to reduce construction-related erosion. Review of the project's building permit application will include analysis and response to soil stability issues related to the site. Regarding dust, water sprinkling-suppression is proposed as needed. The amount of impervious surface will be increased. However, applicant will be required to store surface water on-site and allow discharge at the normal, pre-construction rate to the storm system in accord with the City's grading and drainage ordinance.

14. At 18 ft. in width, the East Pike Street (and its cul-de-sac) are substandard per the theoretical Seattle Design Manual standard for L-2 zones. The Manual calls for a 32 ft. width.

15. There would be no exceptional need for increased fire, police, health care or public services resulting from the proposal. The Hearing Examiner declines to find that the anticipated population increase will signal increases in criminal use of the alley or of criminal activity in general.

16. The Hearing Examiner finds that each of the six proposed units will generate approximately 6.6 trips per day (a total of 39.6), and that this amount of added vehicular traffic can be easily absorbed by the nearby segments of East Pike Street, East Union Street and 18th Avenue. Some 10 percent of these will occur during peak periods. Public transit stops are within approximately two blocks of the site.

17. The Hearing Examiner finds that the four one-bedroom/two two-bedroom apartment will generate an approximate parking demand of 1.5 vehicles per unit. Seven of the resulting nine spaces will be accommodated by the on-site parking. The remaining two spaces would need to be accommodated on street.

18. The Hearing Examiner finds that within some 800 ft. of entry to the site are approximately 267 on-street parking spaces. Of those the average utilization rate was 27 percent, or 76 spaces. The average results from a review of parking utilization from 9:30-9:45 p.m. on Tuesday, January 31, 1989 (27 percent); Tuesday February 21, 1989 (31 percent); Wednesday February 22, 1989 (26 percent) and Thursday, February 23, 1989 (29 percent). Exhibit 13.

19. A 1987 parking survey for the site at 1503 18th Avenue (northwest corner of 18th and East Pike) found that after use by 17 spillover vehicles, the 450 ft. area would still have 38 spaces available for on-street parking.

20. From the studies, the Hearing Examiner finds that the vicinity can easily absorb the expected two car spillover from this proposed project. The Hearing Examiner also finds that the amount of available parking can accommodate the parking needs of the existing duplex although applicant is not required within this application to so indicate. It is acknowledged, however, that reported incidents of aggravated assault and other criminal activity may make it undesirable for residents to seek parking more than 1/2-1 block from their residences.

21. It is further acknowledged that there are and will continue to be intense daytime parking needs from the T.T. Minor school, from nearby businesses and from other uses. However, the standard, for evening - residential parking, is the appropriate standard.

22. No protected views, e.g. to specified landmarks will be affected by the proposal.

23. Per DCLU, applicant will be required to pave the alley. Residents, however, do not want the alley paved, presumably to minimize the use and the attendant pedestrian-vehicle conflicts. Alley paving was not imposed as a DCLU condition to the project.

24. Compliance with Chapter 15.22, Seattle Municipal Code, will limit and proscribe tracking of construction site mud onto adjacent and nearby streets.

25. The owner of the duplex two blocks south of the site requested that no additional hookups be allowed to the existing sewer line due to present capacity and cleanout access. No evidence to the contrary was submitted.

26. The issue of enforcement of conditions relating to alley access and other items is appropriately addressed to the DCLU enforcement division.

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code. Therein it is provided that the DCLU Director's determination shall be given substantial weight. Seattle Municipal Code Section 23.76.022C.7. It is therefore appellants' burden to show that the DCLU decision was "clearly erroneous." Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

2. At this juncture, the Hearing Examiner cannot deny the project. This is because there is no environmental impact statement (EIS) which would show that the proposal will "likely...result in significant adverse environmental impacts." Seattle Municipal Code Section 25.05.660A.6.a. Further, there would need to be a showing within the EIS that reasonable mitigation measures would be "insufficient to mitigate the identified impact." Seattle Municipal Code Section 25.05.660A.6.b.

3. In asking that the project be denied, however, appellants are effectively asking for the EIS. An EIS is not appropriate in this case and the DNS is therefore affirmed.

4. An EIS may be required if the record shows that there will be adverse environmental impacts that are probable and significant. Seattle Municipal Code Section 25.05.340A. "Probable" means likely or reasonably likely to occur. Seattle Municipal Code Section 25.05.782. "Significant" means "a reasonable likelihood of more than a moderate adverse impact on environmental quality." Seattle Municipal Code Section 25.05.794. The context of "significance" may indeed "vary with the physical setting." Seattle Municipal Code Section 25.05.794.

5. A review of this record shows that the proposed six-unit apartment will mean that a slightly larger development will be added to this built, urban environment. Some 39 car trips will be added to a street system that can accommodate them. A two car parking overflow is expected from the completed project. Vicinity on-street parking is adequate to accommodate that spillover. Some soil erosion indicators are present in the Pike Street cul-de-sac.

6. However, the proposed construction is slated for the flat area of the site and away from the steeply sloped area toward the east (19th Avenue). There are no other indicators for this record that the soil is unstable or that construction will jeopardize the safety of surrounding properties. (Soils stability testing and drainage control are included within the schedule of approvals required). Therefore, while the anticipated impacts will be in some ways adverse, the impacts are not "significant." No EIS is required.

7. Although no EIS is required, it is possible to mitigate environmental impacts. The mitigation measures must be based on formally designated and specified policies, rules or regulations. Seattle Municipal Code Section 25.05.660A.1. The mitigation must be related to specific adverse environmental impacts, and "shall be reasonable and capable of being accomplished." Seattle Municipal Code Section 25.05.660A.2.

8. Based on the minimal amount of overflow parking projected and the 27 percent average vicinity utilization of the on-street demand, it is not "reasonable" to require modification to the project to mitigate the parking impacts. Also,

...parking impact mitigation for multi-family development may be required only where on-street parking is at capacity...or where the development itself would cause on-street parking to reach capacity...

Seattle Municipal Code Section 25.05.675M.

9. The site is within two blocks of a public transit and has access to East Union Street, Pike Street and 18th Avenue. The proposed six units will add approximately 39 trips per day to the transportation network, some 10 percent of which will occur at peak periods. While on-street parking is inconvenient, it is available within the immediate vicinity. Based on these and related factors, no further mitigation is required pursuant to SEPA. Seattle Municipal Code Section 25.05.675R.

10. No designated public views will be impacted by the proposal. The project cannot be conditioned to protect private

views. Seattle Municipal Code Section 25.05.675P.

11. The record provides no data from which to conclude that the increased population will have an adverse impact on police, fire, or other public services. Mitigation measures must relate to "specific, adverse environmental impacts clearly identified..." Seattle Municipal Code Section 25.05.660A.2. It is adequately established, however, that the sewer line should not be further utilized. A condition is hereby imposed that the new building should have a separate side drain directly to the 19th Avenue main.

12. Before requiring mitigation, agencies must consider whether local requirements and enforcement would mitigate an identified adverse impact. Seattle Municipal Code Section 25.05.660A.5. On-site storm water retention and soil erosion issues will be addressed through the Grading and Drainage ordinance. Street use provisions will address mud tracking onto adjacent streets. The construction noise and other impacts will be temporary and governed by the noise ordinance and other applicable provisions. And, appellants are encouraged to utilize the DCLU enforcement division to report alley blockage or other violations of permit or city conditions.

13. Regarding height, bulk and scale, the City's stated policy is to, inter alia, "provide for a reasonable transition between areas of less intensive zoning and more intensive zoning." Seattle Municipal Code Section 25.05.675G.2.a. Projects should be reasonably compatible with

the general character of development
anticipated by the adopted Land Use
Policies...for the area in which they are
located...


loc. cit., emphasis added.

14. The proposal site is on the edge of no single family zone. It is near the center of an L-2 zoned "block" and adjacent to L-3, more intensive zoning to the west. The proposal is "reasonably" compatible with anticipated L-2 land use policies and accords with code provisions relative to height, setbacks and landscaping. The site is topographically removed from the lower intensity development along 19th Avenue, below, and is separated from those single family homes and duplexes by the existing duplex. Under the circumstances, the incompatibility of scale, height and bulk is not "substantial," Seattle Municipal Code Section 25.05.675G.2.b., and requiring mitigation therefor is not supported by this record. Nevertheless, voluntary mitigation related to bulk and scale may be offered. Seattle Municipal Code Section 25.05.660A.4.

Decision

The DCLU decision is affirmed as modified by Conclusion 11 above.

Entered this 1st day of May, 1989.


LeRoy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW

Pursuant to Seattle Municipal Code Section 23.76.024, 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, 5th Floor Municipal Building, 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 23.76.024, 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 City Council appeal.

If no appeal is taken to the City Council, 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. 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. See Chapter 43.21C, RCW and Chapter 25.05, Seattle Municipal Code.

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 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, 684-0521, 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.