

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

PLUM TREE PARK COMMUNITY COUNCIL

FILE NO. MUP-89-011(W)  
APPLICATION NO. 8806084

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

#### Introduction

The Plum Tree Park Community Council (the "Council"), appeals the decision by the Director, Department of Construction and Land Use ("DCLU"), issuing a Declaration of Non-significance ("DNS"), with conditions, for Master Use Permit Application Number 8806084, submitted by Courtney and Heather Branch (the "Branches").

The Council exercised its right of appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code. This matter was heard on April 24, 1989. The Council was represented by Ms. Arnette Holloway and DCLU was represented by Christina Van Valkenburgh. The Branches were also presented and represented themselves.

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 of law and decision of the Hearing Examiner on this appeal.

#### Findings of Fact

1. The Branches applied for a Master Use Permit for the construction of a two (2) story residential structure with four ground related two bedroom dwelling unit; and four off-street surface parking spaces. The parking spaces would be located in the rear, on the west side of the structure and would be accessed from East Olive Street through an existing alley between 26th and 25th Avenues (The "Alley").

2. The proposed development, located at 2518 East Olive Street, is a rectangular shaped lot on the northeast corner of the intersection of 26th Avenue and East Olive Streets (the "Property"). The proposed structure would cover approximately forty five percent (45%) of the site. A landscaping plan shows a mix of trees, shrubs and ground cover planted along the south, east and north property lines. A six (6) foot high view obstructing fence would be constructed along the full extension of the north property line.

3. The site is on an east-facing slope which rises approximately ten (10) feet from the sidewalk on 26th Avenue, west to the Alley. Although the slope is moderate, the site is designated as an environmentally sensitive area by the City of Seattle (the "City") due to the potential for slope instability.

4. The Property is currently zoned Lowrise 2, as are the areas immediately north, east and west of the property. There is a mixture of single family and multifamily structures in the immediate area. The area immediately south of the property is zoned Single Family 5000 (SF 5000). The South Plum Mini Park is located approximately eighty (80) feet north of the Property. The Mini Park fronts on 26th Avenue and is accessed from East Olive Way through the Alley. The Alley will also provide access

to off-street parking to be developed as a part of the proposed project.

5. The surrounding street system consists primarily of a grid of perpendicular two-way streets and avenues with one lane in each direction. East Olive Way and 26th Avenue are classified as Residential Access Streets by the Seattle Engineering Department. However, there is evidence that East Olive Way serves as an alternate route for commuters traveling east and west during morning and afternoon peak travel periods. The two streets are improved with paving, curbs, sidewalks and planting strips.

6. Although bulkier than some of the existing single family residences in the vicinity, the proposal conforms to development standards of the Lowrise 2 zone and is smaller in scale than the other multifamily buildings in the same block.

7. The public comment period would have normally ended on November 10, 1988. However, a letter requesting extension of the comment period was received by DCLU prior to November 10, 1988. The deadline for receiving public comments was therefore extended to November 26, 1988.

8. Eight letters opposing the proposal were received during the extended comment period. The comments focused on concerns about potential increases in traffic, parking demand, noise, density, air emissions, drug-related problems in rental units, change in neighborhood character, loss of property values and increased traffic hazards for children playing in the Mini Park and Alley.

9. Some of the people who mailed written comments requested a public meeting. A meeting was held on November 30, 1988. According to Arnette Holloway, the purpose of the meeting was to gain a better understanding of the process of opposing the proposed project. According to the DCLU representative, the meeting was held for the purpose of eliciting comments and answering questions about the project. After the meeting, on December 2, 1988, a petition with 44 signatures opposing the proposal was received by DCLU. An amended petition containing 63 signatures opposing the proposal and formally requesting a public hearing was received on December 8, 1988 by DCLU.

10. However, according to DCLU, a public meeting was not scheduled because the petitions were not received in a timely manner and did not contain a sufficient number of signatures to satisfy the requirements for scheduling a public meeting.

11. A State Environmental Protection Act ("SEPA") review was performed by the responsible agency. It consisted of an investigation of the environmental checklist submitted by the applicants and other information on file with DCLU. Short term impacts were identified, including decreased air quality, potential erosion, increased dirt in the streets, increased demand for traffic and parking, increased risk of pedestrian/traffic conflict, and the consumption of renewable and non-renewable resources.

12. According to DCLU, compliance with the following City codes and ordinances will adequately mitigate some of the short term impacts, as more specifically set forth in the DCLU staff report: (a) the Drainage Control Code; (b) the Street Use Ordinance; (c) the Building Code; and, (d) Puget Sound Air Pollution Control Agency regulations. Thus, according to DCLU, imposing additional specific conditions on the proposed project is not necessary to mitigate those impacts.

13. The City's Noise Ordinance is not sufficient to mitigate the project's noise impacts on nearby residential uses. Therefore, DCLU recommended that the applicant limit the hours of construction to between 7:00 a.m. and 5:00 p.m. on non-holiday weekdays.

14. According to a soils report prepared by Geotech Consultants, the site is stable and the risk of damage to the subject property and to adjacent properties from soil instability at the site is minimal.

15. The SEPA review also disclosed long term impacts which include increased: (a) surface water runoff due greater site coverage by impervious surfaces; (b) bulk and scale on the site; (c) traffic and parking demand; (d) airborne emissions; (e) ambient air noise levels; (f) light and glare; and, (g) energy consumption. According to DCLU, those long term impacts are not considered significant because the impacts are minor in scope. Although not "considered significant," the long term impacts would be adverse and would warrant specific mitigating conditions if not mitigated by existing City codes and ordinances.

16. According to DCLU compliance with the following City codes and ordinances will provide sufficient mitigation of "long term adverse impacts" set forth in the DCLU staff report: (a) the land use code; and (b) the SEPA Traffic and Transportation policy.

17. As a condition of approval of this application, DCLU has specifically required the applicant to petition the Seattle Engineering Department for a sign to be placed along the Alley right-of-way, which limits speed of autos using the Alley to fifteen (15) miles per hour. This condition is designed to mitigate the potential adverse impact of increased pedestrian/traffic conflict between children who use the Alley as an extension of their play area in the Plum Tree Mini Park and the residents of the proposed development who would use the Alley to access the project's off-street parking.

18. DCLU also conducted site visits to investigate specific issues, including traffic and parking conditions on the streets adjacent to the property. According to DCLU, streets adjacent to the property are underutilized for on-street parking during evening hours and during the day. Based on that finding, DCLU concluded that on-street parking in the vicinity of the Property is below capacity. According to the Appellant, there is insufficient on-street parking to absorb the additional parking demand to be generated by residents of the proposed development and their guests.

19. Estimated peak parking demand is expected to occur in late evening hours when most residents are at home. Assuming that the proposed project would generate demand for 1.5 spaces per unit, a total of six (6) spaces would be required. Four (4) off-street spaces are planned leaving a spillover demand for two (2) on-street spaces. Two (2) additional on-street spaces would be required based on an assumption that the project would generate a demand for two (2) spaces per unit. Additional temporary parking demand would be generated by guests of all residents in the immediate neighborhood. Based on the evidence, the Hearing Examiner finds that there is sufficient on-street parking to meet this demand.

20. Several other city codes will appropriately mitigate the potential use-related adverse impacts created by the proposal, including the City's: (a) Grading and Drainage Control Codes; (b) Land Use Code; (c) Traffic Code; and (d) Energy Code.

#### Conclusions

1. DCLU has authority, during its initial environmental review, to consider a project's contribution to cumulative effects on existing traffic and parking conditions; and authority to impose reasonable conditions of approval on master use permit applications for the purpose of mitigating any such direct impacts.

2. DCLU also has authority to impose reasonable conditions of approval on master use permit applications for the purpose of mitigating a project's noise impacts.

3. The following conditions of approval recommended by DCLU are reasonable: (a) During Construction. In order to further mitigate the noise impacts during construction, the owner(s) and/or responsible parties shall limit the hours of construction to between 7:30 a.m. and 6:00 p.m. on non-holiday weekdays. (b) Prior to Issuance of Certificate of Occupancy. In order to mitigate the traffic hazard impact of additional vehicles using the alley, applicant shall petition the Seattle Engineering Department for a sign to be placed on the alley right-of-way which will limit speed to 15 miles per hour according to the provisions set forth by the City of Seattle Traffic Code. A copy of the said petition shall be forwarded to the Land Use Division.

4. The Director has concluded that, as mitigated by City codes and ordinances and with the additional specific conditions to mitigate impacts related to noise and traffic hazards, the requirements of the State Environmental Policy Act (Chapter 43.21C, RCW), are met.

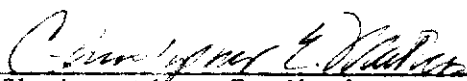
5. Decisions of the Director of DCLU on environmental determinations are given substantial weight.

6. Appellants have failed in their burden of proving that the Director's decision should be modified or reversed. For example, the height, bulk and scale of the proposed project is not substantially incompatible with the development in the area; and existing off-street parking capacity is sufficient to accommodate the overflow parking demand to be generated by the project.

Decision

The appeal is DENIED.

Entered this 5th day of May, 1989.

  
Christopher E. Mathews  
Hearing Examiner Pro Tempore

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, 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.