

FINDINGS AND DECISION

MAY 31 1990

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

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In the Matter of the Appeal of

GARY OGDEN

FILE NO. MUP-90-015(W)
APPLICATION NO. 8904800

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

Introduction

Appellant Gary Ogden appeals the decision of the Director, Department of Construction and Land Use, to approve a master use permit application with conditions, for the construction of a multifamily project in an environmentally sensitive area. The project address is 5310 S.W. College Street.

The appellant exercises 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 9, 1990.

Parties to the proceedings were: for the appellant, Gary Ogden, pro se; the DCLU Director represented by Faith Lumsden, Land Use Specialist; and the applicant, Mark Hughes, pro se.

Letters and other correspondence received during the pendency of this appeal have been included in the record.

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 as a result of the personal inspection of the subject property and the surrounding area by the Hearing Examiner, the following shall constitute the findings of fact, conclusions, and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The applicant proposes to construct a 4-unit, 3-story apartment building in an area designated as environmentally sensitive. The Department of Construction and Land Use (DCLU) approved the master use permit application with conditions and issued a determination of nonsignificance (DNS), which is a part of this record. Conditions in the DCLU decision included: limiting construction hours; requiring an erosion control fence during construction; prohibiting on-street parking of construction workers; and, limiting excavation to the months of June through October.

2. The appellant objects to the Director's failure to further condition, or deny the proposal on environmental grounds pursuant to Section 25.05.660. Appellant argues for the preparation of an environmental impact statement (EIS) and/or for additional conditions. Conditions desired by appellants include: drainage to be tight-lined to the storm sewer rather than directed to the street, reduce the number of units to three, require street widening, change the driveway, increase on-site parking, decrease the bulk and scale of the proposal. Appellant asserts DCLU failed to adequately address cumulative impacts associated with development in the area.

3. The current zoning of the subject site is Lowrise, Duplex, Triplex (LDT). The proposal is vested to the previous Lowrise 2 (L2) zoning which was in effect at the time the application was filed.

4. The subject property is designated environmentally sensitive due to steep slopes. Topographic relief within the property boundaries is approximately 35 feet. The building site is on a gently sloping bench, but the edges of the property are steeply sloping.

5. This proposal will have to comply with DCLU's Director's Rule 2-87 which addresses construction in potential slide areas. A geotechnical engineering study, required by Director's Rule 2-87 was submitted to DCLU during its review of this proposal. The geotechnical study, prepared by Geotech Consultants (Exhibit 22 and 23), includes recommendations regarding excavation, foundation design, retaining walls, rockeries and drainage.

6. The area has been subject to landslides in the past but there is no evidence of slide activity or groundwater seepage on the subject property itself.

7. Storm water would be collected and detained on-site. The Seattle Engineering Department has approved the drainage control plan which would provide for "curb discharge".

8. Credible testimony indicates that runoff discharged to the curb from the proposed project could add to existing problems of sheeting and ice in the street associated with runoff.

9. The streets in the vicinity are generally quite narrow; credible testimony indicates pavement widths to be 18 feet or less. On-street parking space is scarce and parties agree that in the immediate area, streets are "at capacity" (i.e., space available is currently being used). Some parking also occurs in areas along the streets which are not suitable and/or legally available for parking.

10. Five parking spaces are required for a project of this size (1.25 spaces per unit). The applicant proposes seven parking spaces (1.75 spaces per unit). Appellant asserts that 2 spaces per unit should be provided. DCLU used a rate of 1.5 spaces per unit to estimate impacts of the proposal.

11. The streets are narrow, winding, and steep, but this is not considered a "high accident" area. The slow rates of speed in reaction to the street conditions likely contribute to the result that accidents which do occur are relatively minor.

12. The proposal is estimated to add approximately 24 vehicle trips per day to existing traffic.

13. The proposed structure would be larger than existing structures in the nearby vicinity. At 30 feet, the height of the building would be comparable to heights allowed for single family structures. DCLU found that given the topography of the site and the orientation of nearby homes, the proposal would provide a reasonable transition relative to the single family zone across S.W. College Street.

14. Other residential units have recently been built or are currently contemplated in the vicinity. The total number of these units vary with the area considered and the timing of development (i.e., new but not occupied; applied for, but not approved; etc.). Credible testimony indicated that up to 19 units (marked #3, 4, 5, and 8 on Exhibit 12) could be considered to potentially contribute to cumulative impacts.

15. Appellant believes that this proposal, especially when it is considered with other new development in the vicinity, will have a deleterious effect on the neighborhood due to impacts related to traffic, on-street parking, drainage/runoff, and general liveability.

16. The Director's position is that the impacts likely to result from this proposal, even when viewed together with other new development in the vicinity, are not significant, do not require additional mitigation, and additional mitigation is not

within DCLU's authority.

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code.

2. The Hearing Examiner must give "substantial weight" to the DCLU Director's decision. Section 23.76.022.C.7. The burden is on the appellant to overcome this weight by proving that the decision is "clearly erroneous". Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. The Director is to require an environmental impact statement if the proposal would have a probable significant adverse environmental impact. Section 23.05.360.

4. Mitigation measures under SEPA must be based on policies, plans, rules or regulations designated in the Seattle Municipal Code as a basis for the exercise of substantive authority. Section 25.05.660. Mitigation measures must be "related to specific adverse environmental impacts clearly identified in an environmental document". Section 25.05.660.A.2. Mitigation measures must be "reasonable" in consideration of the adverse impact sought to be mitigated. In re Appeals of Queen Anne Community Council et al, C.F. 293623 (1985). Also, mitigation measures may be imposed only to the extent the adverse impacts are attributable to the proposal. Section 25.05.660.A.4. Voluntary mitigation is permitted.

5. The impacts of the proposal were not shown to be probable, significant, adverse impacts. Therefore, the Hearing Examiner may not require an environmental impact statement (EIS). Section 25.05.340. In the absence of an EIS, the Hearing Examiner may not deny the project. Section 25.05.665A.2.

6. Evidence was not presented that indicates the Director erred in using the information and the level of detail presented in the geotechnical study, or in looking to compliance with the Director's Rule 2-87 as a means of addressing anticipated impacts related to soils and slope on this site.

7. Impacts of the proposal related to on-street parking have been addressed by the provision of parking on the site which approximates the project's likely demand for parking.

8. Insufficient evidence was presented to support appellant's contention that the bulk and scale of the proposal should be reduced to mitigate impacts. No evidence was presented that supported appellant's assertion that the proposed driveway would be inadequate or otherwise should be modified.

9. The cumulative impacts associated with other developments in the vicinity were not shown to be of a magnitude that demonstrated the Director was clearly erroneous in not requiring an EIS or additional conditions.

10. The provision for controlling runoff (i.e., using curb discharge) was shown to be unsatisfactory. The appellants demonstrated that potential impacts associated with the proposed method of discharge had not been adequately addressed. The Director's decision should be modified to require direct discharge in the combined sewer in order that conditions related to runoff in the street not be exacerbated by this project.

Decision

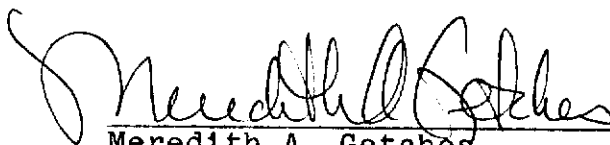
The Director's Decision is MODIFIED as follows:

Condition #7

The applicant shall revise the drainage control plan to provide a tight-line system for the discharge of site runoff into the

combined sewer system. Storm water must still be collected and detained on site and released at a controlled rate but the tight-line shall be used in lieu of the curb discharge originally proposed.

Entered this 31st day of May, 1990.


Meredith A. Getches
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, Room 1320 Alaska Building, 618 Second Avenue, 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.