

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

PHYLLIS W. STONEBROOK, ET AL.

FILE NO. MUP-90-018(P, W)
APPLICATION NO. 8905266

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

Introduction

Phyllis W. Stonebrook, James W. Washington, Jr., Keith R. Geller, Ruth Brooks, and Regina Lyon Cooke appeal a decision by the Director, Department of Construction and Land Use ("DCLU"), to conditionally approve the application of Juanita Bunch to subdivide an existing parcel of land into two parcels of land in an environmentally sensitive area. Appellants also appeal DCLU's State Environmental Protection Act ("SEPA") Determination of Non-significance ("DNS").

Appellants exercised their right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code. This matter was heard, following proper notice, on May 21, 1990 and the record remained open until June 20, 1990 to allow appellants additional time to provide evidence pertaining to the possible designation of an adjacent parcel of land as a Historic Landmark.

Appellants were represented by Phyllis Stonebrook. The applicant was represented by one of the property owners, Juanita Bunch. DCLU was represented by Corbitt Loch. 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 during comment periods, the following shall constitute the findings, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The applicant, Tom Kido, agent for the property owner proposes to subdivide an existing parcel of land, located at 1826 26th Avenue (the "site"), into two parcels of land pursuant to Section 23.20. The site is comprised of two lots (numbers 7 and 8) which are situated on the north and south sides of the site, separated by an east-west property line. The entire site has approximately 9,605 sq. ft. of lot area. The west half of the site is currently developed with a duplex which straddles lots 7 and 8. The east half of the site is undeveloped, covered with trees and unmaintained vegetation and slopes steeply downward from west to east.

2. The proposed two new parcels would be situated on the east and west sides of the site, separated by a north-south property line. The proposed west parcel would have an area of 4,781 sq. ft. and would be accessed directly from 26th Avenue. The proposed east parcel (Parcel B) would have an area of 4,823 sq. ft. and would be benefited by a 14.5 foot wide easement for utilities and possibly access across Parcel A. The access width of 14.5 is adequate for one dwelling unit only. If there are two or more dwelling units on Parcel B, an access width of 20' would be required. An unimproved alley exists east of proposed Parcel B would. Alley way improvements would be required to access Parcel B if more than one dwelling unit is proposed for that portion of the site.

3. The existing duplex on the site would be located on

Parcel A. Parcel B would initially remain undeveloped but, in their Environmental Checklist, the applicant stated a desire to make Parcel B a buildable parcel for a multi-plex unit.

4. The site is located in the Central Area of Seattle, is zoned L-1 and has approximately 80 ft. of frontage on 26th Avenue. The L-1 zoning has no minimum lot area. The site is surrounded by relatively uniform lots zoned Single Family Residential, Lowrise 1 (L-1) and Lowrise 2 (L-2). Surrounding development consists of single family residences, duplexes and triplexes.

5. One letter in opposition to the request was received during the comment period which ended on October 6, 1989. The letter contained seven signatures and expressed opposition to the construction of any multifamily dwelling in the area.

6. Land Use Referrals were received from: (a) the Seattle Fire Department, who expressed no objections; (b) the Zoning Plans Examiner, who noted that access width is O.K. for one dwelling only; (c) the Seattle Engineering Department (SED), who commented that no additional street improvements for 26th Avenue will be required, but if access from the alley is required for proposed, improvements must comply with SED standards, that use of the existing sewer in the alley is subject to SED approval prior to permit issuance and that a drainage control plan will be required with Building permit application; and from (d) Seattle City Light, which required an easement for electrical utilities and provided an easement certificate to the Plat.

7. A Water Availability Certificate was issued by the Seattle Water Department, which included a comment that Parcel B would need new service. Any future development would be subject to compliance with the City's Grading and Drainage Ordinance, and other applicable City codes and policies. Controlled-release drainage would be required to be discharged into the storm sewer main in 26th Avenue.

8. The proposal, if approved, would result in future development of housing consistent with current zoning for the site. The future development may or may not occur on both Parcels and may or may not consist of four or more dwelling units.

9. Several witnesses testified at the public hearing that the DCLU Decision lacks sufficient conditioning. According to the witnesses, approval of the short subdivision is inconsistent with a genuine concern about quality of life in the Central Area and multifamily zoning in this neighborhood is improper. Witnesses testified that the rezone criteria are not met because the public use and interest in retaining single family uses and discouraging multifamily use. According to the witnesses, multifamily use results in negative impacts because absentee landlords generally lack a commitment to the neighborhood's values and quality of life; and because impacts from increased density and increased crime often follow multifamily development.

10. Several witnesses opposing the application also testified that property owned by one of Washington State's most gifted artists, internationally celebrated painter and sculptor, Mr. James W. Washington Jr., is adjacent to the site. The Washington property is developed with a single family home and the Washington Studio of Fine Art (the "Art Studio") which he constructed to take advantage of natural northern light.

11. According to Mr. Washington, the Art Studio was built as a landmark and, based on discussions with public officials, is expected to be accepted as a landmark after his death. Washington testified that lithography press is currently located on the north side of the Studio to take advantage of the Art Studio and that the northern light is now and will always be essential to his sculpture and painting. Washington further testified that increased density of development on the site would impact the northern light which is essential to his work.

12. Mr. Washington's vision is that the family home, Art Studio and grounds would be preserved as a public nonprofit museum to commemorate his life and work. Mr. Washington testified that he and his wife have mutual wills which assure that his vision will be realized even if his wife survives him.

13. As evidence of his intent, Mr. Washington offered portions of his Last Will and Testament which expressed his vision for home, Studio and property. Moreover, Mr. Washington testified that some of his papers are currently on deposit through the West Coast Area Center, M. H. de Young Museum, in Golden Gate Park in San Francisco, California. Upon his death other personal papers would be given to the Smithsonian Institute for the use of the Archives of American Art. In addition, Mr. Washington testified that he has contacted several public agencies about his intent to make a gift of his property and several elected officials, who have expressed interest in and a willingness to support him in accomplishing his objectives.

14. Witnesses opposing the application testified that increased light and noise from multifamily development on the site would impact the Washington Art Studio and the future Art Museum. The witnesses also expressed concern about whether there would be sufficient space on the lot to accommodate required off-street parking.

15. The Washington Studio of Fine Arts is clearly identified as an art studio by a sign which has been posted outside the structure since 1960. Reasonable investigation would have disclosed the potential historic and current cultural importance of the Washington property.

16. The site is designated environmentally sensitive because of steep topography on the west side of the site, land which would become Parcel B. However, development can occur on the west portion of the site with or without approval of this short subdivision application.

17. In section B.6.b of the Environmental Checklist, the applicant answered "NO" to the question - "Would your property affect the potential use of solar energy by adjacent properties? If so, generally describe."

18. In section B.13.a of the Environmental Checklist, the applicant answered "DO NOT KNOW" to the question - Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site?

19. In section B.13.b of the Environmental Checklist, the applicant answered "DO NO KNOW" to the question - Generally describe any landmarks or evidence of historic, archaeological, scientific or cultural importance known to be on or next to the site?

20. The Environmental Checklist was reviewed by DCLU representative, Corbitt Loch on November 27, 1989, but there are no notes or comments in the margins of the Checklist which suggest that DCLU was aware of or considered the Washington property in its analysis.

21. Corbitt Loch testified that he performed a traditional review of short term impacts, which he believed to be adequately mitigated by existing codes and ordinances. Mr. Loch also testified that there are no significant long term impacts. According to the DCLU Analysis and Decision, the SEPA review analyzed the impacts of the short subdivision and development of the related access and utilities; and since plans for future residential development on the lots are not available at this time, additional SEPA review will be necessary to review the impacts of any future construction.

22. On cross examination, Mr. Loch admitted that he did not know about Mr. Washington's Art Studio when he performed the environmental analysis or about the sign which provided notice of

its cultural importance. Mr. Loch also testified that if the checklist had disclosed the existence of the Art Studio, he would have done nothing differently because further environmental analysis can be done during environmental review required when a building permit application is filed.

23. Based upon DCLU's Environmentally Sensitive Area Maps, the entire site is within the Environmentally Sensitive Area boundary. Accordingly, any grading or new construction at the site would require environmental review, with opportunity for public comment. With or without approval of this short plat application, the property owners could remodel the existing duplex to the maximum height, bulk and scale permitted under the Land Use Code for the L-1 zone.

24. The applicant testified that there are other multi-family developments in the neighborhood. The applicant wants to change the lot lines but does not know what can be built there, but has considered single family, triplexes or townhouses. The applicant testified that she is sensitive to the light issue and that the purpose of the application is to improve the neighborhood as well as benefit from her investment.

25. Mr. Loch did not know about and therefore did not consider the presence of the Washington Art Studio, its future use as a public Art Museum, and proposals to have it designated as a historical landmark or about the current and future cultural importance of the Washington property when he performed the environmental review.

26. Mr. Loch was aware of the applicant's intent to develop housing units on the site. It is possible to evaluate the impacts of possible new development on the site in sufficient detail to identify potential short-term and long-term adverse impacts on the adjacent property.

Conclusions

1. The application conforms to most of the applicable Land Use Policies and Code provisions. The proposed lots will conform to the lot area standards of the Land Use Policies and Code. If properly conditioned, the proposed lots will conform to the access standards for all potential development on the site. DCLU was unaware of the potential historic significance and current cultural importance of the Washington property and therefore did not evaluate the potential impacts of new development on either or both Parcels on the site.

2. If properly conditioned, the proposed lots will be adequately served by access for vehicles, utilities and fire protection. The proposed lots can potentially be accessed from 26th Avenue. If more than one dwelling unit is developed on Parcel B, improved alley access to Parcel B will be required.

3. Future development on the site would be subject to compliance with the City's Grading and Drainage Ordinance. If properly conditioned, adequate drainage, water supply and sanitary sewage disposal will be provided. The Seattle Water Department has indicated that there is adequate water service and public hydrant service available. A new meter will be required for Parcel B prior to development and occupancy.

4. The proposed short subdivision is consistent with the current zoning on the site and would result in future development of housing as encouraged by adopted applicable policies. However, many residents and homeowners in the community in which the site is located believe that the current L-1 zoning is inappropriate and strongly advocate a return to Single Family zoning.

5. Adjacent property located to the south is developed as the Washington Studio for Fine Arts. This Arts Studio has particular international cultural importance and may be considered for historic preservation. There is considerable

community concern about potential short and long term adverse impacts on the Washington Studio for Fine Arts of any development on the site.

6. The applicant, along with other community members is sensitive to the potential impact on the northern light and the importance of not interfering with that light during the lifetime of Mr. James W. Washington, Jr. When the Art Studio, the Washington family home and grounds are designated as a historic landmark, it will also be important to assure that development on the site does not interfere with the light source used by Mr. Washington during his productive years.

7. The public use and interests would not be served by permitting development of the site in a manner which adversely impacts the Washington Art Studio during the lifetime of Mr. James W. Washington, Jr., or during its future use as a public Art Museum. Any development of the site should take into consideration the current and future cultural importance of the Washington property. Therefore, there are potential short and long term impacts which were unknown to and therefore not considered by DCLU during its environmental review.

8. Any grading or new construction on the site will trigger environmental review because the entire site is located in an Environmentally Sensitive Area. The Examiner lacks authority under either the short plat ordinance or SEPA to condition this application to mitigate potential impacts on the Washington property that may arise from remodeling the existing duplex. However, full consideration of all potential short-term and long-term impacts and opportunities for mitigation shall occur during any future environmental review at the site.

9. The Washington family home, Art Studio and grounds are culturally important.

10. To ensure that future environmental review takes into consideration the historic significance as well as the cultural importance of the Washington family home, Art Studio and grounds, DCLU shall refer the said Washington property to the Seattle Landmarks Preservation Board, as provided in Section 25.05.675.H.2.c. DCLU shall provide proof of its compliance with this requirement to Mr. Washington and to the Office of Hearing Examiner.

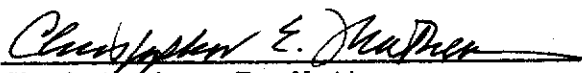
11. The conditions recommended by DCLU to mitigate adverse impacts of the short subdivision are reasonable and should be affirmed.

12. Other future development impacts should be assessed and appropriate mitigation measures imposed during environmental reviews required in connection with building and other permit processes which precede development of the site or either Parcel of the site.

Decision

The Director's decision conditionally approving the short subdivision application is AFFIRMED. The DCLU Director shall comply with the requirements of Conclusion No. 10.

Entered this 5TH day of July, 1990.


Christopher E. Mathews
Hearing Examiner Pro Tempore

CONCERNING FURTHER REVIEW OF HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

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 party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

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, (206) 684-0521.

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.