

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

In the Matter of the Appeal of

KINNEAR PARK CONDOMINIUMS  
HOMEOWNERS ASSOCIATION

FILE NO. MUP-90-033(DD)  
APPLICATION NO. 8903928

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

Introduction

Appellant, Kinnear Park Condominiums Homeowners Association, appeals the decision of the Director of the Department of Construction and Land Use ("Director") to grant a design departure approval to a project on property at 622 6th Avenue West.

The appellant exercised its rights of appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on August 17, 1990.

Parties to the proceeding were: the appellant, represented by Marianne Kory; the project applicant by Carla Swanson, Foster Pepper Shefelman, and the Department of Construction and Land Use ("DCLU") by Faith Lumsden, Senior 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 a site visit and the documents received prior to the closing of the record, the following shall constitute the findings of fact, conclusions of law, and the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is located at 622 6th Avenue West on Queen Anne Hill, just north of West Mercer Place. The site has 50 ft. of frontage on 6th Avenue and is 128 ft. deep. An alley runs along the north side of the parcel.
2. The property is zoned Midrise (MR).
3. Existing use on the site consists of a single-story building currently in use as an office and an accessory parking area.
4. Under project number 8903828, Pollack Lau Associates applied to construct a 20-unit apartment building on the site with parking underneath the structure for 23 cars. The parking would be on two levels. In conjunction

with the application, the applicant requested a design departure to allow driveway access from both 6th Avenue West and the alley. The 6th Avenue driveway would serve the lower level and 12 parking spaces. The alley driveway would serve the upper level and 11 parking spaces.

5. The project is categorically exempt from environmental review under SEPA (SMC 25.05.800A.2).

6. The alley to the north of the property is platted at 20 ft. in width. The testimony of Carl Johnson indicated that it is developed to a width of 15 ft. 9 inches.

7. Section 23.45.060B provides as follows:

B. Access to Parking.

1. Alley Access Required. Except when one (1) of the conditions listed in subsections B2 or B3 applies, access to parking shall be from the alley when the site abuts an alley improved to the standards of Section 23.54.010C. Street access shall not be permitted.

2. Street Access Required. Access to parking shall be from the street when:

a. Due to the relationship of the alley to the street system, use of the alley for parking access would create a significant safety hazard;

b. The lot does not abut a platted alley;

c. Apartments or terraced housing are proposed across an alley from a Single Family, Single-Family Attached, Lowrise 1 or Lowrise 2 zone.

3. Street or Alley Access Permitted. Access to parking may be from either the alley or the street when the conditions listed in subsection B2 do not apply, and one (1) or more of the following conditions are met:

a. Ground-related housing is proposed across the alley from a Single Family, Single-Family Attached, Lowrise 1 or Lowrise 2 Zone;

b. Topography makes alley access infeasible;

c. The alley is not improved to the standards of Section 23.54.010C. If such an alley is used for access, it shall be improved according to the standards of Section 23.54.010C.

8. The Department report concluded that "the alley meets Code standards for the midrise zone." At hearing, the Department representative emphasized that the Department considered the alley "improved."

9. No request for a land use code interpretation pursuant to Chapter 23.88 was made prior to the close of the appeal period on the Director's decision.

10. The criteria for design departure are found at 23.40.010. That section provides that design departure may be permitted in multi-family zones "for design solutions which result in a better development than would be allowed under the development standards of the applicable zone."

11. The applicant submitted plans for an alternative structure that would not require design departure (hereinafter referred to as the Code alternative). That structure, represented by Exhibit 6, would be a 19-unit structure with 22 parking spaces. Under that plan, all parking access would be off of the alley.

12. Stating that design departure is to allow for a better project, not necessarily a larger project, the Department approved the design departure requested by the applicant, but imposed a condition limiting the project to 19 units, the same number as in the Code alternative. This condition was not appealed.

13. Neil Watts of the Seattle Engineering Department testified that both the project proposal and the Code alternative were acceptable to the Engineering Department, but that it favored the project proposal and its use of 6th Avenue for access to part of the parking. This preference was based on the proximity of the western driveway of the code alternative to the intersection of Sixth Avenue and the alley.

14. The project requiring the design departure provides somewhat more open space than the code alternative.

#### Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to the provisions of SMC 23.76.022. Under that section, the Director's decision on design departure applications is entitled to substantial weight.

2. The determination by DCLU that the alley abutting the property is "improved" is binding on the Examiner. If appellant wished to challenge this determination of the Department, it was required to request a land use code interpretation.

3. Because of the above, the only question before the Examiner is whether the design departure results in a better project than could be constructed without it. Here the answer is plain. The thrust of the appeal was that the alley was too narrow and steep to carry the traffic associated with the design departure. However, with the design departure, only half as many cars will be using the alley as access to parking as would use it if a project meeting code, and therefore placing all its parking access off the alley, were constructed. While DCLU and the Engineering Department did not agree with the appellant that the alley was too steep or narrow to carry additional cars, both Departments did conclude that there were benefits to allowing some of the parking to be accessed off of 6th Avenue. The Examiner concurs. Not only is the driveway configuration better, but an additional parking space is provided as is additional open space.

4. It is worth noting that the design departure criteria require only a "better design solution" than what would be premitted outright under the Land Use Code. There is no provision prescribing how much better the solution needs to be. Therefore, where the Department grants departure and is able to identify some benefits from the departure, the discretion afforded the Examiner is limited in terms of demanding greater enhancements. This point is relevant in terms of appellant's suggestion that the structure be required to observe a greater setback from the alley. The Examiner can envision that the greater setback might indeed further enhance access into and out of the alley driveway. However, given the fact that diverting half the traffic onto Sixth Avenue already results in a better access solution, and the fact that the Director's decision to grant or deny design departure is entitled to substantial weight, the Examiner does not believe there is a basis for remanding the project to DCLU for additional changes.

5. While the appellant sought to point out the traffic problems on West Mercer Place and the problems of cumulative development on Queen Anne Hill, those topics are beyond the scope of this decision. As noted in the findings, the project is categorically exempt from SEPA. There is, therefore, no authority either to deny this project or to reduce the number of units or bulk of this project. The only matter before the Examiner is the location of access to parking. No evidence was introduced to suggest that the location of this project's driveways will have any effect on the overall state of traffic in the vicinity.

#### Decision

The decision of the Director is AFFIRMED.

Entered this 31<sup>st</sup> day of August, 1990.

  
Guy E. Fletcher  
Deputy Hearing Examiner

#### 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.