

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MR. AND MRS. CLAUDE FLYNN

FILE NO. S-79-026

from a determination of the
Superintendent of Buildings

Introduction

Appellants, Mr. and Mrs. Claude Flynn, appeal a use permit for a 5-unit townhouse per revised plans, at 4424 - 4th Avenue N.W.

The appellants exercised their right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: The appellants, by their attorney Janet E. Quimby, Evans, Quimby and Hall, Inc., P.S., attorneys at law; the Superintendent of Buildings (Superintendent) represented by Greg Borba, Program Coordinator; and Christopher Nyhus, permittee.

This matter was heard before the Hearing Examiner on April 28, 1980 and continued to May 9, 1980 for additional evidence.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance (86300, as amended).

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The Superintendent's intention to issue a use permit for five attached townhouses at 4424 - 4th Avenue N.W. was first published July 5, 1979.
2. Appellants filed a timely appeal of that decision (S-79-017). After hearing, it was determined that the method of calculating the front yards was in error and a decision remanding the matter to the Building Department for recalculation was entered.
3. On September 6, 1979, the Superintendent published his intention to issue a use permit based on revised plans. Appellants filed their appeal of that decision September 14, 1979. Motions to Dismiss were filed by the Superintendent and the permittee, and hearings on the motions were held in September and November. The motions were denied because the changes in the plans since the first appeal created new issues.
4. After the revised plans were approved by the Superintendent and appellants were given opportunity to review them, notice of additional issues of the appeal were filed.
5. A hearing was held April 28, 1980, to consider the following issues: 1) whether a front yard protrusion is permitted; 2) whether the finished grade may be and is

greater than 18 in. higher than existing grade and; 3) whether measures to avoid soil erosion and for drainage may be imposed as conditions of the permit under Section 19 of the SEPA Ordinance.

6. No evidence was offered on the front yard intrusion issue.

7. The plans were approved by the Superintendent for the grades and elevations indicated on them. According to evidence at hearing the plans provide for the finished grade to be 18 in. higher than the pre-redevelopment grade.

8. An inspection by the City on December 4, 1979, showed no "violation", which is assumed to mean deviation from plans, at that time.

9. Nyhus testified that after excavation he stored the dirt, hauled some away, took some around to the front and brought in an additional 20 yards of fill for front yard. He did add some dirt at Unit 5 in back.

10. Photographs in evidence show that the grades of the appellants' north yard and the rear or south yard of the subject property were nearly the same prior to redevelopment.

11. Other photographs (Nos. 6, 7, 8, 10) show that the grade slopes down to the fence separating the two properties. The degree of angle was described by witnesses for appellants as 45 but cannot be ascertained from the photographs.

12. A rockery had served as a retaining wall along 4th N.W. in front of appellants and the subject property. The rockery has been removed but will be replaced and continued at same level as appellants'.

13. Appellants fear soil erosion and drainage problems from the differing grades.

14. Landscaping plans have been approved for the project.

15. A declaration of nonsignificance was issued February 27, 1977 for the proposal. No significant adverse impacts were found, however, change in absorption rates was noted.

16. Porches initially approved were on grade. Three are now elevated above grade. The Superintendent has concluded that the porches conform to the Zoning Ordinance and has approved the change. The Superintendent's response does not address lot coverage but the examiner's calculations show that it is unlikely that permissible lot coverage would be exceeded by the additional area of the three above-grade porches.

Conclusions

1. Appellants have not shown that the Superintendent erred in his decision to issue a permit for the project based on the revised plans.

2. Reasonable conditions may be imposed to mitigate adverse impacts identified in a DNS under Section 19, Ordinance 105735, as amended, for which policies have been adopted. While a change in absorption rate was identified, the appellants have not proved it to be sufficiently adverse to require mitigation. The contemplated landscaping can reasonably be expected to prevent soil erosion and slow runoff of surface waters.

3. While no conclusion can be reached from the evidence as to whether the grade has been increased more than the 18 in. approved, a deviation from the approved plans on which a use permit is based would be an enforcement issue to be resolved by the Superintendent.

Decision

The appeal is DENIED and the Decision of the Superintendent of Buildings is AFFIRMED.

Entered this 21st day of May 1980.

M. Margaret Klockars
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Deputy Hearing Examiner

Notice of Right to Appeal

Pursuant to Section 20A of the SEPA Ordinance (105735, as amended) a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth (15th) day after the date the decision appealed from is filed with the SEPA Public Information Center. The appeal must be filed with the City Clerk. Rules have been adopted by the City Council governing the appeal procedure and should be reviewed prior to filing an appeal.

The City Council will only review issues relating to compliance with Section 19, Ordinance 105735, as amended. Section 19 relates to substantive authority to condition or deny a proposal on environmental grounds.