

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ROBERT WALKER, et al.

FILE NO. MUP-85-048(W)
APPLICATION NO. 8501226

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

Introduction

The appellant exercised 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 September 17, 1985.

Parties to the proceedings were: appellants by Robert Walker, pro se, developer by Derrill Bastian, attorney, and the Department of Construction and Land Use (DCLU) Director by Arthur Ward.

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 and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property consists of an 11,867 sq. ft. area lot that is addressed as 4054 N.E. 55th Street. The lot is developed with a roughly 35 ft. high single family dwelling that is proposed for demolition. In its stead would be located two three story apartment buildings with enclosed basement parking and offering a total of 19 units. The buildings would be colonial in style. Less than 40 percent of the units would have more than 1,200 sq. ft. of living area.

2. The lot is located approximately 75 ft. west of a Business Commercial (BC) zone in a strip of Lowrise 2 (L-2) zoned properties located along the south adjacent N.E. 55th Street arterial. The lot also has frontage on east adjacent 43rd Avenue N.E., a local access street.

3. Vicinity development is mixed. The west adjacent lot is developed with a ground-level, six unit apartment building. This lot marks the western edge of the subject site's L-2 zone. The west adjacent BC zone, along the north and south sides of N.E. 55th, are developed with an Albertson's grocery store and parking lot, a bank, realty offices, professional building and similar uses.

4. Properties across 55th Street to the south are also within the L-2 zone and are developed with a duplex and single family residences. Properties immediately north and east of the subject site are within the L-2 zone but are developed with single family residences.

5. A Single Family 5000 (SF 5000) zone begins some 50 ft. north of the subject site.

6. The vicinity is predominated by single, and two-four story structures.

7. The east and west boundaries of the site are generally marked by 30-35 ft. tall cedars. The lot is also marked by large perimeter hedges. A large pine tree is located near the southeast corner of the lot.

8. A DCLU condition of the declaration of non-significance (DNS) here appealed states that

Landscaping shall be provided per approved plan prior to final occupancy of the building. The large pine and as much of the existing hedges as possible are to be retained. Maintenance of the landscaping shall be the responsibility of the owners.

9. Applicant plans to retain most of the trees and intends to replace those that are removed. One specific tree planned for removal is a 32 in. pine located roughly mid-point of the east lot line. Applicant testified that all cedar trees would be retained.

10. Egress and ingress will be via a new curbcut to N.E. 55th Street some 13 ft. 6 in. from the west property line. The hedge on the east and west sides of the driveway will be retained. DCLU will require a 10 ft. sight triangle. The driveway will be at a 20 percent grade and have a pavement area marked for caution. A Metro bus stop for route number 74 is located east of the proposed driveway area.

11. The subject project will generate roughly 125 additional average weekday vehicle trip-ends. The present vicinity traffic flow is moderate-light.

12. The height of the proposed structure will approximate the height of the existing single family dwelling. However, the visual character of the site and immediate area will be altered by the replacement of the single family dwelling by the multi-unit dwellings.

13. Exhibit 15 represents applicant's parking survey results for the subject vicinity. It shows, for example, that from 40th Avenue N.E. to 43rd Avenue N.E., along N.E. 55th Street, the 14 on-street parking spaces (north side) were from 7-14 percent occupied, and that on the south side that the 13 spaces were 56 percent occupied. The given days and times for the survey were Friday, 2:30 p.m., Friday, 5:15 p.m., Saturday, 8:15 p.m. and Wednesday, 10:15 p.m. The survey area generally was reported to have a total of 196 spaces which were from 15 (Friday, 2:30 p.m.) to 30 percent (Saturday, 8:15 p.m.) utilized. The Hearing Examiner finds that Exhibit 15 is a reasonably accurate report of parking availability and patterns for the vicinity.

14. There will be increases in the amount of noise, light and traffic as a result of the increase in residential population. Particularly affected will be the west adjacent dwelling that will be 3 ft. from one of the proposed structures.

15. A parking spillover of up to 13 could result from the proposal. The spillover figure is arrived at by adding the zoning code and/or survey ratio of parking to the visitor parking demand. The Seattle Engineering Department visitor factor is .39 automobiles per unit per day.

Conclusions

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

2. The Director's environmental determination at issue in this case, the DNS, is accorded substantial weight, Seattle Municipal Code 23.76.36(B)(7), and the burden of establishing the contrary is appellants'. Seattle Municipal Code Section 25.05.680(1)(c). Appellants must therefore show the DCLU determination here at issue to be "clearly erroneous".

3. If a proposal may have probably significant adverse environmental impacts, a declaration of significance is required. Seattle Municipal Code Section 25.05.360(1). If, on the other hand, no probable significant adverse environmental impact is determined, a declaration of nonsignificance (DNS) is appropriate. Seattle Municipal Code Section 25.05.340. Significant has been read to mean "of more than a moderate effect". Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976).

4. It is undisputed that increased light, auto, and other activity related to increased human population will result from the proposal. Further, the proposed buildings will alter somewhat the visual character of the vicinity. These and other identified impacts do not rise to the level of probable significant impacts. Therefore, no EIS is required. Specific to parking and traffic impacts, the existing environment can absorb projected spillover, and project access will be via N.E. 55th Street, an arterial.

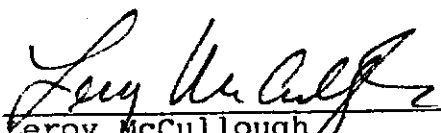
5. As to conditions desired for response to impacts that were not shown to be significantly adverse, the Hearing Examiner is without authority to require on-site parking in excess of the zoning code ratio of 1:1. In re Elmer, C.F. 293040 (1984).

6. Any conditioning of a proposal under the State Environmental Policy Act (SEPA) must be based on specific plans or policies formally designated in Seattle Municipal Code Section 25.05.902. Seattle Municipal Code Section 25.05.660. In light of the proposed height and the vicinity development pattern no authority is presented for conditioning of the proposal as it relates to height. In re Oden Investment, MUP-84-057(W), MUP-84-058(W), C.F. No. 293557. Relative to landscaping, however, retention of the perimeter trees and hedges will soften the proposal's impact on nearby single family and other properties. Accordingly, the Hearing Examiner adds as a specific condition that the perimeter (cedar) trees be retained or replaced by applicant. Seattle Municipal Code Section 25.05.902(5). Other elements of the landscaping plan will be subsequently determined by DCLU in accord with the DNS of record.

Decision

The decision to issue a conditional declaration of nonsignificance is AFFIRMED as modified by Conclusion 6, above.

Entered this 1st day of October, 1985.


Leroy McCullough
Hearing Examiner

Concerning Further Review

Pursuant to Section 25.05.680(2), Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fourteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center. The City Council's review on appeal shall be limited to the exercise of the City's substantive authority to condition or deny the proposal under SEPA as authorized by Section 25.05.660. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council should be consulted regarding their appeal procedures.

If an appeal is taken pursuant to Section 25.05.680(2), 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 Section 25.05.680(2) appeal.

If no appeal is taken pursuant to Section 25.05.680(2), 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 fourteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.36(B)(11); JCR 73. Judicial review underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). 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 Municipal Building, Seattle, Washington 98104, within fourteen days of the date of this decision. Section 25.05.680(3)(d).

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 written 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 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.