

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

In the Matter of the Appeal of

JOHN GRANTHAM, ET AL.

FILE NO. MUP 85-073(W)
APPLICATION NO. 8502932

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

Introduction

The Department of Construction and Land Use (DCLU) Director issued an environmental declaration of non-significance (DNS) with conditions for planned demolition of an existing residence and construction of a 24-unit multifamily structure at 1203 N.E. 135th.

The appellants 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 December 4, 1985, after a continuance from November 25, 1985, occasioned by inclement weather. The Hearing Examiner agreed to attempt to shorten the decision time.

Parties to the Hearing Examiner proceedings were: John Grantham, for appellants, pro se; Dennis Loeb, applicant, pro se; and the DCLU Director by Clay Leming.

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 subsequent to a visual inspection of the subject site and vicinity, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Applicant proposes to demolish an existing single family residence and construct on-site a 24-unit apartment building with basement parking for 24 cars at 1203 N.E. 135th Street. Appellants challenged DCLU's declaration of non-significance.

2. The subject property is located at the southeast corner of N.E. 135th Street and 12th Avenue N.E. The lot has 95 ft. of frontage on N.E. 135th and 142.5 ft. of frontage on west abutting 12th Avenue N.E. At its southerly border the lot also has a 12.5 ft. wide strip of property extending 175 ft. east of the west property line.

3. The project site is in the extreme northwest corner of a Lowrise 3 (L-3) zone that extends from N.E. 133rd to N.E. 135th Streets and from 12th to 15th Avenues N.E. The Jackson Municipal Golf Course is directly north (across N.E. 135th) of the subject site and is zoned SF 7200.

4. Beginning at 12th N.E. and continuing easterly, the subject lot and four other adjacent lots within this L-3 zone are developed with single family structures. The remaining portion of the zone is developed with two large multi-family complexes located southeasterly of the subject site. These multi-family complexes are at a markedly lower elevation than the subject property.

5. There is a solid block of low scale single family structures west of 12th N.E. zoned Single Family 7200 (SF 7200). Many are single story structures with flat roofs.

6. From 15th Avenue N.E., N.E. 135th rises to the west. The subject property is therefore at a topographically more prominent location than other properties below and east. Twelfth N.E. is a 20 ft. wide private easement road that principally serves its west side residences.

7. Vicinity residents testified of a severe present parking shortage that they fear will be exacerbated by the proposal's resident vehicles and those of guests. There is parking spillover on 135th and 12th from vicinity single and multifamily development.

8. Up to 64 persons are expected to reside in the completed project. Environmental Checklist, p. 8. The largest unit will approximate 800 sq. ft. Access to and from the basement parking for 24 vehicles will be via 135th. One DCLU condition to the DNS requires that applicant erect a solid 6 ft. high fence along the western border of the site. This is designed to discourage new apartment dwellers' pedestrian or auto use of 12th N.E. and would also serve as a buffer between the new use and the single family properties to the west.

9. The several large trees found within the perimeter of the subject site include cedar, fir, pine and hemlock. Some, 65 ft. in height, have high branch lines. Sights across the lot are through the tree trunks. Shrubs, grass and other vegetation also decorate the site. Applicant plans to retain the large trees as is required by a DCLU condition of the declaration of non-significance (DNS).

10. With the exception of the two lower-elevation complex buildings, the proposed structure will be the largest residential structure in the vicinity. Modulated, the proposed structure will be approximately 105 ft. long and 81 ft. 7 in. wide. The projected height of the apartment structure is 35 ft., 3 ft. less than initially proposed.

11. The plans accord with zoning code requirements.

Conclusions

1. The Hearing Examiner has jurisdiction of these proceedings pursuant to Chapters 23.76 and 25.05, Seattle Municipal Code.

2. Seattle Municipal Code Section 23.76.36(B)(7) requires that the Director's environmental determination be accorded substantial weight. That section also specifies that it is appellant's burden to establish a position contrary to that of the DCLU Director. See also Seattle Municipal Code Section 25.05.680(1)(c). Therefore, appellants here must show that the DCLU decision was clearly erroneous.

3. Appellants urge the Hearing Examiner to deny the project, require an environmental impact statement (EIS), or in the alternative condition the proposal to respond to parking, height, bulk, scale and other impacts expected to result from the proposed 24-unit structure. At least one witness urged that the site was inappropriately zoned. The Hearing Examiner is without jurisdiction to alter or amend the zoning of the site in this context.

4. If a proposal may have probable adverse environmental impacts that are significant, a declaration of significance and an EIS are required. Seattle Municipal Code Section 25.05.360(1). If not, a DNS is appropriate. Seattle Municipal Code Section 25.05.340. The term "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).

5. The impact of the proposal on the environment was not shown to be "significantly adverse". While the new use will be more intensive than its immediately adjacent west and east uses, large multifamily development is south and southeast adjacent. A DCLU condition to the DNS requires west fencing of the subject site so that pedestrian and auto use of 12th by new residents will not be encouraged. Perimeter trees will be retained. The site is zoned for multifamily development. On-site parking for 24 vehicles is proposed with egress to 135th Street. The Hearing Examiner was not persuaded by the evidence of record that the traffic and parking consequences would be "significant". The aberration in scale and the increased human and traffic activity do not singly or jointly constitute a "significant" adverse environmental impact. No EIS is therefore required.

6. In order to deny a proposal under the State Environmental Policy Act (SEPA) the proposal must be shown to likely result in significant adverse environmental impacts "identified in a final or supplemental environmental impact statement..." Therefore, since no EIS has been prepared, and none is required, the Hearing Examiner may not deny the proposal. Seattle Municipal Code Section 25.05.660(1)(f).

7. As to impacts that do not qualify as "significantly adverse", Seattle Municipal Code Section 25.05.660 requires that all responsive or mitigation measures be based on specific plans or policies formally designated in Section 25.05.902.

8. One of the Seattle Municipal Code Section 25.05.902 SEPA policies states as to parking and traffic that it is the City's policy to modify off-street parking requirements to mitigate adverse impacts. Seattle Municipal Code Section 23.45.46(A) states that in the L-3 zone one off-street parking space per dwelling unit is required. Seattle Municipal Code Section 23.54.20, Parking Quantity Exceptions, allows the Director to require up to 1.25 spaces per unit if specific criteria are met. All of the criteria are not met in this case. Less than 40 percent of the units will have more than 1,200 sq. ft. of living space. Seattle Municipal Code Section 23.54.20(D). Therefore, no authority exists per Section 23.54.20 to require more parking. Further, the City Council observed in In re Appeal of Oden Investment and Kinneer Park Condominium Association, C.F. 293557, MUP-85-057,58 that parking in multifamily areas is to be governed by the specific provisions of the multifamily code. Therefore, SEPA provides no additional authority for conditioning a project in response to parking concerns.

9. As to views, it is undisputed that the proposed building will be larger than the one presently on-site, and that there will be some concomitant detracting from east and southeasterly views. However, In re Oden, supra, also addressed the question of private view blockage by stating that SEPA protection is limited to views from or of certain places that have specific, recognized status, i.e. views of landmarks or views from public places listed in "Appendix B" of the SEPA Policies. The views that will be impacted by the proposal are not protected public views. Therefore, the Hearing Examiner is without authority to condition the proposal to preserve the private views that may be impacted.

10. Finally, relative to scale, Oden indicates that zoning classifications are general indicators (emphasis added) that heights are appropriate for the specific site. "In order to justify a reduction in height below the zoned maximum", stated the City Council Oden decision,

it must be shown either that the project presents unusual circumstances which would not have been contemplated as part of the rezoning of the area or that the project is on the edge of a zone where the problems of transition are not fully accommodated by the zoning...

at p.3.

11. The Hearing Examiner notes that the project site is sandwiched between and is at a crest of low-scale single family residential structures; that the site is at the very northwesterly edge of the subject L-3 zone, and is separated from the west adjacent SF 7200 zone and development by a narrow, 12 foot wide private access road; and that the subject site is topographically and functionally removed from the existing multi-family development to the southeast. The proposed structure at 35 ft. in height (roughly four stories, including parking garage), 105 ft. in length and 81 ft. 7 inches in width will be the vicinity's largest residential structure, with the exception of lower elevation complexes. DCLU Analysis and Decision, p. 2. The present case is therefore distinguished from that concerning the 160 Lee Street project, MUP 85-049/53, Application 8501158, where uses surrounding the multi-family zoned site included a fire station, transmission towers, multi-family and single family development.

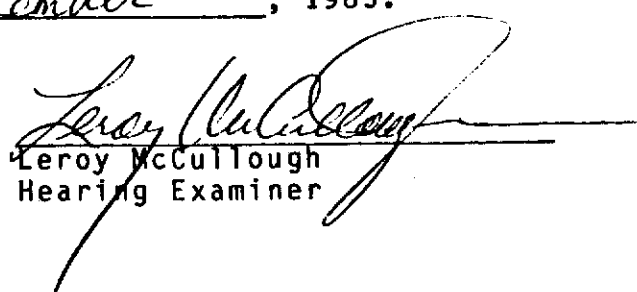
12. This kind of inconsistency between the bulk and scale of the proposed project and its functionally adjacent land uses is similar to that addressed by the City Council in the Victoria Apartments case. The Council concluded on interlocutory review that since the proposed (tower) addition would be totally inconsistent with the land use pattern extant and would have had a devastating impact on the neighborhood "a reduction to eight stories would reasonably mitigate the adverse impact of the tower's height, bulk and scale..." even though the midrise zoning would have allowed the 160 ft. height proposed. In re Appeals of Queen Anne Community Council et al., C.F. 293623, MUP 83-080-85(W).

13. Therefore, in accord with Seattle Municipal Code Section 25.05.660 (reference Appendix A), the application is remanded to the DCLU Director for imposition of reduced scale or other additional conditions that will decrease the impact of the project's bulk, scale and height on the vicinity. In re Oden supra; In re Appeals of Queen Anne Community Council et al., supra.

Decision

The DCLU decision is REMANDED to DCLU for compliance with Conclusion 13, above.

Entered this 16th day of December, 1985.


Leroy McCullough
Hearing Examiner