

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JOHN GRANTHAM

FILE NO. MUP-86-006(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

On October 24, 1985, the Department of Construction and Land Use (DCLU) Director issued an environmental declaration of nonsignificance (DNS) with conditions for planned demolition of an existing residence and construction of a 24-unit multifamily structure at 1203 N.E. 135th.

John Grantham and other neighbors appealed pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

That matter was heard before the Hearing Examiner on December 4, 1985. On December 16, 1985, the Hearing Examiner decision remanded the application to DCLU for that department to add conditions designed to mitigate height, bulk and scale impacts of the project. File No. MUP-85-073(W).

Applicant subsequently revised the building plans, and by decision of February 6, 1986, DCLU imposed additional conditions on the project as part of the second declaration of nonsignificance.

John Grantham then submitted this appeal, MUP-86-006(W), and the matter was heard by the Hearing Examiner on March 17, 1986.

Parties to the Hearing Examiner proceedings were appellant John Grantham, pro se; Dennis Loeb, applicant, pro se; and the DCLU Director by Clay Leming. Appellant was assisted in the hearing by witnesses from the December 4, 1985, hearing.

Finding and exhibits from the MUP-85-073 record were approved for consideration in this matter. Accordingly, the Findings below integrate the findings from MUP-85-073 with Findings from the hearing of March 17, 1986.

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. 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. Appellant and neighbors challenged DCLU's declaration of nonsignificance.

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. Twelfth N.E. is a 20 ft. wide private easement road that principally serves a solid block of low scale single family structures beginning west adjacent to 12th N.E. Many of these SF 7200 residences are single story structures with flat roofs.

5. 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 multifamily complexes located southeasterly of the subject site. These multifamily complexes are at a markedly lower elevation than the subject property.

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.

7. The several large trees found within the perimeter of the subject site include cedar, fir, pine and hemlock. Some, 65 ft. in height, have 30-40 ft. branch lines. Sights and sunlight across the lot are through the tree growth and the 14-16 inch diameter tree trunks. Shrubs, grass and other vegetation also decorate the site. Applicant plans to retain the large perimeter trees as is required by a DCLU condition of the declaration of nonsignificance (DNS).

8. The applicant's revised plans show two modulations along the west side of the proposed structures. These building line indentations will be approximately 8 ft. 5 in. wide and 9 ft. 7 in. deep. The resulting western view will be of three separate building units separated by the two indentations. See Sheet A6, Exhibit 6, MUP-86-006. The west side yard setback will approximate 8 ft. 5 in.

9. The north-south dimension of the proposed structure is 105 ft. The setback from the north property line, along N.E. 135th Avenue, will be 15th ft. 5 in. The south setback will be 22 ft. 1 in.

10. The east facade of the proposed structure will also be modulated and provide a minimum side yard setback of 5 ft.

11. Applicant's revised plans also eliminate the peaked roof for a basically flat, mansard roof. DCLU has required that this roof be of cedar shingles or simulated cedar.

12. The proposed building's west elevation will be the lowest in natural height, 29.86 ft. Average building height will approximate 31 ft.

13. With the exception of the two lower elevation complex buildings, the proposed structure will be the largest residential structure in the vicinity.

14. The plans accord with zoning code requirements.

15. 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 to discourage new apartment pedestrian or auto use of 12th N.E. The fence would also serve as a buffer between the new use and the single family properties to the west.

16. Up to 64 persons are expected to reside in the completed project. Environmental Checklist, p. 8. The largest unit will be roughly 800 sq. ft. in area. Access to and from the basement parking for 24 vehicles will be via 135th.

17. Vicinity residents testified of a severe present parking shortage that they fear will be exacerbated by additional resident and guest vehicles. There is some parking spillover presently on 135th and 12th from vicinity single and multifamily development.

18. Appellants specifically maintained objections to the amended proposal. According to appellant and witnesses, the proposed scale, intensity and height remain out of scale with the predominantly one-story forested development extant. For some opposing witnesses the proposed 24-unit structure's density is clearly incompatible with the vicinity development pattern. Witnesses also complain that the proposed structure would provide no transition between its L-3 zone and the present neighborhood development.

19. Appellant's witnesses alternatively restated their request for an EIS; their objection to the zoning of the subject site; their concern that the building would block views and sunlight; and their views that parking spillovers and other negative consequences would result from the proposal. In response to one question, applicant accepted responsibility for monitoring a DCLU condition which requires that "applicant and/or owner(s)...provide construction workers with parking on-site once the site preparation and basement garage are completed."

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 23.76.22(C)(7) requires that the Director's environmental determination be accorded substantial weight. See also Seattle Municipal Code Section 25.05.680(1)(c). Therefore, appellant must show that the DCLU decision was clearly erroneous.

3. Appellant and witnesses in this and in the prior proceeding urged the Hearing Examiner to require an environmental impact statement (EIS), or to further condition the proposal to more fully respond to height, bulk, scale and other impacts expected to result from the proposal. At both proceedings at least one witness asserted that the subject site was inappropriately zoned.

4. As was noted in the prior proceeding, 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 revised proposal on the environment was not shown to be "significantly adverse". The new use will be more intensive than its immediately adjacent west and east uses; however, large multifamily development is already south and southeast adjacent. A DCLU condition to the DNS requires west fencing of the subject site so that new pedestrian and auto use of 12th Avenue N.E. will not be encouraged. Another condition requires that perimeter trees be retained. Revisions have flattened the roof and reduced the height to 31 ft. and below. The west modulations, in conjunction with the perimeter trees, will help present a west facade of three separate buildings. The site is in fact zoned for multifamily development. On site parking for 24 vehicles is proposed with access via 135th Street. The traffic and parking consequences would not 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 for this development. Since no EIS need be prepared, which would reflect any significant adverse environmental impact, the Hearing Examiner may not deny the proposal. Seattle Municipal Code Section 25.05.660(1)(f).

6. The Hearing Examiner acknowledges that there will be more impacts on views by the proposed structure than there would be by a smaller or by the existing structure. However, views at issue are private and are therefore not protected by State Environmental Policy Act provisions. In re Appeal of Oden Investment and Kinnear Park Condominium Association, C.F. 293557, MUP-85-057, 58. Also as stated in MUP-85-073(W) the 1:1 parking is governed and approved by the Multifamily Code provisions.

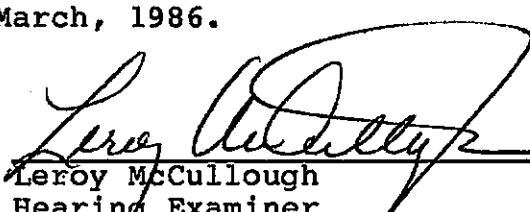
7. In MUP-85-073(W) the Hearing Examiner was presented with a peaked roof 35 ft. high building. Under present consideration is a mansard-roofed building that will average less than 30 ft. in height along the west side that faces 12th Avenue. A solid landscaped fence will be erected along the west side. The building's west side will be modulated such that the Hearing Examiner is persuaded that visually the west side will present as three separate buildings. Based on these considerations and others reached in Conclusion 5 above, it was not clearly erroneous for DCLU to approve the project as conditioned. The proposed structure will not be "totally inconsistent" with vicinity development as a whole; nor will it have the devastating impact feared and addressed by the Victoria Apartments decision. In re Appeals of Queen Anne Community Council, et al, C.F. 293623, MUP-83-090-085(W).

8. Appellant's and witnesses' concerns with the zoning of the subject site are not properly before the Hearing Examiner in this case. Similarly, the permitted density is an issue that directly flows from the legislated classification of the site in question. Therefore, although the site is located at a crest and at the extreme edge of a multifamily zone which faces single family zoning and development, the project adequately balances the competing zoning, SEPA and other considerations sufficiently to require affirmance of the DCLU decision.

Decision

The Department of Construction and Land Use decision is AFFIRMED.

Entered this 3/5 day of March, 1986.


Leroy McCullough
Hearing Examiner

Concerning Further Review

Pursuant to Section 25.05.680(C)(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 fifteenth 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 procedure.

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

If no appeal is taken pursuant to Section 25.05.680(C), 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. Judicial review under SEPA shall without exception be of the decision on the 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 Seattle Municipal Building, Seattle, Washington 98104, within fifteen days of the date of this decision. Section 25.05.680(D)(4).

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 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.