

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

ERNEST AND CHERYL WILSON

FILE NO. MUP-86-012(W)
APPLICATION NO. 8506045

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

DECISION ON REMAND

This matter was remanded by the City Council to consider "whether the applicable zoning, in this case Title 24, provides sufficient transition in bulk and scale between the Neighborhood Business (BM) (sic) zone and the adjacent SF 7200 zone or whether additional mitigation under SEPA is appropriate." Oral argument was presented September 17, 1986, by Paul Sikora, Diamond and Sylvester, for appellants, and Melvin F. Buol, Keller, Rohrback, Waldo, Hiscock, Butterworth and Fardal, for applicant. No representative of the Director appeared.

The Hearing Examiner decision included the following which are relevant to the issue to be considered:

Finding of Fact No. 18

Structures in the area surrounding the subject property are generally one to two stories in height. The exception to this pattern is the three, 3-story single family houses on the north side of the alley which abuts the subject property.

Finding of Fact No. 19, in part

The proposed structure departs substantially from the prevailing scale in the area.

Conclusion No. 3, in part

Further, one building of the size proposed, even if out of scale and character with the neighborhood, does not cause more than a moderate adverse impact. That impact should have been identified, however, in the DNS.

The examiner's conclusion in No. 8 that "(i)f the dedication of 9.5 ft. for street purposes requires reduction in the size of the structure, that condition will accomplish the desired mitigation" was found to be clearly erroneous by the City Council in its conclusion No. 1.

The City Council also corrected the examiner's interpretation of Goal I B 9 which states:

Provide for a transition in scale and use between residential and commercial areas, buffering residential areas from the impacts of heavier commercial uses, wherever possible.

The City Council concluded that this provision can be used as the basis for reducing the scale of residential uses, as well as commercial uses, in commercial areas. Conclusion No. 2.

The Hearing Examiner, therefore, enters the following:

Additional Conclusions

1. Accepting the City Council's determination that there is a policy basis to mitigate a negative impact from bulk, the re-

mainder of the requirements of Section 25.05.660 must be considered. The next requirement is that the adverse impact be "clearly identified in an environmental document on the proposal".... Section 25.05.660(1)(b). Neither the environmental checklist nor the DNS identified an adverse impact from the bulk of the building. It was identified in Findings of Fact Nos. 18 and 19 of the Hearing Examiner decision. The question then is whether the Hearing Examiner decision is an "environmental document." "Environmental document" is defined as "any written public document prepared under this chapter." Section 25.05.744. The Hearing Examiner is required to file written findings of fact, conclusions of law and a decision, Section 25.05.680(1)(c), so the Hearing Examiner's decision appears to constitute a written public document prepared under Chapter 25.05, and would be an environmental document.

2. After it is determined that there is a SEPA policy on which a condition may be based to mitigate the impact from bulk and scale, and that the adverse impact has been identified in an environmental document, a mitigating measure may be required if it is "reasonable and capable of being accomplished." Section 25.05.660(1)(c).

3. The policy intent is to provide for "transition" which term contemplates a change from one scale to another so, presumably, the goal is not to duplicate the scale but to smoothly increase the scale to that allowed by the zone. Reasonable mitigation, then, would result in bulk less than that permitted in the zone but greater than that permitted in the adjoining zone.

4. The bulk will be lessened by the reduction in length by at least 8.5 ft. because of the 9.5 ft. street dedication to maintain an 18 ft. sum of the side yards. A reduction in height to one comparable to a three-story building with peaked roof, since there are three, three-story buildings across the alley, should achieve a transition in bulk and scale, assuming that the overall design, i.e., two entrances with modulation in the center which creates the appearance of two buildings, is maintained. If the design is changed to eliminate the features that give the appearance of two buildings, then the building should be stepped down the slope to reflect the topography of the site and thus reduce the appearance of bulk.

5. Appellant contends that the number of units is another aspect of bulk and that the number of units should be reduced. Throughout the code and policies, bulk and intensity, or density, are distinguished. Bulk, in the Single Family Residential Areas Policies, is determined by height and setbacks. p. 23.16.002. In the Multi-Family Residential Areas Policies bulk considerations are width and depth with height as a separate consideration. p. 23.16.002. Both clearly are concerned with physical mass, not the intensity of use of the mass, so a condition reducing the number of units would not reasonably relate to the identified impact.

6. A reduction in height of the ridge of the building by 8 ft., maintenance of the modulation, two entrances and pitched roofs and reduction in length by at least 8.5 ft. would be reasonable conditions which would serve to mitigate the impacts from bulk. If the design features which give the appearance of two separate buildings are not retained, the roof ridge should be lowered by at least 8 ft. at the east end and at least 12 ft. at the west end in a manner to reflect the change of grade of the lot.

Decision on Remand

The decision of the Director is modified to add the following condition:

Prior to issuance of a master use permit the plans shall be

revised to show either:

- a) an 8 ft. reduction in the height of the roof ridge line, at least an 8.5 ft. reduction in the length of the building and retention of the pitched roof and the design features that give the appearance of two separate buildings; or
- b) in the case the design features that give the appearance of two separate buildings are not to be retained, the height of the roof ridge line at the east end shall be reduced at least 8 ft. and the height of the roof ridge line at the west end shall be reduced at least 12 ft. to reflect the change in the grade of the lot, and the length of the building shall be reduced at least 8.5. ft.

Entered this 2nd day of October, 1986.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

Pursuant to Seattle Municipal Code Section 25.05.680(C), 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 appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 25.05.680(C), 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(C)(12)(c). 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.