

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

In the Matter of the Appeal of

JINNY WEINTRAUB ET AL.

FILE NO. MUP-86-056(W)
APPLICATION NO. 8601980

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 October 7, 1986.

Parties to the proceedings were: appellants by Jinny Weintraub, pro se; applicant by James Potter; and the DCLU Director by Julia Gibb, associate land use specialist.

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 the personal inspection of the subject property and surrounding area by the Hearing Examiner, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject parcel is a 120 ft. deep, 60 ft. wide rectangular site located on the north side of an unopened portion of North 45th Street. The site is zoned Lowrise 3 (L-3).

2. The site is within a rectangle bordered on the west by First Avenue N.W.; on the north by an unopened segment of North 46th Street; and on the east by Palatine Avenue North. Trees and shrubbery are to the south, where unopened North 45th Street is the border.

3. The northern portion of the site is developed with a duplex which applicant proposes to retain. This duplex is south adjacent to a 16 ft. wide unpaved alley.

4. Potter Investments proposes to construct a 3-story 12-unit apartment building south of the existing duplex on the subject parcel. The proposed structure at 36' 3" height would measure 48' wide and 64' deep. A total of 16 on-site parking spaces would be provided, 14 for the apartment building and 2 for the existing duplex.

5. As the portion of North 45th immediately south of the site is unopened, access for the new structure is proposed from a partial extension of a western segment of North 45th. This segment is presently paved at 14 ft. average width from 120 ft. (two lots) east of First Avenue N.W. and serves as access for the apartment located on the northeast corner of First Avenue N.W. and North 45th Street.

6. Department's Exhibit 5 shows that the 14 ft. wide extension terminates in that corner apartment's parking lot. Applicant proposes to extend the 14 ft. wide segment farther east for access to their proposed garage.

7. Applicant has petitioned the Seattle Engineering Depart-

ment for a special exemption from the usual requirements for street access, due in large measure to the steep slope characteristics of the site, the east portion of North 45th and the general area. Also because of topography, applicants requested and have received preliminary approval from the Seattle Fire Department for fire department access to the site from above, via a staircase that will connect the upper (improved) and lower portions of North 45th Street.

8. Contingent on "Fire Marshall" approval of the stairway, Seattle Engineering Department has approved the special street access exemption if applicant secures a street use permit; and provides a total graded access width of 17 ft., 15 ft. of which should be paved, for that westerly extension of North 45th. Department's Exhibit 7.

9. DCLU issued a determination of non-significance on the proposal and appellants submitted this appeal.

10. DCLU imposed several conditions on this proposal, e.g. "Prior to Building Permit Issuance"

Applicant must obtain written approval from Seattle Fire Department to provide fire access by way of a staircase leading from the lower portion of (unopened) N. 45th Street to the improved portion of N. 45th Street...

Prior to Occupancy

2. All staircase improvements for fire access shall be completed.

11. Appellant Weintraub is a 9-year resident of the vicinity who is concerned with the impact of the proposal on the ambience of her neighborhood. Specifically, appellants contest DCLU's approval of the fire department access scheme. Appellants also oppose the anticipated impact of the proposed structure on this community of "narrow streets, dead ends and...abundance of large apartment buildings." Appellants, per Weintraub, request that the project be denied; that an EIS be issued; or alternatively that the project be conditioned to require proper fire code access, i.e. access from a widened North 45th Street.

12. Appellant's Exhibit 1 referenced a Fire Department guideline and states a requirement that "an access road capable of supporting 30,000 lb. fire apparatus shall be provided within 200 ft. of the most remote corner of the house."

13. Applicant's representative testified that the proposed fire access route was chosen because stair access, vs. widening North 45th, would preserve the vegetation along the south side of North 45th Street, would not disturb existing parking pattern along this segment of North 45th, and would avoid cutting into the hillside. In applicant's view, the designated course is the one least disruptive to the neighborhood. As noted above, applicant has secured preliminary Fire Department approval of the stair access plan.

14. The site is designated as environmentally sensitive because of steep slopes at or near the north, south and east property lines.

15. Concerning more general consequences, appellants' assessment is that parking spillover and added traffic will negatively affect area children's and others' level of safety. Weintraub testified that to her knowledge, approximately 8 of the 18 homes along First N.W. and south of North 45th are without off-street parking; that the area has on-street 32-35 parking spaces; and that the area has resident car ownership of approximately 32. Appellant did not survey parking availability to the west.

16. The DCLU analyst observed available on-street parking on her two visits to the site. Assuming a peak parking demand of 1.9 cars/unit for the 6 two-bedroom apartments proposed, and 1.5 autos/unit for the 6 one-bedroom units proposed the DCLU analyst concluded as follows:

$$\begin{array}{r}
 6 \times 1.9 = 11.4 \\
 + 6 \times 1.5 = 9.0 \\
 \hline
 20.4 \\
 \text{less } 16.0 \text{ parking spaces proposed} \\
 \hline
 \text{spillover } 6.4 \text{ vehicles}
 \end{array}$$

DCLU concluded that this parking spillover could be absorbed by the subject area.

17. Applicant's representative lives two blocks from the subject site. He added that there is parking on First Avenue N.W. and that five bicycle spaces are proposed for the site.

18. Relating to soils, a DCLU condition to the DNS requires that "During Construction"

A licensed geotechnical engineer shall be present during site excavation and foundation work to advise applicant of soils-related construction conditions as specified by Geotechnical Consultants' report...

DCLU Analysis and Decision, p.6. Cf. Exhibit 6, Soils Report.

Conclusions

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

2. The Hearing Examiner must give the DCLU environmental determination "substantial weight." Seattle Municipal Code Section 23.76.022(C)(7). It is therefore appellants' burden to show that DCLU decision to be clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762; 637 P.2d 1005 (1981).

3. In order to deny a proposal under the State Environmental Policy Act (SEPA),

...an agency must find that the proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental environmental impact statement...

Seattle Municipal Code Section 25.05.660(A)(6)(a) (emphasis supplied). As there is no EIS of record in which adverse, significant impacts are described, the Hearing Examiner is without authority at this juncture to deny the proposal.

4. Appellant has, however, requested an EIS for the project. If determined that the subject proposal "may have a probable significant adverse environmental impact" a declaration of significance (DS), to be followed by preparation of an EIS, is appropriate. Seattle Municipal Code Section 25.05.360. Appellants have not proved in this case that an EIS is required. Appellants' primary points concern traffic/parking safety and fire access. Regarding the former, the weight of the evidence fails to show any significant impact on parking availability, street circulation or pedestrian or vehicular safety. The mere presence of narrow, dead-ended streets and an increase in vehicular activity associated with an additional 12 unit apartment are insufficient to show a DNS as "clearly erroneous."

5. Similarly, the evidence suggesting a significant, adverse fire safety impact is inadequate to require an EIS. This

record fails to support a firm conclusion that fire department access as proposed will be inadequate or will lead to probable and significant adverse impacts on safety. Applicant has secured preliminary Fire Department approval for the plan. Further, Seattle Fire Department approval will be necessary before the project can be built. Based on the foregoing, no EIS is required.

6. As to adequacy of the mitigating conditions, the Hearing Examiner concludes that anticipated parking spillover can be absorbed within the vicinity of the proposal. There is therefore no basis in this record to require additional on-site parking spaces or a reduction in the number of living units. Seattle Municipal Code Section 25.05.660(A).

7. However, the DCLU condition relating to fire access should be modified to read as follows:

Prior to Building Permit Issuance

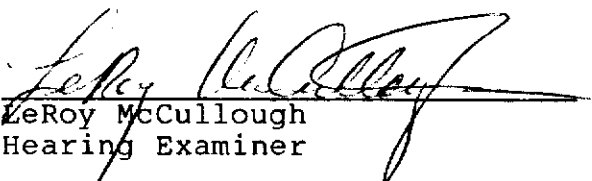
Applicant must present to DCLU a fire protection and access plan for the proposed structure. This plan shall have received the prior written approval of the Seattle Fire Department and the Department of Engineering.

By this modification, it is clarified that although fire department stair access is not required, definitive Seattle Fire Department review and approval of some safety plan shall precede issuance of a building permit. Seattle Municipal Code Section 25.05.902(3). In all other respects the DNS is affirmed.

Decision

As modified by Conclusion 7 above, the DNS with conditions is AFFIRMED.

Entered this 22nd day of October, 1986.


LeRoy McCullough
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.

