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BEFORE THE HEARING EXAMINER

MAY 19 1987

FINDINGS AND DECISION

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In the matter of the appeal of

CONCERNED CITIZENS OF SCENIC PARK

from an environmental
determination of the Director of
the Department of Construction
and Land Use

FILE NO. MUP-87-017(W)
APPLICATION NO. 8602131

Introduction

Appellant, Stephen Rock, for himself and for other area residents appeals the decision of the Director, Department of Construction and Land Use to issue a declaration of non-significance (DNS) for a proposal to construct a five(5) story mini-warehouse at 4750 - 40th S.W.

Appellant exercised his 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 May 4, 1987.

Parties to the proceeding were: appellant, by Stephen Rock, pro se; the Director, Department of Construction and Land Use by John Doan; and the applicant, B. L. Perkins, assisted by architect, Lance Mueller.

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 applicant proposes to construct a five (5) story building, 58 feet in height, having 94,500 sq. feet and containing on the 1st floor an office, loading docks and 40 parking stalls; on the 2nd floor, a 1200 sq. foot apartment, and the remaining areas of the 2nd, 3rd, 4th and 5th floors to provide mini-warehouse space.

2. Applicant's application was filed April 2, 1986 and the Director of DCLU's threshold determination was a determination of non-significance with conditions on March 5, 1987. C1-65 zoning was adopted on June 9, 1986 for the subject site but the Director declared the proposal to be vested to the prior CG zoning.

3. The 19,135 sq. foot lot is located on the northeast corner of the intersection of 40th S.W. and S.W. Edmunds in West Seattle. The rectangular shaped lot has 150 feet of frontage on 40th S.W. and 126 feet along S.W. Edmunds. Presently, the site is level and is being utilized as a paved parking lot for 60 cars. The proposed structure will cover 99% of the lot.

4. One-half block to the east and along both sides of Fauntleroy Way S.W. lies commercial development, north to the end of the block and on both sides of S.W. Alaska Street lies commercial development, south across S.W. Edmunds is the YWCA building, and west across 40th S.W. lies single family residences. One block further west on 41st S.W. is the former Jefferson elementary grade school which is being developed into a retail and residential complex.

Abutting this commercial usage which the Hearing Examiner finds to be medium intense from Director's representative credible testimony are areas zoned L-3 to the south and southeast, and SF 5000 to the southwest and east. The single family use directly west of the site will be the most impacted by the proposal but the Director's representative in testimony found credible by the Hearing Examiner stated that those residences are 4 to 5 feet higher in grade than the site and that the zoning designation for those properties is NC3-40.

5. Area residents through comment letters, petition and testimony at the public hearing oppose the bulk, lack of landscaping, view blockage and the trend of commercial development in the area. One letter concerned the impact of the anticipated increased auto traffic on S.W. Edmunds in regards to the safety of the children who attend the daycare center at the YWCA.

6. From the record and the credible testimony of Director's representative the Hearing Examiner finds that the scale and bulk of the proposal is offset by the commercial development existing in the area and by the impact of the project under construction at the site of the former elementary school. The Director's representative indicated that under the newly adopted designation, the applicant could build to a height of 65 feet and if the warehouse were constructed to that height, would, by being taller, be a bulkier, less compatible and less desirable structure on the site.

7. Despite appellant's expressed desire for curtailing commercial development in the area the Hearing Examiner finds that commercial development is the trend in the area. The Hearing Examiner does find, however, that the project under construction at the former Jefferson elementary school is to provide some residential units.

8. As vested to the prior CG designation, the Director's representative indicated that the proposed 94,500 sq. foot structure is allowed but that mitigation is required. The Hearing Examiner does not find that applicant's proposal submitted under the prior land use code designation nor the Director's consideration of the proposal under the CG designation to be improper nor in violation of any code regulation or policy as was argued by appellant.

9. Applicant's architect in credible testimony indicated that the facade treatment of textures and colors will lessen the impact of bulk of the structure. Affixing a canopy over the office usage is stated by the architect to further lessen the impact of bulk of the structure at street level. The Hearing Examiner finds that the facade treatment and canopy were conditions of granting the DNS.

10. The Director's representative in further credible testimony stated that the structure's bulk will also be mitigated by requiring street trees of maximum size. The Director's representative indicated that the City's adopted SEPA policy for landscaping will keep the proposal from having the likelihood of a significant impact on other properties in the vicinity. The Hearing Examiner finds that the size of the trees will result in a reduced number of trees required under the Code but that the larger sized trees will provide the optimum mitigation of the impact of bulk on the surrounding properties.

11. The Director's representative stated in credible testimony that in regards to concerns over traffic, the peak traffic period at the warehouse would be on Saturday between 1 and 6 and that the worst case peak period would be approximately 40 cars. On the weekdays, peak traffic period would be approximately 20 cars per day with the majority of this traffic after 6 p.m.

Applicant, further, in credible testimony indicated that the proffered data was derived from his mini-warehouse in Factoria which is fully computerized and that that operation maintains the information presented. The Hearing Examiner finds the applicant's testimony credible and relevant to these proceedings. The Hearing Examiner specifically does not find that appellant's characterization of the Factoria area as rural is correct.

As the daycare traffic was indicated by the Director's representative in credible testimony to peak between 3 and 6 p.m. on weekdays, the Hearing Examiner finds that the increased traffic in the area due to the proposal will not be of significant impact to the operation of the daycare at the YWCA.

12. Views from the private residences along 40th S.W. will be blocked and residences from the south and southwest will have their views impacted but the Hearing Examiner was presented with no policy that would operate to protect private views from private residences.

The Hearing Examiner finds that the residences to the southwest and further west are at a higher grade than the proposal's site so that the impact of the proposed height of the building will be somewhat mitigated.

13. From the credible testimony of the Director's representative, the Hearing Examiner finds that noise during construction will impact the surrounding properties but with the hours of construction limited, that this impact will be temporary and not be a significant impact.

14. Appellant's expression of concern over the use, size and number of signs to be affixed to the structure is found by the Hearing Examiner to be a message to applicant, as it was stated to be, by appellant. Appellant presented no evidence, code section or policy in regards to his argument regarding signage, and therefore, the Hearing Examiner makes no finding on this issue. The Director's Representative commented that said concerns in regards to signs and signage would be governed by the appropriate code provisions for the proposal.

15. Appellant's challenge to the adoption of the commercial designation for the area is not found to be properly before the Hearing Examiner. The Director's Representative stated in credible testimony that all prior land use designations for the area have allowed for public comment and that public hearings had been held for the purpose of solicitation of resident's comments.

16. Applicant argues that the present hearing is improper and without authority in that the Director's DNS notification stated that appeals would be accepted through the 20th of March, 1987. Appellant's appeal is date stamped March 23, 1987. Appellant's testimony found credible by the Hearing Examiner is that the appeal was timely filed. The record discloses that the appellant delivered his appeal letter to the offices of DCLU on March 20, 1987 and that the Office of Hearing Examiner received the appeal letter on March 23, 1987. The Hearing Examiner finds that the appellant has timely filed his appeal.

Conclusions

1. An environmental impact statement is required if the responsible official determines that a proposal may have a probable significant adverse impact on the environment. Seattle Municipal Code Section 25.05.360. A significant impact is present "whenever more than a moderate effect on the quality of the environment is a reasonable probability. Norway Hill v. King County Council, 87 Wn. 2d 267, 278, 552 P. 2d 674 (1976).

2. The Director of DCLU has found an impact of bulk in reviewing applicant's proposal, but the Director has conditioned the DNS by requiring facade treatment and the planting of large street trees.

The Director further conditioned the DNS by requiring a canopy over the office use and limited the hours of construction to control noise. The Hearing Examiner concludes that the Director's issuance of the DNS with conditions is appropriate.

3. Area residents' submittals and appellant's presentation at the public hearing dispute the Director's conclusions that the impacts are not significant adverse impacts but there has been no showing that the factual basis for the Director's decision are in error. No evidence was presented which contradicted the Director's conclusions. The Hearing Examiner therefore concludes that there is not a sufficient basis for reversal of the Director's decision given the standard of review of Seattle Municipal Code 23.76.36(B)(7) which requires that the Director's decision be given substantial weight.

4. The Hearing Examiner concludes the proposal should be conditioned pursuant to the DCLU decision as follows:

A. Prior to Issuance

1. In order to reduce the appearance of bulk, the owner(s) and/or responsible party(s) shall submit plans revised to show the redesign of the exterior facade to include concrete or CMU vertical and horizontal elements alternating in color with the remaining background of the structure. The colors used shall be compatible with the surrounding uses.

B. During Construction

2. In addition to the Noise Ordinance requirements, to reduce the noise impact of construction on nearby properties, the owner(s) and/or responsible party(s) shall limit the use of loud equipment, including but not limited to, pavement breakers, pile drivers, jackhammers, sandblasting tools, crawlers, tractors, compactors, drills, graders, compressors and other similar equipment to normal working hours (7:30 a.m. to 6:00 p.m.) on nonholiday weekdays.

C. Prior to Occupancy

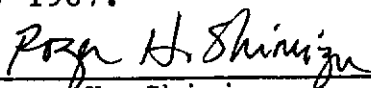
3. The owner(s) and/or responsible party(s) shall provide a total of nine large scale (of a 3 - 3-1/2 inch minimum caliper) street trees (5 on 40th Avenue S.W. and 4 on S.W. Edmunds street) at the site pursuant to a Street Use permit issued by the Seattle Department of Engineering (SED), and as approved by the City Arborist as to species and size.

4. In order to reduce the appearance of bulk and visually separate the street-level office from the remainder of the structure, the owner(s) and/or responsible party(s) shall provide, on the west side of the building pursuant to a street Use Permit issued by the Seattle Engineering Department, a fabric canopy above the windows and doors to the office as shown on the project plans.

Decision

The Director's decision to issue a DNS with conditions is AFFIRMED.

Entered this 19th day of May, 1987.



Roger H. Shimizu
Hearing Examiner Pro Tempore

Concering 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 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(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 fifteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.36(B)(11). 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(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 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.