

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

In the Matter of the Appeal of

BARTON & PAULA BOOTHE, ET AL.,

FILE NO. MUP-87-033
APPLICATION NO. 8605310

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

Introduction

Appellants, Barton and Paula Boothe, et al., appeal the decision of the Director, Department of Construction and Land Use to grant a master use permit with conditions for a six unit apartment building at 4716 - 30th Avenue South.

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 September 8, 1987.

Parties to the proceedings were: appellants, represented by Barton and Paula Boothe, the Director by Leslie Lloyd, associate land use specialist, and the applicant, Jerry Journee, by Evvian Willis, residential and commercial designer.

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 demolish a vacant single family house and construct a six unit apartment building on Lots 25 and 26, Block 2, Meadow Park Addition at 4716 - 30th Avenue S.

2. The site is a through lot with frontages on both 30th Avenue S. and Martin Luther King, Jr. Way in an NC1/40' zone.

3. Ms. Lloyd, for the Director, reviewed the application, environmental checklist, and public comment and issued a determination of non-significance pursuant to SEPA and approved the proposal subject to conditions requiring watering during construction, limiting hours of construction, requiring landscaping with street trees, requiring maintenance of the landscaping and requiring that lighting be shielded.

4. Appellants appealed the decision citing concerns with density, traffic, parking, crime, noise and litter.

5. The analysis for the DNS identified short term impacts associated with construction and permanent impacts consisting of increased surface run-off, increased building bulk, new light, increased traffic and increased parking demand.

6. Thirtieth Avenue S. is only two blocks long in this area running from S. Alaska Street on the north to South Angeline on the south. The street is used by motorists to by-pass the traffic signal at M. L. King Jr. Way S. and S. Alaska so gets more traffic than one would expect.

7. The subject site is the most southernmost lot of the NC1 zone extending along M. L. King, Jr. Way. It abuts a lot in the Single Family 5000 zone to the south. Property on the west side of 30th Avenue S. is also SF 5000.

8. To the north of the subject site is an auto repair business with its building at the southern property line of that lot. Development in the SF 5000 zone is single family with a church on S. Alaska Street a block or two west of 30th.

9. The subject site is in an area which has a high incidence of crime including vandalism and burglaries.

10. Litter from the convenience store on the north side of Alaska Street affects the area.

11. Children play in 30th Avenue S.

12. Most of the houses on 30th Avenue S. are owner-occupied.

13. Of the 17 houses on 30th Avenue S. in this area, only four have on-site parking, Louise Pekkonen's and the three newer "skinny" houses. In addition to residents and their guests parking on the street, there is occasional overflow from the auto repair shop. Appellants also believe they are, or will be, impacted by demand for parking from the church.

14. Ms. Lloyd understood that there is a bus stop in front of the site on M. L. King Jr. Way S. and, because of that fact, determined that the access to parking for the building must be from 30th Avenue S. Her understanding was based on the following statement in the environmental checklist: "busses right in front."

15. There is no bus stop in the subject block on M. L. King Jr. Way S.

16. The plans for the proposed building show it set back 10 ft. from the south property line, except for the 5 ft. intrusion of a deck into the setback.

17. The Director found the 10 ft. setback, where only 5 ft. is required, to be sufficient mitigation for the bulk of the three-story building.

18. The right-of-way for 30th Avenue S. is 60 ft. wide.

19. The increase in traffic due to the proposed development is projected to be 26 trip ends per day. The Director considered this to be a minor impact.

20. The Director concluded that parking demand for the church would not be in direct conflict with that for residents of this area.

21. Residents of the new building could park on M. L. King Jr. Way S. While parking is not prohibited on M. L. King Jr. Way S., cars seldom park there.

22. The design of the new building places it 5 ft. from the M. L. King Jr. Way S. with parking on the west side of the building.

23. The land use specialist testified that because of the volume and speed of traffic on M. L. King Jr. Way S., it would be safer to retain the driveway access to the building on 30th Avenue S.

24. Houses on 30th S. have problems each year with water in their basements which appellants believe runs off Beacon Hill.

25. The Grading and Drainage Control Code will require the proposed development to control its own run-off.

26. Appellants are concerned about the character of potential residents of the new units because of its proximity to the public housing development.

Conclusions

1. The Hearing Examiner has jurisdiction of these parties and this subject matter pursuant to Chapter 23.76.

2. The Director is granted the authority by Section 25.05.660 to impose conditions to mitigate negative environmental impacts of a project subject to a series of limitations. Those limitations are that the environmental impact must be specific and clearly identified in the environmental documents; any condition to mitigate an impact must be based on a SEPA policy, i.e., one designated in Section 25.05.902 as a basis for the exercise of such authority; the measures must be reasonable and capable of being accomplished; and responsibility for mitigation may be imposed only to the extent of the impacts from that proposal.

3. Appellants urge that the number of units be reduced to one. If that relief cannot be granted they seek a change in the access to parking to the M. L. King Jr. Way S. side.

4. To impose a condition requiring a reduction in the number of units the Director would have to find environmental impacts, policies supporting that action, that such reduction is reasonable given the degree of impacts and that the adverse environmental conditions would be attributable to the proposed development. The Director identified impacts from runoff, bulk, light, increased traffic and increased parking demand but mitigated those with conditions to the extent appropriate. Since the Hearing Examiner is to give substantial weight to the decision of the Director, it must be affirmed unless appellants show it to be clearly erroneous. Section 23.76.022C7 and Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981). Appellants' evidence did not show that the decision not to reduce the number of units was clearly erroneous.

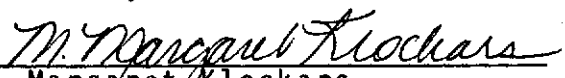
5. It should be noted that a number of the impacts anticipated by appellants, crime and litter specifically, are not addressed by SEPA so there is no authority to consider any impact, even if shown to be attributable to a specific development.

6. The Director's decision as to whether to require vehicular access from M. L. King Jr. Way S. instead of 30th Avenue S. was based on a mistake of fact. The land use specialist testified, however, that even without a bus stop, from a traffic safety standpoint the access would be better on 30th Avenue S. She concluded that it would be unreasonable to require a redesign of the project because of the small amount of traffic to be generated. Again, appellants did not show the determination to be clearly erroneous.

Decision

The decision of the Director is affirmed.

Entered this 18th day of September, 1987.


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 for 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.