

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

In the Matter of the Appeals of

PATRICIA THOR,  
NANCY BERGQUIST,  
JAMES STRICHARTZ,  
JENNY EICHWALD,  
MARLENE JAMESON, and  
DENISE WARREN AND AHMED AMR

FILE NOS. MUP-87-066(W),  
MUP-87-067(W),  
MUP-87-069(W),  
MUP-87-070(W),  
MUP-87-071(W) and  
MUP-87-072(W)

APPLICATION NO. 8606146

Introduction

Appellants appeal the decision of the Director, Department of Construction and Land Use, to issue a determination of nonsignificance for a proposed 22-unit apartment building at 4405 Linden Avenue North and not to impose further conditions pursuant to SEPA.

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 January 25, 1988.

Parties to the proceedings were: Appellants, Patricia Thor, pro se, Nancy Bergquist, pro se, James Strichartz, pro se, Jenny Eichwald, pro se, Marlene Jameson through Nancy Bergquist, and Denise Warren and Ahmed Amr by Denise Warren; the Director by Jim Barnes, land use specialist; the applicant, Paul Smith, by his architect, Thomas Lindsay.

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. Paul Smith filed a master use permit application to demolish two single-family residences and to construct a 24-unit apartment building at 4405 Linden Avenue North. In response to suggestions by the Department of Construction and Land Use (DCLU) the application was modified to propose a 22-unit building. The Director then issued a determination of nonsignificance ("DNS") and imposed conditions pursuant to SEPA. These six appeals of those decisions were filed.

2. The subject site is a two-lot parcel on the west side of Linden Avenue North in the Fremont neighborhood. Each lot is currently developed with a single-family residence which structures appear to be in good condition.

3. The subject site is zoned Lowrise 3, as are both sides of Linden Avenue North in this area. The west half of the block containing the subject property fronts on Fremont Avenue North and is zoned NC2 40'.

4. Immediately north of the subject site is a single-family residence and to the south is a 12-unit condominium building. The remainder of the blockfront is in single-family development. While there are several multi-family buildings in the area the predominant use is still single-family.

5. The large master use permit sign on the property



described a three-story, 24-unit proposal. The notice of the decision described a three-story, 22-unit building with basement garage. The notice of the appeal hearing also referred to basement parking. The proposed parking is not "basement" parking but is to be at grade with 21 spaces under the building and five regular spaces and six tandem spaces on the south and west sides of the building.

6. The proposal, then, is for a 22-unit building, four stories high including a parking level at grade, and 32 parking spaces which number include six tandem spaces. Landscaping is to be provided on all sides and a 6 ft. high fence around the parking on the south side. The applicant explained at hearing that the fence would also screen the parking on the north side.

7. Linden Avenue North is substandard in that it is not 32 ft. wide, the standard for multi-family areas. Most streets in multi-family-zoned areas are similarly substandard. The land use specialist explored options with the Engineering Department for improving the situation. The options discussed were making Linden one-way or removing on-street parking from one side; widening Linden adjacent to the subject site; widening the whole block; installing a traffic circle. Alteration of the traffic pattern was not viewed as needed at this time but may be later depending on future development in this area. Widening adjacent to the subject site was seen to serve no purpose and would eliminate one on-street parking space. Widening of the entire block was not seen as an appropriate mitigating measure in that the expense would be too great for a single development.

8. The roadway of Linden Avenue North is 25 ft. wide. With parking on both sides of the street there is only one lane for travel. Because of on-street parking, on occasion a car meeting an oncoming car must back down Linden and around the corner, onto a street used by cars exiting Aurora which may be traveling faster than street traffic.

9. The intersection of Linden and North Allen Place, which is one lot away from the subject site, is considered a high accident intersection because of the number of reported accidents. Many minor accidents at that intersection are not reported.

10. The number of vehicle trips projected to be generated by the proposal was stated to be 120 in the checklist. Based on ITE trip generation rates of 6.6 trips per unit, the number should have been 145.

11. The volume of traffic on Linden south of Allen Place has been an average of 850 vehicles per day with 90 of those trips during the p.m. peak hour.

12. The proposal is expected to generate 14 to 15 trips during the p.m. peak hour.

13. The traffic generated by the proposed building would represent a very small percentage of the traffic at the intersection of Linden and Allen, according to applicant's traffic consultant. No evidence to the contrary was shown.

14. Applicant's traffic consultant agrees with appellants that the two-way street situation is undesirable and that the increased traffic will have an adverse effect but concluded that the impact would not be significant.

15. If Linden Avenue was widened to the City's standard, the frequency of accidents with parked vehicles would be reduced significantly.

16. Traffic circles reduce the frequency and magnitude of traffic accidents at intersections, according to applicant's traffic consultant.

17. The land use specialist found that there is no accepted



practice as to how to assess impact of traffic on the street other than at intersections. He acknowledges that the situation on Linden is bad and that a level will be reached when steps will have to be taken but that the addition of traffic from this proposal will not reach that level.

18. The installation of a traffic circle at Allen Place and Linden Avenue could reduce the accident potential. Cost of installation is estimated to be between \$3,000 and \$7,000. Appellants ask that the applicant be required to fund the installation and maintenance of a traffic circle at that location.

19. The land use specialist views the cost of a traffic circle to be unreasonable to mitigate the level of impact from this project.

20. The location has been added to the Engineering Department's list for study. If private funds were available the circle would be installed.

21. Traffic and parking in the area was studied by TDA, Inc. The instructions from DCLU on the land use correction sheet for the study specified an area covering Linden Avenue North between North 42nd and North 45th and the cross streets between Aurora Avenue North and Fremont Avenue North. The land use specialist clarified his instructions to the consultant and directed that parking on Aurora and Fremont be included in the study area. The Engineering Department had advised the land use specialist to include the parking spaces in the west lane of Aurora since they are available for parking.

22. The supply of on-street parking spaces within the study area was found to be 219. The average utilization on a week night was found to be 156 spaces or 71 percent.

23. The survey data was adjusted by the consultants to add probable spillover of 14 spaces from apartment buildings at 802 North 43rd and 800 North Allen Place. The utilization rate with that spillover would be 78 percent.

24. The on-street parking demand from the the newer building at 800 North Allen may be higher than the standard used in calculating the utilization since tenants are charged for the parking separately from their apartment rental.

25. A new building at 717 North 45th was not considered by the parking consultant or the land use specialist in assessing on-street parking demand in the area. With six units in that building, the spillover would be expected to be three spaces which would raise the average utilization to 79 percent.

26. The parking supply figure includes 17 spaces on Aurora Avenue North, a state highway, in the lane used by traffic merging onto Aurora. While those are legal spaces, cars parked may make joining Aurora traffic difficult and parked cars are in danger of being hit. If those spaces are excluded from the supply for the area, because most are not likely to be used, the utilization rate would be 86 percent.

27. With the 22 units proposed, as many as four cars could need parking on-street. If the tandem spaces are used, the spillover would be reduced. Because of the inconvenience of tandem spaces, their full utilization for parking cannot be assured.

28. If four more cars were parked on the street, the average utilization rate for the area (including the 17 Aurora spaces) would be 81 percent.

29. Parking in five spaces of the supply is prohibited between 9:00 a.m. and 4:00 p.m., making them less desirable to the residents.

30. Between eighty and ninety percent utilization of the



theoretical supply is considered to be the practical capacity for on-street parking by the Engineering Department.

31. There is substantial illegal parking (on planting strips, too close to fire hydrants, etc.) in the area.

32. The parking situation has deteriorated significantly since the addition of the three newest apartment buildings. Other master use permit signs show additional proposals for the area.

33. Based on the parking study by applicant's consultant, the land use specialist concluded that on-street parking is overutilized in the area. Given the mitigation already included in the project which reduced the number of units and increased the amount of parking, he concluded that the remaining spillover demand for on-street parking is a fair burden to be placed on the neighborhood. He also concluded that even if the existing utilization is greater than it was at the time of the survey, the project's parking impact cannot be further mitigated.

34. Construction vehicles, equipment and supplies have occupied on-street parking spaces during construction of the new apartment buildings. One appellant asks for a condition requiring that such equipment or materials be removed from the street at night so that the spaces are available for the residents.

35. The new parking amendment to the code would require a parking ratio of 1.3 spaces per unit for this proposal. DCLU calculates that the ratio proposed is 1.39 spaces per unit.

36. With only a few exceptions, such as the ten-unit building at 802 North 43rd, the structures in the neighborhood are one or two stories in height. Further, structures in the NC zone along Fremont are low in scale.

37. Appellants ask that the project be limited to two stories to make it more consistent with other structures in the neighborhood. Basement parking would be preferred to surface parking.

38. When the applicant modified his plans to reduce the number of units the overall mass was not changed. Appellants are concerned that in the future the space which was freed up could be converted back to dwelling units without permits.

39. The land use specialist imposed no condition to mitigate bulk or height because the proposed condition is not on an edge of a zone which has development standards requiring less bulk.

40. Some appellants object to the increased density because of the likelihood of increased noise, pollution and litter.

41. A measure to mitigate construction noise is the condition regulating the hours. The condition limits construction to the hours of 7:00 a.m. to 6:00 p.m. on nonholiday weekdays.

42. The residents' experience with the other construction projects nearby was that the workers came before 7:00 a.m. and made nonconstruction noise that was disturbing. Appellant Strichartz requests that a later starting time be required.

43. The land use specialist opined that there is no reason to expect any unusual noise from the proposed building when it is occupied. The Hearing Examiner concurs in this opinion.

44. Light from headlights entering the parking area should not bother other properties because of fencing and walls. Light from cars leaving will shine on the property directly across the street. The only measure suggested by appellants to mitigate that impact was to decrease the number of occupants of the building.



45. Conditions were imposed by the Director to mitigate construction noise impacts as stated above; to mitigate the building bulk by requiring landscaping; to mitigate light and glare by requiring shielding of outdoor lighting and a fence adjacent to open parking areas; and to mitigate parking impacts by prohibiting the charging of a separate fee for parking and assigning the tandem parking stalls each to one unit.

46. The land use specialist testified that he has required an environmental impact statement once or twice for proposed apartment buildings in Lowrise 3 zones out of thousands of proposals.

47. Interim development standards were imposed by the City Council on areas in Ballard and Fremont in November, 1987.

### Conclusions

1. An environmental impact statement is required if the responsible official finds that the proposal may have a "probable significant adverse environmental impact." Section 25.05.360. A DNS is to be issued when the responsible official determines that there will not such impact. Section 25.05.340. "Probable" is defined as "...likely or reasonably likely to occur...." Section 25.05.782. The meaning of "significant", for purposes of SEPA, is "a reasonable likelihood of more than a moderate adverse impact on environmental quality." Section 25.05.794.

2. One of the appellants suggests that the evidence shows a policy determination by the Director not to require EIS's for apartment buildings in L-3 zones without regard for the cumulative effect of these buildings on an area. There are other reasonable inferences that can be drawn from the evidence that only a small number of EIS's have been required. Moreover, it is the appellant's burden to show that the Director erred in determining that this proposal would not cause a significant adverse effect on the environment, which environment includes other development already approved.

3. None of the impacts, additional traffic, parking demand, construction impacts or bulk and height of the building, have been shown to rise to the level of a significant adverse impact. Therefore, no error has been shown in the decision to issue a DNS.

4. Proposals may be conditioned, to mitigate environmental impacts provided the the following conditions are met: the mitigation measures must be based on policies formally adopted as bases for the exercise of substantive authority pursuant to SEPA; the measures must relate to environmental impacts which have been clearly identified in an environmental document; the mitigation measures are to be reasonable and capable of being accomplished; and the applicant can be held responsible only to the extent that the impact is attributable to the proposal. Section 25.05.660.

5. Appellants have shown, and the environmental documents acknowledged, that the proposed building would be substantially bulkier than most of the buildings in the area and, therefore, out of scale. There is no policy authority, however, to impose mitigating conditions to reduce the bulk of a building where the subject site is not on the edge of a zone where transition in size is needed or where there are not unusual circumstances which the City Council would not have contemplated at the time the zoning designation was applied to the site. The fact that the surrounding buildings are developed to a lower height is not justification for a condition reducing the height of the building. In re Oden Investment, C.F. No. 293557 (1985). Without that policy basis, no condition may be imposed.

6. Appellants have shown that street parking is nearly at practical capacity. Yet, because the projected spillover from the proposed building is so small (0 to 4 spaces) and the project



already includes more parking than required, mitigation of parking impacts by reducing the number of units would be unreasonable.

7. Given the near capacity parking situation in the area, use of the street for storage of vehicles, equipment or supplies during construction would have an adverse effect on parking. The Director has authority under Section 25.05.902D.2.c to require measures to mitigate adverse parking impacts. A condition restricting the use of the street for storage should have been imposed.

8. One appellant requests that proposed fencing be clarified on the plans. Condition No. 4 of the Director's decision states clearly where fencing is required to mitigate light and glare impacts. None other can be required. However, the applicant has stated a willingness to meet with neighbors to plan additional screening.

9. Condition No. 1 of the Director's decision which limits construction to the hours of 7:00 a.m. to 6:00 p.m. should be revised to 7:30 a.m. to 6:00 p.m.

10. Appellants each request one or more of a number of conditions to mitigate the impact of additional vehicles on the circulation system and street safety. There is authority under the cumulative effects policy, Section 25.05.902C, to modify a project to lessen its demand for support services and facilities (presumably streets), and also to provide for the needs of subsequent projects. The record does not show what level of traffic can be accommodated safely by the street. Without that information it cannot be determined whether the project should be limited to lessen the demand or to what extent. In any case, there are other means to increase the capacity of the street such as establishing it as one-way. The Engineering Department has indicated that adjustments will be considered when there is increased traffic to accommodate.

11. The installation of a traffic circle at the intersection would enhance safety. However, the record shows that the intersection is already hazardous and that the project would add only a very small percentage to the volume at the intersection. Therefore, requiring the applicant to be responsible for the cost of the traffic circle would violate the limitation on the Director's authority, i.e., that the measures must mitigate a situation to the extent it is attributable to the proposal. The other difficulty in requiring even a proportional payment of the cost is that while the policy intent seems to be broad, the only authority under the parking and traffic policy of Section 25.05.902D addressing traffic is:

d. The City official or authorizing agency may require curb cuts, construction of sidewalks and other pedestrian access amenities or deeding of street right-of-way.

The Hearing Examiner does not find authority to require installation, or partial payment for installation, of a traffic circle since it does not appear to be a pedestrian access amenity.

#### Decision

Condition No. 1 is modified to read:

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 construction to the hours of 7:30 a.m. to 6:00 p.m. on nonholiday weekdays only.

Condition No. 1a is hereby added:

To reduce the impact on the heavily utilized on-street parking, construction vehicles, equipment or materials shall not occupy the street so as to reduce the amount of parking available



after 6:00 p.m. or on weekends.

With those modifications, the decision of the Director is affirmed.

Entered this 9th day of February, 1988.

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 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.