

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

In the Matter of the Appeal of

NANCY DARDARIAN, ROBERT  
ELEFSON AND CENTRAL BALLARD  
COMMUNITY COUNCIL

FILE NO. MUP-87-073(W)  
APPLICATION NO. 8702219

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

Introduction

Appellant for herself, her husband and 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 demolish a single family residence and to construct a ten (10) unit, three (3) story apartment building at 1531 N.W. 61st Street.

Appellant appealed pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on January 26 and 29, 1988.

Parties to the public hearing were: Appellant, Nancy Dardarian, hereafter referred to as lead appellant, pro se, the Director, Department of Construction and Land Use by Meredith Getches, and applicant by Rod Simmons, attorney at law.

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 Facts

1. The site is located in a Lowrise 2 (L-2) zone at mid-block on the south side of N.W. 61st Street between 15th Avenue N.W. and 17th Avenue N.W. The site is presently developed with a single family residence that is proposed by applicant to be demolished to permit construction of the project. From the record the Hearing Examiner finds that the applicant has applied for an appropriate permit, A HPO 87-080, in accordance to the Housing Preservation Ordinance.

2. The Hearing Examiner finds in accord with the prehearing conference held December 22, 1987 in this matter that the down-zoning plan for the Ballard area was not applicable to this project as approval had vested to this property.

3. The lot is 75 feet by 95 feet and at 7,125 square feet was stated in credible testimony of the Director's representative to be one of the larger lots in the block and the Hearing Examiner so finds. A ten (10) foot wide alley is at the rear of the lot.

4. The Hearing Examiner finds from the testimony of the Director's representative that the area of the site, 1/2 block from 15th Avenue N.W. (which is of intense commercial use), is undergoing a transition to more intensive residential use by the infilling of multi-family residences. Appellant and the DCLU representative referenced numerous multi-family projects in existence, under construction or in development.

5. The Hearing Examiner finds from lead appellant's credible testimony that structures surrounding the site are, with few exceptions, two(2) story apartments and homes.

6. The proposed development will be a three (3) story building with six two-bedroom units, four one-bedroom units, with 10 on-site parking spaces provided on the first level at the rear. Access will be from the alley. At the Seattle Engineering Department ratio of 1.5 x 10 units, the proposal is expected to create a demand for 15 parking spaces. A 5 auto spillover parking demand will impact the surrounding streets.

7. Approximately four dozen personal letters and one petition containing twenty-two signatures referencing 30 area residences were received during the public comment period. The issues of concern were the bulk, scale and height of the proposed building, the impacts related to increased automobiles in the area as to parking and safety, and issues relating to the alley. Additional personal letters were submitted at the public hearing and an area resident also testified as to the alley and automobile related impacts.

8. The Director's representative presented testimony, found credible by the Hearing Examiner, that parking utilization in the area is at a 34 percent utilization rate. The area of study included the west side of 15th Avenue N.W., both sides of 17th Avenue N.W. between N.W. 59th Street and N.W. 63rd Street, and both sides of N.W. 61st Street from the intersection of 15th N.W. and N.W. 61st Street to mid-block of the block of 17th N.W. and 20th N.W. A total of 133 spaces were counted and identified as being available 800 feet of the site. Lead appellant's survey resulted in identifying 123 available parking spaces in the same general area.

9. Lead appellant questioned the validity of the applicant's study because spillover from neighboring multi-family structures were not considered for their cumulative impact on available parking spaces in the area. In appellant's Exhibit 7, twenty-one (21) structures within the area bounded by N.W. 65th Street, 24th N.W., N.W. 58th and 15th N.W. totaled 159 units that lead appellant alleged would impact the same streets impacted by applicant's project. Alley traffic on the block of the site was also alleged to be impacted by these units as well as by the auto traffic associated with the proposed number of tenants at the site. A 50 percent increase in alley traffic was alleged by the area resident.

10. The evidence of record fails to show that a majority of these referenced apartments would cause the impact alleged by lead appellant and the area resident. The Hearing Examiner finds that the Director's representative had taken into account other apartments expected to impact the area's streets and had projected an anticipated 15 spillover demand that could be accommodated by the available parking spaces on the surrounding streets. The Hearing Examiner finds that the surrounding area streets can accommodate the spillover parking demand due to the percentage of present utilization of available parking.

11. At the public hearing the Director's representative through Director's Exhibit 22 presented a 58-63 percent utilization rate, depending on appellant's or applicant's study, that would take into account eight (8) apartments that are located on N.W. 61st and N.W. 62nd to 20th N.W. and in the 1500 block of N.W. 59th. The Hearing Examiner also finds that in this enlarged study area that the area streets could accommodate the increased parking demand in the area from the proposal and other projects.

12. One area resident asserted that increased alley use by new tenants would significantly and adversely impact the safety of several children who use the alley for play and as a pedestrian route.

13. As presented by Director's representative, the Hearing Examiner finds that alley access is required to prevent the loss

of on-street parking along N.W. 61st and that with the required three (3) feet of dedication required of the applicant as mitigation, the proposed use of the alley for access would cause only a minor decrease in safety. The record fails to reflect a negative impact for fire truck access.

14. Lead appellant argues that the height of the proposal at 35 feet will make the proposal taller than any other building in the area with the exception of the building at 17th N.W. Abutting the proposal are a one-story residence and a duplex. Lead appellant also argued that the alleged lot-line to lot-line configuration of the proposal is out of character with the development in the area. Applicant and applicant's architect in testimony found credible by the Hearing Examiner indicated that the proposal is being constructed in accordance to all building and zoning requirements as to height, yards, set-backs, parking and required alley dedication. Both lead appellant and applicant introduced evidence as to height and the evidence indicated a north to south slope at an approximate 8 percent grade in the subject area.

15. Although single family residences and one-story duplexes exist in the L-2 zone, the Hearing Examiner finds that due to the existing mixed use in the area and slope of the topography, applicant's proposed development would not be out of character with other development nor violate any height restrictions in the area.

16. The Director's representative in testimony found credible by the Hearing Examiner indicated that required landscaping at the site will soften the appearance of the development but that no further mitigation would be required of applicant's proposal.

17. Further testimony of the Director's representative found credible by the Hearing Examiner is that long term impacts such as increased traffic, water runoff, tenant population and associated noises, lighting levels, and bulk and scale at the site are adverse but are not major impacts. The impacts will be mitigated by ordinances and relevant codes. Short term impacts related to demolition and construction such as noise from equipment, decreased air quality, etc., being temporary in nature, were not determined to be significant impacts.

18. Lead appellant argues that the project will cause loss of views from private residences, shadows and a loss of privacy. No code section had been presented which would give authority to the Hearing Examiner to condition the proposal as requested.

19. The appellant requested that the City be required to widen the alley to 16 ft. as a condition to the proposal. Appellant also requested that the Hearing Examiner limit the proposal to 4 units with 100 percent on-site and guest parking; delay the Hearing Examiner's decision until other downzoning efforts are final and evaluated; require another parking study; require monthly verification of landscaping; require a 6 foot alley dedication; research prior case decisions; order retention of an existing tree on site; and provide low income housing.

### Conclusions

1. The following conclusions are based on the provisions of Seattle Municipal Code Chapter 23.76 and 25.05 as well as on City Council and court precedent. 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. Area residents' letters, testimony and lead appellant's

presentation at the public hearing dispute the Director's decision that there are not significant impacts created by the proposal. But there has been no showing that the factual bases for the Director's decision are in error. A difference of opinion is not a sufficient challenge.

3. The Hearing Examiner concludes that the impacts due to the bulk, height and scale of the proposal will not be a significant adverse impact because of the existing development in the area. The 3 feet alley dedication and the required landscaping mitigates the impacts from the bulk and scale of the proposal. In light of the present development pattern, the Hearing Examiner concludes that requiring a 16 ft. wide alley is not "reasonable." Seattle Municipal Code Section 25.05.660(A)(5). Further, the low-income housing landscaping conditions requested were not shown to be reasonable mitigation.

4. The Hearing Examiner concludes that the automobile related impacts such as increased parking demand, increased traffic, and safety to both the surrounding streets and the alley are not significant adverse impacts. The Hearing Examiner concludes on the basis of the Director's representative's presentation of the enlarged parking study that there will not be cumulative impacts that would require mitigation. Since the area can absorb the increased parking, there is no basis to require a reduction in the number of units. There is no authority to suspend applicant's proposal until other downzoning efforts are evaluated.

5. The Hearing Examiner concludes that there is not a sufficient basis for reversal of the Director's decision given the standard review of Section 23.76.36(B)(7), Seattle Municipal Code which requires that the Director's decision be given substantial weight.

6. The Hearing Examiner concludes that the proposal should be conditioned as found in the DCLU decision:

Prior to issue of Master Use Permit

1. The owner(s) and/or responsible party(s) shall submit three sets of a revised plan showing the three foot dedication for the alley right-of-way to the satisfaction of the Land Use Specialist.

During Construction

1. 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 7:00 a.m. to 6:00 p.m. on non-holiday weekdays only.

Prior to Occupancy

1. To reduce the impact of building scale, the owner(s) and/or responsible party(s) shall provide landscaping according to the plan approval by the Land Use Specialist. The owner(s) and/or responsible party(s) shall submit to the Construction Inspector an affidavit from a landscape professional that the landscaping is installed per plan.
2. The owner(s) and/or responsible party(s) shall direct and shield illumination of parking areas and building exteriors so that all lighting is contained on the property and nearby properties or street traffic are not affected by light or glare.
3. To prevent vehicle lights from affecting adjacent properties, the owner(s) and/or responsible party(s) shall install a 6 ft. high wood screening fence on the east and west property lines bordering the parking area.

Permanent for the Life of the Project

1. The owner(s) and/or responsible party(s) shall maintain all landscaping per approved plans.
2. The owner(s) and/or responsible party(s) shall direct illumination of parking areas or building exteriors so that all lighting is contained on the property and nearby properties or street traffic are not affected by light glare.

#### Decision

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

Entered this 14th day of February, 1988.

Roger H. Shimizu  
Roger H. Shimizu  
Hearing Examiner Pro Tempore

#### 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). 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.