

AMENDED

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

Reed
SEPA
PUBLIC
INFORM
05/05/88
Green

In the Matter of the Appeal of

JAMES & DONNA KNUDTSON

FILE NO. MUP-88-007(W)

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

APPLICATION NO. 8704941

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 April 8, and 19, 1988.

Parties to the proceedings were: appellant by Scott Blair, Esq.; applicant by John Hendrickson, Esq.; and the Director of the Department of Construction and Land Use by John Doan.

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 subject property is a rectangular corner lot located near N. 136th Street and Greenwood Avenue N. The street address is 13543 Greenwood Avenue N. Access from N. 136th to Greenwood Avenue is controlled by a stop sign.

2. The subject property, approximately 18,980 square ft. in area, is developed with a 2-story single family home that is near the southern lot line. Applicant proposes to demolish the single family structure and construct on-site a series of 4, 3-story apartment buildings that would be connected above by walkways and which would share underground parking.

3. Applicant's proposed 36 units would include 12 studios, 18 one-bedroom units and 6 two-bedroom units. Secured parking underground for 45 spaces is also proposed.

4. The subject site measures approximately 140 ft. east-west. The east 120 ft. is zoned Lowrise 2 (L-2). The west 20 ft. of the site, zoned Single Family 7200, is adjacent to a SF 7200 lot that is developed with a one-story single family dwelling oriented north to N. 136th Street.

5. There is a mix of zoning in the subject vicinity. As indicated, SF 7200 zoning is west adjacent. The east and west sides of Greenwood Avenue N. are principally zoned L-2 or L-3, inclusive of the east 120 ft. of the subject site that fronts to N. 136th Street. The multi-family zones are developed with duplexes, apartment buildings and nursing home facilities and a few remaining single family structures.

6. A 4-story, 45-unit apartment building is directly south of the subject site. Directly north of the site, across N. 136th Street, is a fourplex.

7. Directly east of the site, across heavily travelled Greenwood Avenue N., are triplexes. East and southeast of the triplexes is the body of Bitter Lake. DCLU estimated the dis-

tance to the Lake as 300 ft.; appellants approximately 175 ft.

8. Applicant proposes that access to the underground garage be from N. 136th Street, a two-lane residential access street without curbs, gutters or sidewalks. North 136th Street is paved to approximately 24 ft. in width.

9. Greenwood Avenue N. is a principal 4-lane "regional arterial" that is signalized at intersections with N. 145th, N. 143rd and N. 130th Street. A crosswalk signal is located on Greenwood between N. 130th and N. 132nd Street that is pedestrian activated.

10. The site is directly served by Metro bus routes 5,302 and 355.

11. The level of service (LOS) for the 130th-Greenwood signalized intersection is B, based on 1986 traffic volumes, for the morning and afternoon peak hour volumes.

12. Based on the Institute of Transportation Engineers (ITE) reported estimate of 6.1 vehicle trips per dwelling unit, the 36 units would be expected to generate approximate 220 vehicle trips per average weekday. Approximately 75 percent would be to and from the south; 25 percent to and from the north.

13. Of the 232 average weekday vehicle trips originally anticipated by the study, 19 were expected to be AM peak hour trips and 27 PM peak hour trips.

14. The Hearing Examiner finds in accord with the credible testimony of applicant's traffic engineer that when added to other vicinity projects proposed, viz.

8702683	300 N. 130th Street	186 units
8703153	600 N. 130th Street	38 - bed hospital
8704297	12726 Greenwood N.	56 units
8704326	13410 Greenwood N.	56 units
8705204	903 N. 130th Street	40 units

the proposed project will cause no decrease in the 1989 AM peak level of service. The 1989 year is the theoretical year for occupancy of the designated projects. The traffic study concluded that the 1989 PM peak would be D. Of particular concern is the southbound left turn activity.

15. Traffic impacts from Projects 8704297 and 8702683 have been the subject of mitigation measures imposed by DCLU, i.e. funds have contributed to improve the 130th-Greenwood signalization. Project 8705204 is contributing funds for signal improvements at N. 130th and Linden Avenue N.

16. The Hearing Examiner finds that application of the Seattle Engineering Department 1.5 vehicle per unit ratio yields a project demand of 54 spaces. As applicant is proposing 44 on-site spaces, the spillover will approximate 10 spaces.

17. The Hearing Examiner finds that west of Greenwood and within 800 ft. of the proposal are approximately 121 on-street available parking spaces. These include spaces within the single family zone to the west of the subject site. The approximate overflow from the subject project would utilize roughly 7 percent of the total on-street supply available.

18. The proposed structures would be 31 ft. tall to the crest of the 4 foot pitched roof. Two buildings would be located along the east (Greenwood) side of the lot and two along the west side of the lot. Although separated by 10 ft. breaks on each side, the buildings would present as 110 ft. wide along the east and west sides and 108 ft. along the north and south sides.

19. Along the west side, adjacent to the single family lot referenced above, the more northerly building's west facade will approximate 68 ft. in width and the more southerly 26 ft. Both.

would be 31 ft. in height.

20. The proposed development complies with L-2 development standards.

21. The landscaping plan proposed includes provisions for a dense row of tall evergreen trees to edge the west property line. Also, the development will be set back 20 ft. from the west property line. The landscaping plan further calls for a mix of deciduous and coniferous trees around each building as well as smaller bushes, trees and landscaped areas. See Exhibit 25. The site presently has several large evergreen trees and other smaller vegetation.

22. The 137th - Greenwood intersection area typically experiences severe "puddling" during heavy rainfalls. During these periods, traffic typically reroutes to N. 136th. The record reflects that the street flooding is traceable to a plugged, ineffective 48 in. drain to Bitter Lake.

23. Bitter Lake has a build-up of grease, oils and other substances that detract from the quality of the lake. One of appellants' major concern is with the anticipated impact of increased surface water runoff from the site on Bitter Lake. There is a further concern that oil from the increased number of cars parked on or off site will find its way into Bitter Lake and exacerbate the problem.

24. The proposed development will be required to comply with the Seattle Comprehensive Drainage Control Ordinance. Pursuant to that ordinance, applicant's drainage plan will include on-site detention, controlled release, and oil-water separation. Any drippings from on-site (garage) parking will be routed to the sanitary sewer system.

25. The capacity of the proposed on-site stormwater detention is that of a 25-year (vs. a 10-year) storm. This will result in an increase of 33 percent in volume/capacity. Compliance with the drainage ordinance would also require that the water be retained on site and released periodically in an amount consistent with the degree of present runoff.

26. The Hearing Examiner finds that the proposal will have little or no impact on the quality of the Bitter Lake body of water. Neither will the project cause more than a negligible effect on present on street flooding.

27. A 1989 Capital Improvement Program proposal is expected to include a on street sedimentation trap and separator for the N. 138th-N. 137th Street area. The success of this proposal, combined with the present quality of maintenance of the existing street drainage systems, will impact the amount and quality of water flows to Bitter Lake.

28. Other DCLU conditions attached to the permit include requirements that the "owner and/or responsible party:

A. provide bus schedules and one month Metro transit pass to each unit B."...include all charges for on-site parking in the sale price on rental free" and assign each unit a parking space. C."...provide street improvements as approved in the concept street improvement plans or be bonded to the satisfaction of SED for constructions."

29. Regarding item 28(C) above, SED will require applicant to provide concrete curbs, gutters, drainage and sidewalks to the adjacent portions of N. 136th Street and Greenwood Avenue North.

Conclusions

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

2. Seattle Municipal Code Section 23.76.22(B)(7) provides that the DCLU Director's environmental determination shall be given "substantial weight." In this case, appellants' burden of showing the DCLU decision to be clearly erroneous was not met. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. For the Hearing Examiner to require preparation of an EIS, the appellants must show adverse impacts that are significant and probable. Seattle Municipal Code Section 25.05.360(A). "Probable" means "likely or reasonably likely to occur;" it does not refer to remote or speculative consequences. Seattle Municipal Code 25.05.782. A "significant" impact is one with "a reasonable likelihood of more than a moderate adverse impact..." Seattle Municipal Code Section 25.05.794.

4. The proposal will adversely impact traffic and parking. There will be an increase in the number of vehicles entering and exiting the Greenwood arterial and the residential access streets nearby. These and other impacts, however, were not proved to be significant. Ample parking is available and the effect on levels of service will not be severe, even after consideration of 1989 occupancy of the subject and other contemporary projects. It is possible that project-based sediment, oils or other substances, may find their way to Bitter Lake. However, this potential was not shown to be "probable." Nor, in light of the oil-water separation aspect of the required drainage control plan, was the impact proved to be "significant." Finally, the bulk and scale proposed is not inconsistent with the prevailing development pattern along Greenwood Avenue N. After a review of the entire record, the Hearing Examiner concludes that the burden of persuasion was not met. No environmental impact statement is required.

5. Environmental impacts that are not "significant" may nevertheless serve as bases for mitigation. The impacts must be specific and clearly identified, and the resultant mitigation must be "reasonable." Also, the mitigation must be based on specific policies or regulations formally designated for consideration by Seattle Municipal Code Section 25.05.902. Seattle Municipal Code Section 25.05.660(A)(2).

6. As noted above, the anticipated parking spillover is 10 vehicles. This can be accommodated within a reasonable distance of the project. The amount of traffic expected to be generated will not alter the AM peak level of service but may decrease the P.M. level of service. Balanced against this P.M. impact are proposed improvements to local signalization. It is also noted that the site is served by three bus lines and a regional arterial. There is no basis, therefore, for the Hearing Examiner to require a reduction in the number of units. Some additional protection is required, however, for the west adjacent single family neighborhood. Traffic exiting the site should be allowed to make right turns only, i.e. from N. 136th to Greenwood.

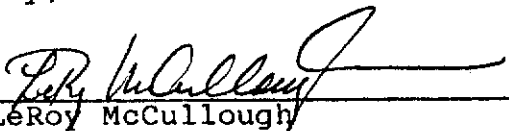
7. The bulk and scale of the building could, under other circumstances, present a dramatic effect on the west adjacent single family dwelling. Under those circumstances, some scaling back of the west facade and reduction in height on that facade could be argued. In Re Strosahl, C.F. 296112 (1988). In the instant case, however, the proposed structure is set back 20 ft. from the west property line and is encircled with trees of various species. Specifically, west border landscaping will include a row of tall evergreens against the building. The west adjacent dwelling is oriented north, away from the project site, to N. 136th Street. Under these circumstances, the Hearing Examiner is not persuaded that modification to the design of the building is required.

8. It is further recognized, in accord with the DCLU decision of record, that principal structures in the single family zone are allowed a 30 ft. height, "plus another 5 ft. for a pitched roof" and that "the proposed apartment is actually shorter than the maximum allowed in the Single Family zone." at p. 5.

Decision

As modified herein, the DCLU decision is AFFIRMED.

Entered this 5th day of May, 1988.


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 decision is filed with the SEPA Public Information Center the same day that the decision is signed by the Examiner. The SEPA Public Information Center telephone number is 684-8322. 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.