

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

SUE ROBINSON, SUSAN WILLINGHAM ET AL.

FILE NO. MUP-88-014(W)

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

APPLICATION NO. 8707302

#### Introduction

Appellants challenged the adequacy of conditions imposed on a proposal to construct an eight-unit apartment at 1531 N.W. 59th Street.

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 May 4, 1988.

Parties to the proceedings were: appellants, pro se; applicant by Victor Malen, pro se; and the Director of the Department of Construction and Land Use by Faith Lumsden, land use specialist.

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. Applicant proposes to demolish a single family residence and construct on-site an eight-unit apartment building with eight first floor parking spaces. The site address is 1531 N.W. 59th Street.

2. The subject site is located roughly midblock on the south side of N.W. 59th Street. Seventeenth Avenue N.W. is the block's west boundary and 15th Avenue N.W. the block's east boundary.

3. The subject site is included within a large Lowrise 2 (L-2) zone located within the Ballard/Fremont area. The site, surrounded by other L-2 zoning, is on the edge of no single-family or other zone.

4. The subject site lies geographically within the Ballard/Fremont study area that at the time of the present DCLU decision was subject to City Council interim development standards. However, the present application was accepted by DCLU as completed on October 21, 1987. Because the interim "downzone" controls were effective subsequently, November 13, 1987, DCLU considered the project "vested" to regular L-2 development standards.

5. The flat, 6000 sq. ft. - area site has 60 ft. of frontage to N.W. 59th Street. The site has no alley access.

6. The site is presently developed with a single family structure that is in an advanced state of disrepair. One corner of the house is supported by beams and a jack.

7. The site is marked with several mature trees and shrubbery. The growth supports squirrels, birds and similar wildlife. Specific to this case, appellants' letter of appeal requested that applicant preserve a large tree that is located in



the rear of the lot and that the overhang of a tree located on the lot west adjacent to the proposal site (1537 N.W. 59th) not be affected. (See appeal letter "Recommendations"). In hearing appellants pressed their concern that the landscaping proposed was insufficient, and added a request that a second large tree also be retained.

8. Applicant testified that while he would trim the adjacent overhang to the degree necessary to avoid that tree's contact with the new building, he sees no reason to remove perimeter trees. Specifically, he continued, he would positively review the question of retaining the rear trees.

9. In general, the immediate vicinity presents as a stark, urban environment with minimal shrubbery, tree or other greenery.

10. The properties directly adjacent to and across the street from the site (north) are developed with single family structures.

11. These homes across N.W. 59th are generally five-seven ft. above street level and have retaining walls or rockeries at the property line. They also have steps ascending to the front doors.

12. Also, the properties across N.W. 59th from the site have rear alley access. Some residents park off this alley. One of the residents testified in opposition to the introduction of any new buildings onto the block. According to that resident, on at least one occasion an ambulance could not access the alley because of "illegal parking" along the alleyway. The Hearing Examiner does not find that alley blockage is a common occurrence. Nor does the Hearing Examiner find that the proposal will particularly detract from alley accessibility.

13. Vicinity dwellings are typically small, turn-of-the-century homes. Some are single-story with attic structures.

14. Northwest 59th is paved for an approximate width of 25 ft. Parking is allowed on both sides of this street. Fifteenth Avenue N.W., roughly one-half block east of the site, is a "regional," heavily traveled arterial that effectively serves as an eastern boundary to the subject vicinity. Seventeenth Avenue N.W., one half block west of the proposal site, carries much less traffic than 15th N.W. and is considered as a residential access street. There are traffic signals at the N.W. 60th Street - 15th N.W. and at the N.W. 58th Street - 15th Avenue N.W. intersections.

15. Applicant's proposed building would offer four one-bedroom and four two-bedroom units for a total of eight units. It would have a pitched roof. The two floors of living area would be above the ground level parking area which would be partially screened by a six foot, view obscuring fence. Groundcover, shrubs, and trees are included within present landscaping plans which plans do not specifically indicate retention of the large trees referenced in Finding 7 above. Lot coverage would approximate 50 percent. The proposed building height is 32 ft. 10 in., within the L-2 height limit (30 ft. + 5 ft. addition for a pitched roof).

16. The 2,025 sq. ft. of proposed open space includes a 465 sq. ft. front yard area south of the driveway opening and a 340 sq. ft. area north of the driveway opening. These and other open areas would offer trees, shrubs and ground cover.

17. The proposed three-story structure would be larger than the majority of surrounding structures and would alter private views of and through the site. The proposal will affect no views from public places or of designated landmarks.

18. The proposed building complies with Land Use Code height, bulk and other provisions.



19. Two six-unit apartments are located approximately three and four lots east of the proposal site. From the photos, Exhibit 6D, the duplexes appear as three-story structures with peaked roofs.

20. The typical parking demand associated with residential occupancy is 1.5 spaces per unit. Applying the 1.5 factor to the eight proposed units, 12 parking spaces would be needed. With the provision of eight spaces on-site, four autos would be expected to "spillover" to on-street parking. The 1.5 factor is reasonable.

21. From SED-approved studies conducted after 9:00 p.m. on Tuesday and Wednesday January 5 and January 6, 1988, the Hearing Examiner finds a parking supply of approximately 181 on-street parking spaces within 800 ft. of the site. The parking utilization rates were 41 and 49 percent, respectively. The immediate area could accommodate the anticipated four car spillover.

22. Some 46 new units are proposed by several other vicinity projects. If the 1:1 (parking space to unit) ratio is applied, the 46 units would offer 46 parking spaces. The demand would be for 69 spaces (1.5 X 46). Combining the new developments' 23 space overflow with the present project overflow of four yields a total need of 27 spaces. The parking utilization rate would then be altered to 54 percent (Tuesday, January 5, 1988) and 61 percent (per Wednesday, January 6, 1988 data).

23. The 800 ft. distance is a reasonable one for impact analysis.

24. Appellants provided figures from a Friday April 1 (10:00 p.m.) and Saturday, April 2 (10:00 a.m.) "update." This study suggests that for an approximate 500 ft. distance from the site (65 parking spaces) the parking utilization percentages would be 60 percent for April 1 and 85 percent for April 2.

25. As between appellants' study and that approved by SED, the Hearing Examiner finds in accord with the study approved by the agency, SED, that offers greater expertise in the specific subject area. Appellants' presentation did not show that the SED-approved study was erroneous or particularly misrepresentative of the parking scenario.

26. The subject site is one-half block from a 15th Avenue N.W. busline.

27. Per Institute of Transportation Engineer (ITE) figures, an eight-unit apartment building is expected to generate 53 vehicle trips throughout a day, inclusive of morning and evening peaks. Considering the street system and project proximity to the 15th N.W. "regional arterial" 53 daily vehicle trips were not shown to be of any substantial impact.

28. One of appellants' concerns is that some 14 children now reside within the subject block and that increases in traffic from the present proposal and others will detract from the safety of these children as they play or traverse to or from school. Looking at the multi-family units to three blocks west, appellants concluded that some 800 trips per day could be expected, and that the majority of the trips would come through N.W. 59th to access 15th N.W.

29. The Hearing Examiner is unable to conclude from the evidence that the "800" trips per day would cause a particular hazard to the subject vicinity, particularly in light of the fact that no trip distribution data (directions) are of record.

30. Appellants cited a concern that an increase in criminal activity typically follows an increase in population. Although there is evidence that the subject area is significantly above average in reported criminal activity, the nexus between the eight-unit building proposed, criminal activity and the increase



in the need for police, fire or other services is primarily unsubstantiated.

31. In addition to requesting that applicant preserve certain trees, applicants also ask that the project be scaled down from eight to four units; that applicant provide 1.25-2 parking spaces per unit; and that construction hours terminate at 4:30 p.m., in recognition of school children's return for the day.

32. Regarding construction hours, the DCLU conditioned the permit to include a 7:30 a.m. - 6:00 p.m., non-holiday weekday limitation. Regarding traffic and parking impacts, the DCLU decision states as follows:

To minimize traffic and parking impacts on the surrounding community, the owner(s) and/or responsible party(s) shall include all charges for on-site parking in the sale price or rental fee and each unit shall be assigned a parking space. No additional parking fee shall be charged for the assigned space.

33. Regarding vegetation, the DCLU decision requires installation and maintenance of pre-approved landscaping.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23, Seattle Municipal Code.

2. Seattle Municipal Code Section 23.76.022(C)(7) provides that the DCLU Director's environmental determination shall be given "substantial weight." In this case, therefore, appellants have the burden of showing that the DCLU decision was "clearly erroneous." Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. Appellants request that the subject project be subject to several additional conditions of approval. They would like the project downscaled from eight to four units; 1.25 - 2 car spaces per unit; and preservation of certain vegetation.

4. Adverse environmental impacts may serve as bases for mitigating conditions. The impacts must be specific and clearly identified. The mitigation must be "reasonable and capable of being accomplished" and must be based on specific policies or regulations formally designated in Seattle Municipal Code Section 25.05.902 for consideration. Seattle Municipal Code Section 25.05.660(A).

5. In the case of In re Elmer, C.F. No. 293040, MUP-83-077 (1984), the City Council affirmed that

DCLU was to be prohibited from using SEPA policies to require more than one parking space per dwelling unit for projects with twenty or fewer dwelling units.

In the present case, therefore, the Hearing Examiner cannot require additional on-site parking pursuant to SEPA.

6. The record reflects that the building will have an adverse height, bulk and scale impact on the subject vicinity. The three-story, eight-unit building proposed would be larger than neighboring single family structures, generally low-scale buildings. However, the residences across N.W. 59th are 5-7 ft. above the street level. This difference in elevation serves to offset some of the height, bulk and scale impact of the proposed building as it relates to those single family dwellings. Further, there are two six-unit buildings within the block that are also three story buildings. Third, the project site is on the edge of no less intensive zone but is surrounded by L-2



zoning. The building complies with L-2 zoning criteria.

7. The City Council addressed the question of height and scale maximums in the decision of In re Oden, C.F. 293357, MUP 84-054(W), 058(W) (1985). There the Council declared in relevant part that

It is inappropriate to require a reduction in scale merely because the surrounding buildings in the same (midrise) zone are developed to a lower height. The Council decision to zone for (midrise) was a decision that as a general matter (midrise) heights are appropriate for this area. If they are not, a downzone is the appropriate recourse. In order to justify a reduction in height below the zoned maximum, it must be shown either that the project presents unusual circumstances which would not have been contemplated as part of the rezoning of the area or that the project is on the edge of a zone where the problems of transition are not fully accommodated by the zoning...

8. Based on the Oden decision, the Hearing Examiner concludes that there is no basis in this record to require a reduction in the proposed building's height. This project is on the edge of no zone and presents no "unusual circumstances" that would justify a reduction in height.

9. As to bulk, the proposed building will be consistent in size with at least two others within the immediate block. No issue of single-family or other zoning adjacency is presented. These and other factors distinguish the subject case from In re SQAD, C.F. 294378, 294392, MUP 85-049(W), MUP-85-053(W) (1986).

10. The proposed eight units would generate some 53 vehicle trips per average weekday. The street system can reasonably accommodate the increased traffic.

11. The proposed project is expected to produce a spillover demand of four cars. These four cars could be easily accommodated within the 181 parking spaces located within the 800 ft. distance of the site. The utilization rate would, with the additional four cars, be less than 50 percent. In combination with a 23 space overflow that could be expected from other projects, the parking utilization would approximate 54-61 percent.

12. There is testimony but minimal evidence that the increase in population will adversely impact crime statistics for the area.

13. The City Council has stated that

...Density in the abstract is not an adverse environmental impact but must be evaluated in terms of how it affects utilization, traffic, parking etc.

In re SQAD, supra. In evaluating this proposed project, it would be "unreasonable" to require a reduction in the proposal's scale. Seattle Municipal Code Section 25.05.660(A)(3). The parking and traffic impacts can be easily absorbed into the existing environment. There are no indirect density effects on the infrastructure which would justify a reduction in project scale. Cf. 25.05.902(C)(D).

14. Seattle Municipal Code Section 25.05.902(E) contains the City's landscaping policies. That section provides that "the City official or authorizing agency may require foliage and greenery to promote the aesthetic and natural qualities of Seattle." Section 23.05.902(E)(1). The "City official or authorizing agency" may also require that existing vegetation be retained. Section 23.05.902(E)(2)(f).



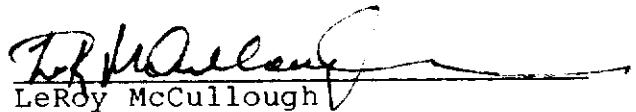
15. The record reflects no development constrictions related to the retention of the large trees in the rear of the site. Retention of either or both trees would promote the "aesthetic and natural qualities of Seattle." It is therefore "reasonable," Section 25.05.660(A)(3), to require that the landscaping plan include retention of at least one of the large trees. Further, applicant and DCLU shall consider maximum retention of the remaining perimeter trees in the landscape plan. The DCLU condition requiring installation and maintenance of approved landscaping condition is accordingly amended.

16. The Hearing Examiner declines to order any amendment to the construction hour limitation imposed. The hours, however, may be the subject of an agreement between applicant and DCLU based on concerns raised by appellants in hearing.

Decision

As modified herein, the DCLU decision is AFFIRMED.

Entered this 19th 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.