

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

In the Matter of the Appeal of

LANCE AND JULIE CORBIN

FILE NO. MUP-88-025(W)  
APPLICATION NO. 8707650

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

Introduction

Appellants, neighborhood residents, appeal the decision of the Department of Construction and Land Use Director to issue a declaration of non-significance (DNS) for a proposal to demolish a single-family residence and to construct on-site a three-story, five-unit apartment building at 6117 - 20th Avenue N.W.

Appellants submitted this appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on June 10, 1988.

Parties to the public hearing were: appellants, pro se by Lance Corbin; the Director, Department of Construction and Land Use, by Faith Lumsden; and applicant by architect Jerome Diepenbrock.

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 located at the southwest corner of N.W. 62nd Street and 20th Avenue N.W. The site address is 6117 20th Avenue N.W.

2. The subject lot is generally flat and rectangular. It has some 50 ft. of frontage to 20th N.W. and some 78 ft. of frontage to N.W. 62nd Street. The lot area approximates 3900 sq. ft.

3. The project site is developed with a small, single story residence. Applicant proposes to demolish the existing structure and construct on-site a three-story, five-unit apartment building with five on site parking spaces. The Hearing Examiner finds that the five spaces proposed are functional in siting and dimension. The building would be modulated on all sides, principally have wood siding and will approximate 34 ft. in height to the ridge of the pitched roof. Street trees, groundcover and other similar elements are included in the proposed landscaping plan. A housing demolition license has been applied for.

4. The site is located deep within a large Lowrise 2 zone. Although the site is within the Ballard/Fremont Interim Zoning Study area, the project vested to L-2 standards and interim controls are inapplicable. No single-family or other zone edges are adjacent. Vicinity development includes a mix of single family homes, duplexes and triplexes. Five churches are within two blocks of the subject site.

5. One such church is the Church of the Divine Man located

at the corner of N.W. 61st and 20th Avenue N.W. CDM's April-June, 1988 activity schedule includes meditation (Thursday, 6:00 - 7:00 p.m.); healing (third and first Thursday of each month, 7:30 p.m.); and aura readings (Wednesday, Thursday, and Friday, 7:30 p.m.). Building hours are Saturday and Sunday, 10:00 a.m. - 3:00 p.m. and Wednesday through Friday, 2:00 p.m. - 10:00 p.m. The building is closed on Mondays and Tuesdays. Exhibit 1C.

6. The Hearing Examiner finds that immediate parking becomes more difficult to locate when the CDM and other local church facilities are in session. Some of the churches have no on-site parking provided.

7. Vicinity parking sometimes occurs on planting strips, close to crosswalks and driveways, and near fire hydrants. Some of this parking appears attributable to church activity.

8. At three stories the proposed building will be "noticeably taller" than most surrounding development and will impact the streetscape as well as private views. No public or protected views will be affected. According to one resident witness, the proposed building is simply "too large."

9. DCLU and SED estimate a parking demand of 1.5 spaces per residential unit. The 1.5 factor was not shown to be in error or unreasonable.

10. Application of the 1.5 ratio yields a parking demand of eight spaces for the proposed five-unit project. Since five of these will be provided on site, some three vehicles will, theoretically, "spillover" into the surrounding streets in search of parking.

11. There is adequate on-site parking within a reasonable distance to accommodate the projected spillover. Applicant's parking studies taken after 9:00 p.m., Tuesday, March 1 and Wednesday, March 2, 1988 indicated 57 on-street parking spaces within an area extending from N.W. 61st to N.W. 62nd along 20th N.W. and west from 20th N.W. to 22nd N.W. Of those 57 spaces, 27 and 28 (47 and 49 percent) were occupied on the respective dates. The three car overflow would increase the utilization to 53 and 54 percent.

12. Applicant's study did not extend to the typical SED study radius of 800 ft., but did conform to parking space measurements as indicated by SED guidelines. Appellant showed no error in the applicant's methodology but expressed concern with the unreported results of a larger study area.

13. Applicant presented and the Hearing Examiner finds that a parking study for a 2035 N.W. 63rd building showed an average utilization rate of 64 percent. Exhibit 7. This study area extended along 20th N.W. from N.W. 62nd to N.W. 64th and west of 20th N.W. to 22nd N.W. along N.W. 63rd Street. Applicant's two studies show that on-street parking is easily available in the close vicinity to accommodate a three car spillover.

14. Appellant's study, Exhibit 1A, showed 40-41 (as opposed to 57) spaces for the same geographical area that applicant used. This results in a 68 percent utilization rate if 27 cars are parked in 40 available spaces.

15. Considering ten overflow spaces that could be needed as a result of other planned development within two blocks, the parking utilization rate would increase to approximately 72 percent using the applicant's study.

16. Northwest 62nd is a residential access street with parking allowed on both sides. Because it is only paved to approximately 25 ft., one lane of traffic can flow through if cars are parked on both sides of the street.

17. Twentieth Avenue N.W. is a collector arterial with two lanes of through traffic.

18. Applying the Institute of Traffic Engineers estimate, a five-unit apartment will generate approximately 33 vehicle trips per day, inclusive of morning and evening peaks. The record contains no evidence that the street system is unable to easily absorb an additional 33 daily trips.

19. Two DCLU conditions related to traffic and parking are stated below:

Due to potential parking impacts to the surrounding neighborhood and to discourage residents from maintaining more than one vehicle, the owner(s) and/or responsible party(s) shall inform potential residents in lease or sale agreements that only one parking space per unit is available on site. The owner(s) or responsible party(s) shall submit a sample copy of the lease or sales agreement to the Land Use Division for inclusion in the file.

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 fees shall be charged. The owner(s) and/or responsible party(s) shall submit a sample copy of the lease or sales agreement stating these terms of the Land Use Review Division for inclusion in the file.

20. Appellant was also concerned that insufficient information on drainage-sewer line connects was provided. No final drainage plan has been completed and appellant wishes the opportunity to personally review those final drainage plans. More specifically, appellant desires prohibition on black plastic garden lining (to reduce water runoff). Appellant would also like for the sewer line to run alongside the building (for easy access) rather than rest beneath the proposed parking area. Applicant's plan is to improve access to the line by removing it from its present location (foundation area) to the parking area. Appellant's property is served by the subject sewer line.

21. Appellant was also concerned with the mechanism available to enforce specific conditions imposed on the proposal.

22. Applicant agreed in hearing to appellant's request that a stop sign be erected at the garage exit to enhance the safety of traversing children and other pedestrians.

#### Conclusions

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

2. Seattle Municipal Code Section 23.76.22(C)(7) provides that the DCLU Director's environmental determination shall be given "substantial weight." Therefore, appellant's burden is to show the DCLU decision to be clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. Appellant suggested in hearing that an environmental impact statement might be appropriate on the drainage issue. However, consideration of a request for an EIS is improper and beyond the scope of the appeal document.

4. Further, for the Hearing Examiner to require preparation of an EIS, the appellant 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 Section 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. Appellant showed no significant adverse impact from the proposal relative to drainage or other issues.

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. The proposed building will be larger in scale than the majority of surrounding residential structures. However, the proposed building will be three-stories, modulated and surrounded by landscaping. The building site is on the edge of no single family or other less intensive zone. "It is inappropriate to require a reduction in scale merely because the surrounding buildings in the same...zone or developed to a lower height..." In re Oden, MUP-84-057(W), MUP-84-058(W), C.F. NO. 293557 (1985). The subject case presents no special transition, edge or other circumstances which would justify a reduction in scale. Cf. Oden, supra.

7. Neither were parking or traffic impacts shown to justify reduction in building scale. There was no evidence that the infrastructure would be unduly burdened by the additional 33 daily trips or that the project would restrict access and flow. Appellant also failed to show that DCLU's decision was clearly erroneous as it related to parking. Although the applicant's study area did not extend to 800 ft., the great weight of the evidence shows that there is adequate on-street parking available to meet the projected overflow demand of three vehicles, and the demand that may be generated by other projects. Although of some negative parking impact, the respective church's activity must be considered intermittent. Secondly, the other projects will draw from a larger potential area for parking availability within this L-2 zone. Third, two parking utilization studies show available on-street parking within the vicinity. Given these facts and the appellant's burden of persuasion, no remand is required.

8. The Hearing Examiner is precluded from ordering applicant to provide more than one parking space per unit on-site. In re Elmer, MUP-83-077, C.F. 293040 (1984).

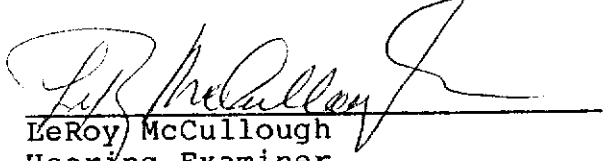
9. Regarding enforcement of conditions, it is recommended that appellant maintain contact with the enforcement component of DCLU.

10. The record fails to show SEPA authority to modify the DCLU decision in response to concerns regarding the drainage and sewer line location issues. Review of the plans is the responsibility of the DCLU Director.

#### Decision

The DCLU decision is AFFIRMED.

Entered this 15th day of June, 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.