

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

In the Matter of the Appeal of

CONCERNED NEIGHBORS ON N.W. 63RD
AND N.W. 62ND STREETS, ET AL.,

FILE NO. MUP-88-026(W)
APPLICATION NO. 8707522

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

Introduction

Appellants appeal the decision by the Director, Department of Construction and Land Use, on a master use permit application for a proposed six-unit apartment building at 2035 N.W. 63rd 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 June 13, 1988.

Parties to the proceedings were: appellants, Bruce Craigen, Susan Cook, Nancy E. Nagle, Lisa Dawson, Nona Y. Jacobsen, Tom Walker, Bonnie V. Evans, Nancy A. Owen, James Owen and the Central Ballard Community Council represented by Bruce Craigen; the Director, Department of Construction and Land Use, by John Doan, land use specialist; and the applicant, Inline Construction Co. represented by Paul Pierce, designer.

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 applicant applied for a master use permit to demolish a single family residence and construct a six-unit apartment building at 2035 N.W. 63rd Street. The Director issued a determination of non-significance (DNS) and approved the master use permit subject to certain conditions. A timely appeal was filed.

2. The subject site is a 5,000 sq. ft., mid-block lot in a large L-2 zone. The immediate area is a mix of single family, duplex, triplex and multi-family residences and a church. On one side of the subject site is a single family house, on the other, a duplex. The property to the rear is also a single family residence. All are in the L-2 zone. The predominant height of the buildings in the area is one to two stories.

3. The proposed building would be three stories high with parking for six cars at the ground level. The six units would be divided between the second and third levels. The building would have a 20 ft. front setback, 16 ft. rear setback and 5.5 ft. average side setbacks. The height would total 35 ft. to the peak of the pitched roof. The building conforms to L-2 standards.

4. The applicant submitted an environmental checklist which was reviewed and annotated by the land use specialist. Long term environmental impacts were identified including: increased storm-water runoff, airborne emissions from traffic, consumption of

energy, noise, light and glare, building bulk and scale, traffic, solid waste generation and parking demand. These impacts were found not to be significant and allowed a DNS to be issued.

5. A photograph (Exhibit 1) shows that the pavement of N.W. 63rd Street has cracks and patching. The land use specialist's testimony that the project and construction equipment which would be used would be small and therefore there would not be severe damage to the street was uncontroverted.

6. The peak parking demand for the six units is projected to be 1.5 spaces per unit or nine spaces. The expected overflow would be, therefore, three cars. A survey of both sides of N.W. 63rd in the block and 20th Avenue N.W. within 350 ft. of the site showed that the average weekday evening utilization of the 52 spaces in that area was 33.5 spaces or 64 percent. Adding three cars from the proposed building and 3.5 cars from two projects outside the study area brings that average to 77 percent.

7. The parking study did not factor in demand from a triplex which has been approved across the street which should be assumed to have a spillover demand of 1.5 (rounded to 2) if only one on-site space per unit is provided. That would increase average utilization to 81 percent.

8. Appellants urge that the 1.5 space per unit projected demand for parking used for the project and other projects which are approved but not yet constructed be applied to all existing units in the area to determine utilization arguing that the utilization varies with tenancy. The actual experience is valid for the existing dwelling units.

9. The paved portion of N.W. 63rd Street is 22 ft. wide which is substandard for a multi-family zone.

10. The ITE trip generation manual predicts that a six-unit apartment will generate 37 vehicle trips per day. Since a single family residence generates ten vehicle trips per day on the average, the net increase from this project would be 27 vehicle trips per day with about three of those occurring during the p.m. peak hour.

11. The intersection of N.W. 63rd and 22nd Avenue N.W. has yield signs and, over a six year period, has had 12 reported accidents. That rate is considered low.

12. The land use specialist found that the level of traffic generated would be too low to warrant any mitigation.

13. Any leakage from automobiles in the garage would be collected in a system with an oil/water separator and routed to the sanitary sewer system. Leakage from cars parked on the street could add to pollution of the water depending on the storm sewer system.

14. Appellants showed that multi-family buildings in the Ballard area do not house many children.

15. The neighborhood has had experience with criminal behavior by residents of one apartment building in the area.

16. Residents expect to lose privacy due to the new units overlooking their yards and houses.

17. The applicant had planned to include parking in the unit rental cost so would not object to a condition prohibiting a separate charge for parking in order to encourage use of on-site parking.

18. The landscape plan for the project includes a 16 by 25 ft. "grasscrete" patio area in the 16 by 50 ft. rear yard.

19. Formal and informal recreational opportunities exist in the general area.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.76.020.

2. Appellants seek reduced bulk and density to minimize the various impacts of the project. The Director has authority to impose mitigation measures as conditions of approval subject to the limitations set forth in Section 25.05.660A. The adverse impact to be mitigated must be identified in the environmental document; the mitigation measure must be based on a policy designated in Section 25.05.902 as the basis for the exercise of substantive authority; the measure must be reasonable and capable of being accomplished; and responsibility for implementing the mitigation may be imposed only to the extent attributable to the impacts of this proposal.

3. The impacts from increased density, parking demand, traffic, runoff and building bulk complained of by appellants were identified in the DNS.

4. The Director correctly determined that there is no SEPA authority regarding mitigation of density increases per se. The City Council has observed in an earlier case, In re SQAD, C.F. 294378, 294392 (1986), that density is not an environmental impact in itself, but its effects on other elements of the environment are to be assessed.

5. The Grading and Drainage Ordinance provides for control of runoff from the site. The effect of leakage from three cars parked on the street would not come within that ordinance purview but was not shown to be of a level to require mitigation.

6. The Director did consider whether mitigation is appropriate for the adverse impact from spillover demand for three parking spaces. Since the additional demand would not bring the on-street utilization to 85 percent, the practical capacity, no conditions were found to be warranted. Though the Director did not consider the approved project across the street, its addition to the demand was not shown to push utilization to capacity. Since the utilization rate will be quite high and the applicant has no objection, a condition prohibiting a separate charge for parking should be imposed to ensure that parking on-site is fully utilized.

7. Since the number of peak hour trips would be minor and the accident rate at the intersection was shown to be low, the Director's conclusion that no mitigation of impacts from additional traffic generated by the proposal was not shown to be wrong.

8. Though the proposed building conforms to the L-2 standards, the Director recognized it would represent an increase in bulk and scale over that existing in the area. The Director found insufficient policy basis to mitigate that impact, however. The policy authority (Multi-family Land Use Policies, p. 23-19) is available only to address special transition problems at edges of zones or where there are unusual circumstances present. In re Oden, C.F. 293557 (1985). This site is not close to an edge of the zone and presents no unusual circumstances which would not have been contemplated in the zoning of the area. Therefore, the Director's determination that she had no authority to mitigate the impact was correct.

9. The other concerns raised by appellants, e.g, privacy, crime, usable outdoor space, providing for children, are not cognizable under SEPA.

Decision

With the addition of the following condition, the Director's decision is affirmed.

All charges for on-site parking shall be included in the

rental fee or sale price for each unit.

Entered this 28th day of June, 1988.

M. Margaret Klockars
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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 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.