

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

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In the Matter of the Appeal of

CENTRAL BALLARD COMMUNITY COUNCIL,
ET AL.,

FILE NO. MUP-88-031(W)
APPLICATION NO. 8705995

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 master use permit application for a proposed eight-unit apartment building at 2226 N.W. 62nd 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 July 8, 1988.

Parties to the proceedings were: Appellants, Central Ballard Community Council, John Markuson, David M. Chapin and Diana C. Farrow, by John Markuson; the Director, Department of Construction and Land Use, by Arthur Lee, land use specialist; and the applicant, Leiv Vikingstad, by his attorney, Stephen Kenyon.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

After due consideration of the evidence of record the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The applicant filed a master use permit application to construct an eight unit apartment building at 2226 N.W. 62nd Street. The Director issued a determination of nonsignificance and approved the project subject to certain conditions. This appeal followed.

2. The subject property is a 5,000 sq. ft., mid-block lot in Ballard. The lot is developed with a one-story single family house with a shared driveway. A maple tree 40 inches in diameter is near the property line in the rear.

3. The subject lot is zoned Lowrise 2 (L-2) and is surrounded by L-2 zoned properties. One-half block west is a Midrise/Residential-Commercial (MR/RC) zone along 24th Avenue N.W. The structures in the immediate area are largely one to two story single family and duplex residences. At the ends of the block are 6, 8, 10, 12 and 18-unit apartment buildings which are two and three stories high. There is one four-unit building across the street at mid-block.

4. The duplex on the east side of the subject site is listed on the Inventory of Historic and Archaeological Resources as a structure of community significance. Though consideration was given to filing a Landmark nomination form by a community member, none was filed and the structure has not been nominated or designated as a landmark.

5. The proposed structure is a three-story, eight-unit apartment building, 40 ft. wide and 60 ft. deep. Setbacks pro-

vided would be 16.2 ft. front, 24 ft. rear and 5 ft. sides. The 5 ft. setback on the west side places the structure at the edge of the 10 ft. easement. The height on the street side to the top of the pitched roof would be 32.6 ft. from grade. In the rear, the height from grade to the pitched roof would be less than 28 ft. Access to the first level garage would be on the street side and would slope up from the street into the garage. Eight parking spaces would be provided.

6. An earlier proposal would have utilized the easement driveway (shared with the neighboring property) for access. The Director required that the plan be changed to avoid vehicular use of the easement.

7. The proposed building is vested to Lowrise 2 development standards. Surrounding properties are subject to the interim controls which allow Lowrise 1 standards.

8. The west side of the duplex next to the subject site would be less visible from the street than it now is if the proposed apartment building and fence is constructed.

9. The proposed building is to be set back 19.5 ft. from the sidewalk. The house to the west is set back 22.6 ft. from the property line and the duplex to the east, 11.2 ft.

10. The Director's decision on the application identified short term impacts during construction and imposed mitigation measures to control noise, to keep the easement driveway open for access for the residence to the west, to suppress dust, etc. Long term impacts identified include changed land use, increased traffic and parking demand and aesthetic impacts from larger bulk and scale, among others.

11. The Director imposed conditions requiring lawn in the front yard instead of kinnikinnick, limiting construction to non-holiday weekdays, requiring that notice be given to the residents of the property with joint use of the shared driveway of use by construction vehicles or equipment and that it be kept free of debris, requiring sprinkling or other dust suppression measures during demolition and construction, protecting the maple tree, requiring a fence and landscaping and requiring that the landscaping be maintained including retention of the maple tree, among others.

12. The City arborist examined the maple tree and found it to be sound. Because of its age, however, its root structure should not be disturbed. Any excavation must be kept at least 10 ft. from the tree to avoid endangering the tree. Support posts for the fence would have to be offset to one side or the other of the large roots and no soil or debris can be piled on top of the root structure.

13. No part of the apartment building foundation would be closer than 15 ft. to the maple tree. Excavation for the parking level, 4-5 ft. deep, would extend another 2 ft. toward the tree but still more than 10 ft. away.

14. The land use specialist estimates parking demands for the project to be 1.5 spaces per unit or 12 spaces. With eight spaces provided, the demand for on-street parking would be for four spaces. When the demand from the subject proposal is combined with that of four other pending projects located some 400 ft. to 900 ft. to the east of the subject site, the total estimated spillover would be 16 spaces.

15. The applicant's representatives did a "windshield survey" of on-street parking availability in the area and found a supply of 11-13 spaces on the N.W. 62nd block and 57-60 spaces within a block of the site.

16. Appellants conducted a parking study following Engineering Department guidelines. The area they surveyed consisted of the facing block fronts on N.W. 61st, 62nd and 63rd between

22nd and 24th N.W., on 22nd N.W. between N.W. 61st and 63rd and the west side of 24th N.W. between N.W. 61st and 63rd. They found a total supply of 128 spaces. The number of cars parked was 104 on July 7, 1988 or approximately 81 percent utilization.

17. Appellants' parking survey shows only one parking space available in the block on N.W. 62nd Street on the night of July 7th and one to five on the side streets. Nine spaces were available in the same block on N.W. 61st Street and eight on N.W. 63rd.

18. The Director's representative cited surveys of parking utilization for two other projects. Both are too far removed from the subject site to provide any useful comparison.

19. One parking space is located immediately inside the building perpendicular to the access so would require a 90 degree turn to be entered head-in. Since more than one movement would generally be necessary, the space would be less desirable.

20. The additional traffic expected to be generated by the proposed units would be 48 vehicle trips per day less those generated by the current use. Around four trips would occur during the a.m. and p.m. peaks. This added traffic was found not sufficient to be significant or to warrant mitigation.

21. Headlights from cars exiting the parking area would shine onto the house or houses across the street.

22. The parties agreed, in response to appellants' concern about possible interpretation of the term "weekdays" that Condition No. 3 can be modified to limit construction to Monday through Friday. They also agreed that conditions regarding parking may be added to require that potential purchasers or renters be notified that only one parking place per unit is available and to require that all charges for on-site parking be included in the sale or rental price.

23. The street is 25 ft. wide and when cars are parked on each side two cars cannot pass.

24. Because of small children living in the block, appellant ask that there be a warning mechanism installed in the garage to alert the children or drivers.

25. The west wall of the structure will rise some 26 ft. approximately about 15 ft. from the house to the west.

26. The height above the sidewalk of the proposed structure and those on each side would be very similar, all 34-35 ft.

27. The subject site is within the area covered by the Adams Neighborhood Improvement Plan (Adams Plan) adopted by the City Council in 1977 as a supplement to the Comprehensive Plan of Seattle. One of the goals developed by the people working on the Adams Plan for projects was "4. Recognize and utilize existing residential use areas and potential density patterns provided by existing zoning." p.3, Adams Plan (Ex. 6). Under "Land Use" the plan stated that "...much has been done to stabilize and improve the residential areas in the Adams neighborhood..." noting a 1975 City Council decision to deny a rezone from RD 5000 to RM 1600 of a large area characterized by single family residences with scattered duplexes and triplexes. The reasons given for the denial were a potential increase in taxes in an area with many elderly people and

...the influx of multi-family dwellings would alter the physical appearance of the neighborhood and reduce the aesthetic qualities which now exist, adding height and bulk to the street without adding variety or architectural expression. Most of these structures, because of their different scale, bulk and materials used, do not thematically support the preva-

lent single family character of the neighborhood. Maintaining the RD 5000 zoning should stabilize and confirm the existing single family character of the neighborhood. Better home maintenance should result from removal of the expectation that existing structures would be demolished to make way for apartments. Also, these homes provide accommodations that would be difficult to duplicate in new construction, and the conservation of existing housing stock is in the public interest owing to rapid inflation in costs of housing construction beyond the ability of most families to purchase.

p.9, Adams Plan (Ex. 6)

Seattle's Growth Policies, May, 1977, Policies for Population Base and Household Mix provide:

Policy 1: City Population. Seattle shall strive for a population level of 500,000 to 550,000 persons by 1990 by:

d. offsetting potential population losses due to outmigration of families and low birthrates by increasing the number of households through constructing a variety of 1,200 to 1,800 new housing units per year in areas where their addition will not threaten the existing character of neighborhoods;...

28. The City Council cited this policy in its recent decision, In re Victoria Tower Apartments, CF 293623 (1988), when it limited the height of a proposed structure to preserve neighborhood character.

29. Appellants had initially asked that the rear yard be planted in grass rather than low shrubbery to make it usable to the tenants but in response to a neighbor's concern about the impact on his privacy from that use, appellants withdrew that request.

30. The decision found the proposed building to be within the range of use and structure size in the vicinity but greater than the neighboring structures. Because it would be within the existing range the Director found no need for mitigating its size to provide transition and because the site is not near a zone boundary she found no authority to impose a mitigating condition.

31. The Director concluded that there is sufficient parking within a block of the site to handle spillover parking from the proposed building and also that portion of the spillover from the other proposed buildings which would overlap with the demand from the subject proposal.

32. Appellants request that the trees planted in the street right-of-way be of a flowering species. The applicant agrees to that change.

Conclusions

1. The Hearing Examiner jurisdiction over these parties and this subject matter pursuant to Section 23.76.022.

2. The Director's decision is to be accorded substantial weight by the Hearing Examiner on appeal. Section 23.76.022C.7. The burden is upon appellants to overcome that weight. They must prove that the Director's decision is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. The Director is to issue a determination of significance if she finds the proposal may have probable significant adverse impacts on the environment. Section 25.05.360. "Significant", as used in SEPA, means more than moderate. Section 25.05.794. If she finds no probable significant adverse impacts she is to issue a determination of nonsignificance. Section 25.05.340.

Appellants have not proven that her determination that none of the identified impacts is significant is clearly erroneous.

4. The Director has the authority to require mitigating measures as conditions of approval. Section 25.05.660. That authority has limitations: the adverse impact must be clearly identified in the environmental document; the condition must be based on policy adopted pursuant to SEPA for that purpose; the condition must be reasonable and capable of being accomplished; and responsibility for the condition must relate proportionately to the impact from the project. Section 25.05.660.A.

5. Those modifications agreed to by the parties should be adopted.

6. Appellants sought conditions, in addition to those agreed to or withdrawn, regarding additional protection for the maple tree, maintenance of the landscaping, controlling the glare from headlights, dust suppression during construction, reducing the number dwelling units to two, and reducing the height of the building to two stories and providing greater setbacks.

7. The record shows that the condition regarding the maple tree will be adequate to protect it and there is a condition requiring that the landscaping be maintained.

8. No reasonable condition was suggested which could mitigate the impact of headlights shining on houses across the street. Reducing the number of dwelling units for this minor impact would not be reasonable.

9. The decision includes a condition that dust suppression measures be used so no further condition is appropriate.

10. The Multi-family Land Use Policies do not provide authority for reducing the bulk of the proposed structure since it is not near a zone edge nor are there circumstances surrounding it which would not have been contemplated at the time of its zoning. See In re Oden, CF 293557 (1985). Appellants cite both the Adams Neighborhood Improvement Plan and Seattle's Growth Policies as other bases for conditioning. The Growth Policies are listed in Appendix A as SEPA authority for conditions as is the Adams Plan under the heading of Comprehensive Plan.

11. While the City Council relied on the Seattle Growth Policies and a neighborhood plan as the bases for height mitigation in Victoria Tower Apartments, supra, the facts here show that the height of the proposed building would not be markedly different even from its immediate neighbors and the overall bulk would not be inconsistent with that in the surrounding area. While the immediate neighbors will suffer a loss of privacy and have a large building in their view, the record shows that the existing character (scale) of the neighborhood itself would not be greatly altered by addition of the proposed building.

12. Appellants seek lowered density, independent of the size of the building. The City Council has noted that density itself is not an environmental impact but that the effects of the density are to be evaluated. In re 160 W. Lee Street, CF 294378 (1986).

13. The greatest effect of the increased density in this case would be from its demand for off-street parking where the immediate block is already utilized to its capacity. The projected spillover of four cars, or even five if the tenant finds the first space too difficult to get into, can be accommodated on nearby streets, N.W. 61st for example, according to appellants' survey, a 1 1/2 block walk. Since this project is vested under the code prior to the parking amendments conditions to reduce the on-street demand may be considered. The number of spaces required cannot be increased. In re Elmer, CF 293040 (1984). The City Council has found occasion to reduce the number of units where the surrounding situation had unusually restricted parking. In re 1430-1st Avenue North, CF 294508 (1986). Here, the streets

are not restricted but the demand is high. Since the spillover can still be accommodated and at least two units would have to be eliminated to assure a one-car reduction in the spillover, the hearing examiner cannot conclude that it would be reasonable to require a reduction in the number of units to mitigate the parking impact.

14. The record as to the effect of the cumulative demand of the proposed project, those pending and the existing situation was not adequate to support a finding that the capacity of the greater area, encompassing a reasonable distance around each of the pending projects, would be exceeded. Therefore, no condition based on cumulative impacts may be imposed.

Decision

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

The conditions of approval are modified as follows:
Substitute for:

3. 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 8:00 a.m. to 5:00 p.m. on non-holiday weekdays (Monday - Friday) only.

Add:

12. 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 lease or sales agreements that only one parking space per unit is available on site. The owner(s) and/or responsible party(s) shall submit a sample copy of the lease or sales agreement to the Land Use Division of the Department of Construction and Land Use for inclusion in the file.

13. To reduce parking impacts on surrounding streets and encourage off-street parking, one parking space shall be assigned to each unit and no separate charge shall be made for that parking.

Entered this 25th day of July, 1988.

M. Margaret Klockars
M. Margaret Klockars
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.