

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

WILLIAM H. DILLS

FILE NO. MUP-89-023(W)
APPLICATION NO. 8604158 and
8604162

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

Introduction

William H. Dills appeals the decision of the Director, Department of Construction and Land Use, on a master use permit application imposing a condition requiring additional parking at 2845 and 2855 14th Avenue West.

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 June 21, 1989.

Parties to the proceedings were: appellant, William H. Dills, represented by Rod Clarke, and the Director, Department of Construction and Land Use, represented by Faith Lumsden, land use specialist.

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. Master use permit applications to demolish existing buildings and construct one eight-unit apartment building on each of two lots at 2845 and 2855 14th Avenue West were filed. The Director, Department of Construction and Land Use ("Director"), approved the applications subject to a series of conditions. This appeal was filed as to one condition.

2. The challenged condition is as follows:

5. To mitigate the long-term parking impact of the subject proposal and the companion proposal, the owner(s) and/or responsible party(s) shall provide a ratio of 1.5 parking spaces per unit onsite for each project.

3. The Director found the condition was needed to mitigate the negative impacts of overflow parking and relied on, and cited, Section 25.05.675(M)2.b for authority to impose the condition. The negative impact to be mitigated by the Director's condition is the displacement of vehicles currently parking on 14th Avenue West.

4. A parking study was prepared at the request of the Department of Construction and Land Use for the applicant by a private consultant. The results, after adjustments by the land use specialist, showed 57 percent utilization of the on-street parking in the area within 800 ft. of the sites and 95 to 100 percent utilization on 14th Avenue West, itself. West Barrett Street showed 11 percent utilization with over 14 vacant spaces

and Prosch Avenue West had a 25 percent utilization with around 22 spaces vacant.

5. The lot at 2855 14th Avenue West abuts the Barrett Street right-of-way on the west side of 14th Avenue West which is not open so the available parking on Barrett Street is the distance of the width of the 14th Avenue West right-of-way away from the lot at 2855. The second lot at 2845 is 100 ft. from the Barrett Street right-of-way.

6. The nearby street system is unusual in that there is no street access for vehicles to 14th Avenue West between West Barrett and Gilman Avenue West, a distance of some 2,000 ft. Further, 14th Avenue West is comprised of two halves, each two-way, separated by a median strip of property. Each half is approximately 18 ft. wide allowing for only one lane of travel with cars parked on one side. When cars meet one has to pull into an open space or back until an open space is found.

7. The Department of Construction and Land Use uses a ratio of 1.5 vehicles owned per unit, which rate was acceptable to the appellant. At that rate, with a total of 16 units and 18 parking spaces, the spillover parking demand would be for six spaces.

8. The proposed on-site parking is to be under the building at least partially underground. To provide an additional four parking spaces for each building would require substantially more excavation and would cost an additional \$15,000 to \$20,000 per site.

9. While all parking overflow connected with the proposed buildings could be parked on West Barrett Street, the land use specialist found that there would be no reason to assume those residents would park on Barrett and not on 14th and there would be no way to require and assure that they do park on Barrett. Appellant urged that the residents would choose to go to West Barrett Street where they would know parking is available and direct their guests there rather than to take a chance of finding parking on the congested 14th.

10. Fourteenth Avenue West has a gradual slope. While not steep, the slope makes walking from a residence to distant parking more of a problem, especially for elderly or other less vigorous persons.

11. The Seattle Engineering Department regards a street to be "at capacity" when 85 percent of the supply of parking is utilized.

Conclusions

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

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

3. A permit may be conditioned to mitigate an environmental impact subject to the following limitations: 1) the measure must be based on a policy designated for that purpose; 2) the measure must be related to an adverse environmental impact identified in the environmental documents; 3) the measure is to be reasonable and capable of being accomplished; 4) the applicant's responsibility for implementation of the measure must be proportionate to the impact attributable to the project; and 5) whether regulations will provide mitigation is to be considered. Section 25.05.660A.

4. The policy relied upon by the Director for mitigation of adverse parking impacts is found in Section 25.05.675M.2. That policy provides for mitigation for parking mitigation for

multifamily development only when on-street parking is at capacity, as defined by the Seattle Engineering Department, or where the development would cause capacity to be reached. Here, the area treated as reasonable by the Engineering Department and DCLU for consideration shows utilization at 57 percent of capacity. Even if restricted to parking on 14th and West Barrett, eliminating Prosch from consideration, the parking utilization would be below 75 percent. Only by restricting consideration to 14th Avenue West did the Department find that parking was at capacity and the project subject to mitigation. Appellant has shown this to be in error where an average of 14 parking spaces is available less than 100 ft. away from the closer project. While a more restricted area may be appropriately considered in a case where, due to topography or other constraints, parking is not readily available, that is not the case here and to ignore the parking available on Barrett is patently unfair. The policy does not authorize mitigation in this case.

5. The Director has identified impact of potential displacement, however that displacement is not probable given the availability of parking on the adjacent street.

6. Appellant's argument, in part, goes to the third required condition, that the measure be reasonable. Because there is adequate, nearby on-street parking for spillover from the proposed buildings, the condition which would impose a high cost of changing plans, excavation and slope retention makes the condition unreasonable.

7. Since the condition requires six parking spaces for six car spillover, the measure is proportionate to the impact of the proposal.

8. The decision to require the additional parking has been shown to be clearly erroneous because the policy is not applicable in this case and the condition is not reasonable.

Decision

The decision of the Director is modified as follows:
Condition No. 5 is stricken.

Entered this 6th day of July, 1989.


M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

Pursuant to Seattle Municipal Code Section 23.76.024, 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, 5th Floor Municipal Building, 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 25.05.060. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 23.76.024, 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 City Council appeal.

If no appeal is taken to the City Council, 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. 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. See Chapter 43.21C, RCW and Chapter 25.05, Seattle Municipal Code.

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 transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, Room 1320 Alaska Building, 618 Second Avenue, 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.