

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

In the Matter of the Appeal of

DAVID CUNNINGHAM, et. al

FILE NO. MUP 85-065(W)
APPLICATION NO. 8503630

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

Introduction

Appellants appeal the decision of the Director, DCLU, to issue a determination of non-significance and permit with conditions for a proposed 9-unit apartment building at 1430 1st Avenue North. The Land Use Review Committee of the Queen Anne Community Council was permitted to intervene as appellant.

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 November 26, 1985.

Parties to the proceedings were: Appellants, David Cunningham, David and Gail Jackson, Paul J. and Mary Jo Martin and Save Queen Anne from Developers, represented by David Cunningham and David Jackson; Intervenor represented by William G.E. Blair; the Director, represented by Ed Somers, land use specialist; and the Applicant, Rod Clarke, co-owner, pro se.

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. An application was filed for a master use permit to demolish a single family residence and construct a nine unit apartment building at 1430 1st Avenue North. The Director issued a determination of non-significance (DNS) for the proposal and imposed three conditions. Appellants appeal these decisions.

2. The subject site is a 4,500 sq. ft. lot in a Lowrise 2 (L-2) zone on Queen Anne hill. It has 45 ft. of frontage on 1st Avenue N. and is the second lot from the intersection of 1st Avenue N. with Galer Street. It is developed with a single family residence. Behind a 15 ft. embankment at the front of the lot, the site is essentially flat.

3. The L-2 zone extends two more lots south of the subject site on the east side of 1st N., the entire block front on the west side, is two lots deep along the north side of Galer, and continues on to the east. The zone is irregularly shaped in part because of Queen Anne High School and gymnasium property, a playfield and a site containing a radio tower and fire station, all zoned RD 5000.

4. Land uses in the immediate vicinity consist of single family residences along the south side of Galer in the same block with two abutting the north side of the subject site; a duplex abutting the south side of the site and one more single family residence south of that; an apartment building directly west of the site; and apartment buildings on three corners of the intersection of Galer and 1st N. Beyond the L-2 zone north of Galer is a large single family zoned and used area.

5. First Avenue North is narrow with a platted width of 20 ft. and roadway of 15 ft., curb to curb. The street is two way. Parking is prohibited on both sides.

6. The proposed building would contain nine units ranging in size from 464 to 764 sq. ft. The basement would provide resident parking for nine cars. An existing terrace garage near the front property line is to be retained. The north side yard setback would be 5 ft. The height of the building would be approximately 30 ft. with a flat roof and stair penthouses, clerestory and rooftop railing. Existing grade is approximately 15 ft. higher than street level.

7. Other development is proposed in the area including a 30 unit apartment building at 160 Lee Street, reuse of the Queen Anne High School for 137 units of housing and an expansion of the fire station. The Luther Playfield site is the proposed site of a new John Hay Elementary School. The gymnasium, now used by the YMCA, would serve the new elementary school.

8. The Director's analysis of the environmental impacts of the proposal discloses that the project would increase overcovering of soil and runoff, air emissions; add landscaping; increase energy consumption, noise during construction activity, traffic noise, housing, population traffic and parking, use of public services and utilities; and block views from private properties.

9. The Director determined that landscaping would be necessary to offset aesthetic impacts and that, because of limited on-street parking availability, the applicant or owner must inform potential residents that only one parking space is available and should provide on-site parking for construction workers when the garage is completed. The Director concluded that "cumulative impacts do not warrant further mitigation." Exhibit No. 17.

10. The proposed structure would cast a shadow November 24th at noon over most of the two houses abutting the subject site to the north, their rear yards and the side yards between the houses. The building's shadow would also fill in the shadows on Galer resulting from existing development to completely shade a section of the street at noon on November 24th. Shadows on January 21st at noon would be greater. No specific evidence of the shadow effect of the roof top extensions was adduced.

11. Ms. Martin, appellant and owner of the house at 107 Galer, uses her deck in the rear yard year round. She has remodeled her house extensively. She believes that her heating costs may be higher with the shadowing of her house. Her house is set 10 ft. from her rear property line.

12. The single family residences in the area are typically two-story, below 30 ft. in height. The apartment buildings across 1st North, though at least three stories high, extend only about 30 ft. above street grade because of the downhill slope of property on the west side of the street. The duplex on the south side of the subject site is approximately the same height as the proposed structure but has a pitched roof. Apartment buildings on the north side of Galer appear to be three stories high. At least two of the apartment buildings have flat roofs.

13. The existing garage on the subject site, proposed for retention as a storage or laundry room, is located 4 feet from the front property line or 8 feet from the curb and encroaches on the normally required side and front yard setbacks.

14. Appellants are concerned that the garage may obstruct sight lines for vehicles leaving the site and may constitute a hazard.

15. Galer Street deadends just west of 1st Ave. N. where stairs in the right-of-way lead to Queen Anne Avenue. Vehicles on Galer turn north on 1st Ave. N. to Garfield and then west to Queen Anne Avenue.

16. The amount of on-street parking in the area is limited because parking on most streets is restricted to only one side. Less than 40% of the street curbs is available for parking in the area.

17. Parking surveys were done by appellants and by applicant, under the direction of consulting traffic engineers. Appellants' study covered an area extending 1-2.5 blocks from the subject site and occurred over a one week period with appellants counting parked cars and the consultant, Kenneth Cottingham, estimating the actual capacity of the streets. Applicant's study considered an area to the north and east where parking is in less demand because the area is primarily single family. The applicant counted cars and spaces on one occasion and the consultant, Christopher E. Brown, P.E., on another. The applicant's study coincided with Seattle's unseasonable and heavy snowfall making its validity as representative of normal conditions questionable.

18. Appellants' survey showed that it is possible to find parking between 11:00 a.m. and 3:00 p.m. but that the streets are nearly at capacity or over capacity the rest of the time. Applicant's survey showed that nearly 30% of the spaces (44% reduced to 29% with room for maneuvering) were available but recognized that the area considered was different. Both studies found illegal parking occurring.

19. Any overflow on-street parking from the Queen Anne High School and 160 Lee Street projects, if completed, may overlap that from the subject site.

20. Appellants' consultant projected that the proposed dwelling units would generate an average of 10 trip ends per day, some 80% by personal automobile and 20% by public transit. He did not know of any relationship between trips per day and parking demand but projected a need for no less than 12 spaces, 3 of which would be needed by visitors.

21. Applicant's consultant believes that car ownership/bedrooms is the most reliable factor to predict parking demand. Relying on the Seattle Engineering Department's 1982 parking study of Queen Anne and other areas and his study of a Northgate complex, he projects car ownership at between .92 and 1.03 per bedroom.

22. The parking study referenced by applicant's consultant showed that demand by visitors for parking averaged .39 per unit weekdays and .83 for weekends. Exhibit 11.

23. The number of actual bedrooms in the structure, as proposed, appears to be 12, from the testimony of the applicant.

24. The number of spaces needed to accommodate residents' demand based on the Seattle Engineering Department study would be approximately 12 and three to seven more spaces would be needed for guests.

25. Illegal parking is likely to increase as the demand for parking increases, according to the unrefuted testimony of appellants' consultant. As that occurs more complaints will result in more enforcement causing the overflow to spread further away from the site and into the surrounding neighborhood, according to appellants' consultant.

26. Illegal parking creates hazards for pedestrians and for the vehicles at intersections where sight lines are blocked or reduced.

27. There are no traffic controls at the intersection of 1st Ave. N. and Galer St. which makes unobstructed sight lines essential for safety.

28. Both traffic consultants agreed that parking is very tight in this area of Queen Anne. Possible reasons are the small lots, slopes, narrowness of streets, absence of alleys, and small number of garages or other off-street parking.

29. The Engineering Department reviewed the proposed access configuration. The Director concluded that "no significant impacts to the environment are anticipated from the proposed access." Exhibit 17.

30. William Blair, member of the Land Use Review Committee of the Queen Anne Community Council and architect, whose committee reviews land use proposals for Queen Anne property, believes this proposal may have been the first application for L-2 zoned property on Queen Anne Hill. He opines that development of L-2 lots with greater density than had been anticipated will cause greater pressure on land values and encourage the conversion of single family developed lots to multi-family.

31. Development of L-2 zoned property around the City is achieving greater density than had been forecast, according to the uncontroverted testimony of William Blair.

32. The Director did not impose a condition requiring more parking because she felt she lacked authority.

33. The Director did not impose a condition restricting the height of the structure because she found the proposed structure would be similar in height to other structures, specifically the apartment buildings and adjacent duplex, and because the site was not at a zone boundary which would allow the consideration suggested by the City Council decision In re Oden, MUP 84-057, 58(W), C.F. 293557, according to Exhibit 17 and her representative's testimony.

34. The Director felt she did not have authority to require a pitched roof, according to her representative's testimony and Exhibit 17.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to Chapter 23.76.

2. Appellants contend that the Director's decision to issue a DNS for this proposal was in error and request an environmental impact statement (EIS). They further request that the Director's decision be reversed and the application denied based on her failure to mitigate adequately its adverse impacts.

3. Section 23.76.36.B(7) requires that the examiner, in considering an appeal of the Director's decision, accord that decision substantial weight. The burden is on appellants, therefore, to prove that the decision is clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

4. An EIS is required where a proposal's probable adverse environmental impacts may be significant. Section 25.05.360(1). An impact is "significant" if it is reasonably probable that the proposal will have more than a moderate effect on the environment. Norway Hill v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976).

5. The Director has acknowledged various adverse impacts but found none to be significant. Appellants have shown that there will be increased demand of at least 3 cars for on-street parking, increased shadows on two residences and impact on aesthetics from the bulk and scale of the building. They have not shown, however, that the magnitude of these impacts from a 9-unit, 30 ft. high building would be significant. The Director's decision to issue a DNS, then, must be affirmed.

6. The Director may not deny a proposal unless an EIS has been issued identifying significant adverse environmental impacts which could not be mitigated. Section 25.05.660(1)(f). Since a DNS was appropriate for this proposal the Director could not deny the permit.

7. In closing arguments, appellants and intervenor urged that various conditions be imposed including the following: removal of the existing garage to mitigate access hazards; requirement of additional open space to replace the driveway counted toward the open space requirement; relocating the clerestory and stair penthouses to minimize shadow and reduce the appearance of bulk; redesign of the structure to "step up" the lot; addition of three parking spaces or reduction in the number of units to reduce parking demand; and reduction of number of units to three or four. In addition, intervenor asks that the matter be remanded for DCLU to undertake a cumulative effects study because of the concern that permitting this nine-unit building would induce other similar development and that there are to be several projects being developed simultaneously.

8. Mitigation measures must address specific adverse impacts identified in the environmental document, be based upon a policy designated in Section 25.05.902 as a basis for conditioning, and be reasonable. Section 25.05.660(1).

9. The removal of the garage could not be required because the DNS did not identify any adverse impact from the proposed access. While impact on open space may be inferred from the identification of view blockage and aesthetic impacts, there was no evidence that the requested condition to require an additional amount of open space would necessarily reduce view blockage or improve aesthetics. Shadow impacts were not identified in the DNS and no evidence was adduced to show that moving the location of the rooftop appendages decreases the impact.

10. Appellants did not cite specific policies that would allow the imposition of a condition requiring redesign of the building to cause it to "step up" the slope to reduce the perception of bulk and the shadow impact. If appellants are relying on Multi-Family Policy 4 it should be noted that the policy does not necessarily support the suggested condition since it would require that the building's heights reflect the topography of the site, which is flat in the buildable portion. Even if there was a policy basis, some showing would have been required that a building could be "stepped-up" this site given that the only slope is in the required front yard.

11. Appellants and intervenor ask that more parking be required or that the number of units be reduced to mitigate the impact of the parking demand. This impact was identified in the DNS. Even if the overflow would be only three vehicles instead of the 5 to 9 which the Engineering Department study suggests, the adverse impacts would warrant mitigation because of the surrounding conditions. However, the City Council made its intent about the relationship of SEPA to parking requirements in the Land Use Code clear in its decision In re Elmer, MUP 83-077, C.F. 293040, that "...DCLU was to be prohibited from using SEPA policies to require more than one parking space per dwelling unit" for structures with 20 units or fewer. Appellants and intervenor urge that this interpretation is contrary to the intent of the State Environmental Policy Act to be responsive to

the environment surrounding each proposal and should not be applied in this case. The Director's determination that the City Council's decision in Elmer delimits her authority to condition for parking impacts was not in error.

12. Intervenor asks that the Cumulative Effects policy, Section 25.05.902, be applied in this case. That policy recognizes that a single project may have impacts on its surroundings "when aggregated with the impacts of prior development" or by inducing other development. If an analysis of cumulative effects shows adverse impacts, the "project may be modified to lessen its demand for support services and facilities or its impact on natural systems." Section 25.05.902(3)(b). Intervenor suggests that analysis and mitigation are warranted on two grounds: there are several proposals which are occurring simultaneously; and this project, as the first L-2 project on Queen Anne, may "induce" other projects of like density.

13. The Cumulative Effects policy intent addresses those impacts of the project combined with "impacts of prior development," not future or simultaneous proposals. Prior development has been considered in the Director's analysis. The policy intent also addresses the situation where the proposal may cause other development. Here, intervenor urges that there is a causal relationship between this project and future development because it will demonstrate to other developers the density that can be achieved on a small lot, thus encouraging further development. The examiner is not persuaded that even if the project serves as an example of what can be done under L-2 zoning, that this amounts to inducing or causing a future happening as contemplated by the policy. The examiner is also not willing to assume that the community of developers is divided and isolated in ways that those who may develop on Queen Anne will be knowledgeable only about what is occurring on Queen Anne, e.g. as to density achievable. The conclusion must be that the code and economics will determine the level of future development, not this project. There is no error.

14. The appellants have failed to show that the Director's decision as to the DNS or imposition of conditions is clearly erroneous.

Decision

The decisions of the Director are AFFIRMED.

Entered this 10th day of December, 1985.


M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

Pursuant to Section 25.05.680(2), Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fourteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center. The City Council's review on appeal shall be limited to the exercise of the City's substantive authority to condition or deny the proposal under SEPA as authorized by Section 25.05.660. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure.

If an appeal is taken pursuant to Section 25.05.680(2), 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(2) appeal.

If no appeal is taken pursuant to Section 25.05.680(2), 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 fourteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.36(B)(11). 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 fourteen days of the date of this decision. Section 25.05.680(3)(d).

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 from 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.