

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

In the Matter of the Appeal of

GREG GOODWIN

FILE NO. MUP-87-020(W)
APPLICATION NO. 8605846

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

Introduction

Greg Goodwin appeals the decision of the Director, Department of Construction and Land Use, to impose certain conditions on a master use permit for a proposal at 6215 Phinney Avenue North.

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 May 26, 1987.

Parties to the proceedings were: appellant, pro se, and the Director, Department of Construction and Land Use by Jim Barnes, associate 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. Appellant applied for a master use permit to demolish two single family residences and construct a 21-unit apartment building at 6215 Phinney Avenue North. The Department of Construction and Land Use conducted its review and issued a determination of non-significance (DNS) and imposed certain conditions pursuant to SEPA. Appellant challenges certain of those conditions.

2. The conditions imposed by the Director which are appealed by appellant are as follows:

1. In order to mitigate the adverse impacts of the project's bulk and scale on the adjacent single family development, the owner(s) and/or responsible party(s) shall submit new plans revised to provide a minimum 16 ft. landscape setback along the closest facade to the west property line, or, alternatively, to provide additional minimum 6 ft. setbacks and new roof lines at the third floor level at the northwest and southwest corners of the building to relieve the apparent height. The revised plans shall also incorporate safe, at-grade access to all open space in this rear setback area. The new plans shall be approved by the Land Use Review Section.

5. To encourage use of transit, the owner(s) and/or responsible party(s) shall provide bus schedules for nearby bus routes and a one month Metro transit pass to each unit for a

period of three months the first time it is leased or sold. A covenant stating this provision shall be provided to the Land Use Review Section for approval and recording with the property.

8. 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 to the Land Use Review Division for inclusion in the file.

9. To encourage use of transit, the owner(s) and/or responsible party(s) shall provide bus schedules for nearby bus routes and a one month Metro transit pass to each unit for a period of three months the first time unit is leased or sold per covenant.

3. Clarification of the intent of Condition 8 resulted in an agreement that the wording should be modified to more clearly convey that intent. The intent is that one parking space per unit be included in the price or rental fee for the unit. Charges may be imposed for extra parking spaces.

4. The site of the proposed building is a two lot parcel at the southwest corner of the intersection of Phinney Avenue North and North 63rd Street. The parcel contains some 9,250 sq. ft. of area and is level atop an embankment rising from the sidewalks at the property line.

5. The subject site is zoned L-3 RC as are properties to the north and east across Phinney. The southern half of the site abuts the SF 5000 zone to the west. The northern half abuts a lot which crosses the zone line so is L-3 RC next to the subject site but is largely in the SF 5000 zone and is single family developed. Property south of the subject site is zoned NC2/40'.

6. To the west of the subject site development is largely single family in the SF 5000 zone; in the L-3 RC zone to the north, on the west side of Phinney, development is still single family in the first block and multi-family and commercial on the second block; on the east side of Phinney is multi-family development; to the south, in the NC2/40' zone, development is mostly commercial with a duplex immediately south of the subject site. Beginning about three blocks south of the subject site there is multi-family development of generally larger size.

7. There is no alley separating the L-3 and NC2/40' zones from the SF 5000 zone.

8. The proposed building would be three stories high over basement parking for 23 cars. The building, above ground, would be as close as ten feet to the rear (west) property line for 17.5 ft. of the northerly portion and 25 ft. back on the southerly portion. The closest portion building would be 23 ft. from the closest portion of the neighboring house on North 63rd. The 25 ft. rear yard setback adjoins the rear yard of the house on Greenwood Avenue. The height of the building from the level portion of the lot to the plate would be 28 to 29 ft. and to the top of the peaked roof would be 40.75 ft.

9. The landscape plan shows, what was described by Jim Barnes, land use specialist, "fairly extensive landscaping" along

the rear property line. A 6 ft. high wooden fence is also proposed along that line.

10. The environmental checklist, Exhibit 11, discussed compatibility of the structure with the area in terms of height: the proposed building would be two stories higher than the single family residence in the single family zone (facing North 63rd Street) and one story higher than the duplex to the south, "one of the tallest structures in the immediate vicinity."

11. The Director's threshold and conditioning decision found that the proposed building would be taller and wider than existing buildings and "the minimal setback proposed between the three-story apartment and the one-story single family residence would still result in an adverse impact on neighborhood character."

12. The two buildings to the south of the subject site are 2 and 1/2 stories tall. Heights of 28 to 30 ft. are common south along Phinney until North 59th where there is a four-story building with a peaked roof. The house at 6212 Greenwood North, immediately west of the southern lot of the parcel, is 24 ft. or two stories tall.

13. The maximum permitted height in the L-3 zone is 37 ft. plus a pitched roof.

14. The maximum permitted height in the SF 5000 zone is 30 ft. plus a pitched roof.

15. The minimum required rear setback for the zone is 10 ft.

16. Appellant initially intended a four-story building on the site but reduced his plans to three stories in recognition of the scale of the immediate neighborhood.

17. Condition 1 states that the additional 6 ft. setbacks at the third floor are intended "to relieve the apparent height." At hearing, Jim Barnes testified that the condition is to provide further setback, to relieve the apparent height and to reduce the apparent width.

18. Condition 1 would result in the elimination of one apartment unit.

19. Engineering Department standard for alley width in the City is a 16 ft.

20. The DNS decision identified a "worst case" overflow demand for parking from the proposed building to be nine spaces which includes guest parking. It concludes that there is an adequate supply of on-street parking to accommodate the overflow utilizing both sides of Phinney Avenue and that the utilization of on-street parking would be within acceptable limits.

21. No adverse impact on traffic circulation was identified in the DNS or environmental checklist from the projected 105 additional trips per day to be generated by the project which figure would represent an addition of .01 percent to the volume on Phinney Avenue.

22. Conditions 5 and 9 which require a Metro transit pass be given to each unit for three months for the first time unit is leased or sold is intended to encourage use of transit, reduce demand for parking and reduce traffic volume.

23. Appellant filed his application for a master use permit August 3, 1986. On about December 30, 1986, a traffic study was requested by the Department. The study was submitted by appellant January 23, 1987. The Director issued her threshold determination on April 28, 1987.

Conclusions

1. Appellant raises several procedural issues, chiefly matters of timing. He contends that the Department has violated the code provisions regarding timing and unduly delayed his project. He acknowledges, however, that the Hearing Examiner would be unable to fashion a remedy which could cure these alleged errors.

2. The Director has authority to impose conditions on a project pursuant to SEPA to mitigate adverse environmental impacts subject to the subject the following limitations: 1. the mitigating measures are to be based on policies designated in Section 25.05.902 as bases for the exercise of this authority; 2. the conditions must be related to impacts identified in the environmental documents and the policy basis for the condition must be stated in the decision; 3. the conditions are to be reasonable; and 4. responsibility for the conditions must be proportional to the amount of impact from the proposal. Section 25.05.660.

3. Appellant has several bases for his challenge to the imposition of conditions: that the policies were misinterpreted as to the intent of the Council with regard to "edges"; that the proposed building would not have the impact on neighborhood character identified; that the condition requiring transit passes was not related to a specific adverse impact; and that the condition requiring bus passes was imposed to accomplish a societal goal, use of alternative transportation modes, rather than being related to the impacts of the proposal.

4. Appellant outlined the legislative history leading to the present Multi-Family Land Use Policies which have been designated under Appendix A to Section 25.05.902 as SEPA policies. He showed that two competing goals were present throughout the planning process, the preservation of the character of neighborhoods and increasing opportunities for affordable housing, and that the policies attempted to accommodate both goals by permitting a moderate increase in the scale of buildings which were located close to parks, transportation corridors, shopping areas, etc. He argues that the Director's decision has the effect of isolating just one consideration, proximity to single family zoning, and ignoring others such as proximity to arterials, transit, etc. and keeping housing affordable.

5. The objectives to be achieved through multi-family designation are to increase opportunity for new housing development and ensure that new development is compatible with neighborhood character by "sensitively increasing the scale and intensity of development while attempting to minimize the impacts on existing character." p. 23-16. Where application of the designation policies through rezoning has resulted in a special problem of transition between zones which has not been fully accommodated by zoning, the City Council has decided that the multi-family policies may serve as a basis for reducing the height of a building below the zone maximum to provide better transition. Appeal of Oden Investment, C.F. No. 293557 (1985). The Director relied on the multi-family policies and the commercial policies in requiring the two "cut-outs" or setback to create greater separation and reduction in height.

6. Appellant urges that he has already reduced the height of the building from the four stories which would have been permitted to three and that he has increased most of the rear setback from the required 10 ft. to 25 plus has provided extensive landscaping for buffering.

7. Though appellant's argument that transition has been adequately provided for in the zoning because the difference in

maximum height between the two zones is only 7 ft. has merit, at the north end, where the building would be only 10 ft. from the lot line, the Director has a basis for her determination that the separation is inadequate for transition. While the examiner has some question whether a 6 ft. indentation at the third level will provide the separation or height reduction desired, the decision by the Director must be given substantial weight by the Hearing Examiner. Section 25.05.680B(3). Only a showing that it is clearly erroneous can overcome that weight. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981). Since appellant has provided much greater than the 16 ft. separation at the southwest corner, which the Director has determined is needed for adequate transition, the "cut-out" at the southwest corner for separation is not reasonable. Further, the height, at three stories, is only one story higher than the adjacent house in the SF 5000 zone so reducing the height to two stories, to match that of the house, is not justified where some increase in height is contemplated by the L-3 zoning. The decision to require a "cut-out" at the southwest corner is clearly erroneous.

8. Condition 8 should be clarified to require that one parking space be included in the cost of each unit.

9. Since no adverse impact on traffic circulation was identified in the documents, the only basis for Conditions 5 and 9 is parking overflow. While at worst case a nine car overflow is anticipated, the DNS found the supply to be adequate to accommodate the overflow and the utilization rate to be within acceptable limits. The overflow parking, then, does not represent an adverse impact so no condition is warranted. Further, encouragement of use of transit is a desirable goal, however, imposition of the cost on this project, without a showing that the project would cause an adverse impact, is not permissible under SEPA.

Decision

The decision of the Director to impose conditions pursuant to SEPA to mitigate adverse environmental impacts of the proposed project is modified as follows:

Condition 1 shall read:

In order to mitigate the adverse impacts of the project's bulk and scale on the adjacent single family development, the owner(s) and/or responsible party(s) shall submit revised plans showing a minimum 16 ft. landscaped setback along the closest facade to the west property line, or, alternatively to provide an additional minimum 6 ft. setback and new roofline at the third floor level at the northwest corner of the building to relieve the apparent height. The revised plans shall also incorporate safe, at-grade access to all open space in this rear setback area. The revised plans shall be approved by the Land Use Review Section.

Condition 5 is stricken.

Condition 8 shall read:

To minimize traffic and parking impacts on the surrounding community, the owner(s) and/or responsible party(s) shall include one on-site parking space in the sale price or rental fee for

each unit. No additional fees shall be charged for that space. The owner(s) or responsible party(s) shall submit to the Land Use Review Section for inclusion in the file a sample copy of the lease, rental or sales agreement stating these terms.

Condition 9 is stricken.

Entered this 10th day of June, 1987.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

Pursuant to Section 25.05.680(C), Seattle Municipal Code, 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 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(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 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 23.76.36(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 fifteen days of the date of this decision. Seattle 25.05.680.

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.