

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

FREMONT NEIGHBORHOOD COUNCIL,
ET AL.,

FILE NO. MUP-88-066(W)
APPLICATION NO. 8707676

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

Introduction

Appellants, Fremont Neighborhood Council, et al., appeal the decision of the Director, Department of Construction and Land Use, to issue a determination of nonsignificance and to approve with conditions a master use permit application for a 24-unit building at 4323 Evanston Avenue North.

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 October 31, 1988. Post-hearing briefs were submitted by the parties and the record closed on November 18, 1988.

Parties to the proceedings were: appellants, Fremont Community Council and individuals including Toby Thaler, represented at hearing by Toby Thaler, attorney at law; the Director, Department of Construction and Land Use, represented by Ed Somers, land use specialist; and the applicant, David Forsmire, represented by his attorney, Kimberlee A. McDonald.

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 two single family residences and construct a 24-unit apartment building with 30 parking spaces at 4323 Evanston Avenue North. The Director, Department of Construction and Land Use ("Director"), issued a determination of nonsignificance and imposed conditions of approval pursuant to SEPA. Appellants appealed this decision. After issuing the decision, the Director's staff discovered that the decision had been based on alternate plans which had been withdrawn from consideration by the applicant. A revised decision was issued by the Director which changed one of the conditions of approval.

2. The actual proposal is for 24 apartment units in four levels over a parking level. Sixteen of the units would be two-bedroom and eight, one-bedroom. The alternate plans had shown a four level building with three two-bedroom units and 21 one-bedroom or studio units. Both plans provided 30 parking spaces which meet current code requirements.

3. The site for the proposal is a 10,000 sq. ft. parcel with 100 ft. of frontage mid-block on Evanston Avenue North. At the time of the application the site was zoned Lowrise 3 as was property on all sides.

4. The surrounding development is single family, one or two stories high, and small apartment buildings.

5. The Director's decision identified a height, bulk and scale impact in that the proposed building would be larger than other residential structures in the area. Because the site is not located on or near an edge of a less intensive zone, the Director concluded that mitigation of the bulk and scale was not warranted or authorized under SEPA.

6. An increase in traffic due to that generated by the proposal was identified as an impact but it was determined that because the site is located near arterials and it has good access to North 45th Street, the impact was not considered significant and no mitigation was warranted.

7. A parking spillover of six spaces was identified but, based on a parking utilization survey showing 70 percent utilization in the area, it was determined that there would be no significant impact and the only mitigation warranted was to require that parking be provided free to the tenants and assigned to each unit.

8. The potential for cumulative impact from the traffic of this and two proposed developments on Dayton Avenue North was considered but it was concluded that the other developments would not use Evanston and the traffic on arterials would not be significantly increased by the combined traffic.

9. Evanston Avenue North does not meet current Engineering Department design standards for streets in an L-3 zone.

10. No traffic survey or study was required by the Department of Construction and Land Use for the project.

11. The appellants' witnesses testified that because of congestion at North 46th and Fremont, area residents travel on side streets to reach an arterial to go north or east. If there are oncoming cars on Evanston, it may be necessary to back out of that street. When there is backup traffic at 44th and Fremont, it sometimes reaches the intersection of 44th and Evanston.

12. The land use specialist found Evanston to be a typical Fremont street with no specific hazards or problems. He also determined that there are no level of service difficulties at the intersections on the arterials.

13. Witnesses disagree with the department's finding that access to Fremont or North 45th is "good" in the area.

14. The Department of Construction and Land Use assumes that the worst case parking demand is 1.5 vehicles per unit unless a lower ratio is proved. The parking demand for the proposal would then be for 36 spaces with 30 supplied on-site leaving a potential spillover to the street of six vehicles.

15. According to the land use specialist, use of a ratio of cars per bedroom would result in a ratio lower than the 1.5 vehicles per unit used in this case.

16. A parking utilization study was done by TDA, Inc., a traffic and transportation consultant, for the applicant. The survey of the area which extended approximately 2 to 2.5 blocks in each direction showed 287 unrestricted parking spaces. The land use specialist found the area covered by the survey to be reasonable. Counts on two week nights after 9:00 p.m. in August showed an average utilization of 70 percent or 200 vehicles.

17. Neighbors of the subject site conducted surveys of parking utilization. Counts of parked cars on the street within the subject block were taken by one neighbor (Harem) four times over the two weeks prior to the hearing between 10:00 p.m. and 1:00 a.m. Between 26 and 28 cars were found each night. A second neighbor (Thaler) made around six counts at 9:00 p.m. and generally found 26 cars parked. A third (Anderson) found 25 cars parked on a Saturday morning.

18. The consultant's study shows 24 spaces available in the block consisting of the two block faces in the 4300 block of Evanston. The neighbors found about 26 cars parked in those spaces, more than capacity.

19. On North 43rd and North 44th streets in the block between Evanston and Dayton (around the corner from the subject site) the consultant's study shows an average of 19 parking spaces vacant. Those areas were not surveyed by the neighbors.

20. The land use specialist determined that there would be sufficient on-street parking available in the area to meet the demand from the proposal.

21. Cars meeting on Evanston cannot pass when cars are parked on both sides so one has to seek a vacant space or driveway or back out if there are no openings.

22. The condition imposed by the Director to mitigate the parking impact by encouraging tenants to use the on-site spaces requires the owner to inform tenants that only one space per unit is provided, requires the owner to assign one space to each unit, prohibits a separate charge for parking and requires signs stating that the extra spaces are for tenant parking.

23. The proposed structure is to have a flat roof, the minimum required modulation in front and on the south side. No modulation is required in back or on the north side and none is proposed. At the front, four stories plus part of the garage will be above grade. At the rear, three stories will be exposed. The structure will be larger than any of the neighboring structures. While the land use specialist considered other apartment proposals in the area, he did not consider large, mixed-use proposals on Fremont near North Allen Place or at North 45th.

24. Because of the unkempt condition of the existing houses on the site and grounds under the ownership of the project proponent, appellants are concerned that the landscaping required as a condition of approval may not be maintained. They also seek a completion bond fearing that the project may not be adequately financed to be completed.

25. The current zoning of the subject site and its surroundings is Lowrise 1 (1200) with a 30 ft. height limit.

26. The Superior Court determined that applicant's original application was vested to the prior L-3 zoning.

Conclusions

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

2. The Director is to issue a determination of nonsignificance if he determines there will be no probable significant adverse environmental impacts from the proposal. Section 25.05.340A. "Significant" means in this context a "reasonable likelihood of more than a moderate adverse impact on environmental quality." Section 25.05.794A.

3. The Director has the authority pursuant to Section 25.05.660 to impose conditions to mitigate adverse environmental impacts subject to a series of limitations: 1) the conditions must be based on policies adopted pursuant to SEPA; 2) the mitigation measures are to be related to specific adverse impacts identified in the environmental documents; 3) the conditions must be reasonable and capable of being accomplished; and 4) responsibility for the measures must be proportional to the impact attributable to the subject proposal.

4. The Director's determinations as to the threshold determination and conditions are to be given substantial weight by the examiner on appeal. Section 23.76.022C.5. The burden

then is on appellants to produce evidence proving that the decision is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

5. Appellants did not produce evidence showing that the Director's determination that the impacts would not be significant was clearly erroneous.

6. Appellants seek additional conditions to mitigate parking, traffic and height, bulk and scale impacts. The evidence shows that spillover parking from the project could not use Evanston Avenue North in the subject block without displacing existing parking but that there is adequate parking around the corner on either North 44th or North 43rd Streets. Since the parking on the subject block is already fully utilized, the spillover would not make the circulation any more difficult by filling in any vacant spots to allow cars to pass.

7. The policy in effect at the time of vesting prohibited mitigation of parking impacts if the parking ratios in the Land Use Code were met so the Director had no authority to impose conditions to mitigate parking impacts.

8. Appellants' testimony showed that there is some difficulty in gaining access to the arterials which was not recognized by the land use specialist, however the evidence does not show whether the addition of traffic from the proposed 24 units, as distributed over the streets, would be sufficient to make any mitigation measure reasonable.

9. While Evanston Avenue North is a substandard street, there was no showing that requiring it to be widened or property dedicated for street right-of-way on the mid-block site would mitigate the impact of additional traffic from the project so the examiner cannot conclude that would be a reasonable mitigating measure.

10. The Director has authority to mitigate height, bulk and scale impacts only when the proposed project is at the edge of a zone where transition to a less intensive zone is not adequately accomplished by compliance with the development standards of the zone or when the project presents unusual circumstances which would not have been contemplated at the time of zoning of the property. In re Oden, C.F. 293557 (1985). The subject site is not at or near an edge of the zone so that basis is not present. Appellants argue that an unusual condition exists because subsequent zoning decisions have created a situation where the proposed project will be taller and bulkier than any other development in the area. Appellants did not specify the reduction they seek. New development will be limited to 30 ft. (35 ft. with pitched roof) so the proposed building will be approximately 5-10 ft. taller than any new building. A difference of approximately one story is not of the degree that would warrant mitigation of the project.


11. While appellants' evidence showed that the land use specialist failed to consider two projects on Fremont Avenue, the evidence did not show that the cumulative impacts of those projects, the subject project and the others known on Dayton would create problems in need of mitigation.

12. No policy was identified to support conditioning to assure completion of a project.

Decision

The decision of the Director is affirmed.

Entered this 1st day of December, 1988.


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 25.05.660. 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, 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.