

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

PAUL PANAGAKIS

FILE NO. MUP-86-054(W)

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

ORDER

This matter concerns property addressed as 7750 - 15th Avenue N.E.

Appellant challenged the adequacy of the conditions imposed on the project by DCLU.

The matter was heard before the Hearing Examiner on October 2, 1986. By Hearing Examiner Decision entered October 16, 1986, the matter was remanded to DCLU for further review and conditioning pursuant to SEPA.

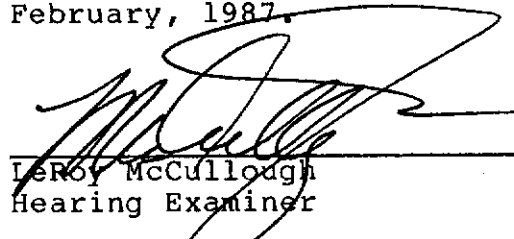
The DCLU Response of the Director was dated January 27, 1987 and per the DCLU Affidavit of Service of Mailing, mailed on that date to appellant, applicant and architect.

To date, the Hearing Examiner has received no request to review the DCLU response.

The Hearing Examiner Decision of October 16, 1986 specified that unless a request for review of the DCLU "supplemental decision" was received within seven business days of the DCLU mailing, the supplemental DCLU decision would be considered as the Hearing Examiner decision.

In accordance therewith, IT IS ORDERED: the DCLU decision, as modified, is AFFIRMED.

Entered this 27th day of February, 1987.


Leroy McCullough
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 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 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.

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

In the Matter of the Appeal of

PAUL PANAGAKIS

FILE NO. MUP-86-054(W)
APPLICATION NO. 8603235

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

Introduction

Paul Panagakis challenges the adequacy of conditions imposed by the Director, Department of Construction and Land Use (DCLU), on a 4-story, commercial-residential structure proposed for 7750 - 15th Avenue N.E.

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 October 2, 1986.

Parties to the proceedings were: appellant, pro se; project applicant by Don Winnerlind, co-owner, and by Blaine Weber, architect; and the DCLU Director by Patrick Doherty, 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. The subject property is located at the southern edge of a Neighborhood Commercial 2, 40 ft. height zone at 7750 - 15th Avenue N.E. This segment of 15th N.E. and nearby Lake City Way are classified as major arterials with Metro bus service approximately every quarter hour.

2. The applicant's 5440 sq. ft. parcel is the third lot south of N.E. 80th on the east side of 15th N.E. The parcel is developed with a one-story, wood frame building that is used as a second-hand goods store.

3. Applicant proposes to demolish the wood frame structure and construct in its stead a 4-story, mixed-use building. On the first floor would be 2725 sq. ft. of office-retail space projected to accommodate between 2 and 4 professional, consultant-type businesses. The Hearing Examiner finds in accord with applicant's presentation that these businesses are not "auto intensive."

4. The second, third and fourth floors are proposed for residential units with balconies. A large "community" deck is proposed for the top floor. Appellant, a neighbor, was especially concerned that the east neighbors would lose their privacy by virtue of this 4-story deck.

5. The DCLU decision at issue notes that the proposed building is "taller than many of the nearby structures." Decision, p.3. In hearing the DCLU analyst explained further that the proposed building is taller than structures all along the subject 15th Avenue strip, and that the building would be of much

greater dimension than existing residential and commercial uses in the vicinity.

6. Ten basement parking spaces are proposed with access via a driveway to the east adjacent alley. An additional 4 spaces are proposed for undesignated parking.

7. Because of the amount of commercial space proposed no new parking is required for the new business use.

8. After reviewing the proposal DCLU issued a determination of non-significance (DNS) conditioned on installation and maintenance of approved street trees and landscaping. Appellant, who lives some 60 ft. south and west of the subject property, contested the adequacy of the conditions. Appellant is not requesting that an environmental impact statement (EIS) be prepared.

9. The adjacent and nearby properties to the south are zoned Single Family 5000 and are generally developed with one-story (plus attic) single-family residences. Across the east adjacent alley are other older SF 5000 zoned single family dwellings, oriented to 16th Avenue N.E.

10. One-story commercial buildings predominate in the subject site's commercial zone, i.e. along 15th N.E. Thus, appellant argues, the proposed building will have an imposing, visual impact on the environment, and should be significantly reduced in scale. Appellant also pointed out that in contrast to the south adjacent lot's 35% lot coverage, the proposed building will cover a substantially greater portion of the land. In fact, the only setback required for the proposed structure is a 10 ft. setback to the south where the subject site is adjacent to single-family zoned and developed property.

11. DCLU and project applicant responded that the subject property's height limit has been reduced from the predecessor BC zone's 60 ft. to the present 40 ft. Proponent continued that only 1 ft. of a 1.5 ft. sloping lot bonus will be used; and that the building facade will be modulated (indented) and covered with materials that will soften the visual impact. Applicant also projected that when adjacent properties develop to their 35 ft. height potential there would be a difference of only 5 ft. between the height of those structures and the height proposed herein.

12. There is no on-street parking allowed on this specific portion of 15th N.E. during morning and afternoon traffic peaks. However, parking is permitted on both sides of the street between 9:00 a.m. and 4:00 p.m. Appellant anticipates that the proposed 10 apartments and (4) offices will result in the need for some 12-15 extra parking spaces along 15th and/or along vicinity streets. Appellant presented no direct study data or evidence supportive of this projection.

13. The DCLU witness testified that the anticipated parking overflow from the developed site can be reasonably accommodated on the surrounding streets. DCLU specifically noted that the increased parking demand would be met by 15th Avenue on-street parking, but that some peak hour spillover to surrounding streets would occur. Applicant's witness testified credibly that he had no difficulty finding parking along 15th N.E. (during non-peak hour visits). The photos of record reflect no shortage of on-street parking. (Photo Exhibits 1a-e). The Hearing Examiner therefore is unable to find that there is inadequate on-street parking to accommodate the projected increase.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapters 23.76 and 25.05, Seattle Municipal Code.

2. The Hearing Examiner is required to give "substantial weight" to the DCLU Director's environmental determination. Seattle Municipal Code Section 23.76.022(C)(7). Consequently, it is appellant's burden to show the DNS, as conditioned, to be clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. Appellant challenges the adequacy of the mitigating conditions imposed by DCLU. The State Environmental Policy Act, (SEPA), applied by the City of Seattle, permits conditioning of projects to mitigate specific, adverse, clearly identified environmental impacts. Seattle Municipal Code Section 25.05.660(A)(2).

4. In determining the need for conditioning pursuant to Section 25.05.660 the City shall use SEPA "and other environmentally related policies adopted by the City Council in the form of resolutions, codes, ordinances, regulations or plans identified in Appendix A..." Seattle Municipal Code Section 25.05.902(B)(2). Appendix A includes the "Zoning Code and amendments thereafter."

5. Other litigants have argued that no conditioning related to height is appropriate where the zoning permits a specific height. However, that contention has been laid to rest by several City Council pronouncements, including those of In re the Appeals of Queen Anne Community Council et al., C.F. 293623, Hearing Examiner File Nos. MUP-82-080-085(W) (May, 1985), and In re Oden Investment and Kinnear Park Condominium Association, C.F. 293557, Hearing Examiner File Nos. MUP-86-057, 58(W) (July 1985). Oden, concerning property zoned midrise, is particularly relevant to this case. According to Oden,

It is inappropriate to require a reduction in scale merely because the surrounding buildings in the same midrise zone are developed to a lower height...In order to justify a reduction in height below the maximum, it must be shown either that the project presents unusual circumstances which would not have been contemplated as part of the rezoning of the area or that the project is on the edge of a zone where the problems of transition are not fully accommodated by the zoning.

6. Where a business-zoned apartment complex was proposed for a site adjacent to a single family zoned and developed area, the City Council remanded a Hearing Examiner decision with clarification that

The question...is whether the applicable zoning...provides sufficient transition in bulk and scale between the Neighborhood Business... zone and the adjacent SF 7200 zone or whether additional mitigation under SEPA is appropriate.

In re Appeal of Ernest Wilson and Cheryl Amundson, C.F. 294841, MUP-86-011, MUP-86-012 (August 25, 1986). The Wilson - Amundson remand noted that the

role of SEPA in the case of the bulk and scale impacts of single purpose residential buildings in commercial zones is particularly important since neither Title 24 nor Title 23 zoning effectively regulates the scale impacts of residential structures in neighborhood commercial areas.

7. Applying the foregoing principles of law to this case, appellant did not show the DCLU Director's decision to be clearly

erroneous as it relates to parking. The Hearing Examiner is persuaded by applicant's presentation that the business uses allowed, e.g. professional, consultant, would not be auto-intensive. The record is also persuasive that there is ample on-street parking on 15th and secondarily on surrounding streets to accommodate the anticipated increased demand. Thus, there is no basis in this record to require additional on-site parking; nor reduction in on-site occupancy levels. Seattle Municipal Code Section 25.05.660(1).

8. The Hearing Examiner is inclined to reach a different conclusion with respect to the height, bulk and scale of the proposed building. In response to the Land Use Code designation for the applicant's site, applicant is proposing a 4-story (41 ft.) structure. The other commercially zoned properties within applicant's strip are developed with one-story commercial uses. Single Family 5000 zoned properties are immediately south, southeast and east of the applicant's site. They are generally developed with single-story, older dwellings. It is this setting that would be impacted by an attractive but nevertheless 4-story aberration proposed by applicant.

9. The DCLU report acknowledges that the building would be taller than many of the nearby structures. And the DCLU representative expanded upon this observation in hearing by acknowledging the proposed building's greater height and bulk. However, applicant, appellant and others should be apprised by DCLU's written report as to the degree and nature of the proposed building's impact on the environment. This is because mitigation is permitted only on "specific, adverse, environmental impacts clearly identified in an environmental document on the proposal." Seattle Municipal Code Section 25.05.660(1)(b). Conversely, had DCLU concluded that no particular impact was expected on the land use pattern, the environmental documentation should have clearly stated that assessment.

10. This project site is on "the edge of a zone where the problems of transition are not fully accommodated by the zoning." In re Oden, supra. After more clearly documenting the impact verbally described in hearing, DCLU should therefore review the proposal and condition it to reduce its height, bulk and scale impacts. In its second decision, DCLU should also specify the applicability of the Neighborhood Commercial Areas Policies, In re Wilson and Amundson, supra, and any other policies, plans or rules relied upon to impose reasonable mitigating conditions on this project.

Decision

1. This application is remanded to DCLU for action in accord with Conclusions 9 and 10 above.

2. After the supplemental DCLU decision, applicant may appeal conditions imposed by submitting written objections to the Hearing Examiner within 7 business days of the DCLU mailing date. The objections must be accompanied by a \$25.00 appeal fee payable to the City Treasurer.

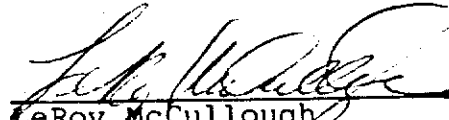
3. Appellant may request further review of the DCLU supplemental decision by submitting written objections to the Hearing Examiner within 7 business days from the date of DCLU's mailing. No additional appeal fee will be required of appellant.

4. If a request for review of DCLU's supplemental decision is received, the Hearing Examiner will issue a decision based on the written submittals and responses thereto.

5. If no request for review is received per items 2 and 3 directly above, the DCLU decision shall be considered as the Hearing Examiner decision on this application.

6. The Hearing Examiner retains jurisdiction of this matter in accordance with the foregoing.

Entered this 16th day of October, 1986.



LeRoy McCullough
Hearing Examiner