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BEFORE THE HEARING EXAMINER

AUG 17 1988

CITY OF SEATTLE

SEPA
PUBLIC INFORMATION CENTER

In the Matter of the consolidated
Appeals of

JAMES AND MARY JACOBS

FILE NO. MUP-88-038(W)
APPLICATION NO. 8707652

and

DAVID MALMGREN, GEORGIA WAGNER

FILE NO. MUP-88-041(W)
APPLICATION NO. 8707652

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

ORDER

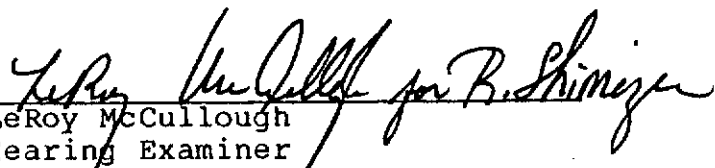
This matter, concerning property addressed as 13709 Greenwood Avenue North, came on for an appeal hearing before the Hearing Examiner on July 29, 1988.

The written decision on that appeal, made August 15, 1988, did not include an entry date.

It is therefore ordered:

The decision date of entry shall be considered as the date of this order. Further, this order will be filed with the SEPA Information Center, 5th Floor Municipal Building, on this date of entry.

Entered this 17th day of August, 1988.


LeRoy McCullough
Hearing Examiner
Office of Hearing Examiner
400 Yesler Building, 5th Floor
Seattle, Washington 98104

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FINDINGS AND DECISION

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Introduction

The appellants exercised their 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 July 29, 1988.

Parties to the proceedings were: appellants, James and Mary Jacobs by Scott Blair, attorney at law; appellants David Malmgren and Georgia Wagner by Nancy Malmgren, pro se; applicant by John Hendrickson, attorney at law; and the Director, Department of Construction and Land Use, by John Doan.

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 these appeals.

Findings of Fact

1. The applicant proposes to demolish two single family residences and to construct two, four-story apartment buildings having a total of 31 units and basement parking for 40 vehicles. The two appeals are from the same decision of the Director and raise similar issues. While appellants Jacobs' presentation was directed at the requirement of an EIS, other evidence in the record addressed sufficiency of mitigation. The two appeals were thus consolidated to the hearing date herein and opportunity was made available for presentations on both appeals.

2. The subject property is in the Broadview/Bitter Lake Neighborhood of north Seattle in a Lowrise 2 (L-2) zone and is 19,320 sq. ft. in lot size. Located at the northwest corner of the intersection of N. 137th and Greenwood Avenue N., the property extends 120 ft. along N. 137th and 160 ft. along Greenwood Avenue N.

3. The property lies in a corridor of L-2 properties on either side of Greenwood Avenue N. that is an edge to the surrounding residential properties. Properties in the multi-family zoned areas are predominately duplexes, and apartment buildings. New development in the past several years have been multi-family structures ranging in size from 36 units to 186 units. The property is less than 200 ft. from Bitter Lake.

4. South, across N. 137th is a three-story, four unit apartment building, abutting to the north are one and two-story 3 and 4 unit apartment structures, abutting west across a 16 ft. wide unimproved alley is a single family residence and southeast

across Greenwood Avenue N. are multi-family structures.

5. The proposed structures will be oriented east-west at a depth of 73 ft., and 60 ft. in width. The structures will be connected by a two story skybridge and will have a combined total of 31 residential units: 23 two bedroom units and 8 one bedroom units. The first level containing an enclosed parking garage is to be 5 ft. below the grade of alley. The west facades (rear of buildings) is 30 ft. to the roof plate and another 4 ft. to the top of the pitched roof. The northerly building is to be positioned east of the southerly building by nine ft. resulting in the buildings having 19 ft. and 28 ft. rear setbacks, respectively, at the west boundary line. A 13 ft. wide courtyard is to be provided between the structures and a 10 ft. wide dedication is being provided at the south boundary at N. 137th for a sidewalk. Access to the garage parking is off Greenwood Avenue N.

6. During the comment period, 9 letters objected to the proposal based on auto related impacts, drainage concerns, runoff concerns, flooding, air pollution, loss of privacy, loss of private views, and incompatibility with present area development. At the public hearing appellants called witnesses, presented evidence into the record and introduced a petition signed by approximately 150 area residents who opposed the project for similar reasons.

7. Appellants differed in their conclusion as to both short-term impacts, such as construction related matters, and long-term impacts such as auto related matters, runoff, drainage, air pollution, population density, and associated noise and nuisance that the Director concluded were not significant impacts.

8. Demolition and construction will adversely impact the surrounding area in terms of noise, dust, and related impacts but due to the short-term nature of these impacts the Hearing Examiner finds that the impacts are not substantial. Code provisions and regulations mitigate impacts and where further mitigation was required the Hearing Examiner finds that the Director conditioned the proposal in those respects.

9. The Hearing Examiner finds that the proposal conforms to L-2 zoning requirements and in consideration of the present and new development in the area, is not out of character in regards to the development in the respective zones. The rear of the proposed buildings abut the less intensive SF 7200 residential zone but with their respective rear yard setbacks, the proposed structures will be 35 ft. and 43 ft., respectively, from the abutting single family homes. The slope of the property makes the effective height of the rear facade of the proposal 24 ft. The single family zoning would allow the single family residents to construct another story to their residences which would make the abutting structures in the two different zones to be at the same height.

10. Landscaping will mitigate the bulk of the proposal and large evergreen trees will be required as a buffer as well as the retention of the existing vegetation in the alley. The Hearing Examiner finds that the proposal was so conditioned by the Director. Conditions as to impacts due to light and glare were also found required of the applicant by the Director to mitigate these impacts.

11. The Director's representative indicated that the proposal provides 35 standard parking stalls and 10 tandem spaces for a total of 45 spaces for the 31 units. At a ratio of 1.5 spaces per unit, 46.5 spaces is the total demand for parking and thus, the spillover demand for parking is 1.5 spaces. The Director's representative indicated and the Hearing Examiner finds that spillover demand could be absorbed on the surrounding streets.

12. The appellants contend that a 36 unit development nearby will have spillover parking demand that will utilize spaces in

the same on-street parking areas; and further, due to the inability of new tenants to park along the west side of Greenwood Avenue North, this project will create an adverse auto impact.

13. Applicant's witness through his transportation study that was largely unchallenged except for the fact that it was conducted after the Director's decision was issued, establishes that parking utilization in the area is under 40 percent and the Hearing Examiner so finds.

14. Seattle City Council Resolution No. 27708 states that for new development the off-street parking shall approximate the city average parking demand according to the ratio that reflects the likely demand of the units occupants. At 1.15 per unit per structure, the Hearing Examiner finds that applicant in providing 45 parking spaces has exceeded that ratio. Mitigation is not required of the applicant but the Director has required that the tandem parking be assigned to tenants in the same unit to ensure utilization of that arrangement.

15. Appellant Jacobs testified as to the traffic volume on Greenwood Avenue N. as did applicant's witness who indicated that traffic on a daily average was approximately 23,990 vehicles. Seventy percent of the traffic volume is southbound at the morning peak and reverses during the peak PM hour. At a rate of 6.1 trips per unit, the proposal will generate 190 vehicle trips with 14 trips occurring at the AM peak and 18 trips occurring at the PM peak. In contradiction to appellants' presentation, both the Director's representative and the applicant's witness indicated that auto related impacts such as delays and auto accidents from these increases will only be slight at existing intersections and that, therefore, mitigation is not required. The Hearing Examiner finds that the increases in delays and auto accidents will only be slight. The Hearing Examiner does not find appellant Malmgren's witness's presentation that the proposal would cause substantial auto pollution to be persuasive. The Director, however, has conditioned the proposal by requiring that the applicant not charge for parking and that applicant to provide free bus passes for tenants for a period up to three months.

16. The Director has further conditioned the development by requiring that applicant provide improvements to both N. 137th and Greenwood Avenue N. that will include concrete curbs, gutters, drainage and sidewalks to Seattle Engineering Department or Board of Public Works approval.

17. Appellant's witness testified that Bitter lake is in such a condition that street runoff from area streets will substantially impact the condition of Bitter Lake so that it will become oxygen deficient. Appellants contend that the Director has not addressed this issue and that relevant evidence was presented in a preceding matter entitled, appeal of James and Donna Knudtson, MUP-88-007. The Hearing Examiner fails to attribute such an impact to Bitter Lake and finds that the Director's representative had, though not expressed in a detailed written analysis, reviewed the impact to Bitter Lake and had not found a significant adverse impact.

18. Applicant proposes an on-site detention system to control runoff to minimize water quality impacts to Bitter Lake. Applicant stated that the system is adequate for a 25-year storm and the Director's representative stated that the system complies with relevant Comprehensive Drainage Control Ordinance provisions, Seattle Municipal Code Chapter 22.800 to 22.806.

19. The detention system will include oil-water separators that will serve to minimize water quality impact on Bitter Lake.

20. Appellants attempt to tie-in the flooding in the area, in particular, at N. 137th and Greenwood Avenue N., and the difficulties that tenants will experience in regards to the flooding and rerouted traffic flow to avoid the flooding as adverse impacts. Runoff from the development due to increased impervious

surfaces was not found by the Hearing Examiner to be an adverse impact that would require mitigation or conditioning on part of the applicant.

21. The Hearing Examiner finds that no authority was cited which would provide mitigation to protect private views or privacy of area residents.

22. Applicant renoted his motion to dismiss and alleged that area residents were joined in a conspiracy to delay the proposal. The Hearing Examiner finds only that area residents have exercised their lawful rights in regards to the instant proceeding.

Conclusions

1. Jurisdiction of this appeal is pursuant to Chapter 23.76, Seattle Municipal Code.

2. Seattle Municipal Code Section 23.76.22(C)(7) provides that the DCLU Director's environmental determination shall be given "substantial weight." The appellants' burden is to show the DCLU decision is clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. Appellants request an environmental impact statement for the proposal. In order for the Hearing Examiner to require the preparation of an EIS, appellants must show that adverse impacts are significant and probable. Seattle Municipal Code Section 23.76.360. A "significant" impact is one with "reasonable likelihood of more than a moderate adverse impact..." Seattle Municipal Code Section 23.05.794. A "probable impact" is an impact "likely or reasonably likely to occur." Seattle Municipal Code Section 25.05.782.

4. The Hearing Examiner concludes that construction impacts, though adverse, will not be significant impacts because of their short-term nature.

5. The Hearing Examiner concludes that bulk and scale, and light and glare impacts were mitigated by topography and landscaping and by conditioning and thus will not be significant impacts.

6. The Hearing Examiner concludes that concerns with automobile related impacts such as parking, traffic flow, delays, pollution and safety were mitigated by conditioning and were thus not significant impacts. Conditioning regarding improvements to N. 137th and Greenwood Avenue N. by requiring curbing, gutters and sidewalks will further address the concerns with automobile related impacts.

7. The Hearing Examiner concludes that concerns of drainage, run-off and possible deterioration of Bitter Lake were satisfactorily addressed by the imposition of the detention system. It was not shown that this proposal will significantly, adversely affect Bitter Lake such that an EIS is required.

8. The Hearing Examiner concludes that an EIS is not required. Neither are further conditions required to mitigate the environmental impacts.

Decision

The Director's decision is affirmed.

Roger H. Shimizu
Roger H. Shimizu
Hearing Examiner Pro Tempore

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 the 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. 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. 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 written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available for 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.