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FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

HAZEL R. WEYERMAN

FILE NO. MUP-83-090(W)
APPLICATION NO. 83-614

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

Introduction

Appellant, Hazel R. Weyerman, appeals the decision of the Director, Department of Construction and Land Use, to issue a declaration of non-significance for a proposed four unit apartment building at 460 North 39th Street.

The appellant exercised her 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 February 1, 1984.

Parties to the proceedings were: Appellant, represented by James M. Driscoll, attorney at law, the Director represented by Jim Barnes and the applicant, James J. Scott.

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 applicant filed a master use permit application to establish the use for construction of a four unit apartment building at 460 North 39th Street. The Director's representative, Jim Barnes as responsible official, issued a declaration of non-significance (DNS). Appellant filed this appeal.

2. Issues raised by appellant in her letter of appeal on which she presented evidence at hearing were soils stability, traffic and parking impacts and land use change. Other issues were raised in testimony by appellant's witnesses which had not been cited in the appeal letter. One witness proposed the imposition of conditions however appellant's request for relief was limited to issuance of a declaration of significance and preparation of an environmental impact statement (EIS).

3. The subject property is a 40 by 120 ft. lot with frontage on North Bowdoin Place, Dayton Avenue North and North 39th Street. A two-story duplex is located on the southerly half of the site.

4. The site is in a Lowrise 3 zone and faces an SF 5000 zone across North Bowdoin Place (Bowdoin). In the subject block, that bounded by Bowdoin on the north, Dayton Avenue North (Dayton) on the east, North 39th on the south and Phinney Avenue North (Phinney) on the west, development is single family except for the duplex on the subject property. The site faces two apartment buildings with 16 units across Dayton and an apartment building across North 39th.

5. Bowdoin is 22 ft wide and ends at Phinney on the west and in mid-block east of Dayton.

6. The property on the north side of Bowdoin, across from the subject site, is supported by a retaining wall and the residence is elevated well above the street. The property on the north side is designated by the City as environmentally sensitive because of its slope.

7. The subject site slopes at an 8% grade down to the south and is not designated as environmentally sensitive.

8. Dayton drops down to the south and 39th down to the west.

9. The applicant proposes to construct a two-story four-plex on the northern half of the site creating a cluster development with the existing duplex. Six parking spaces would be provided for the six units, one under the duplex (existing), two between the buildings and three under the new building. Except for the one duplex space which is accessed from 39th, vehicular access would be from Dayton via an existing driveway approximately mid-block.

10. The Wards, whose property is in the same block 160 ft. from the subject site, have experienced some earth slippage in their back yard from erosion.

11. At some time in, or prior to, 1976 earth on the north side of Bowdoin, next to the retaining wall, spilled across the sidewalk below.

12. Mr. Ward has observed cracked walls, foundations and streets in the area. Mr. Scott saw no cracks in the walls or foundation of the duplex on his property which was build in 1929.

13. Donn Bodine, a builder for 30 years, who has excavated on several properties in the area, one within 100 ft., has experienced no soils stability problems.

14. Mr. Bodine owns the property two lots to the west of the subject site at 420 North 39th and has made a master use permit application to construct 12 apartment units there.

15. Jim Barnes found no reason to believe the changes in the soil from construction would be likely to cause a significant impact on the environment.

16. Based on studies of automobile ownership in Seattle, Jim Barnes estimates that the "worst case" demand for parking from the proposal would be parking for 1.5 cars per unit or two additional off-site spaces.

17. Parking is prohibited on the south side of Bowdoin and the north side of North 39th Street.

18. Parking surveys done by the applicant and appellant's witnesses and photographs in the record show that Bowdoin is heavily used for parking through at least two spaces were empty at the times surveyed.

19. Two blocks of Dayton, which is the area likely to be looked to for parking since vehicular access is to and from that street, with 22 or 23 possible parking spaces, had from 8 to 13 spaces available at the times surveyed. The grade of Dayton does make it less desirable for parking.

20. Since North 39th is an arterial, parking on the south side seems less likely for residents but may be used by guests if parking is not available on Bowdoin or Dayton. The surveys showed that half of more of the 13 or 14 spaces there were available at all times.

21. The two surveys showed that within the area surveyed, taking the time of highest occupancy from each, the rate of occupancy was 60 or 69%.

22. The street portion of the 60-66 ft. wide Dayton right-of-way is 25 ft. wide. If cars are parked on both sides cars cannot meet and pass unless one pulls into a driveway or parking space. If cars are parked, illegally, on Dayton clear to the intersection, cars turning onto Dayton from the arterial may encounter an oncoming car and have to stop in traffic or back into traffic, creating a hazardous situation.

23. Two apartment buildings on the east side of Dayton with a total of 16 units provide no off-street parking and approximately 25% of the single family homes have no off-street parking.

24. The only regular, public bus service in the immediate area is route No. 5 which runs from Shoreline to downtown. The nearest bus stop for that route is approximately two blocks away.

25. Jim Barnes responded "no" to the environmental checklist question 4. "Will the proposal result in the alteration of the present or planned land use of an area?"

26. While the block in which the subject site lies is zoned L-3, this project would be only the second departure from single family use and the first in the Bowdoin blockfront. The apartment structure would face multi-family development to the east and be only a short distance from multi-family development to the south across 39th Street.

27. A petition to rezone the subject block to SF 5000 was filed by the Ward's on October 26, 1983.

28. There was indication at hearing that the subject master use permit application was filed November 9, 1983. The decision on the application was made December 20, 1983. Section 23.76.40, Vesting of Land Use Approvals, provides in part, that:

No land use regulation which becomes effective after the issuance of the Director's decision on a valid Master Use Permit shall apply to that Master Use Permit.

Conclusions

1. An EIS is required when a major action will have a significant adverse impact on the environment, i.e., "whenever more than a moderate effect on the quality of the environment is a reasonable probability." WAC 197-10-350, Norway Hill v. King County Council, 87 Wn.2d 267, 278, 552 P.2d 674 (1976). The threshold determination by the Director as to whether to require an EIS or to issue a DNS is to be accorded substantial weight by the hearing examiner on review. Section 23.76.36(B)(7). The decision may be reversed only if appellant establishes that it is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

2. Appellant urges that the Director erred in one or both of the following ways: he did not have sufficient information about soils stability on which to base the threshold determination; he improperly concluded that the proposed action would not have a significant impact.

3. The decision must be based upon information "reasonably sufficient to determine the environmental impact of the proposal." WAC 197-10-330. The decision maker can require additional information but did not in this case.

4. The land use specialist knew the topography of the site, that it was not designated as environmentally sensitive but was across the street from property which was, what the construction plans were and that the building permit process would include

consideration of grading and drainage controls. It was not error to determine that no additional information was needed before making a threshold determination about probable effects of the proposal on earth stability.

5. Appellant did not prove the decision to be clearly erroneous as to probable impacts. To require an EIS the Director would have to conclude that there is a reasonable probability of adverse effect on soils stability from the project. Appellant's evidence did not indicate a reasonable probability of an adverse impact, only a desire to know if there would be an impact. This evidence does not overcome the substantial weight to be given the decision.

6. As to new parking demand and circulation difficulties, it is clear that on Bowdoin, at least, even two additional cars using the street for parking would be noticed. Both surveys show, however, that within a reasonable distance, the projected additional demand can be accommodated. Further, the narrowness of the streets adjacent to the subject property makes traffic circulation more difficult, however, the decision was not erroneous in concluding that the small amount of additional traffic which is expected to be generated would not cause more than a moderate impact on the environment.

7. The appellant's disagreement with the Director's judgment as to land use impacts arises from her disagreement with the appropriateness of the current zoning, i.e., its consistency with land use policies, and from the difference in the "area" considered. As to the latter, if only the one block long street frontages of Bowdoin are considered, the proposal would change the present use of the "area". If properties on just the other abutting street are added to the "area", the land use would not be changed. Again, appellant has not shown the Director's judgment as to the area to be considered to be clearly erroneous.


8. The other part of the consideration is whether the proposal would change the "planned" land use of the area. Neither the Director nor the hearing examiner may look at the general locational policies for determining appropriate zoning where the Council has acted to implement them by adopting the L-3 zoning for the site. No other plans have been shown to have been adopted. The down-zone petition, even though filed before the application for the subject master use permit, cannot be considered by the Director. Only those regulations in effect at the time of the decision are applicable.

9. The decision, not having been shown to be clearly erroneous, must be affirmed.

Decision

The decision of the Director is affirmed.

Entered this 14th day of February, 1984.


M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Section 23.76.36(B)(11). Should such request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.