

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ST. THOMAS CONDOMINIUM ASSOCIATION

FILE NO. MUP-87-012(W)  
APPLICATION NO. 8603515

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

#### Introduction

Appellant, St. Thomas Condominium Association, appeals the decision of the Director, Department of Construction and Land Use, to issue a determination of non-significance and conditionally approve the master use permit for the proposed demolition of a single family house and construction of a nine-unit apartment building at 1112 East Thomas Street.

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 April 10, 1987.

Parties to the proceedings were: appellant, St. Thomas Condominium Association by Linda Balyeat; the Director, Department of Construction and Land Use by Leslie Lloyd, associate land use specialist; and the applicant, Thomas Place Associates, by its attorney, Roger Leed.

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. Thomas Place Associates applied for a master use permit to demolish a single family building and to construct a nine-unit apartment building at 1112 East Thomas Street. The Director issued a determination of non-significance (DNS) and approved the application subject to certain conditions. A timely appeal was filed by appellant.

2. The subject site has approximately 50 ft. of street frontage and a depth of approximately 95 ft. It is currently developed with a structure which may have been used as a duplex but has been abandoned and a garage. The structure is in very poor condition. There is no alley. The westerly lot line abuts upon the neighboring property's driveway.

3. The subject site is in the heart of a large Lowrise 3 zone on Capitol Hill. The zone has a mix of residential densities from single family to large apartment buildings, up to 72 units, with heights ranging from one to four stories. The block front which contains the subject site is developed with three single family structures, including the subject property, and appellant's five unit structure. The facing block front has one six-unit building and five single family structures, in single family, duplex and triplex use. Around the corner to the south on 11th East are twelve, six and fourteen unit buildings. To the north, in the block with the subject site are single family structures and a four-unit building on 11th East and a single family, two four-unit and one six-unit structures on 12th

East. To the west on the north side of Thomas are twelve, six and 30-unit buildings. On the south side are structures built as single family residences.

4. The proposal is for nine, two bedroom units with nine parking spaces on the first level. The building would be 42 ft. high or 37 ft. to the plate; 38 ft. 10 in. wide and 80 ft. deep. A 6 ft. high wooden fence is planned on the west and north sides. The existing laurel edge on the east side would be retained and new landscaping added.

5. The Director's staff reviewed the environmental checklist supplied by the applicant and comment letters and issued a DNS. The impacts identified were those short term impacts during demolition and construction of increased noise, increased suspended particulates in the air, movement of earth, loss of vegetation, loss of a dwelling unit and increased traffic. Long term impacts identified were increased vehicle emissions, altered landscaping, increased noise, more housing units and residents, increased bulk, increased light and glare, increased traffic and increased parking demand.

6. The Director imposed conditions, pursuant to SEPA, to mitigate environmental impacts. The conditions included those restricting the hours of use of loud equipment, requiring landscaping to reduce the impact of height, bulk and scale, requiring that building exterior lighting is contained on the property, requiring a 6 ft. high fence to shield adjacent properties from vehicle lights and requiring that transit passes be provided to each new owner or new tenant for three months.

7. An informal survey of parking utilization was conducted by one of the St. Thomas owners for a period of 52 days. The survey covered the nine parking spaces in the block between 11th and 12th Avenues East. It showed that utilization exceeded 89 percent on 34 of the days.

8. The applicant's architect conducted a parking study according to Engineering Department guidelines. The study covered an area within 800 ft., or approximately 2 1/2 blocks, walking distance. This study was done on two weekdays after 9 p.m. and showed results for this larger area similar to those obtained by appellant. The study showed the area at "practical capacity" or around 85 percent. The average number of spaces available was 26.5.

9. Various studies done by the City and others have shown vehicle ownership per unit ranging from 1.2 to 1.5. The Director's land use specialist believes ownership at the proposed apartments would be within that range because transit service is good and services are nearby reducing the need for cars, on one hand, while, on the other hand, the units are to have two bedrooms suggesting higher ownership. At those rates the range would be from 11 to 14 cars.

10. A 12 ft. wide strip of the subject property's side yard adjoining the St. Thomas driveway is used by St. Thomas for parking. Since there is room for four cars, three spaces are assigned to the three units without on-site parking and the fourth is reserved for guests. The proposal would eliminate those four parking spaces.

11. The applicant, at appellant's request, considered the possibility of providing replacement parking on the subject property for St. Thomas owners. The architect found that the code requirements for landscaping and open space cannot be met.

12. The area's parking situation is a result of development without provision for, or inadequate provision for, parking, parking restrictions, two nearby commercial districts, Broadway and 15th East, and two restaurants, Gracie's and Baffert's, which use area streets for their valet parking.

13. Several apartment projects are planned or underway nearby. There is a new building, unoccupied at the time of hearing, at 11th Avenue East and Harrison, one block away, with 14 units and 16 parking spaces. Other buildings are under construction or proposed at 12th Avenue East and East Mercer Street, 13th Avenue East and East Republican and one completed at East Harrison and Malden Avenue East.

14. The standard used by the Director to assess the significance of a parking impact was described by the land use specialist. If more than 25 percent of the available spaces would be used by the project's overflow parking, the impact would be judged to be more than moderate.

15. The overflow of two to five cars would use 8-19 percent of the supply so was determined to be less than moderate. If the cars from the four spaces on site are displaced the on-street supply would be reduced and the overflow would consume from 9-22 percent.

16. The Director found the project to cause an "acceptable degree of impact" on parking.

17. East Thomas Street is used more heavily than most neighborhood streets because it is the first street north of East John Street, an arterial, and it does not have traffic circle or other device to slow traffic.

18. The intersection of 11th East with East Thomas is offset and was described as "blind" by a neighborhood witness. One witness was aware of a serious accident which occurred at that intersection.

19. The parking garage for the building would be on the ground floor. Three cars would be parked perpendicular to the west lot line and three to the north lot line. A solid, 6 ft. high wooden fence would enclose these two parking areas.

20. The solid fence would stop headlights from shining on the St. Thomas, and would deflect noise and exhaust.

21. The fence for the westerly parking would be greater than 9 ft. from the lot line with the additional width of the driveway separating it from the St. Thomas.

22. The stairway to the upper levels would be located on the west side of the building. It must be open to meet Fire Code requirements when there is no other access. The applicant has changed the orientation of the stairway to present the least amount of opening to the St. Thomas in response to concerns voiced about noise.

23. The St. Thomas has parking for two cars on the north side of the building. A resident of the building at 311 - 12th Avenue East, to the north, hears those cars and is concerned about added noise from cars on the subject property.

24. Two units on the east side of the St. Thomas get the majority of their natural light from the east. The proposed building would reduce the amount of light received.

25. The proposed building would cast a shadow over the back yard at 311 - 12th Avenue East, a four-unit building, during part of most sunny days. The back yard is used by the residents for outdoor enjoyment.

26. The design for the proposed building is intended to fit in with the neighborhood character and includes modulation and other design detail such as surface materials and enclosed balconies to reduce the appearance of bulk.

27. The appellant's witnesses see the proposed building with its four stories as out of scale and context on the block. The next blocks are seen to have a totally different character so, it is argued, should not be considered in assessing the aesthetic impact of bulk and scale.

28. The land use specialist looked at an area larger than the one block and observed the variety of buildings in size and character. Because of that variety and because this proposal is for one lot, thus not disrupting the platting pattern, she concluded there is no substantial impact on aesthetics warranting mitigation beyond the additional landscaping.

### Conclusions

1. The Director is to issue a DNS if she determines there will be no probable significant adverse environmental impacts from a proposal. Section 25.05.340A. "Significant" is defined as "a reasonable likelihood of more than a moderate adverse impact on environmental quality." Section 25.05.794A.

2. Appellant pointed to parking, traffic, aesthetic, noise, shadow, air and light impacts and urged that these impacts, accumulated with those of projects underway in the area, would be significant. Because of the existing parking condition, that of heavy utilization, the proposal's impact from parking demand that would be added is the impact of most concern. It was not shown that the degree of impact over the greater area, which is the appropriate consideration, would be more than moderate.

3. The degree of impact on traffic circulation and hazard was not shown but that from a nine unit building would be expected to be slight. The bulk and scale are within the range in the larger area, which much be considered, so the impact would not be more than moderate. The impacts from noise, light and glare and shadows and on air quality would be minor. The Director did not err in issuing a DNS.

4. The Director has authority to impose conditions to mitigate adverse environmental impacts subject to certain limitations. The conditions must relate to specific impacts which have been identified in the environmental documents; the conditions must be based on policies formally designated in Section 25.05.902 as bases for conditioning pursuant to SEPA; the conditions must be reasonable; and the applicant may be held responsible to implement conditions only to the extent attributable to the impacts of the proposal. Section 25.05.660.

5. Appellant has asked that the project be limited to three stories with six units and nine parking spaces; that the four spaces which have been used by St. Thomas be maintained; that the parking area be completely enclosed; and that the exterior stairwell be handled differently.

6. The request that the buildings's bulk and height be reduced is intended to improve its scale relationship or aesthetics, reduce shadow impacts and reduce its impact on parking. First, there is no SEPA policy which gives the Director authority to condition to mitigate the impact of a building's shadow on private property. See Section 25.05.902(H).

7. The Multi-Family Residential Areas Policies, part of Section 25.05.902, Appendix A, speak of ensuring 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. It has been determined by the City Council that the Director has authority to reduce height and bulk or scale only when the site is at the edge of a zone or there are unusual circumstances not contemplated as part of the rezoning of the

area. In re Oden, C.F. 293557. The circumstances present here do not satisfy either of those conditions in that the subject property is not at an edge of the zone and no unusual circumstances were shown by appellant. Therefore, the policy does not support reducing the size to mitigate aesthetic impacts. Moreover, an adverse impact on aesthetics (character, scale) has not been clearly identified. The Director's decision found the size to be not inappropriate given the variety in the area. Appellant showed it to be out of the scale of the immediate block but not of the area so no error in the Director's analysis was shown.

8. Provision of more than one parking space per unit for a nine unit building cannot be required, Chapter 23.54, In re Elmer, C.F. 293040, however, the absolute demand for off-street parking may be reduced by limiting the number of units when there are unusual and extreme circumstances. In re SQAD, C.F. 294378. While parking demand in this area is intense, there was no showing that there are unusual and extreme circumstances surrounding this proposal and site.

9. No authority was cited by appellant for requiring an applicant to provide parking for an adjacent use. Any ownership claim must be pursued through the judicial system.

10. The fencing proposed and required by the Director adequately mitigates any impact from noise or exhaust from vehicles in the garage level. Complete enclosure would be unreasonable.

11. No impact from the stairwell was specifically identified so no condition may be imposed. Given the code requirement for a second access if the stairwell is enclosed, a condition requiring enclosure would be unreasonable considering the minor noise impact which might be expected.

#### Decision

The decision of the Director is affirmed.

Entered this 27<sup>th</sup> day of April, 1987.

M. Margaret Klockars  
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Deputy 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.