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FINDINGS AND DECISION

JUN 01 1988

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

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In the Matter of the Appeal of

TOBY THALER, ET AL.,

FILE NO. MUP-88-017(W)
APPLICATION NO. 8707492

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

Introduction

Appellants appeal the decision of the Director, Department of Construction and Land Use, on a master use permit application for a proposed six-unit apartment building at 4416 Dayton 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 May 19, 1988.

Parties to the proceedings were: Toby Thaler, pro se and representing the other appellants, Deborah Paine and Frank Jackson; the Director, Department of Construction and Land Use, by Ed Somers, land use specialist; and the applicant, David MacNeil, pro se.

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. David MacNeil, applicant, applied for a master use permit to demolish a single family residence and construct a six-unit apartment building at 4416 Dayton Avenue North. The Director, DCLU, issued a determination of non-significance (DNS) pursuant to SEPA and approved the permit subject to conditions limiting construction hours, requiring landscaping and regarding parking. Appellants filed a timely appeal.

2. Appellants challenged the DNS and the failure to deny the permit or impose conditions to mitigate the impacts on air quality, on light, air and views from other properties, on energy consumption of other properties, of drainage, from increased traffic and parking demand and from the height, bulk and scale of the building.

3. The subject site is in the middle of an L-3-zoned area, now with L-2-development standards. It would be adjacent to a two-story apartment building to its north, a one-story single family residence to its south and an apartment building behind it to the east.

4. The subject site is a 4,460 sq. ft. lot with a shared access easement driveway between it and the lot to the south. The apartment building on its north side is set back from the common property line about 5 ft.

5. The proposed structure would have three floors of apartments over a parking level. Nine parking spaces would be provided. Each unit would have a fireplace. The fireplace

chimneys would be located in the middle of the front facade and in the middle of the rear side.

6. The Engineering Department will require that drainage from all impervious surfaces be routed into the storm sewer system in the street. Plans have been submitted and approved for that system.

7. Dayton Avenue North is 25 ft. wide. The Seattle Street Design Manual establishes the standard width for streets in an L-3 zone at 32 ft.

8. The Director's SEPA analysis recognized that the project would generate around 40 vehicle trips per day but found this would not be significant.

9. The demand for parking for the six units is estimated to be nine spaces, which would be accommodated on-site so no on-street demand is expected.

10. Three other multi-family apartment projects are proposed within a one-block area. The size those buildings will be is not known but will be less than currently proposed because of the reduced development standards for the area. The traffic from none of the others would directly impact Dayton and though they would use Fremont Avenue, that street has adequate capacity to accommodate the traffic from all four projects.

11. The new structure would reduce the solar access of the building to the north which may result in greater use of electricity or fossil fuels to heat the units.

12. Bedrooms on the south side of the apartment building to the north will face the side of the proposed building.

13. The proposed building would be the tallest on the block and could remain so if the interim restriction to L-2 development standards is made permanent. The height of the building to the ridge is 41.8 ft. and to the top of the trim above the plate is 36.6 ft.

14. Dr. Tim Larson is studying night air pollution in a project sponsored by the Puget Sound Air Pollution Control Agency and has found the highest levels of particulate matter to be in the air in residential areas on cold, clear nights. Woodstoves throughout an entire area contribute to the accumulation. In addition to areawide degradation of air quality, he reported instances where smoke from chimneys severely impacted the use of nearby bedrooms. The potential for that problem can be reduced, he explained by locating chimneys away from bedroom windows.

15. The products of incomplete combustion of wood products will enter the air when the fireplaces in the proposed building are used. While the air in the subject area is relatively clean, additional woodburning will reduce air quality incrementally. Dr. Larson testified that the addition of six fireplaces should not be ignored in assessing the impact of the project.

16. The land use specialist did not consider the potential long term, total development of the area under the current development standards, only those projects presently proposed.

17. The land use specialist was aware of potential shadowing of the building to the north and of potential increase in energy consumption and cost, though not the amount.

18. The land use specialist did consider the size of the proposed building relative to the size of the other structures on the block. He imposed no conditions to reduce the size because the subject property is not on a zone edge.

19. The Director imposed a condition requiring that parking be assigned to the units and that no separate charge be made for parking.

20. The land use specialist did not look at the impacts of the emissions from the fireplaces.

21. The applicant testified that he believes that the proposed building is of lesser bulk than the one to the north, though higher, and the perceived bulk is less because he chose to have a pitched roof and because of the facade detail.

Conclusions

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

2. The Director is to issue a DNS unless she finds that there will be probable significant adverse environmental impacts. Section 25.05.340. The Director's decision is to be accorded substantial weight by the Hearing Examiner on review and the burden is on the appellant to prove that the decision is clearly erroneous. Section 23.76.022, Brown v. Tacoma, 30 Wn.App 762, 637 P.2d 1005 (1981).

3. Appellants urge that failure to consider the impacts on air quality from the fireplaces is error. The evidence adduced by appellants did not show that the emission from the six fireplaces would be a significant impact. The evidence the emissions from the six should not be ignored is not sufficient to overcome the weight given the Director's decision.

4. It was not error for the Director to have considered the cumulative effects of the project with only proposed projects.

5. An application may be denied only when an environmental impact statement has been prepared which discloses significant adverse environmental impacts which cannot be mitigated. Section 25.05.660.A.6. No significant impacts have been identified so no environmental impact statement is required. Therefore, the Director was without authority to deny the application.

6. The Director has the authority pursuant to Section 25.05.660 to impose conditions as mitigation measures where adverse impacts have been identified in the environmental documents, where there are SEPA policies adopted pursuant to Section 25.05.902 authorizing the imposition of conditions, for those impacts, where the requested conditions are shown to be reasonable and capable of being accomplished and where responsibility for implementing the measures are imposed only to the extent attributable to the impacts of the specific proposal.

7. No impact on off-street parking was identified or shown in the hearing so no further condition could be imposed.

8. No condition was requested regarding drainage. Moreover, there is no policy authority to impose additional conditions.

9. Appellants seek mitigation of the loss of solar access or shadowing of the adjacent property. There is no policy authority for imposing conditions to mitigate that impact on private property.

10. Appellants seek mitigating measure to address the incremental effect of emissions from six additional fireplaces. The source of authority suggested by appellants is two resolutions in Appendix A. Those were reviewed by the examiner who concludes that neither provides authority for conditions to control fireplace emissions.

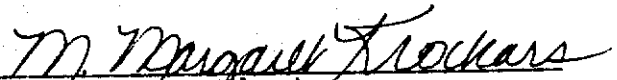
11. Appellants seek conditions to address the cumulative impact of increased traffic. While the environmental document does identify increased traffic as an adverse impact, there was no showing that that traffic accumulated with the traffic from the known projects would exhaust the existing capacity or even what portion of the existing capacity would be used. Therefore, no condition was shown to be appropriate.

12. Appellants seek conditions to reduce the height, bulk and scale of the proposed building. Policy authority for conditioning to reduce the impacts of height, bulk and scale has been found in the multi-family policies where an unusual circumstance is shown that would not have been anticipated by the City Council in the zoning of the area or where the proposed building is on the edge of a less intensive zone and reduction is needed to provide adequate transition. In re Oden, C.F. 293557 (1985). Neither of those conditions is present so there is no authority for the imposition of conditions to reduce the height, bulk or scale.

Decision

The decision of the Director on this application is affirmed.

Entered this 1st day of June, 1988.


M. Margaret Klockars
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 decision is filed with the SEPA Public Information Center the same day that the decision is signed by the Examiner. The SEPA Public Information Center telephone number is 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 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 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.