

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

In the Matter of the Appeal of

ROBERT MAKI, ET AL.,

FILE NO. MUP-88-019(W)
APPLICATION NO. 8706355

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, approving a master use permit application for a ten-unit apartment building at 4 Florentia Street.

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 24, 1988.

Appellants, Robert Maki, Loretta Sylvester, Teresa Marshall, William Beal, W.J. McMullen and Ramona Zulkosky, represented by Robert Maki; the Director, Department of Construction and Land Use, by John Doan, land use specialist; and the applicant, Goodwin Builders, by A.C. Goodwin.

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. Goodwin Builders applied for a master use permit to demolish a single family residence and construct a ten-unit apartment building at 4 Florentia Street. The Director, Department of Construction and Land Use, issued a determination of non-significance (DNS) and imposed conditions on the approval of the application. Robert Maki, and others, appealed the decision.

2. The site of the proposed building is a corner lot with frontage on Florentia Street and Queen Anne Avenue North. It slopes steeply down to the north with a retaining wall at the alley along the north side.

3. The site is part of a large L-3 zone which extends to the north, east and west but it faces, directly across Florentia Street, an SF 5000 zone, with residences elevated 10 to 12 ft. above the street, and, diagonally across Florentia, an L-1 zone with duplexes. The other development in the L-3 blockfront is all single family. Across Queen Anne Avenue North is a six-unit apartment building and across the alley to the north is a twelve-unit apartment building.

4. A 20 ft. high laurel hedge is on appellant's property at the property line and affords a visual barrier between the two properties. The Director's decision recognized the value of the hedge as a buffer and imposed a condition requiring the hedge to be replaced if it is damaged. Appellant Maki is concerned that the replacement would not duplicate the 30 year old hedge.

5. The proposed building would have four levels: a parking

level partially below grade, three levels of living space above the parking level on the northern portion and two levels above on the southern topped by a pitched roof. On the side facing the SF 5000 zone, the height of the building would be 37 ft. 11 in. from grade (three feet below street level) to the ridge of the roof. The setbacks for the proposed building would be 5 to 8 ft. on the east and west sides, 7 ft. on the north and 14 ft. on the south.

6. The proposal had required excavation for a retaining wall three feet from the east property line. Appellant Maki anticipated use of 18 in. in that three feet for forming and a possible 45 degree backslope which would take out the hedge on his property and part of his driveway. At hearing the architect explained that a vertical cut would be made with shoring so there would be no damage beyond the extra 14 in. needed for the shoring.

7. The easterly garage wall was proposed to be set back four inches from the joint property line. At hearing applicant's architect agreed to convert four parking stalls on the east side to compact size so that the wall could be set back an additional four feet for a total setback of 4 ft. 4 in. which would leave the laurel hedge undisturbed.

8. Appellant Maki has seen water on the sidewalk on Etruria, water standing in the alley north of Etruria and slumping of the ground in front of the apartment house to the north of and below the subject site. He is concerned with the impact on the stability of the slope from the heavy construction equipment, from removal of three trees on the site and because of water seepage.

9. The decision requires that a 6 ft. high wooden, view-obscuring fence be placed between the east facade and the east property line as mitigation of light and glare impacts.

10. The parking level would be open on the northern half of the east side. Appellant Maki is concerned about noise from the 13 cars in the garage and asks that the parking area be enclosed on that side. The architect pointed out that the portion which is along the Maki house is fully enclosed.

11. The land use specialist consulted with the City's geotechnical experts who concluded that a full soils survey is not necessary since there would not be excavation across the full site. There will have to be a documentation of the soils make up to calculate loads on the retaining wall. The plans will have to conform to the requirements of the Grading and Drainage Ordinance with runoff from the site channeled into the storm system and runoff from the garage into the sanitary sewer system.

12. The proposed structure will be substantially larger than the one and a half to two-story single family house it is to replace and the other single family houses on the block front.

13. The architect explained that parking is partially buried to minimize the height and that the applicant agreed to forego part of one floor to reduce the bulk of the building. The contour of the site is, therefore, recognized by the design of the building and at no point are the eaves higher than about 29 ft. above grade. He also included more modulation in the design than the code requires in deference to the prevailing scale.

14. The analysis and decision of the Director identified the risk of earth slides during construction, increased stormwater runoff, increase in noise from cars, damage to or loss of vegetation on adjoining properties, light and glare impacts and increased bulk and scale, among other probable adverse impacts of the proposed project.

15. The Director analyzed the bulk and scale impacts and concluded that the policies do not authorize mitigation in this case where properties to the east, north and west could develop to the same size and where, though the site is on a zone edge,

transition is effected due to the separation provided by the street and building setbacks, the elevation is higher on the single family side and there is landscaping on private property.

16. Appellants seek conditions reducing the size of the structure and adding detailing, a hip roof, cedar siding, etc.; closing off parking on the east side to eliminate noise impacts; compensation of \$500 per month when Maki's driveway is unusable due to construction activity; replacement of Maki's driveway (not repair), if damaged; prohibition of discarding or burying of hazardous materials on the site; a three year, \$3,000 bond for replacement of the hedge; and requiring that the corners of Maki's house be bench marked and foundations, hedge, walls, windows, fascia points and driveways be photographed to establish existing conditions in case of damage.

Conclusions

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

2. The determinations of the Director are to be given substantial weight by the Hearing Examiner on review and the burden of overcoming that weight is on appellants. Section 23.76.022C.7. To do that appellants must prove that the decision is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. The Director has the authority to impose conditions to mitigate adverse environmental impacts of a proposal where there is a policy providing the basis for the condition, where the adverse impact has been identified in the environmental document, where the conditions are reasonable and capable of being accomplished, and to the extent the impact is attributable to the proposed project. Section 25.05.660.

4. The environmental document recognizes increased risk of earth slide during construction and increased storm water runoff but there is no independent SEPA authority to address these impacts. Therefore, the Director cannot impose requirements under SEPA to establish a baseline in case of damage to private property. The City will utilize the Grading and Drainage Ordinance to control runoff and assure slope stability however that ordinance is not the basis for SEPA conditioning.

5. SEPA authority does not extend to compensation for a loss of the use of private property or requirement of remedy in case of damage. That is a private matter between the owner and developer.

6. The potential increase in noise from cars is acknowledged by the land use specialist and identified in the environmental document. Enclosure of the parking level to attenuate the noise from the 13 vehicles when the open portion is located away from the adjacent house and separated by a required fence and hedge would not be reasonable considering the degree of impact.

7. No evidence of use of hazardous materials or potential for discard or burying was presented and such impact is not identified in the environmental documents.

8. Appellants did not show that the Director's condition regarding the hedged is erroneous, given that excavation and construction will be farther from the existing hedge than had been proposed.

9. The adverse impact from increased bulk and scale is specifically identified in the environmental document. The Director has concluded, however, that the policies offer no basis to require reduction in bulk or other mitigation. Appellants have not shown any error in the facts the Director relied upon or in her analysis and application of the existing policy. The Council has indicated through In re Oden, C.F. 293557 (1985), and cases following it that the code standards apply unless there are


special circumstances or an "edge" condition where the zoning does not provide for adequate transition. The facts here show adequate transition from the site to the properties upslope. The policies do not authorize any consideration of the scale relationship to existing structures in the same zone.

10. Since no error has been proved by the appellants, the decision of the Director should be affirmed.

Decision

The decision of the Director is affirmed.

Entered this 8th 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.