

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

In the Matter of the Appeal of

NORTHGATE NEIGHBORHOOD ASSOC.

FILE NO. MUP-87-030(W)

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

APPLICATION NO. 8701300

Introduction

Appellant, for area residents, appeals the decision of the Director, Department of construction and Land Use, to issue a declaration of nonsignificance (DNS) for a proposal to demolish three single family residences and to construct a 4 building, 4 story apartment complex at 516 N.E. 103rd in the Northgate area of Seattle.

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 August 20, 1987.

Parties to the proceeding were: appellant, Northgate Neighborhood Association by Sherry Horn pro se; The Director, Department of Construction and Land Use by Malli Anderson; and the applicant, Larry Mitchell of Kuffman Associates by Stephen Crane, attorney at law.

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 site is located in a Lowrise-3 designated zone near the intersection of 5th Avenue N.E. and N.E. 103rd Street. The site is composed of four parcels, three of which are developed with single family residences that will be moved or demolished to allow for the construction of the proposed apartment complex.

2. The site has 177.50 feet of frontage along N.E. 103rd Street and is 135.53 feet deep. The site slopes from the east to the west and north and at the steepest angle slopes approximately 16 percent.

3. Northeast 103rd Street is stated to be unimproved as there are no curbs or sidewalks on either side of the street. Properties not developed along N.E. 103rd Street from 5th Avenue N.E. to the east are generally overgrown with underbush to the road edge. Additionally, some portions of the road edge have a drainage ditch.

4. Abutting west of the site is an area that is zoned RM 800 that is the base of a drainage basin and which is proposed to be part of the City's open space plan that will prohibit any type of development thereon. Further west across 5th N.E. is the Northgate Shopping Mall. Along 5th N.E., BC, RM 800 and multi-family zoning establishes an edge for the single family zone and there is a mix of multi-family structures, office buildings and other commercial uses on this street. South of the Northgate Shopping Mall there exists a number of large office buildings. Abutting east of the site is a newly constructed single family residence that is presently unoccupied.

A large area designated single family, SF 5000 lies to the south and east of the site. Northwest of the site is an area zoned BC. North of the site is another area zoned RM 800.

5. The proposed development will consist of four buildings connected by three uncovered walkways. At the center will be provided a common concrete courtyard. The development will contain 59 dwelling units and parking for 63 automobiles will be provided by a connected underground garage. Access to the underground parking garage will be from a driveway at the west boundary of the site. A sidewalk and curb will be provided along N.E. 103rd Street at the front of the development. The two buildings along N.E. 103rd will be three-stories in height and the two buildings along the site's northern boundary will be four-stories in height.

6. From credible testimony and evidence, the Director's representative established that no opposition to the development was received during the public comment period. The sign giving notice of the proposal was posted on N.E. 103rd St. on February 10, 1987. It was admitted that the legibility of the sign had deteriorated from the posting date and that the sign indicated a 56 unit proposal and did not reflect applicant's modification to construct 59 units.

7. The Director's representative through credible testimony indicated that despite the lack of area residents' reaction to the proposal, the Director requested mitigation by the applicant to reduce the impact of bulk and scale on the surrounding properties. Applicant eliminated a portion of the top floors of the two buildings along N.E. 103rd street that abut the single family zone, agreed that all buildings will have modulation to their respective facades, designed walkways to be 70 feet from the east property line, agreed that tall trees will be planted for screening, and that landscaping will be provided on all sides of the site. Taking into account the east west slope of N.E. 103rd, the Hearing Examiner finds that the referenced modifications will mitigate the impact of bulk and scale of the development on the surrounding properties to the south and the east and will result in no adverse impact. Further, the Director's representative indicated in testimony that the Hearing Examiner finds credible that the common open area will have benches and planter boxes to invite utilization of the open area and to further reduce the impact of bulk and scale of the development.

8. Lead appellant introduced into evidence an eight page petition that had been signed during the appeal period by approximately 170 residents opposed to the development and the Hearing Examiner file contains several letters in opposition to the development. Area residents testified at the public hearing in opposition to the development expressing their concerns over safety, lack of parking, drainage, and the inappropriateness of the development.

9. Lead appellant and her brother conducted a survey of the traffic flow on N.E. 103rd Street at peak after work hours indicating that 366 to 380 vehicles utilize this roadway on a daily work day basis. The Hearing Examiner finds credibility in this presentation on behalf of the neighborhood association.

10. Similarly, lead appellant and her brother conducted a parking survey and presented photos of the area along N.E. 103rd Street between 5th N.E. and 8th N.E. indicating two or three on-street parking spaces on the north side of the street and three on-street parking spaces on the south side of the street. An area resident indicated that because of the unimproved condition of the roadway and because of the numerous no parking signs and property owners' utilization of the existing areas of on-street parking, only two or three spaces exist in this section of N.E. 103rd for additional on-street parking. The Hearing

Examiner finds that the roadway, having neither curb nor defined shoulders, does not have areas off the roadway that are conspicuously usable for on-street parking. Available on-street parking appears, for the most part, to be utilized by area residents.

11. Other area residents in credible testimony indicated that due to the lack of sidewalks, they and school children on foot must generally walk in the roadway or walk single file around automobiles parked along the roadway. Given the level of use of N.E. 103rd by automobiles, the Hearing Examiner does find that pedestrian safety is a definite concern in the area.

12. The applicant's consultant indicated through credible testimony and the Hearing Examiner finds that the development will generate an estimated evening parking demand of 89 spaces based on a 1.5 per unit ratio. And with 63 underground spaces provided, a 26 space spill-over is expected. Applicant will provide at the front of the development, a sidewalk and curb and, therefore, accomodate seven automobiles at the new curb in an attempt to mitigate the spill-over demand. The consultant indicated that more than one half of the spill-over will be expected to be concentrated on N.E. 103rd Street between 5th N.E. and 8th N.E. and the remaining spill-over would be accomodated further eastward along on N.E. 103rd Street and the other surrounding streets.

13. Applicant's consultant surveyed the on-street parking availability within 800 feet of the proposal and indicated a total of 154 on-street parking spaces east of 5th N.E. West of 5th N.E. the roads are improved to include curbs. Parking utilization in the area was surveyed on two week nights at 9:00 p.m. and an average utilization of 23 percent was indicated. Utilization was indicated to be lowest on N.E. 103rd Street near the site because of the relatively few number of residences on that street and generally because streets in the area are not utilized for on-street parking due to those residences having driveways and garages. The consultant indicated 14 on-street parking spaces on N.E. 103rd between 5th N.E. and 8th N.E. with only 2.5 spaces utilized, 28 spaces between 8th N.E. and Roosevelt Way N.E. with only 5 spaces utilized, 19 spaces north and south of N.E. 103rd on 8th N.E. with 0 utilization, 33 spaces on N.E. 102nd between 5th N.E. and 8th N.E. with 9.5 utilization, 18 spaces on N.E. 104th between 5th N.E. and 8th N.E. with 4 utilization, 26 on N.E. 104th between 8th N.E. and Roosevelt Way with 10 utilization and 9 spaces on 8th N.E. north of N.E. 104th with 5 utilization. Area residents' presentation and testimony was in direct conflict to this presentation.

14. The consultant did indicate and the Hearing Examiner finds that the on-street parking spaces are poorly defined and often so narrow that vehicles utilizing some spaces actually encroach upon the roadway. Unless the undergrowth is cut back and shoulders established along this section of the road, the Hearing Examiner, on the basis of the evidence presented, does not find the consultant's presentation to be persuasive in the number of estimated available on-street parking. Additionally, in this section of the roadway, four No Parking signs are posted by the city engineering department on the south side of N.E. 103rd and two No Parking signs are located adjacent to the subject site. Attempting to utilize undefined parking spaces that encroach upon the roadway given the flow of traffic, is found by the Hearing Examiner to be ill-advised at the least and unsafe for pedestrians. Further eastward past 8th N.E. to Roosevelt Way the roadway is no better an area for on-street parking and the Hearing Examiner is disinclined to believe that tenants would park their automobiles at such a distance away from the site. Absent defined on-street parking spaces, the Hearing Examiner finds the consultant's view to be accurate: that many spaces will not be recognized as parking spaces and utilization will be low.

15. That the parking utilization percentage would increase to 38% in the area and not be an adverse impact, as was stated by the Director's representative and consultant, is found to be somewhat misleading. It appears to the Hearing Examiner that the on-street parking situation can be addressed by the City Engineering Department by their action of the clearing of underbrush that hinder on-street parking. If shoulders and curbs existed along this roadway then defined on-street parking would be available for utilization and the consultant's conclusions would certainly be more persuasive to the Hearing Examiner.

Because of the low level of use of available on-street parking, the Hearing Examiner does find that this situation is distinguishable from situations where a reduction in the number of apartment units could have been ordered.

16. Applicant's architect and marketing manager, respectively, in credible testimony indicated that the development will provide 38 single bedroom units, 20 two bedroom units and one studio apartment, and because the market for tenants will be predominately the elderly, noise, disturbances and auto related impacts will be low. The checklist indicates a daily trip generation of 60 will result from the development. The Director's representative indicates a Metro bus route presently servicing 5th N.E. will be a reasonable and practical alternative to automobile use for many of the tenants of the development.

17. Applicant's architect stated in credible testimony that the development could be of greater intensity than at present in that more units could actually be constructed on the site but that economic considerations in providing for the necessary on-site parking made such a design infeasible. The Hearing Examiner finds the applicant to have exercised comparable development rights and that the present design is compatible with the other multi-family developments along the edge of the single family zone.

18. The applicant stated in credible testimony and the Hearing Examiner finds the development is an appropriate transition from the commercial development of the Northgate area as it abuts the single family zone.

19. Construction impacts are stated by the Director's representative to be an impact to the area but because of their temporary nature, these impacts are stated not to be significant adverse impacts. The Hearing Examiner finds that the DNS was conditioned in this regard. An approved drainage control plan will be required of applicant by the Seattle Engineering Department.

Conclusions

1. An environmental impact statement is required if the responsible official determines that a proposal may have a probable significant adverse impact on the environment. Seattle Municipal Code, Section 25.05.360. A significant impact is present "whenever more than a moderate effect on the quality of the environment is a reasonable probability." Norway Hill vs. King County Council, 87 Wn. 2d 267, 552 P. 2d 674 (1976).

2. The Director required mitigation in regards to bulk and scale of the development and the applicant agreed to reduce the top floors of the buildings on N.E. 103rd abutting the single family zone as well as to construct walkways 70 feet away from the property line, to plant tall trees for screening, to modulate the facades of the buildings, to landscape all borders of the site and to enhance the common open area courtyard. In addition, the slope of the site further reduces the impact of bulk and scale to the surrounding properties. The Hearing Examiner

concludes that there is no height, bulk or scale impact that is an adverse impact in this regard.

3. The Director required mitigation in regard to the impact of increased demand for on-street parking anticipated to be caused by the development. Applicant agreed to construct sidewalks and curbing that would provide additional on-street parking, and applicant suggested that the present low rate of on-street parking in the area could absorb the spillover parking demand. The Hearing Examiner concludes that additional steps must be taken to establish defined on-street parking spaces.

Corrective steps, such as the clearing away of the growth of underbrush by the City Engineering Department, would improve the roadway and would result in an increase of on-street parking and improve the safety of pedestrians.

4. The Hearing Examiner concludes that this matter, because of the low rate of utilization of available on-street parking, is distinguishable from situations where a reduction in the number of proposed apartment units could be ordered by the Hearing Examiner.

5. Area residents' presentation at the public hearing dispute the Director's conclusions that the impacts are not significant or adverse impacts. However, there has been no showing that the factual bases for the DLCU decision is in error. While evidence was introduced that contradicted applicant's consultant, the issue is not one of accuracy but of identifying on-street parking spaces. The Hearing Examiner concludes that there is not a sufficient basis for reversal of the Director's decision given the standard of review, Seattle Municipal Code, Section 23.76.36(b)(7) which requires that the Director's decision be given substantial weight.

6. The Hearing Examiner concludes that while the Director may have had the authority to impose further mitigation, the Director's decision before the Hearing Examiner must be accorded substantial weight. As appellant did not prove that the DLCU decision was clearly erroneous, the Hearing Examiner is without authority to reverse or modify that decision except as stated below.

7. The Hearing Examiner concludes that the proposal should be conditioned further as follows:

A. Prior to Issuance of a Master Use Permit

1. The owner(s) and/or responsible party(s) shall submit plans showing the location of exterior lighting and detailing how the lighting will be directed and shielded so that all lighting is contained on the property, and nearby properties or street traffic are not affected by light and glare.
2. Additional: The applicant shall be obligated to request and have the City Engineering Department clear away growth of underbrush in the area, in particular, on N.E. 103rd between 5th N.E. and 8th N.E. and along 8th N.E.

B. Prior to Issuance of a Construction Permit

2. The owner(s) and/or responsible party(s) shall submit concept street (and/or alley) improvement plans approved by the Seattle Engineering Department.

C. During Construction

3. In addition to the Noise Ordinance requirements, to reduce the noise impact of construction on nearby

properties, the owner(s) and/or responsible party(s) shall not use equipment registering more than 55 dba at the property line or 50 feet, whichever is greater on weekends or holidays and may use it on other days only between 7:30 a.m. and 6:00 p.m.

D. Prior to Occupancy

4. The owner(s) and/or responsible party(s) shall provide street improvements as approved by the Seattle Engineering Department (SED) or be bonded to the satisfaction of SED for construction.
5. To reduce the impact of height, bulk and scale, the owner(s) and/or responsible party(s) shall provide landscaping according to the plan approved by the Land Use Specialist. The owner(s) and/or responsible party(s) shall submit to the Construction Inspector an affidavit from a landscape professional that the landscaping is installed per plan.
6. The owner(s) and/or responsible party(s) shall direct and shield illumination of parking areas and building exteriors so that all lighting is contained on the property, and nearby properties or street traffic are not affected by light or glare.

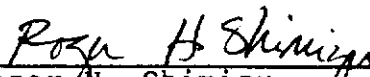
E. Permanent for the Life of the Project

7. The owner(s) and/or responsible party(s) shall maintain all landscaping per approved plans.
8. The owner(s) and/or responsible party(s) shall direct illumination of parking areas or building exteriors so that all lighting is contained on the property and nearby properties or street traffic are not affected by light or glare.
9. To encourage use of transit, the owner(s) and/or responsible party(s) shall provide bus schedules for nearby bus routes each time the unit is leased or sold per covenant.

Decision

The Director's decision to issue a DNS with permit conditions and as modified is AFFIRMED.

Entered this 4th day of September, 1987.



Roger H. Shimizu
Hearing Examiner Pro Tempore

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 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.