

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ROBERT L. HASS

FILE NO. MUP-83-075
APPLICATION NO. 83-440

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

Introduction

The appellant named above appeals the decisions of the Director, Department of Construction and Land Use, to issue a declaration of non-significance with conditions for property located at 2120 8th Avenue North whereby an existing single family dwelling is proposed to be demolished with construction of an eleven unit condominium in its place.

The appellant exercised his 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 November 23, 1983.

Parties to the proceedings were: appellant, pro se; applicant, James K. Schuler and Associates, by Mike Jones and Brian Brand; and the Director by Jim Barnes.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

After due consideration of the evidence and testimony 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 subject property is located on a steep hillside between 8th and 9th Avenues North approximately mid-block between Crockett Street, to the south, and McGraw Street, to the north. The site consists of three platted lots containing 8,370 sq. ft. and has approximately 90 ft. frontage on both 8th and 9th Avenues North, each of which has only a 30 ft. right-of-way.

2. Eighth Avenue North west of the subject site, is improved with sidewalks on both sides and parking is allowed only on the west side. Ninth Avenue North is partially improved from McGraw Street south to the subject property (with varying width of 13 to 18 ft.) and then deadends. Crockett Street is about 250 ft. to the south and because of its steep grade is improved only with a stairway/walkway down to Westlake Avenue North, east parallel to 9th Avenue. The existing single family residence and garage on-site face the 8th Avenue North frontage.

3. The proposed new condominium apartment building will contain eleven units, with two units on the top level, three units on each of the next three levels and parking for twelve cars in a basement level garage. The main pedestrian entrance will be from 8th Avenue North. Approximately 2,400 cubic yards of material will be excavated, some of which will be used as fill in 9th Avenue North to provide vehicular access to the site. Ninth Avenue North will be improved by fill and grading, extension of paving and the existing 8-inch sewer approximately 50 ft. to the south, installation

of retaining wall and guard rail; all per approved street use permit. New landscaping will be provided per approved plans.

4. The subject site is located in an L-3 zoned area containing a mixture of residential development. Many existing single family residences in the vicinity are being redeveloped into multi-family. In the same block with the subject site, the northerly half is occupied by the "Martinique" Apartments (48 units). Adjacent to the south of the subject site are two older single family residences, while across 8th Avenue North, uphill to the west, are both single family residences and multi-story condominiums and apartments. Downhill to the east across the unimproved 30 ft. right-of-way of 9th Avenue North, the "Westlake Condominiums" (51 units in 6 buildings) are presently under construction. Property along Westlake Avenue North is zoned CG. The Westlake Condominiums will provide 79 off-street parking spaces, all accessed from Westlake Avenue North.

5. The entire hillside has been identified as environmentally sensitive under Seattle's SEPA Ordinances because of the underlying soil classification and there have been slides recorded in the vicinity. Properties east of and downhill from the 9th Avenue North right-of-way are located within the Interim Greenbelt Overlay District.

6. Impacts associated with demolition and construction have been identified in the environmental checklist under earth, air, water, noise and transportation/circulation.

7. A geotechnical engineering study prepared by Earth Consultants Inc. for the proposed project prepared on or around July 15, 1983, has been admitted into evidence. A primary concern according to the soils report will be retention of excavated slopes during the construction phase. Several recommendations concerning foundation design and site development are provided in the report. Excavation and foundation design will be reviewed prior to issuance of the Street Use Shoring Permit and the Building and Grading Permits. The Grading and Drainage Ordinance provides for review and approval of Drainage Control plans and for inspection and modification of such facilities during construction if necessary to respond to unexpected soil and/or water problems. Erosion control standards and provision for necessary mitigating measures are also provided. These include requiring liability and property damage insurance against damage from earth slides and surety bonds to assure the site is rendered safe if work is not completed. Such measures are expected to eliminate potential significant adverse soils and water impacts, and will become part of the conditions for the project.

8. Airborn dust during construction can be effectively mitigated by watering of the site and periodic cleaning of adjacent streets and sidewalks.

9. All surface water from the site must be collected and discharged to the combined sewer. In the event that the sewer in 9th Avenue North is not serviceable, all site surface drainage should be collected and discharged by pumping up to the sewer in 8th Avenue North.

10. Adjacent residential uses may be temporarily adversely affected by construction equipment noise. In recognition of the adjacent residential uses, further restrictions of construction periods and use of loud equipment is appropriate beyond the standards set by the City's Noise Ordinance (Section 25.08.540). Temporary impacts caused by construction vehicles using the sub-standard residential streets adjacent to the project can be mitigated by notifying the Police and Fire Departments of street blockages and limiting truck movements to hours of off-peak usage.

11. The developer will be required to restore 9th Avenue North to its existing condition if any damage to the existing street improvements are caused by the construction vehicles.

12. Minimal long term impacts associated with occupancy of the site have been identified under water, flora and fauna, noise, light and glare, housing, public services, energy and utilities. Compliance with City codes such as the Grading and Drainage Ordinance and the Energy Code will adequately mitigate most of these impacts. The approved landscaped open space plan will replace existing vegetation and may adversely affect existing fauna; however, no rare or endangered species have been identified. The anticipated minor increase in localized noise due to the increased occupancy is not expected to be significant in this mixed residential area. No significant adverse light and glare impact have been identified. The proposal will provide a net increase of ten units.

13. The Director has set the following conditions for this project:

1. "The site developer shall advise the contractors and subcontractors in writing that the following mitigating measures are required (a copy of this letter shall be forwarded to the Land Use Review Section of the Department of Construction and Land Use):
 - (a) during site excavation and construction, truck routes shall be approved by the Traffic and Transportation Division of the Engineering Department, and truck trips and materials delivery shall be planned to avoid coincidence with peak evening and morning use of adjacent residential streets.
 - (b) Scheduling of temporary street blockages shall be coordinated with City Police and Fire Departments and appropriate signs will be provided to reroute traffic.
 - (c) To minimize dust or mud impacts on adjacent City streets and sidewalks, during excavation and construction, the contractors shall provide on-site wheel washing and shall designate personnel specifically assigned to conduct street cleaning on a regular basis. Truck beds loaded with excavated materials shall be covered.
 - (d) During construction, a temporary fence shall be provided along the 8th Avenue North frontage as a public safety measure. Signs shall be provided which indicate names and phone numbers of persons to contact should an emergency occur during non-working hours.
 - (e) Use of loud equipment, including but not limited to, pavement breakers, pile drivers, jack hammers, sandblasting tools, crawlers, tractors, compactors, drills, graders, compressors and other similar equipment is strictly limited to normal working hours (8:00 a.m. to 5:00 p.m.) on weekdays. Electrical and hydraulic equipment shall be used, where practicable, in preference to diesel or pneumatic equipment. Equipment shall not be allowed to idle unnecessarily.
 - (f) During construction, all site surface drainage shall be collected, cleaned up and discharged into the combined sewer system to protect adjacent properties as specified in the approved Grading Permit.

2. Demolition and excavation disposal sites shall be identified prior to issuance of demolition or building permits.
3. The site developer shall restore 9th Avenue North to its existing condition prior to start of the proposed construction.
4. New landscaping shall be installed per approved plans prior to occupancy.
5. The soils report recommendations shall be implemented and a slope stability analysis shall be required. The analysis shall give factors of safety for various conditions (e.g., saturated soil and earthquake). Stability of slopes during construction as well as after construction shall be addressed.
6. The permit drawings and documents will be required to include a structural engineers' stamp on foundation, retaining structures, and building structural drawing supported by lateral and vertical calculations. A note will be required on drawings that: "All structural design changes must be stamped by structural engineer and approved by the Department of Construction and Land Use prior to construction of design change."
7. A contractor surety bond in an amount to be determined by the Engineering Department will be required as described in the Grading Ordinance.
8. A contractor's liability insurance policy for earth-slide, as described in the Grading Ordinance, in an amount to be determined by the Department of Construction and Land Use will be required. The policy is to be in force during and for one (1) year after construction completion. The policy shall include the specific words "liability protection for earth slide." The policy must name the City of Seattle as an insured party.
9. A special inspection letter, addressed to the City, shall be required, nominating the soil engineer who wrote the soil report and must state that the soil engineer shall be present during all excavation, backfill, foundation and drainage systems installation.
10. A pre-construction conference shall be conducted at the job site. The meeting participants will include the owner, contractor, soils engineer, structural engineer, structural examiner, architect, and Engineering Department representative.
11. The contractor will be required to state in writing the foundation, excavation, backfill, drainage system and construction shoring sequence.
12. Installation of a monitor system to determine movement of streets and adjacent properties and structures shall be installed and monitored by a licensed land surveyor or civil engineer."
14. The proposal will provide twelve off-street parking spaces for eleven units.

15. The Director relies upon a survey of available on-street parking conducted by the applicant in September of 1983 and a 1979 survey conducted for the Westlake Condominium project for concluding that available on-street parking in the vicinity (within a two-block radius) is adequate to accommodate anticipated overflow parking needs.

16. Eight witnesses testified on behalf of the appellant that on-street parking conditions are presently unbearable in the immediate vicinity of the proposal on weekday evenings. Eight letters from other neighbors of the proposed project additionally complained of inadequate weekday evening parking conditions in the vicinity.

17. A survey of on-street parking availability conducted by the applicant during September of 1983 indicated 20 available parking spaces within a two block radius of the project during the weekends, Monday and Friday mornings, and Friday evening at 6:30 p.m.

18. A survey of available on-street parking on 8th and 9th Avenues North was conducted by the appellant during November of 1983 which indicated limited available parking spaces during the evening hours of Mondays through Thursdays.

19. Daily trip generation in this project is estimated at approximately 56 vehicle trips per day by 1983-84. This total is based on 5.1 vehicle trips per day per dwelling unit for a condominium building (Ite Trip Generation, 1979).

Conclusions

1. The Office of Hearing Examiner for the City of Seattle has jurisdiction over the parties and subject matter of this appeal.

2. An environmental impact statement is required where a proposal would have a significant adverse impact on the environment, i.e., more than a moderate effect is a reasonable probability. Norway Hill v. King County Council, 87 Wn.2d 267 (1976). Otherwise a declaration of non-significance is appropriate. WAC 197-10-340 (1).

3. The scope of review requires that this appeal shall be considered de novo. Issues cited in the appeal relating to procedural irregularities, compliance with substantive criteria, the adequacy of the environmental documentation upon which the decision was made, or failure to properly condition or deny a permit based on disclosed environmental impacts will be considered. Section 23.76.36.B.6.

4. By law, the Hearing Examiner is to give "substantial weight" to the environmental determinations of the Director. Section 23.76.36.B.7.

5. To prevail, the appellant must show that the Director's decision was clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762 (1981).

6. The Director shall grant, deny, or condition approval of a Master Use Permit based on the applicant's compliance with the Seattle Municipal Code, Chapter 25.04, SEPA policies. The Director may impose conditions in order to mitigate adverse environmental impacts associated with the construction process. Section 23.76.24.A.

7. Under SEPA, the Director may reasonably condition any proposal so as to mitigate or prevent adverse environmental impacts based upon adopted policies. Section 25.04.190.

8. By law, the Director shall examine the proposed building occupants' likely vehicle use pattern, guest and service parking needs and availability of on-street parking. Section 25.04.520.

9. The Director may only require off-street parking in excess of the 1:1 ratio up to a maximum of 1.5 spaces per unit if the apartment structure contains more than twenty units. Section 23.54.20.D. The proposed project consists of eleven units and provides for twelve off-street parking spaces which is appropriate.

10. Appellant challenged the Director's decision that this project would not have a significant adverse impact on vicinity on-street parking. The Director had notice the neighbors of this project were concerned about the availability of on-street parking. However, the burden of proof is on appellant, and the Director's decision must be afforded substantial weight. Appellant failed to prove that the demand for parking generated by the proposal will not be accommodated by proposed on-site parking and the available on-street parking. Therefore, the Director's decision must be affirmed.

11. All of the conditions proposed by the Director upon this project are appropriate and reasonable to mitigate or prevent adverse environmental impacts based on adopted city policies and are appropriate.

Decision

The decision of the Director is Affirmed.

Entered this 7th day of December, 1983.



Al Velarde
Hearing Examiner Pro Tempore

Concerning Further Review of DNS

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. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). 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.

Notice of Right to Appeal Regarding Failure to Condition or Deny

Pursuant to Section 25.04.210, Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the 14th day after the date the decision appealed from is filed with the SEPA Public Information Center. The appeal must be filed with the City Clerk on the 1st floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure.