

In the Matter of the Appeals of

QUEEN ANNE COMMUNITY COUNCIL
LAND USE REVIEW COMMITTEE AND
THE BHY KRACKE COALITION

FILE NOS. MUP-88-078(CU,W) and
MUP-88-079(CU,W)
APPLICATION NO. 8801905

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

FINAL DECISION OF HEARING
EXAMINER

After the hearing on these appeals, the matter was remanded by the undersigned Hearing Examiner to the Director, Department of Construction and Land Use, to impose a condition to assure compatibility of scale of the structure with the surrounding structures on the north and south sides. On March 17, 1989, the Director, Department of Construction and Land Use, imposed further conditions resulting in revised plans. Appellant, the Bhy Kracke Coalition, by Anna Nissen, filed Appellant's Objections to the new conditions. Respondent applicant responded to appellant's objections.

Based on the submittals the examiner:

Adds Finding of Fact No. 66. The additional architectural details, that is gable roof structure, pseudo gable vents, "cornice" structure to be painted in a contrasting color, vertical and horizontal spandrels to be painted in a contrasting color, greater window trim, horizontal and vertical mullions and darker paint above the "cornice", all serve to give the structure a more "residential" or "human" scale.

Modifies Conclusion No. 7 by deleting the final sentence.

Modifies Conclusion No. 8 to read as follows:

With the alteration of the scale of the north and south sides by introduction of design elements, the building's height, bulk and scale would be compatible with the surrounding structures.

Final Decision

With the revision of the plans incorporating the Director's changes to the facades (elevation drawings dated March 9, 1989), the decision of the Director is affirmed.

Entered this 17th day of April, 1989.


M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

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 must be by application for writ of review filed in King County Superior Court within fifteen days of the date of this 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 the decision on the underlying governmental action 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, 408 Seattle Municipal Building, Seattle, Washington 98104, within fifteen days of the date of this decision. Seattle Municipal Code 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 for preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available in the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104. In the alternative, RCW 43.21C.075(6)(b) provides that a tape may be used for the 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 designate only those portions of the testimony necessary 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 taped transcript relating to issues on review.

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

In the Matter of the Appeals of

QUEEN ANNE COMMUNITY COUNCIL
LAND USE REVIEW COMMITTEE AND
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FILE NOS. MUP-88-078(CU,W) and
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APPLICATION NO. 8801905

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

Introduction

The Land Use Review Committee of the Queen Anne Community Council and the Bhy Kracke Coalition appeal the decision by the Director, Department of Construction and Land Use, to grant an administrative conditional use to allow a low income elderly housing project at 1250 - 5th Avenue North to be exempted from interim zoning controls.

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 January 26, February 3, 6, 8 and 9, 1989.

Parties to the proceedings were: The Land Use Review Committee, represented by William Blair; the Bhy Kracke Coalition represented by Robert Mosqueda and Anna Nissen; the Director, Department of Construction and Land Use, represented by Cheryl Waldman, land use specialist; and the applicant, Earl Price, represented by his attorney, John Blankinship, Montgomery, Purdue, Blankinship & Austin.

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. An application on behalf of Earl Price was filed for a master use permit to demolish a single family residence and a ten-unit apartment building and construct a 54-unit apartment building for low income elderly persons at 1250 5th Avenue North. After meetings with Queen Anne Community Council representatives and discussion with the staff at the Department of Construction and Land Use (DCLU), the proposal was modified and the unit count was reduced to 44. A determination of nonsignificance was issued and an administrative conditional use approved with conditions by the Director, DCLU, and these appeals followed.

2. The site of the proposed development is located in a Lowrise 3 zone so the plans were developed according to standards for that zone. In March, 1988, the City Council adopted emergency interim controls, Ordinance 113858, which reduced the size and density allowed in the L-3 zone. That action was based on unanticipated impacts and conflicts with the city's planning goals and focused on the achievement of greater density than had been anticipated and than streets and public services can absorb, scale differences, traffic congestion, parking shortage with attendant reduction in emergency access and sight distances and demolition causing neighborhood instability and displacement of affordable housing.

3. In April, 1988, the City Council amended Ordinance 113858 by Ordinance 113913 which exempted low income housing projects, meeting certain requirements, from the interim standards through an administrative conditional use process. Among other requirements, to be exempt the project must be one which obtains a reservation of tax credits for 1988 or 1989 under the program administered by the Washington State Housing Finance Commission (WSHFC).

4. Mr. Price has received a reservation of tax credit allocation for 1989. He must obtain a certificate of occupancy for the units within 1989 or obtain an extension by proving expenditure of at least ten percent of the modified basis prior to the end of the year. If neither is accomplished, the project loses the credits. They may be reallocated to other projects on the waiting list if there is sufficient time remaining in the year for those projects to fulfill the completion requirements. The program ends with 1989 unless extended by congress.

5. The State Housing Assistance Group (SHAG), a nonprofit corporation, is the developer of the proposal, that is it will buy the structure from Mr. Price and operate it for low income housing.

6. The site of the proposed structure is at the southeast corner of the intersection of Lee Street with 5th Avenue North on the southeasterly slope of Queen Anne hill. Lots are combined to create a parcel with about 100 ft. of frontage on 5th Avenue North and 120 ft. on Lee Street. The site's eastern edge abuts a dead end alley off of Lee Street.

7. The proposed structure, after modifications, would be three stories high on the west side and four on the east instead of the four and five earlier proposed. On the 5th Avenue North side, the building is to be set back approximately 15 ft. The north and south facades are modulated, a stack of units having been eliminated on the south and one moved to the north, with 5 to 33 ft. setbacks. The building is to be 24 ft. from the alley with nine parking spaces located just off the alley.

8. Access to the main entrance and lobby is across a bridge from 5th Avenue North which allows handicapped access. A second entrance would be from the alley and is to have a wheelchair lift.

9. The units are proposed to be just over 300 sq. ft. in area and designed as studios supplied with Murphy beds and other fixtures. Two of the units are to be barrier-free.

10. The building will provide a social room with attached kitchen and bathroom for larger group activities, a library, a health care room for visiting dentists, physicians, barbers, etc., laundry facilities on each floor, storage and a rooftop garden.

11. The proposal includes provision of a van, to be driven by the manager for special outings.

12. Fifth Avenue North is a divided street at this location. Each half is two-way but the westerly half dead ends at the apartment building just north of Lee Street and the easterly half connects with Lee Street. The pavement of the easterly portion is 18 ft. wide adjacent to the subject site with a curb and sidewalk on its east side and curb on its west side. The median between the two halves is about 7 ft. wide and slopes steeply up to the westerly half. The street itself slopes down to the south.

13. Lee Street has a pavement width of 25 ft. with curbs and sidewalks on both sides of the street adjacent to the site. The street ends at 5th Avenue North. Lee Street drops down from 5th

Avenue North to Taylor at an average grade of approximately 18 percent.

14. Taylor Avenue North, the next street to the east, is classified as a minor arterial and is the major north/south route in the area. It is relatively flat. Aurora Avenue North is two blocks east of Taylor.

15. The alley is 16 ft. wide and dead ends midblock. The alley is used for access to a large number of parking spaces for buildings off the alley.

16. Neither 5th Avenue North nor Lee Street meets the current standards for a street in a multi-family zone.

17. After the Director's decision, the Engineering Department issued a correction sheet requiring the applicant to widen 5th Avenue North to 25 ft. curb-to-curb adjacent to the site. This is a requirement for the building permit, not SEPA or the conditional use. The applicant has the option of filing a request for an exception to the requirement which will be decided by the Engineering Department.

18. The lot coverage caused by the proposed structure would be greater than that of the existing structures on site. A drainage control plan and a storm water detention plan are required by the Engineering Department. Those plans would assure that there would be no adverse impact from the increased lot coverage.

19. A side sewer line runs under the alley and would carry storm water down to the main line in Taylor Street. The Engineering Department advised the land use specialist that this pipe has adequate capacity to carry the drainage to the main line. Sanitary sewage is pumped up to 5th Avenue North. Residents of the area report breakage in the line a number of years ago when repair required replacement of part of the line and a very recent problem about 100 ft. south of the subject site. Anna Nissen testified as to her belief that increased pressure from development caused the breakage however no competent evidence was adduced on that issue.

20. A resident of the area testified that water pressure has decreased with added development over the years.

21. The applicant showed that about 75 percent of Lee Street next to the subject site is currently in shadow from the existing structures at noon on a mid-January day. That percentage would be close to 100 with the proposed building. Since Lee Street is not passable in periods of ice and snow, an additional 25 percent of the 120 ft. length of the street in shadow would not have any effect on the functioning of the street.

22. The site is not in an area designated environmentally sensitive although the slope farther to the south is.

23. The construction of the proposed structure involves excavation down 10 to 14 ft., removal of 3,200 cubic yards of earth from the site and construction of a retaining wall on three sides. The geotechnical report by Rittenhouse-Zeman and Associates prepared for the proponent concludes that the earth below the material to be excavated is capable of adequately supporting the building footing loads. With excavation there is a risk of disturbance on adjoining properties which could affect those structures and recommendations are made in the report for minimizing that risk and documenting damage. The excavated materials would be carried away by about 320 truck trips.

24. The Director required as a condition of approval that the contractor give 24 hours notice of any street closure for the excavation work to residents. Closure of the street with 24 hour notice was not regarded as a significant impact by the land use specialist as the area does not have a closed street system. This was not shown to be in error.

25. DCLU required the applicant to perform and provide a traffic and parking impact analysis for the project. That analysis was prepared by TDA, Inc. TDA used as a worst case trip generation scenario Institute of Traffic Engineers (ITE) rates for congregate care facilities. The daily trip rate would be 2.15 per unit or 95 trips per day and .17 peak hour trips per unit or 7 trips. The ITE rate for the existing use is 6.1 daily trips and .67 peak hour trips for 67 and 7 trips, respectively. The trip generation rate for congregate care facilities is not necessarily a valid predictor of the trip generation rate for low income elderly housing. The Engineering Department suggested for comparison using the trip generation rate for retirement communities which would result in 18 peak hour trips for 44 units. The likely peak hour generation then would be somewhere between 7 and 18 trips. All the experts, TDA, the Engineering Department and the land use specialist, agreed that the volume generated would be too small to negatively affect the operation of the street. The Director's conclusion that there will be no noticeable impact was not shown to be in error.

26. Taylor Avenue North has two Metro bus routes providing access to downtown and North Queen Anne. There are other routes on Aurora Avenue North. Bus stops for both directions are located approximately 100 to 120 ft., a half block, from the rear entrance of the proposed building.

27. None of the intersections near the subject site is on the Engineering Department's list of high accident intersections. The rate of accidents midblock on Lee Street at .5 and on 5th Avenue North at .16 is above the city's average of .1 per year on nonarterial streets.

28. No on-site parking is provided for the existing 11 units on the property. Nine of the tenants have one car and one has more than one so there are at least 11 cars owned by tenants parked on the streets.

29. The plan is to restrict the proposed units to tenants without cars although there is no formal restriction in existence. In assessing the traffic and parking impacts of the proposal, the land use specialist assumed no restriction on car ownership and no street improvements. Therefore, trip generation and parking demand would be lower than the rates relied upon in the analysis of effects of the proposal if tenant car ownership is prohibited.

30. The parking study performed by TDA examined current utilization of the on-street parking supply on Wednesday evenings, July 6 and 7, 1988, and on Sunday, July 24, 1988, during the "Bite of Seattle" at the Seattle Center. The average utilization for the 170 spaces in the area surveyed for the two Wednesday nights was 78 percent and on Sunday, 81 percent.

31. The Bhy Kracke Coalition studied existing on-street parking utilization in a slightly smaller area on eight days in January and February, 1989. Utilization ranged from 96 to 109 percent on the weekday nights and from 90 to 100 on Sunday afternoons.

32. Based on the more recent study and other evidence adduced at hearing, the examiner concludes that the utilization of the on-street parking is at or above capacity.

33. The Land Use Code requires one parking space for every six units. The proposal would have one for each 4.8 units.

34. TDA estimated parking demand for the proposed development using ITE parking demand rates for a retirement community, not low income, of .27 spaces per unit weekday and .32 on weekends. The report based the demand on 54 units but for a 44-unit project the demand, using that rate, would be for 12 to 14 spaces if all were low income and slightly higher with one unit for a manager.

35. The DCLU staff considered, in addition the ITE parking rate for a retirement community, a study by the King County Housing Authority which found resident car ownership to be .29 cars per unit and a study by the Seattle Housing Authority (SHA) showing car ownership of .4 cars per unit. Based on those studies car ownership for the 44 units would be 13 to 18 or slightly higher with one unit assigned to a resident manager. The evidence presented suggests that the SHA study may not be statistically valid.

36. The housing authority studies also looked at the demand for visitor parking which, based on those studies, would be for the proposed project two cars on weekdays and up to seven on weekends.

37. The Director concluded that the proposed development would have no impact on on-street parking utilization because the existing tenants park at least 11 cars on the street, demand for parking generated by the residents would be for 19 spaces at most, and the project will provide nine parking spaces. The effective demand would be minus one in that there would only be ten cars seeking parking on the street instead of the 11 now utilizing the street. Visitor parking is now accommodated on-street as it would be in the future. There was no showing of the visitor rate for the existing units.

38. The transportation engineer who consulted on the project concluded that no cumulative analysis was warranted because the increase in traffic volume was insignificant. The land use specialist was aware of the projects cited by appellants which are pending or underway but found that they would not affect the same area as the subject project so no study of the cumulative effects was required. No evidence was presented showing those conclusions to be in error.

39. Development generally surrounding the site within the Lowrise 3 zone includes a row of single family residences immediately to the south. Across Lee Street to the north are two single family residences and a seven-unit apartment building. These structures are all one and one half to two stories high. Across 5th Avenue North, at a higher elevation, are apartment buildings with five and six units and to the south of those a single family house. Diagonally across 5th Avenue North and Lee to the northwest is a 29-unit apartment building. To the east, facing Taylor Avenue North, is a 28-unit apartment building. Other larger apartment buildings line Taylor Avenue North.

40. Differing opinions were offered by the design experts as to the compatibility with the surrounding structures of the scale of the proposed building. The project architect, John Minato, views the issue as whether the structure is capable of existing in harmony, that is without visual disruption, with the other structures. Since a mixture already exists in the area, he believes the structure would be in harmony. Cheryl Waldman, the land use specialist, defines "scale" as how something appears in relation to something else. She found the initial five-story proposal to be not in scale with its surroundings but after the design modifications felt that compatibility of scale has been achieved. Rick Buckley, a professional architect, regards "bulk" as the actual volume and "scale" as perceptual. He says that the scale of the area is single family and that the proposed building is not of the same scale because it lacks single family elements or devices such as recessed windows, porch, etc. Anna Nissen, a registered architect, pointed out that the assembly of lots which allows a larger building is unusual on 5th Avenue North where most development is on a single lot, unlike that on Taylor Avenue North below.

41. The Hearing Examiner finds that the "surrounding structures" are the two or three immediately to the south of the site, the two or three directly across Lee Street and the one across the alley to the east. Those structures to the west are so separated by topography and the divided street that they are not part of the surrounding structures. Those to the north and south

are all small with single family detail. That to the east is larger, and not of single family scale but it relates to Taylor, with a different streetscape and scale.

42. The rent for the new units would be restricted by the WSHFC to \$405 or less. Rent of \$300 is proposed and would include utilities and an allowance for heat.

43. There has been no formal governmental or agency review of the appropriateness of the site for low-income elderly housing. The WSHFC staff person visited the site but not as part of a site approval process. One or more City Council members also visited the site in relationship to consideration of Ordinance 113913. DCLU determined in the course of its review that the city is not involved in site selection for a private proposal. A Department of Community Development letter of support was unrelated to the specific site.

44. There are no supermarkets, pharmacies or other shopping opportunities, except for a convenience store, within reasonable walking distance of the site. The absence of these goods and services is a drawback to the site for low income elderly persons. A park across the street adds to the desirability of the site as a location for elderly persons.

45. One concern about the location voiced by witnesses and by letter writers is the steep street which must be negotiated to get to bus transportation and which is impassable during snow and icy periods. Most felt that the residents would be restricted or "trapped" by that feature and would need a vehicle to leave the site. Tom Harader, an architect specializing in low income housing involved with the production of over 20,000 units in the northwest, has seen many built with similar site conditions, including several projects in Seattle.

46. The land use specialist found that the impact on housing would be the displacement of 11 units replaced by 44 units.

46. The existing units currently rent for \$300 per month and most have a bedroom, living room, central room, kitchen and bath and are considerably larger than the proposed units would be. Half of the current tenants qualify as low income persons.

48. Mr. Price, a developer of multifamily housing with 48 years of experience in the construction industry, would not consider rehabilitation of the existing units because of the high cost involved. He believes the rents would double, putting them out of the affordable range and making them unmarketable because no parking would be provided.

49. The existence of a City loan program for rehabilitation or renovation of low-income housing was noted but no evidence was provided as to whether these monies would be available to Mr. Price for the existing housing.

50. One third of the estimated 28,000 persons in need of housing assistance in King County are senior citizens with less than 80 percent of the median income. The need for assisted housing is greatest for those with less than 50 percent of the median.

51. According to a housing needs assessment (Exhibit 23) the number of subsidized units in Seattle for elderly persons meets close to 70 percent of the need for housing for those with the lowest income.

52. John Fox, a long term housing activist, reports that the greatest need for housing for the elderly is housing for which the tenants pay \$150 or less.

53. John Fox argues strongly that demolition of housing on any site contributes to the housing crisis and that new housing should be developed only on vacant lots to preserve the existing stock. He points out that in the period of January, 1987, to

March, 1988, Seattle lost over 1,000 units to demolition. The city spent \$48,000,000 from the elderly housing bond issue to produce a similar number of units.

54. To qualify as low income housing under Ordinance 113913 the tenants must have incomes at or below 50 percent of the median income for the Seattle/Everett Standard Metropolitan Statistical area and monthly rent may not exceed 35 percent of 50 percent of median income. The median income in the area is currently \$26,700. Rents, then, must be below \$467 to qualify.

55. The Seattle-Everett Real Estate Research Report for Spring, 1988, shows that rents for studio apartments in the Queen Anne area average about \$346. No inference about the relative value of the proposed units can be made because the report, Exhibit 37, does not indicate that the rent includes utilities or heat and what other amenities may be provided.

56. The Ticino, a newly renovated building close to downtown, rents studios of 300 to 350 sq. ft. for \$395 and one bedroom apartments for \$459.

57. There are long waiting lists for housing for the low income elderly. The Seattle Housing Authority waiting list is so long that many on the list will not be placed during their lifetimes.

58. Surveys of elderly persons show that studio apartments are in lower demand than larger units. Exhibit 36.

59. Queen Anne is a "high priority" area for addition of low-income assisted housing but not specifically for elderly housing.

60. The Seattle Housing Resources Group (SHRG) has offered to accept referrals of existing tenants for possible placement in SHRG buildings.

61. Resolution 26164 recognizing the Goals and Policies and of Queen Anne Community was adopted in July, 1980. The resolution directs that the Queen Anne Goals and Policies be considered when

...evaluating rezone, variance, conditional use permit...applications which particularly affect the Queen Anne community, and that agreement or disparity between the proposed action and the goals and policies be documented...however, that any disparity between the proposed action and the goals and policies shall not by itself be grounds for approval or disapproval of any proposed action.

Exhibit 32.

62. Goal 1. Preserve and Enhance the Family-oriented Residential Nature of the Community, Policy 5, of the Queen Anne Goals and Policies is cited by appellants as applicable to the decision before the examiner. It addresses, however, licensed, "special care group living facilities". The subject proposal is not a licensed special care group living facility but a multi-family use providing special amenities for its residents. Policy 6 under the same goal encourages city programs for rehabilitation of deteriorated residential structures. The evidence does not show whether existing city programs would apply to this property however the proposal under consideration is for new construction.

63. Goal 3. Develop Improved and Varied Types of Transportation with Adequate Controls, Policy 3, encourages a system of collectors and arterials without widening streets. Fifth Avenue North is not a collector or an arterial so the policy does not apply.

64. Goal 9. Control Development to Assure Compatible and Balanced Cross-section of Housing Types, Policy 2, provides an

exception to Policy 1 which states that development should be compatible with the surrounding neighborhood in regard to bulk, siting, height and density. The exception for density is for special care group living facilities and city-sponsored low income housing development. There would no exception under the Queen Anne Goals and Policies for greater density for privately-sponsored low income elderly housing.

65. Resolution 27471 adopted Housing Policies for the City of Seattle. Policy statements which the examiner finds could be applicable to the subject application are:

- 1.2 Encourage the private sector to produce housing responsive to needs identified by the City, as well as general market demand.
- 1.9 Discourage residential demolition and promote replacement of lost affordable housing.
- 2.5 Discourage displacement of low-income households Citywide.
- 2.9 Use the existing housing stock to meet the needs of low-income people wherever feasible.
- 3.2 Provide people with a variety of housing choices and opportunities throughout the City.
- 4.1 Pursue a comprehensive strategy which maximizes public and private resources to provide affordable housing opportunities.
- 4.6 Foster and develop viable, non-profit organizations capable of developing and managing low-income housing.
- 4.7 Work with the private sector to maximize investment of private resources in housing production.

Conclusions

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

2. The Director is to issue a determination of nonsignificance pursuant to SEPA for a proposal if he determines that there will be no probable significant adverse environmental impacts from the proposal. Section 25.05.340A. That decision is to be given substantial weight by the Hearing Examiner on appeal, Section 23.76.022C(7), so the burden is on the appellants to prove that the decision was clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. Appellant Bhy Kracke urges that the proposal will have impacts on parking demand, traffic, earth or slope stability, drainage, shadows, utilities and housing, among others. The evidence adduced at the hearing showed that the demand for parking on-street would not exceed that of the existing use, that the increase in traffic volume would not be noticeable, that there is no question about the stability of the slope, that the proposal will be required to retain the runoff, that the shadow, though increased, will have no additional impact on street functions and that housing displacement will be offset by replacement. No impact on sewer or water was shown. None of the effects shown, individually or in combination, amount to a significant adverse impact on the environment so the decision to issue a determination of nonsignificance was not shown to be clearly erroneous.

4. Appellant Land Use Review Committee of the Queen Anne Community Council urges that an environmental impact statement is needed for full disclosure of impact on soils stability and property values. No error in the decision was shown by that appellant.

5. Neither appellant sought conditions pursuant to Section 25.05.660.

6. The Hearing Examiner is not required to give deference to the Director's decision on an administrative conditional use application. Section 23.76.022C(7). The standards for that decision are the applicable criteria which in this case are: 1) "height, bulk and scale of the proposed low-income housing development shall be compatible with the scale of development existing on surrounding properties," Ordinance 113913, Section 4; and "whether the use will be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located." Section 23.45.116C.

7. The findings regarding the height, bulk and scale of the proposed building and the surrounding structures show that the scale of the proposed building on the west side would be very similar to that of the existing apartment building, which appellants' witnesses' testimony indicates is compatible with the scale of the neighborhood. When viewed from the sidewalk immediately in front of the building or from much higher on the slope to the west the full height of the structure would be apparent. As viewed from the east, the scale would be regarded as compatible because of the large apartment building to the east and generally larger development on Taylor Avenue giving a sense of apartment scale. The south and north sides, however, relate directly to the single family residential scale on those sides and both facades provide an unadorned, expansive wall and windows and three and four-story height. The perception by viewers approaching from those sides would be that the building is out of harmony with the other structures in the immediate streetscape and is intrusive. Therefore, the building as proposed and viewed from the north and south is incompatible with the surrounding structures.

8. Architect Buckley's testimony that scale can be changed with the introduction of design elements, supports the imposition of a condition requiring the reduction of size, actual or perceived, on the north and south sides to bring it into a more "human" or single family scale. With the alteration of the scale of those sides, the building's height, bulk and scale would be compatible with the surrounding structures. Since the evidence before the Hearing Examiner is not sufficient and she is not qualified to fashion reasonable conditions to accomplish this reduction, the application should be remanded to the Director to work with the applicant, and others in his discretion, to develop a condition consistent with the intent of this conclusion or for revision of the plans to accomplish that intent.

9. As there was not substantial evidence regarding injury to other properties in the zone or vicinity, the remaining consideration is whether the proposal would be materially detrimental to the public welfare. The parties differed as to the scope of the public welfare to be considered. Appellants objected to the Director's limited view. The examiner adopts the broader view of appellants, however, limits consideration to the specific proposal rejecting the argument that the detriment (or benefit) of alternate uses of the site must be compared to that of the proposed use.

10. The evidence that there is a great, or even greater, need for low-income housing for other categories of tenants such as families does not prove that this project would be materially detrimental to the public welfare since the evidence also shows that there is need for housing for low-income elderly persons.

11. The facts that the units will be small and that there is other low-income housing with more amenities and that the loca-

tion is not ideal for elderly persons because of its distance from goods and services and because of the steepness the half block to the bus stop also do not support a conclusion of material detriment to the public welfare. Tenants will reject the site if their needs are for greater space or more immediate access to other facilities.

12. In most cases demolition of affordable housing would be materially detrimental to public welfare for the reasons stated by John Fox. Here, where the demolished housing would be replaced with housing for greater numbers of people and where the rent will be controlled to assure that the housing remains low-income for a long period, that detriment is neutralized.

13. While the Director is correct that there is no incremental effect on the street parking from the proposal, one of the Council's findings in the declaration of emergency was that parking spillover was creating parking shortages and resulting in hazardous conditions. The conditional use allowing the exemption from the interim standards, if approved, would create a situation where there would be more spillover than would be likely to happen if the project met the interim standards. Therefore, the proposal, with provision of parking for just over half its demand, would cause detriment. While the applicant has represented that tenant ownership of vehicles will be prohibited, the record provides no guarantee since ownership and management is to be transferred to another entity. Assurance in the form of a covenant that tenants will not own vehicles would reduce the concern about spillover parking, the numbers of units could be reduced or additional parking spaces could be required to reduce the detriment.

14. The assessment of whether detriment is material requires a balancing of the benefits and negative aspects of the proposal. All parties to the appeal acknowledge that it is the policy of the city to encourage the development of low-income or affordable housing. This project clearly comports with that oft-voiced policy. Since the proposal would add affordable housing without additional degradation of the existing parking situation, it is the examiner's conclusion that allowing the conditional use would not be materially detrimental to the public welfare.

Decision

The application is remanded to the Director, DCLU, to impose a condition requiring reduction of either actual or perceived size of the structure from the north and south sides to assure compatibility with the surrounding structures. The Hearing Examiner retains jurisdiction over the matter. When a condition is formulated to make the scale of the building as viewed from the north and south compatible with the surrounding structures, notice shall be filed with the Hearing Examiner and sent to parties of record. Any party objecting to the condition or revised plans shall file written objection with the Office of Hearing Examiner within ten days of the date of mailing and filing notice of the condition. The examiner will determine whether an additional evidentiary hearing is necessary, will give appropriate notice and after consideration of the objection will close the record and issue a final decision.

Entered this 24th day of February, 1989.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner