

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

Richard P. Blumberg, Esq.
and
Gary D. and Donna L. Ogden

FILE NOS. MUP 85-060(W)
and
MUP 85-061(W)

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

APPLICATION NO. 8500642

Introduction

Appellants contest a declaration of no environmental significance for proposed construction of a 4-unit apartment on property addressed as 2345 Hobart Avenue S.W..

The appellants exercised the right the appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on October 21, 1985.

Parties to the proceedings were: appellants Ogden by Gary Ogden, pro se and appellant Blumberg, pro se.

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

After due consideration of the evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is located on the west side of Hobart Avenue S.W. in a Lowrise 2 (L-2) zone. The site address is 23 Hobart Avenue S.W.

2. The vacant lot has frontage to its south on an unimproved portion of 53rd Avenue S.W. At its intersection with 53rd Avenue, Hobart has a turnaround. Stairs connect this turnaround to west parallel Halleck Avenue S.W. and lead to streets farther west.

3. Topographically the property declines steeply to the west.

4. The site is designated environmentally sensitive due to its slope in excess of 15% and due to soil layer and stability issues.

5. Applicant proposes to develop the subject site with a 3-story building of four townhouse-style units. Proposed is a single car garage per unit and curb cuts to 18 feet wide Hobart Avenue S.W. A slide occurred and narrowed the street area adjacent to the subject site. That area is marked by a guardrail. Applicant proposes to widen or reopen this portion of Hobart and also provide new curbs and sidewalks.

6. DCLU issued an environmental declaration of nonsignificance with conditions that require installation and maintenance of landscaping. DCLU also required that

- Development shall be under the supervision of a Washington State licensed geotechnical engineer and be in accord with the soils reports 11/28/84 and 7/5/85 by Shannon and Wilson (sic).

- An erosion drainage control plan shall be proposed by the contractor and approved by the (contractor's) geotechnical engineer.
- A street use permit shall be obtained for street improvements.

7. The soils report of record describes the risk of slope instability as "minimal" if the geotechnical recommendations are followed (Exhibits 7,8,9).

8. Of record is a petition opposing the project bearing some 27 signatures.

9. Appellant Blumberg specifically challenged the DCLU determination that traffic and parking congestion impacts would be "insignificant." In addition, appellants Ogden asserted that the DCLU decision failed to properly consider the present deteriorated street system and the impact of construction and subsequent activity on that system. The Ogdens also raised the concern about the impact of the multi-family unit on the area "of primarily single family residences." The vicinity is principally improved with single family uses. These appellants chose to discontinue pursuit of the challenge to DCLU notification of the project.

10. Although the west side of Hobart is signed for no parking, some four cars presently park along this segment in front of the subject site. Residents and others tend to park here because they have no on-site parking and/or because available parking in this vicinity of narrow streets and limited visibility is at a premium. The construction proposed will eliminate these on-street spaces with curb cuts and driveways.

11. Because there are high curbs along the east side of Hobart, appellants speculate that those presently parking on the west side will be forced to look in vain for other nearby parking or risk banging their car doors against the curb.

12. While the proposed action would increase on-street parking potential and make a parking search more time consuming and difficult, no "significant" impact would be presented, according to DCLU.

13. Six to eight vehicular trips per dwelling unit on a daily basis is expected from the project.

14. An environmental determination was made in this case because more than 100 cubic yards (350) of grading is proposed. Considering the amount of grading activity and the heavy equipment necessary for the project construction in general, appellant Ogden expressed particular concern that the fissures, chuck holes, and similar street characteristics would be exacerbated. In fact, stated appellant Ogden, her house currently shakes when garbage trucks use adjacent streets.

Conclusions

1. The Hearing Examiner has jurisdiction of this proceeding pursuant to Chapters 23.76 and 25.05, Seattle Municipal Code.

2. The Director's environmental determination is accorded substantial weight, Seattle Municipal Code 23.76.36(B)(7), and the burden of establishing the contrary is appellants'. Seattle Municipal Code Section 25.05.680(1)(c). Appellants must therefore show the DCLU determination here at issue to be "clearly erroneous."

3. If a proposal may have probable significant adverse environmental impacts, a declaration of significance is required. Seattle Municipal Code Section 25.05.360(1). If, on the other hand, no probable significant adverse environmental impact is determined, a declaration of nonsignificance (DNS) is appropriate. Seattle Municipal Code 25.05.340. Significant has been read to mean "of more than a moderate effect." Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976).

4. The expected impacts were not shown to be significant. At issue is a four unit project in an L-2 zone. Although the predominant development is single family, insufficient evidence was adduced from which to conclude that construction below the permissible L-2 zoning should be required or is appropriate. Cf. In re Appeal of Oden Investment and Kinneer Park Condominium Association, C.F. No. 293557. On-site parking for four cars is proposed as is widening of the adjacent street segment. Further, although present west side parking will be displaced, the net loss of parking will be of no more than "a moderate effect." The chance of soil or slope instability is minimal, per the soils engineer report. DCLU has imposed specific conditions relative to the soils engineer report, landscaping, erosion and street use. In sum, it is clear that the new development will make parking more difficult and will alter the development style. However, the effects are not "significant;" accordingly no EIS is required.

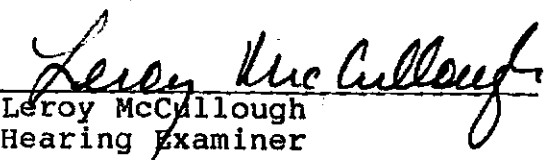
5. As to conditions desired for response to impacts that were not shown to be significantly adverse, the Hearing Examiner is without authority to require on-site parking in excess of the zoning code ratio of one parking space per one dwelling unit. In re Elmer, C.F. 293040 (1984). In Elmer, the City Council clarified that DCLU's discretion, to require more parking spaces than specified by the Land Use Code, was intentionally limited by the Land Use Code. For the L-2 zone, one space per unit is required. Seattle Municipal Code Section 23.54.20(D) provides for exceptions to the 1:1 ratio if, among other things, the structure will contain more than 20 units. The Code exception to the 1:1 ratio therefore does not apply to the proposed 4-unit structure.

6. Concerning street conditions the nexus between the construction/subsequent project activity and the condition of the vicinity streets was insufficient to require a change in the DCLU determination. There is, for example, no evidence that the size or number of trucks or other vehicles will impact in any measurable fashion the street system. No policies were cited which would otherwise authorize imposing further conditions on the project. Seattle Municipal Code Section 25.05.902.

Decision

The DCLU decision is AFFIRMED.

Entered this 4th day of November, 1985.


Leroy McCullough
Hearing Examiner

Concerning Further Review

Pursuant to Section 25.05.680(2), Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fourteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center. The City Council's review on appeal shall be limited to the exercise of the City's substantive authority to condition or deny the proposal under SEPA as authorized by Section 25.05.660. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure.

If an appeal is taken pursuant to Section 25.05.680(2), 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(2) appeal.

If no appeal is taken pursuant to Section 25.05.680(2), 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 fourteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.36(B)(11). 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 fourteen days of the date of this decision. Section 25.05.680(3)(d).

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 from 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.