

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

TYRRELL'S INC., BY J. VERNON WILLIAMS

FILE NO. MUP-82-078

APPLICATION NO. 82-0427

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

Introduction

Applicant proposes to construct a building to contain nine artist studio/dwelling units and other uses at 154 N. 35th Street. The Director of the Department of Construction and Land Use issued a declaration of non-significance and approved the special exception for the project. Appellant, an immediate neighbor, submitted this appeal.

The appellant exercised its right to appeal pursuant to Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: appellant by J. Vernon Williams, Riddell, Williams, Bullitt and Walkinshaw; project applicant by R. Patrick McGreevy, Stafne, McGreevy and Taylor, P.S.; the Department of Construction and Land Use Director (Director) by Leslie Durkee.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24, as amended (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on December 6, 1982.

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 a three lot parcel located in the Fremont area of Seattle. The project address is 154 N. 35th Street. The subject parcel is in the block bounded on the north by N. 36th Street; on the south by N. 35th Street; on the east by Phinney Avenue N.; and on the west by 1st Avenue N.

2. The subject parcel is presently developed with a single family residence, a detached garage, an artist's workshop, and a 750 sq. area retail/office building. Close-by land uses include equipment storage, retail, and single family uses. An apartment building is located across the 16 ft. wide alley north adjacent to the subject property.

3. The site is near the northern edge of a General Industrial (IG) zone that continues south across the Lake Washington Ship Canal to W. Nickerson Street. A General Commercial (CG) strip begins roughly one block north of the subject site at N. 36th Street. Proceedingly northerly is Lowrise 3 then Single Family (SF) 5000 zoning and residential development.

4. The immediate area is marked by industrial uses including manufacturing, welding and equipment storage. The 20 acre Burke Industrial Center, southeast of the subject property, boasts some 40 business tenants that are engaged in manufacture and distribution. For access, industrial center trucks use Phinney Avenue, N. 35th Street and 1st Avenue N. There is a tendency for the large trucks to use Phinney Avenue although there is on-street parking along the east and west sides of that particular street. Industrial park traffic also uses N. Canal Street, south parallel to N. 35th Street, Canal Street

is described as rugged and unpaved, and as the preferred route to the Industrial Park but for the improper maintenance of that street.

5. Tyrrell's Pet Food Processing Plant is located directly across the street from the subject property. The section of N. 35th Street abutting the subject property and appellant's property is 80 ft. wide. Along this section there is on-street parking. Combination tractor-trailers engaged in either pick-up from or delivery to Tyrrell's generally proceed along N. 35th Street to Tyrrell's loading area and then back into that area, which faces N. 35th. Some of the tractor-trailer combinations may be 60 ft. in length. The on-street parking tends to restrict the maneuverability of these trucks engaged in backing-loading. Tyrrell's also unloads (grain) trucks on Canal Street.

6. Tyrrell's provides an employee parking lot for approximately 40 cars at the southwest corner lot of N. 35th Street and Phinney Avenue N. However, some Tyrrell's employees park their cars along N. 35th Street.

7. Tyrrell's also owns the 9,000 sq. ft. area parcel directly east of the subject site and an 18,000 sq. ft. area parcel west of the subject parcel. The latter property is separated from the subject site by one 30 ft. wide lot. Neither of the Tyrrell properties on the north side of N. 35th Street is improved.

8. Tyrrell's has present plans to construct a distribution warehouse on the larger of the vacant parcels which would be connected to the existing plant by an overhead conveyor. The 9,000 sq. ft. area lot is proposed for additional employee parking.

9. Tyrrell's 30-32 employees principally work the 6:30 a.m. to 3:00 p.m. shift. A second shift may begin at 2:00 p.m. or 3:00 p.m. and terminate at 11:00 p.m. Tyrrell's employee population may be increased by six if their proposed development is realized and if business is favorable.

10. Project applicant has owned the subject property for approximately 2½ years. It was purchased with the idea of establishing thereon a facility for artists to create and to support themselves. The primary activity envisioned was to be casting although some painting and other activity could be expected.

11. The project applicant, a metal caster, proposes to replace the subject site development with a building to contain nine artist studio/dwelling units, common studio and storage space, and to retain the retail space in the southwest corner of the building's first floor. The plans also call for a sculpture room, painting room, smelter and kiln. Nine off-street covered parking spaces accessible to the alley are proposed.

12. Applicant's proposal includes on-site availability of an overhead bridge crane of approximately five tons which would be used to move the larger items. Proposed cleaning and other apparatus include a sand blaster, a water blaster, grinders, and welders, all of which are considered noisy. No commitment to overnight or more extensive on-site lodging will be required as a condition of access to the facility, to be dubbed the Fremont Fine Arts Foundry.

13. Applicant's fall 1982, practice has been to invite mailing list patrons to the gallery viewing, hours 12:00 p.m. to 5:00 p.m.

14. Appellant and others opposed to the application submitted that the subject area was inappropriate for residential use; that to the detriment of existing businesses, traffic hazards would be increased by the residential and retail activity; and that approval of this (and indeed any) residential proposal for the zone would serve to inhibit and restrict industrial development as well as use of the dwindling supply of close-in properly zoned properties. Stated differently, a major concern is that by approval of the subject and similar proposals, industrial uses, presently the norm, might become the exception.

15. Retail stores of less than 2,500 sq. ft. of area are not required to provide off-street parking.

16. In 1977, the text of the Zoning Code was changed to conditionally allow artist/studio dwellings in the IG zones.

17. Among the principal uses permitted outright in the IG zone are foundries, provided that gross floor area of all buildings does not exceed 2,500 sq. ft. in area; glass or glass products manufacture; machinery manufacture; machine shops; metal fabrication; paint, paper, and perfume manufacturing; and stoneware or earthenware manufacturing. Section 24.56.020, as amended. Certain manufacturing (M) zone uses such as bronze powder and concrete products manufacture may also be permitted. Section 24.56.020, 24.54.060, as amended.

Conclusions

1. Appellant here generally alleges that the problem of "incompatible" uses and the traffic problem, e.g., tractor-trailer maneuverability and access, will be exacerbated by applicant's project such that an environmental impactment statement (EIS) is warranted.

2. The Director's environmental determination is accorded substantial weight. Section 23.76.36.B.7., and the burden of proving a contrary position rests with the appellant. Further, a negative threshold determination as was issued in this case will be upheld on review unless it is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762 (1981).

3. Under the standard of Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267 (1976), an environmental impact statement (EIS) is not required unless the proposed action would have a significant adverse impact on the environment, i.e., unless more than a moderate effect on the quality of the environment is a reasonable probability. In Brown v. Tacoma, *supra*, the Court "recognized" that construction of a 34 unit condominium near single family zoned area properties would have some impact. The Court stated, however,

...we cannot conclude this impact entails other than a "moderate effect" upon the surrounding environment in an appropriately zoned and developed area such as this one...at p. 768.

4. The substantial weight accorded the Director's decision has not been overcome by the evidence of record. Nine on-site parking spaces are proposed for the maximum nine tenants/artists. These spaces will be accessible by the alley which is north parallel to N. 35th Street. The subject site is currently developed with a 750 sq. ft. area retail/office building. Based on the size of the proposed retail facility the zoning code does not require that off-street parking be provided. The appellant's principal shift is from 6:30 a.m. to 3:00 p.m. although variations thereto are acknowledged. Present gallery viewing hours are from 12:00 to 5:00 p.m. Assuming maximum traffic activity at the beginning and end of appellant's shifts, the employee traffic would not necessarily conflict with traffic generated by the gallery. An unspecified portion of the existing curbside parking, alleged as a bane of the delivering tractor-trailers, is attributed to some of appellant's employees. The proposal will not impact the accessibility on N. 35th Street to the degree that an EIS is warranted. And, alternate routes do exist for the Industrial Park traffic.

5. Further, the subject area is zoned specifically to allow artist studio/dwellings. They may be authorized only on a special exception, conditioned basis. The effect of the limited residential use proposed does not, in view of the other uses proposed, rise to the level of a "significant adverse impact" on the land use pattern of the area although it is undisputed that applicant's project will indeed have some effect. We conclude the proposal will have no more than a "moderate effect" upon the surrounding environment. Brown v. Tacoma,

supra; Norway Hill Preservation and Protection Association v. King County Council, supra. Accordingly, the Director's threshold determination is affirmed.

6. Director's determinations on special exceptions, however, are given no substantial weight or deference. Section 23.76.36.B.7. They are to be considered along with the other evidence of record.

7. Section 24.74.027 (Section 24.74.020, as amended) specifies conditions under which an artist's combination working studio/dwelling unit may be authorized in an industrial zone. The more general conditional use criteria require that no material detriment ensue and that the proposal be consistent with the spirit and purpose of the zoning ordinance. Section 24.74.027, reference 24.74.010.

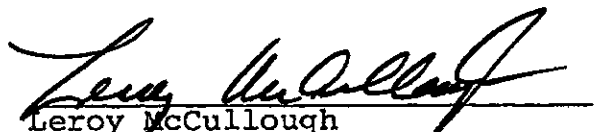
8. The nature of the artist work here proposed is such that there is a genuine need for the space. A five ton crane is proposed to relocate some of the finished work of the sculptors and others. Section 24.74.027.A. Additionally, the sand and water blasting, metal work and other activity will be "similar to the types of uses permitted in the zone". Section 24.74.027.B.

9. As to the more general criteria, the proposal will not prove materially detrimental to the public welfare or injurious to property in the subject zone or vicinity. Increased traffic activity will be of insignificant adverse consequence. See Conclusion 4, above. Applicant will not require that artists live in the facility. This may serve to decrease the concern with traffic expected to be generated. There is no evidence of record that the traffic route currently engaged in by industrial park tenants or by appellant would be restricted or adversely affected by the proposal. No downzone is here proposed that would make the predominant industrial uses nonconforming. Several uses proposed, i.e., foundry, metal work, are markedly similar to the metal and foundry uses allowed in the zone; the residential use is only incidental. Applicant's tenants will engage in various noisy ventures such as blasting and metal work. The suggestion that the tenants will subject appellant and other business uses to noise complaints amounts to mere speculation that does not equate to "material" detriment. Based on the foregoing it is concluded that the proposal is consistent with the spirit and purpose of the zoning ordinance, specifically as amended in 1977, and will not be materially detrimental to the public welfare or injurious to property in the subject zone or vicinity. This does not suggest that every artist-studio residential use applied for should be approved in the IG zone. Such would render meaningless the conditional use criteria currently included in the code. However, the feared scenario wherein conditioned residential uses would unduly affect development in the industrial zone is not here presented. See also MUP-82-048, Application No. 81125-0011.

Decision

The Director's decision approving the special exception and issuing a declaration of non-significance is AFFIRMED.

Entered this 20th day of December, 1982.


Leroy McCullough
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App 418 (1977); JCR 73 (1981). Should an appeal 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.