

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

NANCY ROTHWELL, DIAN WELLS ET AL.

FILE NO. MUP-87-021(W)
APPLICATION NO. 8605869

RECEIVED

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

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Introduction

Appellants, neighboring property owners and residents, challenge DCLU master use permit conditions for a proposal to construct an 18-unit apartment structure at 3562 Interlake Avenue N.

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 May 27, 1987.

Parties to the proceedings were: appellants by Nancy Rothwell and Greg Hill of the Wallingford Community Council, pro se; and the DCLU Director, by Jay Laughlin. No applicant representative appeared at the hearing.

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, and subsequent to a site visit, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Applicant proposes to demolish a single-family dwelling and construct on site a 3-story, 18-unit parking with underground parking to the rear. DCLU issued a determination of nonsignificance and imposed landscaping, lighting, transit pass and schedule information, and lease-parking conditions on the master use permit. Neighbors of the proposal submitted this appeal and challenged the adequacy of conditions imposed.

2. The subject site is roughly two blocks north of Lake Union in the Wallingford area of Seattle. The property street address is 3652 Interlake Avenue North.

3. The site is located nearly "mid-block" between North 36th Street (south) and North 38th Street (to the north). Stone Way is one block west of Interlake and Ashworth Avenue North one block east of Interlake Avenue North.

4. The block face in which the subject site is located faces Interlake to the west and has the multiple residency zoning of Lowrise 2 (L-2). Prior to the 1982 city-wide residential rezoning, the site was zoned RD 5000. To the rear (east) of the subject block face is a Single Family 5000-zoned block face that fronts on Ashworth Avenue North. There is no intervening alley. This SF 5000 zone generally extends some five blocks east to Meridian Avenue North.

5. Across Interlake Avenue North to the west is a block face that is zoned L-2 from North 38th Street south for roughly 1/3 of the block face. The remaining block face is zoned commercial (C1-30'). Continuing westerly is an alley, and a C-2/40' block face that fronts on Stone Way North. Appellants describe Stone Way as "a 4-lane, high traffic carrier."

6. The zoning north of North 38th at Interlake is L-2 to North 39th Street. Zoning south of North 36th Street to Lake Union and on Interlake North is manufacturing (M).

7. Per the DCLU report the L-2 zone on Interlake North between North 39th and North 36th is generally developed with single family dwellings, including those north and south adjacent to the subject site. Exceptions are "three 4-unit buildings and 6 duplexes." The subject site faces a 4-unit apartment building across Interlake to the west.

8. The majority of the vicinity dwellings have porches, dormers and are 2-story. Many comment letters described the area as one of rehabilitation with pride in the existing housing stock and architecture.

9. Applicant proposes to develop the subject 60 ft. wide by 110 ft. deep site with a 3-story, modulated apartment building. Access will be via Interlake Avenue.

10. The proposed structure will be 30 ft. high and have wood siding. The 18 units would be one-bedroom low-middle income units of roughly 400 sq. ft. each. A sloping roofline is also proposed.

11. Applicant proposes a 15 ft. front setback. The north adjacent structure setback is 24 ft. The south adjacent structure offers a front setback of approximately 28 ft. The Hearing Examiner finds that the proposed 15 ft. setback was approved by DCLU in exchange for applicant's plan to remove parking to the rear (special exception). This issue was the subject of no interpretation request or appeal pursuant to Chapter 23.88, Seattle Municipal Code.

12. According to appellants, this front setback destroys the streetscape pattern and impacts views south along Interlake, which streetway slopes down (south) to Lake Union.

13. The rear setback of 23 ft. exceeds the minimum setback by some 13 ft. DCLU described this rear setback and the extensive landscaping and underground parking as measures to mitigate impacts of bulk and specifically single-family transition. DCLU also reported that "applicant modified the design by altering the roofline and including articulation around the windows" to respond to the issue of single-family dwelling compatibility.

14. Although appellants and others expressed some concern with the vicinity sewer system age and capacity, the Hearing Examiner finds that the Seattle Engineering Department reported no problem with sewer capacity as it relates to this project. No evidence was presented which countered this SED conclusion.

15. Many commenters and witnesses expressed the view that addition of such a "large building" as proposed would violate the existing height, bulk and scale pattern; and would severely impact property values and the quality of life. Many of the comments stated direct opposition to the L-2 zoning of the site and to the type of development permitted by that zoning.

16. Appellants also objected to the anticipated impact on traffic and parking. Applicant submitted to DCLU survey results for 9:05 p.m. Tuesday December 23, 1986 and 9:20 p.m. December 24, 1986 which showed 38% occupancy of on-street parking spaces. Block faces covered included the east and west sides of Interlake Avenue North "568 feet south."

17. DCLU's visits to the site, weekday afternoon and evening, revealed an on-street utilization of approximately 80%.

18. A street is considered "at capacity" when on-street parking utilization is 75 - 85%.

19. Appellant submitted a study which showed that within area A, 1/2 block east and west of Interlake, north to 1/2 block above North 38th, and south to 1/2 block south of North 36th, parking capacity exceeded 75% at 3:30, 7:00 and 9:00 p.m. on a Sunday. With the anticipated overflow (9 vehicles) the study shows parking utilization as 85 - 90%. Exhibit 4.

20. The results for the same hours on a Tuesday were 65, 75 and 77% without the project and 75, 77 and 78% with the project.

21. Appellants' study area B extends to 1/2 block east of Ashworth Avenue North. The capacity reached 75% only on Sunday at 7:00 and 9:00 p.m., with the project. Without the project the capacity ranged from 50 - 68% (Tuesday) and from 68 - 72% (Sunday).

22. Some parking is available on Stone Way. Appellants deliberately excluded this from the survey, however, in recognition of that street's high and intense traffic volume.

23. The Hearing Examiner finds that an M-zoned building at 36th and Interlake is under consideration for second-floor gymnastic academy use. The building's first floor is used by Pacific Northwest Ballet as a scene shop. Other commercial uses, such as storage, occur on the west side of Interlake Avenue and impact the parking and traffic pattern.

24. The DCLU projection of overflow parking assumes 1.5 vehicles per unit, which factor includes guest vehicles. DCLU concluded that the vicinity could absorb the overflow although it is "nearing capacity." DCLU's further opinion is that there is a potential parking shortage "if any more large projects go in;" that the vicinity is "on the edge of exceeding capacity", but that the small units should minimize the likelihood of excess private vehicle ownership and use.

25. As the only direct bus service is to downtown Seattle, appellants expect that notwithstanding the small units, occupants are likely to have more than one automotive vehicle.

26. The Hearing Examiner finds that there will be no significant decrease in intersection safety as a result of the project.

27. There is no formal study presented which indicates the effect of bus schedule and bus pass availability on the private vehicle ownership and use. DCLU required bus passes and transit information as a condition to the permit.

28. It was undisputed that while the multifamily EIS projected a density of 58 units per acre for the L-2 zone, the proposed project approximates a density of 136 units per acre. Exhibit 4. The L-3 forecast was for approximately 70 units per acre and the midrise for approximately 115 units/acre.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.76, Seattle Municipal Code.

2. The Hearing Examiner is required to give "substantial weigh" to the DCLU Director's environmental determination. Therefore, appellant has the burden of showing that the DCLU decision was "clearly erroneous." Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. The appeal letter and presentations do not indicate appellants' desire to have an environmental impact statement (EIS) issued. At issue is the adequacy of the conditions imposed pursuant to SEPA.

4. Applicant is proposing a 3-story 18 unit structure for an L-2 zoned site that faces commercial and L-2 zoning to the west. The site abuts SF 5000 zoning to the rear (east). The proposed structure will have front, rear and side modulation, wood siding, extensive landscaping and a sloping roofline. Eighteen underground parking spaces are proposed. DCLU conditions to the permit require landscaping, shielded lighting; prior notice to lessees/purchasers that only one parking space per unit is available, transit information; and provision of a one month transit pass to each unit for 3 months.

5. The above synopsis shows that the completed project will yield adverse impacts. However, these impacts were not shown to be significant. No EIS could therefore have been required.

6. Environmental impacts that are not "significant" may nevertheless serve as bases for imposing specific mitigating conditions on the requested permit. The impacts must be specific and clearly identified in an environmental document. Seattle Municipal Code Section 25.05.660(A)(2). The ensuing mitigating conditions are required to be "reasonable" and must be "based on specific policies, plans, rules or regulations formally designated in Section 25.05.902 as a basis for the exercise of substantive authority..."

7. Included in the SEPA Policies of Seattle Municipal Code Section 25.05.902 are those addressing parking and traffic; and cumulative effects. DCLU has already required applicant to provide transit information and transit passes for tenants. And the Hearing Examiner is without authority to require applicant to provide more than one parking space per unit. In re Elmer, C.F.293040, MUP-86-077 (1984).

8. There is no evidence that the vicinity traffic flow cannot reasonably absorb the additional vehicular trips per day to be generated by the proposal.

9. With respect to parking, applicant is proposing 18 on-site spaces. The reasonable estimated spillover is 9 vehicles, inclusive of visitor demand. The evidence shows that parking is available along Interlake and along other vicinity streets, including Stone Way. Although the Hearing Examiner has no reason to doubt appellants' reports, as far as they go, this fact pattern is strikingly dissimilar to the situation described in MUP-85-065 where the City Council ordered the number of units reduced from 9 to 6. There the adjacent street was 15 ft. wide curb to curb with "parking therefore prohibited on both sides of the street." Also, the lot was considered "undersized," and adjacent streets were at or near capacity. C.F. 294508, 294509.

10. The Hearing Examiner concludes that the "extreme density" in this case (extreme in comparison to the EIS multi-family projection) would yield an overflow of 9 cars which could be reasonably absorbed within a reasonable distance such that a reduction in the number of units is not warranted. Seattle Municipal Code Section 25.05.660(A)(3) requires that mitigation measures be "reasonable." In this factual context, it is not "reasonable" to require a reduced number of units in order to respond to a spillover of 9 vehicles. CF. In re Queen Anne Community Council (Victoria Towers), MUP-82-080 et al., C.F. 293623 (1985).

11. There is insufficient evidence from which to conclude that the sewer system or other elements of the infrastructure require further conditioning pursuant to SEPA.

12. Next is the question of height. Appellants and commenters assert that the 3-story proposed structure would be grossly out of scale with vicinity properties.

In fact, the great majority of residential structures are 2-story and single-family in nature. However, the single-family and multifamily zoning allow a 30 ft. height. In MUP-85-049/053(W), the City Council stated that

The 30 foot height proposed is consistent with the zoning, and the L-2 height limit was clearly intended by the City Council to be a transitional height in areas adjacent to single-family zones.

In re SQAD et al. C.F. 294378, 294392 (1986), conclusion

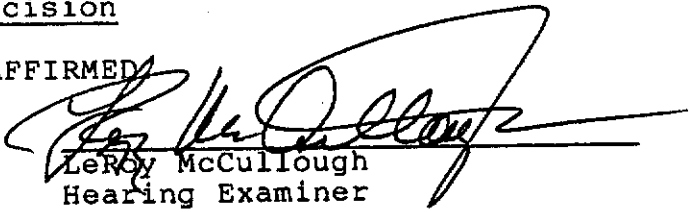
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13. Separate from height, however, is the question of bulk and transition. The north and south adjacent building have 24 and 28 ft. front setbacks. Applicant is proposing 15 ft., in partial response to the rear - abutting single-family zone. The streetscape would be adversely impacted by the forward siting of this 3-story structure and would present the building in more marked contrast to the existing development, primarily single-family, along Interlake. A re-siting could have the effect of reducing the appearance of incompatible bulk and scale, and could also preserve some private views to the south.

14. On the other hand, "it is inappropriate to require a reduction in scale merely because...surrounding buildings in the same...zone are developed to a lower height." In re Oden, MUP-84-057/058(W), C.F. 293557 (1985). Further, there is no zone edge to protect by specific transition-related policies. The L-2 zoned site faces L-2 and the more intense C1 zoning to the west where the proposed setback is 15 ft. The more forward siting enhances the separation from the S.F. zoning and development to the east. Finally, SEPA does not protect private views. The DCLU decision is therefore Affirmed.

Decision

The DCLU decision is AFFIRMED.


Leroy McCullough
Hearing Examiner

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 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 issue 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.