

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

In the Matter of the Appeals of

MR. AND MRS. TED PALMER AND
ALKI PRESERVATION ASSOCIATION

FILE NOS. MUP-90-023(W) and
MUP-90-024(W)

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

APPLICATION NO. 8804837

Introduction

Mr. and Mrs. Ted Palmer and the Alki Preservation Association (APA) appealed the decision of the Director, Department of Construction and Land Use (DCLU), to conditionally approve a proposal to construct 28 units in three multi-story apartment buildings and demolish one of the four existing triplexes at 3210 Alki Avenue S.W.

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 June 27, 1990, July 13, 1990, and August 31, 1990. A visit to the site was made on July 10, 1990.

Parties to the proceedings were: Appellant Mr. and Mrs. Palmer, represented by their attorney, Jeffrey Eustis; Appellant Alki Preservation Association, represented by Margaret Ceis; Applicant Stephen Peters, architect for Alki Beach Properties, represented by his attorney, Melody McCutcheon; and the Director, DCLU, by John T. Doan, Senior Land Use Specialist.

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 consideration of the briefs submitted following the hearing and the site visitation, the following shall constitute the findings of fact, conclusions of law and decision of the Hearing Examiner on this appeal.

Preliminary Matters

Appellant Palmer, represented by Mr. Eustis, filed a motion during the June 27, 1990 hearing regarding whether the project application was completed in a timely and sufficiently complete fashion so as to vest under a L-3 zone designation. This motion was denied.

Also, during the June 27, 1990 hearing, Applicant, represented by Ms. McCutcheon, requested replacement of the Hearing Examiner Pro Tempore for bias, based upon the fact that another attorney in Ms. McCutcheon's firm, had testified before the Seattle City Council on the Seattle Hearing Examiner

position and that the Hearing Examiner Pro Tempore had a personal bias against that other attorney before (presumably based upon that persons testimony before City Council). The request was denied on June 27, 1990, based upon the following reasons: the Hearing Examiner Pro Tempore had no prior dealings with Ms. McCutcheon, her client or this matter, further, the Hearing Examiner Pro Tempore was not aware of any testimony by the other attorney before the Seattle City Council. In addition, the Hearing Examiner Pro Tempore was not aware of any cases requiring disqualification based upon statements by other attorneys within the same law firm.

During the July 13, 1990 hearing, Appellant Palmer, represented by Mr. Eustis made a motion to present the testimony of an expert witness, Mr. William Laprade. The Hearing Examiner had previously requested a list of witnesses from each of the parties prior to June 27, 1990, commencement of the proceedings. Mr. Laprade was not on Mr. Eustis' list of witnesses. Mr. Eustis stated that he had made good faith efforts to find an expert witness prior to the hearing, but that most geotechnical engineers were unwilling to testify against developers and other developments. In addition, Mr. Eustis indicated that he had been able to obtain the services of Mr. Laprade only after a prior case in which Mr. Laprade was an expert witness had settled. Also, Ms. Ceis indicated that she had been able to obtain a copy of the Task Report 380 and 395 (Exhibits No. 24 and 25), on June 27, 1990, after the due date of the witness list. (Task Reports 380 and 395 pertains to rock stability and geology on the site immediately south of the proposed development.) Mr. Eustis' motion to allow Mr. Laprade to testify was granted.

Findings of Fact

1. Stephen Peters, as the architect for Alki Beach Properties, applied for the master use permit to construct three multi-story apartment buildings containing 28 units and to demolish one of the four existing triplexes at 3210 Alki Avenue S.W. The proposal also contained a parking component that provides for parking for 48 cars. The Director, DCLU, granted the application setting forth ten specific conditions.

2. The proposed site is located in West Seattle in an area that was designated L-3 when the permit application was filed.

3. The subject lot is situated at Alki Point and is shaped in a "T" configuration, with the western edge of the site having 75 ft. of frontage along Alki Avenue S.W. The southeast corner of the site runs along the end of Benton Place S.W. and the northeast corner of the property meets the end of S.W. Admiral Way. The subject lot contains approximately 30,000 sq. ft. of area and has two principal topographic elements: a gently sloping lower area, that slopes typically less than 15 percent, and a steeply sloping portion at the northeast corner, with grades of up to 100 percent, with topographic relief which is more than 50 ft. (Exhibit No. 26 A-C, 36).

4. The subject lot has been designated as environmentally sensitive and subject to review under Director's Rule 2-87. (Exhibit No. 22).

5. Director's Rule 2-87 established procedures and guidelines for developments located in potential slide areas and provides for a topographic

map, geotechnical report, disclosures, declarations, covenants and waivers and bonds and public liability insurance. (Exhibit No. 22). Director's Rule 2-87 also specifies that the geotechnical report shall contain "...all items listed in the site Evaluation Checklist (Exhibit No. 37) or explain why such item is inapplicable." In addition, the geotechnical report shall be accompanied by a letter from the geotechnical engineer stating that the risk of damage to the proposed development or adjacent properties from soils instability will be minimal. (Exhibit No. 22).

6. The geotechnical report (Exhibit No. 26 A-C) submitted by Neil Twelker did not contain all the items listed in the Evaluation Checklist. (Exhibit No. 37).

7. The testimony of the expert witnesses, Neil Twelker, John Peterson, and William Laprade, concur that the steep slope at the rear northeast corner of the subject lot consists entirely of weathered bedrock.

8. Mr. Laprade, expert witness for Appellant Palmer, testified that the bedding and jointing pattern of the bedrock indicates the likelihood of significant impact and the probability of rock block, slide and topple, that would undermine the southeast corner of the Palmer residence and compromise the safety of the workers in the excavation site if prudent measures were not taken. Mr. Laprade based his testimony on two reports, Task Report 380 and 395, which mapped the rock cliff on Alki Point and contained information regarding core borings, taken at the lot immediately south of the subject site. (Exhibits No. 24 and 25). Mr. Laprade further stated that it was not possible to excavate without additional support if a vertical or near vertical slope excavation was used. Mr. Laprade testified that rock bolting must be employed to pull the fragmented rock mass together and provide stability to the northeast corner of the subject site and that the design plans be revised to reflect the need for rock bolting. (Laprade testimony)

9. Mr. Peterson testified that in reviewing the project as the DCLU technical engineer, he looks for "fatal flaws" that would endanger the safety of the community or construction workers. He further testified that the northeast corner of the subject lot presents a site in which a rock outcropping of the Blakely Formation appears at the surface and that use of this bedrock as a building foundation provides greater lateral strength and stability as a general rule and in particular on this site. In the other rock outcropping of the Blakely Formation that appear throughout Seattle, Mr. Peterson was not aware of any other rock failures. (Peterson testimony)

10. Mr. Peterson stated that rock bolting would be employed if the site is a hazard for construction workers or if the stability of the whole site is in question. (Peterson testimony)

11. Mr. Peterson stated that blasting is not appropriate because of subject lot's proximity to a residential area. (Peterson testimony)

12. Mr. Neil Twelker, expert witness for Applicant, testified that the northeast corner of the subject lot was stable and that rock bolts, if needed, could be confined to within the perimeter of the subject lot. He further stated that Converse reports No. 380 and 395 (Exhibits No. 24 and 25) contained core borings at a lower level than where excavation would occur at

the subject site. He testified that the cuts for the parking garage structure were a minimal 5 ft. and that the cuts for the rear structure were moderate. (Twelker testimony)

13. The land use specialist who drafted the DCLU decision, Ms. Kunimatsu, testified that no explosives would be used in excavation under the present DCLU decision and that prior to the use of explosives there would be a separate DCLU decision and review.

14. Mr. Peterson testified that the drainage system, as designed was adequate.

15. Mr. Twelker testified that the run-off and wet areas indicated in photos G, H, I, J, K and L of Exhibit 27 show sea water receding from the beach materials at low tide. He also stated that photos E and F of Exhibit 27 indicated rain water run-off.

16. Properties north, west, and south of the subject lot along Alki Avenue S.W. are densely developed with single, duplex and triplex apartment complexes. To the immediate northwest are two 6-unit buildings and to the west along the western edge of Alki Avenue S.W. is a 36 unit condominium. In addition, there is a large three-story apartment building, located approximately 200 ft. from and 40-50 ft. below subject lot at the street end of S.W. Admiral Way. (Kaplan testimony)

17. The apartment complexes along Alki Avenue S.W. average 25 to 37 in height. None of the surrounding apartment complexes rise above the crest of the Alki Point bluff. There are no apartment complexes on the crest of the Alki Point bluff (which is located near the street end of S.W. Admiral Way). The proposed structures appear as three buildings with the rear building rising seven stories, approximately 74 ft. (above the base elevation of the slope). The scale of the rear building is a departure from the scale of the surrounding apartment complexes. (Kaplan, Nancy Confer, Kyle Shaw testimonies).

18. From S.W. Admiral Way, the rear structure appears as a significant mass 24 ft. in height and 60 ft. in width. The form and scale of the structure appears multi-family in a single family neighborhood. (Kaplan testimony).

19. The peak of the roof of the Palmer residence is approximately the same height as the proposed rear structure, but the bulk and scale of the proposed structure is more massive. (Kaplan testimony)

20. The proposed rear structure runs 60 ft. from the end of S.W. Admiral Way toward Alki Avenue. (Kaplan and Stephen Peters testimony)

21. The proposed structure is located 14 feet 2 inches from the Palmer residence, at 6640 S.W. Admiral Way, and 30 to 40 ft. from a small structure on the Miller residence at 6631 S.W. Admiral Way. The proposed structure is situated 9 ft. from the subject lot perimeter on the sides facing the Palmer and Miller residences and S.W. Admiral Way. (Peters testimony)

22. Mr. Kaplan, the expert witness for appellant Palmer, testified that a

setback of the proposed structure would give the illusion of reducing height, scale and bulk. He further testified that reducing the structure from two story units to one story unit would further reduce the height of the structure, but did not know the number of units that would be lost by such a mitigation measure. Mr. Kaplan also stated that landscaping could mitigate height, bulk and scale, but that the present plan did not mitigate those impacts.

23. The posthearing brief of Appellant Palmer suggests as mitigation measures that the rear terraced structure be eliminated or that the height of that structure be limited to 30 ft. above the base elevation of the slope (approximately 26 feet). (Eustis posthearing brief, pp. 10 and 11)

24. The testimony of Peters, expert witness for Applicant, stated that mitigation could be through landscaping that is adjacent to the lot line with the Palmer residence. The landscaping would consist of retention of mature plantings and rhododendrons and would also include plantings along S.W. Admiral Way. (Peters testimony)

25. The posthearing brief of Appellant APA requests mitigation of the rear structure by a reduction of the size and height of the building, adding that a proposed fence and shrubs would not be sufficient to mitigate the impact. (Posthearing brief of Appellant APA)

26. There is no record of any archaeological artifacts found on this site. (The site has been disturbed by the prior construction on the site). (Kunimatsu testimony)

27. A letter from Linda Thurston, a native American Indian, addressed concerns surrounding preservation of artifacts (Exhibit No 31A). In addition, letters to and from the Office of Archaeology and Historic Preservation for the State indicated that the subject lot and surrounding area are not within the State list of archaeological sites. (Exhibit 41 and 42)

28. The established guideline generally used by DCLU in estimating parking demand for multi-family projects is 1.5 cars per residential unit. (Kunimatsu testimony)

29. The Mayor's Recommended Amendment to the Multi-Family Parking Requirements (Exhibit No. 13) contains a U.S. Census figure estimating that West Seattle household owns 1.55-1.99 cars per household. This study and recommendation has not been adopted.

30. There were two methods of calculating parking demands presented by DCLU. The method used in the DCLU decision calculated the total impact of new and existing units (1.5 x 37 units or 56 spaces). The standard method used by DCLU is to subtract the existing units from the new units to determine the impact of the new units. (1.5 x 12 units or 18 parking spaces). There is parking for 48 cars in the parking garage. The spillover of cars from the former method would be 8, as opposed to a spillover of 6 cars from the latter method.

31. Three different parking utilization studies analyzing the situation were presented. (Exhibits No. 16, 17, 44 and 45). Two of the parking studies

were presented by Applicant.

32. The initial parking study presented by Applicant is not credible. The parking statement presented by Ruth Shaw coupled with the parking survey completed (Exhibits No. 16 and 17) indicate that S.W. Stevens and 65th should be eliminated from the parking survey because parking along both street would be in violation of the parking provisions of the Seattle Municipal Code. (Shaw testimony)

33. The second parking study presented by Applicant and completed by the expert witness, Donald Carr, a traffic engineer, is a credible study. In his study (Exhibit No. 45) he eliminated 65th, 66th, S.W. Stevens, S.W. Admiral Way and Hinds). Using the 1.5 figure, he arrived at a range of 80-83 percent capacity on weekdays and 80-81 percent capacity on weekends. (Carr testimony)

34. Mr. Carr testified that the parking mitigation measures provided in Condition No. 9 in the DCU decision: the assigning of parking spaces and inclusion of the parking in the rental fee or sales price will also assist in mitigating parking demands.

35. Mr. Carr testified that in determining the impact of the proposed structures on traffic, he counted only the new units, not the existing units. Using the ITE trip generation manual, he estimated that the new units would generate 153 daily trips of which 18 would be in the p.m. peak period and 14 in the a.m. peak period. He also considered that the traffic would be somewhat less in the winter than the trip generation figures of 153/18/14 used.

36. Mr. Carr garnered his traffic count information from the Seattle Engineering Department and from a traffic count. (Carr testimony)

37. In analyzing the level of service, Mr. Carr reviewed the amount of traffic, width of the road, traffic control, and physical characteristics of the site and found that on a scale of A-F (with A being the best), the level of service was at a very high A. He also projected a 4 percent growth and found the level of service remained at A. (Carr testimony)

38. Mr. Carr testified that the Seattle engineering records reflected no traffic accidents at the location for the last three years.

39. In reviewing the bike path, Mr. Carr testified that the path ended around the corner of Alki and that even with the mix of different users, including 60 plus pedestrians, the different usage worked well together.

40. Mr. Carr testified that the circulation pattern in the surrounding area was down the S.W. Admiral Way/West Seattle business corridor, rather than along Alki Avenue. He stated that most cars entering Benton came from the south.

41. Testimony of Marylou Miller and Pat Bouthillette indicates that there is a substantial volume of traffic in the area surrounding the proposed development. Exhibits No. 7 and 9 again indicate the considerable flow of different user traffic in this area. There was no evidence presented by Appellant APA on the additional traffic generated by the proposed development.

42. Poison Oak is endemic to the Alki Point area. (Exhibit No. 32). In the posthearing brief of Appellant APA, the requested mitigation measure is for a plan to identify and control the poison oak problem. (Posthearing Brief of Appellant APA).

43. The conditions contained in the DCLJ decision are as follows:

CONDITIONS

Prior to Issuance of a Master Use Permit

1. The owner(s) and/or responsible party(s) shall submit concept street improvement plans for Benton Place S.W. including 32-foot wide pavement with curb, extending south to Beach Drive S.W., and a cul-de-sac at the north end as approved by the Seattle Engineering Department or the Board of Public Works, as required.

During Construction

The following conditions to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. The conditions will be affixed to placards by DCLJ. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain most on-site for the duration of the construction.

2. The addition to the Noise Ordinance requirements, to reduce the noise impact of construction on nearby residential properties, the owner(s) and/or responsible party(s) shall limit construction to the hours of 7:30 a.m. to 6:00 p.m. on non-holiday weekdays. Once the building shall be fully enclosed, interior construction may be undertaken outside these hours.

3. In addition to the Noise Ordinance requirements, to reduce the noise impact of construction on nearby residential properties, use of explosives for excavation shall be prohibited.

4. To reduce hazards to downhill properties and construction personnel from excavation debris, the owner(s) and/or responsible party(s) shall provide a cyclone fence debris curtain along the north, west and south boundaries of the construction area, and elsewhere as required by the construction inspector.

5. To reduce the traffic impacts of construction, loading of materials and equipment, and construction staging shall be restricted to Benton Place S.W. only, and shall be prohibited at Alki Avenue S.W. and S.W. Admiral Way.

6. To reduce the traffic impacts of construction, the owner(s) and/or responsible party(s) shall provide construction workers with parking on-site as soon as feasible, as determined by the construction inspector.

7. To prevent adverse impacts to artifacts of historical significance, if such artifacts or other evidence of human habitation are uncovered during excavation, the owner(s) and/or responsible party(s) shall suspend construction activities, notify the State Historic Preservation Officer, and cooperate in evaluation and conservation measures prescribed by the Officer.

Prior to Occupancy

8. The owner(s) and/or responsible party(s) shall construct street improvements to Benton Place S.W. as described in Condition No. 1 and approved by the Seattle Engineering Department or the Board of Public Works.

Prior to Occupancy and Permanent for the Life of the Project

9. To minimize traffic and parking impacts on the surrounding community, the owner(s) and/or responsible party(s) shall include all charges for on-site parking in the sale price or rental fee and each unit shall be assigned (a) parking spaces(s). Unassigned spaces shall be made available to tenants and guests on a first-come first-served basis. No additional parking fees shall be charged. The owner(s) and/or responsible party(s) shall submit a sample copy of the lease or sales agreement stating these terms to the Land Use Review Division for inclusion in the file.

10. To minimize traffic and parking impacts on the adjoining Single Family zone, the owner(s) and/or responsible party(s) shall limit site access from S.W. Admiral Way to pedestrian use for required emergency access and tenant egress only. The site boundary at Admiral Way shall be fenced and, if a gate is provided, it shall be posted to direct guests and deliveries to the garage entrance at Benton Place S.W.

44. There were 30 comment letters received by DCLU. There were also two petitions (Exhibits No. 33 and 34) indicating the interest of members of the community in this proceedings.

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Section 23.76.022, Seattle Municipal Code.

2. The Director's decision on a Master Use Permit on SEPA issues shall be given substantial weight on review. Seattle Municipal Code 23.76.022.C.7. To overcome this deference, the appellant must show that the DCLU decision is "clearly erroneous." Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. In making a threshold decision, the responsible official, DCLU, shall take into account that "the same proposal may have a significant adverse impact in one location but not in another location." Seattle Municipal Code Section 25.05.330.C.1.

4. Seattle Municipal Code 25.05.665, the SEPA overview section, provides that where a "...project is located near the edge of a zone, and results in substantial problems of transition in scale or use which were not specifically addressed by the applicable City Code or zoning" denial or mitigation of a project shall be permitted. SMC 25.05.665.D.5.

Earth/Soils

5. The Seattle Municipal Code regarding earth provides that the City's policy is to protect life and property from loss or damage by landslides and strong ground motion. The subsection additionally provides for conditioning of the project to mitigate impacts related to earth movement or earth instability. Seattle Municipal Code 25.05.675.D.2.a. and b.

6. The subject lot is designated environmentally sensitive and subject to review under Director's Rule 2-87. (Exhibit No. 22). While all the procedural requirements of Director's Rule 2-87 were not met in the geotechnical report submitted by Neil Twelker, the primary purpose of the code and Director's Rule 2-87 is to ensure safety and protection from earth-related impacts. In this regard, it is necessary to focus on whether the construction as currently conceived meets the requirements of Seattle Municipal Code 25.05.675.D. The testimony of the expert witness, Mr. Laprade, conflicts with the testimony of the expert witnesses, Mr. Twelker and Mr. Peterson, on the issue of whether rock bolting needs to be included in the construction design and used to stabilize the bedrock slope at the northeastern edge of the lot. It is clear from the testimony of Twelker and Peterson that rock bolts would be used if necessary, but that the decision on whether to use rock bolting would be subsequent to the construction design process. The hearing examiner concludes that delaying the decision on whether to use rock bolts, where there is no clear evidence necessitating insertion of the rock bolting into the construction design, meets with the requirements of Seattle Municipal Code 25.05.675.

7. The appellants questioned whether explosives would be used in lieu of conventional earth moving equipment. The testimony of Kunimatsu is clear on

this point. No explosive is anticipated and could not be allowed without a separate DCLU review and decision.

Drainage

8. Regarding drainage, the Hearing Examiner concludes that compliance with the Grading and Drainage Control Ordinance will, in the main, sufficiently mitigate impact of the proposal.

9. A drainage control plan is required for the proposed development. This drainage control plan should intercept, then release any rainwater run-off.

Height, Bulk and Scale

10. With respect to height, bulk and scale, Seattle Municipal Code 25.05.675.G. provides that the land use policies are intended to provide a smooth transition between zones and to preserve the character of individual city neighborhoods and to reinforce natural topography.

11. Although there is a nonconforming, multi-story apartment building 200 feet from the subject lot, the main character of the neighborhood at the top of the Alki Point bluff is single family residential. In the past, this single family residential neighborhood has been shielded from the multi-story, apartment complexes on Alki Avenue S.W., by the topographic feature of the Alki Point bluff. The proposal would crest above the bluff, rising approximately 24 feet at the end of S. W. Admiral Way. The proposed structure would basically appear to be 60 feet in width along S.W. Admiral Way. From the Palmer residence at 6640 S.W. Admiral Way, the proposed structure would appear to run approximately 60 feet from the end of S.W. Admiral Way down the slope toward Alki Avenue. The proposed structure would be located exactly 14 feet and 2 inches from the Palmer residence and approximately 30 to 40 feet from buildings on the Miller residence at 6631 S.W. Admiral Way. Although the proposed structure is approximately the same height as the highest peak of the Palmer residence roofline, the bulk and scale of the structures is not comparable. The proposed structure does not provide a smooth transition between the single family residential neighborhood and the L-3 zone. The special topographic feature of the Alki Point bluff coupled with the character of the West Seattle neighborhood at the top of the bluff and the bulk of the proposed structure necessitates additional mitigating measures should be taken to ensure a smooth transition between the L-3 and SF zones.

12. While it is reasonable to require some mitigation measures be taken, it would not be reasonable to disallow construction of this proposal. Some mitigation should be provided by landscaping. The landscaping could only be required on the subject lot, which limits the landscaping to the 9 feet from the proposed structure to the perimeter of the subject lot on both the side of the lot facing the Palmer residence and the side of the lot facing S.W. Admiral Way. Plantings of a five foot wide hedge of laurel (or comparable hedge) and a two three foot wide shrub of a shorter height (next to and in front of the laurel hedge) along the entire property lot line that borders S.W. Admiral Way, and the Palmer and Miller residences along with retention of the mature plantings and rhododendrons on site should assist in integrating the structure with the adjacent buildings.

13. In addition, modulation of the top floor of the proposed structure would assist in reducing the bulk and scale of the structure as it is presently contemplated. Modulation of the top floor of the structure by reducing and moving the top floor back an additional 10 feet from the Palmer residence and an additional 10 feet from the Miller residence, would reduce the impacts of the bulk and scale of the proposed structure by creating a structure that appears 40 feet in width on the second story from S.W. Admiral Way and is a greater distance from the Palmer and Miller residences. Appellant Palmer's request to eliminate the terraced building altogether or require the height of the building not to exceed 30 feet above the base elevation are not reasonable mitigation measures, particularly where there was no evidence presented to indicate the number of units that would be eliminated by such a limitation in the height of the building.

Historic Preservation

14. Regarding possible archaeological findings on the subject lot, given the undisputed testimony on evidence presented at hearing, Condition No. 7, contained in the DCLU decision, adequately protects any artifacts, should such artifacts be uncovered on the subject site during excavation.

Parking

15. Seattle Municipal Code subsection 15.05.675.M states that the city policy is to minimize or prevent adverse parking impacts associated with development projects. This subsection also provides for conditioning to mitigate the parking effects of development on the surrounding area. However, mitigation for multi-family development can only be required where on-street parking is at capacity (i.e. 85 percent) or where the development itself would cause on-street parking to reach capacity.

16. The established DCLU parking demand guideline of 1.5 cars per residential unit is reasonable, although the figure is based upon a study of Capital Hill and Queen Anne approximately 10 years ago. Appellant APA urged that the estimate of 1.55 to 1.99 cars per residential unit be adopted. (See finding 29). Although the figure may be a credible one, it shall not be used as the guideline herein.

17. Using the 1.5 figure, two methods of calculating the parking demand were presented by DCLU: the method used in the DCLU decision calculated the total impact of new and existing units; and the standard method subtracted out the existing units, focusing on the impact of the new units. The method used in the DCLU decision was reasonable and will be used herein and resulted in an overflow of 8 cars.

18. Three different parking utilization studies analyzing the existing situation were presented. The parking survey completed by Donald Carr is the most credible. Using the parking survey data (Exhibit No. 45) as a base, results in a parking utilization of less than 85 percent. Therefore, no additional parking mitigation will be required.

Traffic

19. Seattle Municipal Code 25.05.675.R. provides that the city's policy

is to minimize adverse traffic impacts and that in determining impact mitigation, the following should be examined: expected peak traffic, circulation pattern of the project, existing vehicular and pedestrian conditions, accident history, the trend in local area development, parking, use of the street as determined by the Seattle Engineering Department, and availability of goods, services and recreation within reasonable walking distance. SMC 25.05.675.R.2.b.

20. Testimony of the expert witness, Donald Carr, and the APA witnesses, Marylou Miller and Pat Bouthillette, as well as exhibits No. 7, 10, and 45, indicate that there are substantial traffic volumes currently in the area surrounding the subject lot. Focusing on the traffic that will be generated by the proposed development, it is uncontroverted that the additional new units will generate 153 daily trips of which 14 will occur during the peak a.m. and 18 during the peak p.m. period and that the trips generated during the winter would be less than during the summer. Carr agreed with the exhibits presented by APA, but concluded that given the level of service and lack of accidents, there would be little impact to the current traffic situation. Given the lack of evidence to the contrary, this Examiner concludes that the Carr analysis is reasonable.

Poison Oak

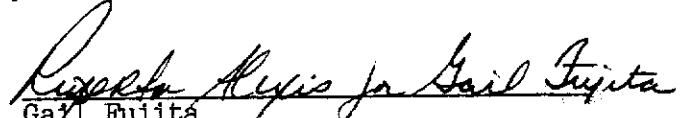
21. There is no Municipal Code which provides the authority to regulate the identification, control and disposal of poison oak on the subject lot. This Examiner would, however, recommend that such an identification, control and disposal plan be designed and implemented.

22. A DNS should be issued for a project when it is determined that the project will not have a significant effect upon the quality of the environment, using the procedures of SMC 25.05.300 et seq. The evidence submitted does not persuade the Hearing Examiner that the Director's DNS was in error.

Decision

The decision of the Director is AFFIRMED. Two additional conditions shall be added consistent with Conclusion 12 and Conclusion 13: landscaping and reduction of the second story of the rear structure as mitigating measures for the impacts of the bulk and scale of the second story of the rear structure.

Entered this 26th day of September, 1990.


Gail Fujita
Deputy Hearing Examiner Pro Tempore

CONCERNING FURTHER REVIEW

Pursuant to Seattle Municipal Code Section 23.76.024, 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, 5th Floor Municipal Building, 684-8322. 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 23.76.024, 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 City Council appeal.

If no appeal is taken to the City Council, 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. 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. See Chapter 43.21C, RCW and Chapter 25.05, Seattle Municipal Code.

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 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, Room 1320 Alaska Building, 618 Second Avenue, 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.