

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

LAURENCE E. MASON ET AL.

FILE NO. MUP-90-006(W)

APPLICATION NO. 8704834

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

Introduction

The appellant exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.74, Seattle Municipal Code.

The hearing was held on April 24, 1990, the appellant Laurence E. Mason, appeared pro se, the proponent was represented by Richard Hill, Foster Pepper and Shefelman, and the Department was represented by Cristina Van Valkenburgh. The record remained open for a site inspection which occurred on May 20, 1990.

After due consideration of the evidence elicited during the public hearing, and as a result of the site inspection, 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 south of Northeast 125th Street and west of Roosevelt Way Northeast in the City of Seattle, King County, Washington. There is no substantial amount of the subject property which fronts either arterial. Rather, the subject property comprises the core of the block. Access currently exists only by way of a 20 ft. wide and 144 ft. long leg which gives access to Roosevelt Way Northeast in about the middle of the block. Another leg would give access to Northeast 125th if the proponent's project is developed. The Lot is a rough square and measures approximately 205.5 ft. north to south and 166 ft. east to west.

2. The property immediately to the east of the subject property is zoned NC-2. That property is developed with two one-story commercial structures. The subject property is zoned L-3 as is property to the north. To the west and south is an SF 7200 zone. Across Roosevelt Way Northeast is a L-3 zone and farther to the east is an L-2 zone.

3. In the past decade there has been considerable development in the area, mostly consisting of apartment type dwellings. More recently, 75 units of apartments were constructed at Northeast 120th and Roosevelt Way Northeast (MUP 8603610 and 8603607); a 15 unit apartment at 12054 Roosevelt Way Northeast (MUP 8805395) and a 48 unit apartment at 840 Northeast 125th Street (MUP 8604603). There is a proposal to build a 36 unit apartment building at 12337 Roosevelt Way Northeast (MUP 8901939). This proposed project would entail demolition of the commercial structures in the NC-2 zone described in Finding 2, supra.

4. To the west, across 11th Avenue Northeast is a large church and related school complex of recent construction. Non-arterial streets in the area are without curbs. Open storm sewers are found where one from the more central areas of the city would usually expect to find sidewalks.

5. The subject property is wooded with dense low foliage in abundance. It is not possible visually to get any accurate perception of the lay of the land from a simple visual inspection. Suffice it to say that the subject property is at a higher elevation than the commercial strip which abuts Roosevelt Way Northeast. The difference in elevation may be as much as 15 ft. To the east, across Roosevelt Way Northeast the terrain slopes down still more.

6. To the immediate south and west are several residences all of which appear to be in good repair. The occupants take pride in their surroundings as is evidenced by landscaping and yard upkeep.

7. A site inspection on Sunday, May 20, 1990, at 4:30 p.m., showed that on-street parking was available on Roosevelt Way Northwest, 11th Avenue Northeast and Northeast 123rd Street. No parking was available, however, on Northeast 125th Street for the block and one-half west of Roosevelt Way Northeast.

8. In general terms, it is proposed to build four apartment buildings on the subject property with a total of 60 units. Previously, the applicant proposed 74 units. A Declaration of Significance for purposes of SEPA was issued on November 19, 1987 with respect to the 74 unit proposal. The smaller number of units was later proposed along with modulation, use of pitched roofs and reduction in bulk of the two westernmost buildings. These revisions in plans and scale had the desired effect and the Department of Construction and Land Use (DCLU) withdrew its Declaration of Significance and a draft revised report dated August 21, 1989.

9. As the project is now configured there will be 77 parking spaces provided on the subject property after development. Vehicles will enter the subject property only from Roosevelt Way Northeast and will be allowed to exit only by way of a leg to Northeast 125th Street.

10. Almost all the subject property will be covered with impervious surfaces although there will be room for some perimeter landscaping. It is not too removed to make analogy to a downtown parking lot. The storm drains in the vicinity all discharge into the Thornton Creek Drainage Basin. The report of the Department assures the reader that potential adverse environmental impacts will be mitigated by compliance with the Grading and Damage Drainage Control Ordinance although the same reader is not told which impacts might exist or how they each will be jointly or separately mitigated.

11. The MUP project application was filed June 26, 1987. Later legislation including multifamily parking, multifamily interim density and landscaping collide with the vesting with which the application is garbed.

12. During construction it can reasonably be expected that disruption to the subject property's surface will cause effects on the environment. Although the Department does not consider these impacts to be significant they are, by any normal person's sensibilities, adverse and deserving of mitigation through conditions peculiar to the subject property or through existing City ordinances.

13. There will long term environmental degradation as a result of development on the subject property. These adverse impacts are, in no particular order: increased energy demand likely to be realized by construction and the future occupancy of the 60 residential units; increased water and pollutant runoff from the subject property; increase in vehicular traffic to and from the subject property including decrease in flow of traffic both on Roosevelt Way Northeast and Northeast 125th Street; increased noise due to human and vehicular activity on the subject property; air pollution from barbecue grills or autos; and more light and glare. The Department's report tells the reader that this degradation is not significant "due to their relatively minor nature within an urban environment." Except with respect to traffic and parking this conclusion was not controverted.

14. No evidence is before the Hearing Examiner as to the number of people reasonably expected to be full-time residents of the subject property if the proposed development is completed. Nor is there any evidence as to where the occupants who are employable will likely work -- downtown (CBD), across Lake Washington; north; south or whether the electronic cottage will allow the dwelling unit to be identical to the workplace.

15. The western edge of the subject property marks a zoning boundary. To the west is SF 7200 single family housing. East of that edge is a commercial zone. The proponent plans to keep the western two buildings to no more than 26 ft. in height to the top of the building plate as seen from the single family zone. There is no evidence of a topographic survey nor is there evidence of the place from where in the SF 7200 zone the development will not exceed 26 ft. in height. However, the concept of reducing bulk and scale of this project as proposed, is a good one. A family resident could be constructed to the same height in the SF 7200 zone. The key is to determine the reference point. The modulation to and reduction in height of the westernmost buildings when coupled with landscaping required by the Department provide an effectual transition to the SF zone.

16. The project will increase by over 300 the number of vehicular trips in the vicinity. However, those trips will not significantly effect the level of service at any major intersection. This was not controverted in the appeal. The subject property is near a major bus routes in Metro's system and is also close to several Key Bicycle Streets.

17. With respect to parking, there was no evidence to controvert the assumption employed by the Department that each unit of the development will, on average, generate demand for 1.5 vehicle spaces. For this project that equals 90 spaces of parking required to meet the needs of residents and visitors. This assumption has been employed by the Engineering Department for so long that references to the genesis of the assumption is no longer provided in the report of the Department. Because of the exorbitant cost of housing and personal auto ownership people may well be faced with the choice of owning wheels or walls. The purchase of either may sacrifice the ownership of the other. With the use the 100 year mortgage in Japan one can see that the dilemma of choice is surely if not sorely that. It is proposed that 77 spaces will be provided on site leaving a need to meet demand for 13 spaces on street. Stated another way, the proposed development will provide for 85.5 percent of parking spaces attributable to the development.

18. There is evidence, by appellant, that certain of the homes in the vicinity of the subject property provide shelter for more than one family unit therefore increasing the number of autos needing on street parking. The force of this evidence is diminished by a corresponding lack of evidence as to whether the individuals in question own or rent and, if the latter, the turn over rate in the market peculiar to that area. Further, evidence of the capacity of the allegedly single family/lots to absorb parking was likewise lacking.

19. Given that the assumptions used for calculating parking demands are not in question and further given that more 80 percent of the demand for parking will be met on site, the evidence of appellant does not successfully rebut the conclusions of the Department that adequate parking on street is available within 800 ft. of the subject property.

Conclusions

1. The Hearing Examiner has jurisdiction over the subject matter and of the parties to this appeal.

2. The proceeding before the Hearing Examiner are de novo. However, the findings and conclusions of the Department are to be given substantial weight and, unless clear error is shown, must be given deference.

3. There is no clear error with respect to the facts presented by the Department in its Final Analysis and Decision dated January 18, 1990, Exhibit #9.

4. It is appropriate to require conditions to the development of this property. The Department has proposed conditions which were not questioned by the appellant directly. With respect to bulk and scale, a condition is appropriate with respect to the means for calculating height of the westernmost buildings of the project. The following conditions shall obtain with respect to the development of the subject property:

CONDITIONS

Prior to Issuance of the Master Use Permit:

- a. The western most two buildings shall not exceed 26 ft. in height from the plate as measured from a point on a line 100 ft. west of the subject property and as close as practicable to the mid-point of that line.
- b. The owners(s) and/or responsible party(s) shall apply for and receive approval for a Lot Boundary Adjustment between and subject property and the property to the north where the second driveway and pedestrian access to the site will be provided.
- c. In order to soften the appearance of bulk and scale along the single family edge, the owner(s) and/or responsible party(s) shall revise the landscaping plan to include a total of 14 trees along the west property line. The trees shall be 7 Serbian Spruces and

7 Flowering Plums; they shall be a minimum of 2 inch caliper each when planted. In addition, the whole 12 feet setback shall be landscaped with trees, shrubs, and ground cover. Serbian spruces and flowering plums shall also be planted along the south property line. Moreover, to further screen the proposal from adjacent development, the owner(s) and/or responsible party(s) shall install a 6 ft. high view obscuring wood fence around the perimeter of the property.

- d. In order to mitigate the potential long term noise impacts along the proposed driveway off Northeast 125th Street, the owner(s) and/or responsible party(s) shall provide a final design for the required sound barrier to be provided along the west side of the proposed driveway exiting onto Northeast 125th Street. The design shall be done in consultation with approved acoustical consultant, and shall be approved by DCLU and the Seattle-King County Public Health Department. In particular, the acoustical barrier shall reduce noise levels for the nearest residential unit to the west of the driveway to 55 dBA in living area and 45 dBA in sleeping areas.
- e. The owner(s) and/or responsible party(s) shall revise the plans to provide a total of 10 on-site secured, covered, bicycle parking spaces.

Upon Application for Construction Permits:

- f. The owner(s) and/or responsible party(s) shall submit plans which maintain the 26 feet height limit as determined in Condition a, to the top of the plate for the two structures located in the western half of the site, facing the single family zone, include modulation (decks), and incorporate pitched roofs to all four buildings.

During Construction:

The following condition(s) 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. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DCLU. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other weatherproofing material and shall remain in place for the duration of construction.

- g. In addition to the Noise Ordinance, to reduce the noise impacts of construction on nearby residential properties, the owner(s) and/or responsible party(s) shall limit construction hours to between 7:30 a.m. and 6:00 p.m. on non-holiday weekdays. Construction shall not occur on Sundays.
- h. To reduce the parking impacts during construction, the owner(s) and/or responsible party(s) shall provide on-site parking for construction personnel whenever feasible.

Prior to Occupancy


- i. The owner(s) and/or responsible party(s) shall provide landscaping according to the plans approved by the Land Use Specialist, or reduce the impacts of bulk and scale. The owner(s) and/or responsible party(s) shall submit to the Construction Inspector an affidavit from a landscape professional that the landscaping is installed per plan.
- j. The owner(s) and/or responsible party(s) shall install the 6 ft. high view obscuring cedar fence around the perimeter of the site as shown on the approved site plan.
- k. The owner(s) and/or responsible party(s) shall post, in a permanent fixture, bus schedules of neighborhood routes in a visible location in all four building lobbies. (Contact METRO for further details.)

1. The owner(s) and/or responsible party(s) shall assign at least one parking space to each unit. All charges for parking shall be included in the sale price, rental fee, and/or lease agreement of the residential units. A copy of the appropriate document shall be submitted to DCLU's Land Use Review Section for inclusion in the file.
- m. To minimize potential for conflict between pedestrians and automobiles at the proposal's driveway entrance off Roosevelt Way Northeast, the owner(s) and/or responsible party(s) shall provide a minimum 5 ft. wide pedestrian walkway surrounded by a curb on both sides. The curb shall extend for the whole length of the driveway until the sidewalk. In addition, a sign indicating that the driveway is to be used for entrance only shall be installed in a visible location to all traffic approaching the site from Roosevelt Way Northeast. Moreover, a 5 ft. pedestrian walkway separated by a curb shall also be provided along the exit driveway onto Northeast 125th Street. A sign shall also be installed at the driveway to indicate that it shall be used for exit only.
- n. In order to mitigate the potential long term noise impacts along the proposed driveway off Northeast 125th Street, the owner(s) and/or responsible party(s) shall construct the required sound barrier along the west side of the proposed driveway exiting onto Northeast 125th Street.
- o. In order to further mitigate the potential long term noise impact along the driveway off Northeast 125th Street, the owner(s) and/or responsible party(s) shall install speed bumps along the extension of the driveway and post signs limiting the speed limit to 10 miles per hour.
- p. In order to inform tenants about the bus pass availability, a permanent sign shall be posted in all four building lobbies. The sign shall be approved by DCLU prior to their installation, and shall say the following: "A free peak-hour METRO bus pass is available in every unit during the first three months of occupancy. Please contact _____ at _____ to receive your free bus pass."

For the Life of the Project

- q. To encourage the use of transit, and reduce the number of trips impacting adjacent streets, the owner(s) and/or responsible party(s) shall give a free peak-hour METRO bus pass to each unit, for three months, every time a unit is sold, leased, and/or rented. In order to inform tenants about the bus pass availability, a sign shall be posted in all four building lobbies. The sign shall say the following: "A free peak-hour METRO bus pass is available to every unit during the first three months of occupancy. Please contact _____ at _____ to receive your free bus pass."
- r. The owner(s) and/or responsible party(s) shall maintain all landscaping per approved plans.
- s. The owner(s) and/or responsible party(s) shall assign at least one parking space to each unit. All charges for parking shall be included in the sale price, rental fee, and/or lease agreement of the residential units.

Entered this 1st day of June, 1990.


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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 23.76.022(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 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, 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 encourage 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.