

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

RANDALL SPAAN

FILE NO. MUP-89-032(W)  
APPLICATION NO. 8807202

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

#### Introduction

The North Beacon Hill Neighborhood Coalition appeals decisions by the Director, Department of Construction and Land Use, to approve the short subdivision of land at 2313 and 2361 South Forest Street, to grant a design departure and to issue a determination of non-significance.

The appellant 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 August 1, 1989.

Parties to the proceedings were: appellant represented by members, John O'Brien, Craig Lorch and Todd Jacobs, the Director, Department of Construction and Land Use, represented by Malli Anderson; and the proponent, Graystone Associates, represented by Randall Spaan.

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 applicant filed a master use permit application for a short subdivision to subdivide six parcels into eight at 2313 and 2361 South Forest Street. Design departure to extend into the required side yards was also requested. The Director, Department of Construction and Land Use ("Director"), issued a determination of non-significance (DNS), conditionally approved the short subdivision, granted the design departure and imposed certain conditions pursuant to SEPA. Appellant filed this appeal of those decisions.

2. The subject property is zoned Lowrise 1 (L-1) and is within the Cheasty Greenbelt overlay. The site is on the east slope of Beacon Hill, a few blocks west of Rainier Avenue South. It abuts three streets, South Forest Street, 24th Avenue South and South Stevens Street, all unopened.

3. Dense vegetation, consisting of shrubs and deciduous trees, covers the site and the unopened streets. The vegetation has appeared since 1970 when the site was devoid of most trees. The greenbelt continues to the north and east of the subject property.

4. The subject property slopes at a rate of approximately 10 percent at the north end and 15 percent at the south.

5. The proposal is to create eight lots with lot areas ranging from 2,500 sq. ft. to 3,157 sq. ft. Four structures, each with two ground-related dwelling units with a common wall,

would be constructed. Vehicular access would be provided via a new 25 ft. wide roadway in the South Forest right-of-way and a 20 ft. wide easement across the west side of the proposed lots. Each unit would have a two-car garage. Additional parking would be provided in cutouts along the easement for approximately 12 cars plus others could park on the driveways in front of the garages.

6. The applicant's reason for the short subdivision is to create separate lots for the eight units so that they may be sold in fee simple.

7. The design departure is proposed to achieve adequate building width for two-car garages and front-facing entries. The departure requested is from the required 5 ft. side yards at each end of the site. The setbacks provided would technically be 0 ft. since at one point the structure would extend to the property line but would be 3 ft. over most of the distance. The side yards abut the unopened streets.

8. The design departure would allow 17 ft. 4 in. between the four structures. A minimum of 10 ft. between the buildings is required so if the minimum separation was provided and the 5 ft. setback supplied there would be a total of 40 ft. opening for view through the site. The design departure would result in total opening of about 52 ft.

9. The existing green space on the subject site is important to the community. It provides a physical and visual buffer between the traffic and commercial activity below and the residential community above. It offers "wilderness" for children's play. It provides habitat for small animals and rodents. It serves as a pleasant visual backdrop.

10. The environmental checklist acknowledges that the site will be denuded.

11. A study of the plants and animals on the subject site was conducted for the applicant by a wildlife biologist. The study concluded that no endangered, threatened or sensitive plant or animal species were expected to occur on the property. There was no indication that the site is a special habitat type. No competent evidence was presented to refute the conclusions of the report but it was questioned for lack of thoroughness.

12. The project includes 9,347 sq. ft. of open space. Only 2,400 sq. ft. is required by the Code. The landscape plan shows a row of trees and shrubs along the west side of the easement roadway, among other plantings.

13. There are no public parks in the area so the greenbelt and a school playground provides open space.

14. The site is within the corridor around North Beacon Hill identified on the Tubbs map as being subject to slides. The site is not designated by the City as environmentally sensitive due to landslides although the property to the east, across 24th Avenue South, is.

15. The site was found to be stable by the consulting soils engineers. Recommendations for the foundation and drainage were made to assure continued stability during and after construction.

16. Appellant's witnesses reported instances of soils eroding away from under streets, cracking of walls, and other indication of slope movement in the area.

17. Groundwater was found 25 ft. deep or greater along 24th Avenue South in earlier borings. The Department's geotechnical engineer does not expect that groundwater will be encountered during the proposed construction but, if found to be a problem during the required special inspections, the Drainage Control Ordinance will allow steps to be taken to handle any problems.

18. A drainage control plan is required for the project. All runoff from the structures, driveways, etc., will be required to be collected and carried to the storm main in McClellan Street which main has adequate capacity for the additional flow.

19. There is less runoff from a developed site than from an undeveloped one so the groundwater condition on the adjacent property should not be worsened by the development.

20. The Department projects that the proposed development will generate approximately 49 vehicle trips per day.

21. Traffic from the site will enter South McClellan Street from Harris Place. McClellan Street slopes up to 23rd Avenue South and down to Rainier with a signal at 23rd and a stop sign at 25th Avenue South.

22. Traffic counts show that McClellan carries approximately 300 vehicles in each direction during the peak hour, well under capacity. Twenty-third Avenue South, only 25 ft. wide in this area, carries approximately 600 vehicles in each direction during the peak hour. During the southbound a.m. peak the volume is 47 percent of theoretical capacity. Both streets can accommodate the additional traffic from the subject site.

23. Appellant's witness expressed concern about the sight distance from vehicles at 23rd to Harris Place. The Department's witness from the Engineering Department opined that the sight distance is "excellent".

24. The nearest Metro bus stop is approximately four to five blocks away.

25. The parking to be provided would be adequate for all site-related parking so no spillover is anticipated.

26. A project involving 46 dwelling units is proposed by the proponent and under consideration by the City for the site immediately east of the subject site. Vehicular access is proposed from 25th Avenue South. Any development of that site would eliminate substantial additional greenbelt.

27. The DNS identified short term construction-related impacts of the proposal, additional traffic, increased surface water runoff, increased bulk and scale, increased airborne emissions, increased noise, increased demand for public services and on utilities, increased light and glare and increased energy consumption. None was found to be a significant adverse impact.

28. The Director imposed several conditions pursuant to SEPA to mitigate construction-related impacts and others prohibiting grading in, and any construction access from, 24th Avenue South to preserve it as greenbelt and prohibiting removal of trees from the public right-of-way without approval of the City arborist.

29. It is the applicant's position that a total of 17 units could be developed on this site under the current zoning without a short plat. The Department did not disagree with that contention. A concept was shown with two buildings containing the 17 units. The duplex structures proposed would more nearly match the character of the adjacent single family neighborhood than the larger multifamily buildings.

30. The proposed access meets City codes and standards. The Fire Department was consulted and has no objection to the proposed short subdivision and has approved the access for emergency vehicles. The Director's approval of the short plan requires construction of a water main, extension of the sanitary sewer, construction of a storm main to join the existing one, granting of an easement for electrical facilities and improvement of South Forest Street to street design standards.

31. In deciding to approve the short plat, the Director considered Policy 1 of the Multifamily Residential Areas Policies

which states the objectives of increasing opportunities for new housing and ensuring that new development is compatible with neighborhood character.

32. The Director did not consider whether the North Beacon Hill Neighborhood Improvement Plan provided any additional authority to condition the project pursuant to SEPA.

33. The overall aim of the North Beacon Hill Improvement Plan is to be "to enhance the livability of North Beacon Hill as a predominantly low density residential community." Exhibit 14, p.2. One of the objectives articulated in the plan is to "Preserve open spaces and other natural amenities." Exhibit 14, p.2. In the discussion of the means to attain this objective the plan looks to the Zoning Ordinance to keep development to a minimum, SEPA and public acquisition of open space. The recommendations chosen involve developing an evaluation system to identify the most critical parcels and an acquisition program and, specifically, to retain Lewis and Sturgus Park areas as natural greenbelts.

#### Conclusions

1. The Hearing Examiner has jurisdiction over this subject matter and these parties pursuant to Section 23.76.022C.

2. The determinations made by the Director are to be accorded substantial weight by the Hearing Examiner. Section 23.76.022C.7. The burden then is on appellant to prove that the decisions are clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. The Director is to issue a DNS if he determines there will be no probable significant adverse environmental impacts from the proposal. Section 25.05.340. "Significant", in this context, means "a reasonable likelihood of more than a moderate adverse impact on environmental quality." Section 25.05.794. Appellant has not shown that the Director's determination as to the significance of the identified impacts was clearly erroneous.

4. In deciding whether to approve a short subdivision the Director is to consider whether the proposed subdivision conforms to the applicable land use policies and Land Use Code provisions; whether the access is adequate for vehicles, utilities and fire protection; whether there will be adequate drainage, water supply and sanitary sewage disposal; and whether the public use and interests are served by permitting the division. Section 23.24.040A. With the conditions imposed for improving access and providing for drainage, water and sanitary sewage disposal, the proposed subdivision conforms in all respects to the first requirements for approval of the division.

5. The Director's determination that the proposed division would carry out the objectives of Policy 1 of the Multifamily Policies was not shown to be in error in that the division will allow for housing which is as compatible as multifamily housing can be with the adjacent single family neighborhood.

6. Appellant's main argument is that the public interest is not served by development which destroys greenbelt. The record shows, however, that the short plat approval is not related to the amount of greenbelt lost. A greater number of units covering a greater area could be built without the short plat. Therefore, the short plat cannot be denied on the basis that greenbelt will be reduced.

7. The Director may also impose conditions pursuant to SEPA to mitigate adverse impacts where those impacts have been identified in the environmental documents based on policies adopted for that purpose which conditions are reasonable and proportional to the impact. Section 25.05.660A. The overview policy, Section 25.05.665, provides that where City regulations have been adopted to address an environmental impact the SEPA policies provide authority for mitigation only under certain

circumstances. One is when the applicable City code has been judicially invalidated. Section 25.05.665.D(2). The City adopted the Greenbelt Ordinance which was intended to address such impacts, however that ordinance was invalidated. Allingham v. Seattle, 109 Wn.2d 947, 749 P.2d 160 (1988). Therefore, use of other policies is permitted.

8. The other possible source of authority would be the North Beacon Hill Neighborhood Improvement Plan ("Plan") which is listed as one recognized as authority for SEPA conditions in the overview policy. Section 25.05.665C.2 note 2. The overview policy strictly limits the use of neighborhood plans as a basis for exercise of substantive authority. The Plan must identify

...unusual circumstances which would result in adverse environmental impacts which substantially exceed those anticipated by the code or zoning, or the plan establishes a different balance of environmental and other goals than is characteristic of the land use code as a whole.

Section 25.05.665.

9. Since the Plan itself lists zoning as a means of minimizing development in the greenbelt, the impact was anticipated so the first circumstance is not present. As to the balance of environmental and other goals, there does not appear to be an unusual emphasis on open space. While recognizing the Director should have considered the Plan as a possible source of authority to mitigate adverse impacts, the Hearing Examiner is unable to conclude that it can be used in this case as authority for greenbelt retention.

10. Design departure is intended for design solutions which result in better development than that which could be created under the development standards. Section 23.40.010. The Director found that several of the reasons listed in that section for permitting design departure apply to the subject proposal. Appellant disagrees with the Director's conclusion but did not show it actually to be in error. At the least, the design departure would have the potential of increasing the quality of the open space and minimizing obstruction of the view of the natural remaining green space in the right-of-way. Therefore, the Director's determination as to design departure is to be affirmed.

#### Decision

The determination of the Director is affirmed.

Entered this 8th day of August, 1989.

  
M. Margaret Lockers  
Deputy Hearing Examiner

#### 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.