

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE RECEIVED

MAY 28 1987

In the Matter of the Appeal of

GAIL R. BUXTON

FILE NO. MUP-87-018 (11) S.E.P.A.
PUBLIC INFORMATION CENTER
APPLICATION NO. 8605996

from an environmental determination
of the Director of the Department
of Construction and Land Use (DCLU)

Introduction

Appellant, a neighboring property owner, challenges a DCLU determination of non-significance (DNS) and master use permit conditions for a proposal to construct an eight unit apartment structure at 3515 Wallingford Avenue North.

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 May 18, 1987.

Parties to the proceedings were: appellant, pro se; the DCLU Director, by Jay Laughlin; applicant Roz Bryant, pro se; and property owner W. Ivan King, estate executor, by Frederick W. Post, Esq.

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. Applicant, contract purchaser, proposes to demolish a single family residence addressed as 3515 Wallingford Avenue and to construct on-site a three-story, eight-unit apartment building with eight surface parking spaces. The Seattle Department of Construction and Land Use (DCLU) issued a determination of non-significance (DNS) on the proposal and imposed specific conditions on the master use permit. Appellant, a neighbor, here contests the DNS and the adequacy of conditions imposed.

2. The subject site is located approximately three blocks north of Gasworks Park and Lake Union, and roughly three lots north of North 35th Street. North 36th Street is four lots north of the site.

3. This rectangular, moderately sloped lot has 45 ft. of frontage to east abutting Wallingford Avenue North and is 114 ft. deep. Lot area is 5130 sq. ft.

4. The site is zoned Lowrise 2 (L-2). L-2 zoning permits multi-family development.

5. The site is presently developed with a single family dwelling and an accessory garage. Access to the garage is via a paved driveway along the north property line.

6. North of the driveway is a four-plex. A six-unit structure is south adjacent to the site. West of the site is a duplex and a single family residence which fall within the west adjacent SF 5000 zone. Appellant's 1906-1912 "vintage" single family home is across Wallingford and directly north of the subject site. It is also zoned L-2.

7. The development pattern described above is representative of the mixture of uses present in the vicinity. In terms of style and architecture, much of the existing development consists of older vintage single and multi-family structures. Some of the multi-family structures were converted from single-family dwellings. The north adjacent four-plex, for example, was converted in the 1940's. Appellant is engaged in an extensive wiring, plumbing and fenestration remodel of their home. She objects to the "intrusion" of newer, multi-family structures on area aesthetics and character.

8. Applicant proposes to replace the subject site's low-scale development with a three-story building of seven one-bedroom apartments and one owner occupied two-bedroom penthouse. The structure would offer a pitched roof and would feature materials of wood and stucco. Landscaping is also proposed. The project complies with the zoning code requirements, including the 30 ft. height limit.

9. The proposed development will offer some 1622 sq. ft. of open space while 1539 sq. ft. is required. The below grade garage would have six parking spaces along the south side and two parking spaces on the west side.

10. Appellant did not dispute the projection that the increased traffic will approximate 50 additional vehicle trips per day, i.e. roughly 6 trips per unit. No evidence of record indicated that the vicinity pattern was unable to absorb this volume without difficulty.

11. The site is within one block of public transit.

12. The north adjacent four-plex provides no parking, apparently through a "grandfather" clause exception.

13. In line with Seattle Engineering Department (SED) recommended guidelines, the DCLU analyst visited the site during a midweek evening after 9:00 p.m. From this he concluded 70-85 percent occupancy rate. The Seattle Engineering Department considers 85 + % as capacity.

14. Also in line with SED recommendations, the DCLU analyst predicted a maximum spillover of four vehicles,

1.5	autos/unit (inclusive of visitor demand)
x 8	units
12.0	autos
-8.0	spaces provided, yields a spillover of
4.0	vehicles

15. The DCLU analyst also considered parking data for a multi-unit building at 34th and Wallingford offering units similar in size to those proposed by applicant. Car ownership in this facility approximated 1 per unit.

16. It was the analyst's conclusion that the vicinity could absorb the anticipated spillover, and further that parking, traffic, aesthetics and other impacts would be of no more than a moderate effect. The DCLU report concluded by acknowledging that mitigation, such as incentives for residents to use transit, would lessen the impacts of parking spillover. The analyst further expressed DCLU's view that the project would not exceed its "fair share" of the street or other infrastructure elements. In this connection DCLU did consider the four-five new buildings proposed within a four block radius and "put the project through the cumulative effects test."

17. Appellant recalled that on a "couple of occasions" her visitors were unable to park on either side of Wallingford Avenue.

Somewhat in contrast, contract seller W. King recalled visiting his mother at the site generally weekly at various times of the day. King testified credibly that he had no trouble parking on Wallingford. No evidence was offered on the parking capacity of surrounding, nearby streets.

18. The manager of the south adjacent six-plex testified that half of his tenants need must park around the block during the summer season. This adjacent development, which offers one off-street parking space (driveway), is described by appellant as an older styled house that "fits in with the neighborhood." The present tenants of its small units have one car per unit, with the exception of one unit occupant who has no automobile.

19. This south adjacent manager underscores appellant's objections that the proposal would have an undue adverse impact on on-street parking availability and on general community aesthetics. This witness also projected that the proposed building would "tower 6-8 ft." above neighboring structures and would have auto lights focused into his building. In fact, the subject site's existing house is lower in scale than its north and south adjacent neighboring uses.

20. An easement dispute is pending between applicant and the north adjacent property owner regarding the driveway. DCLU issued its decision subsequent to advice from the Law Department that the application need not be suspended pending resolution. A condition of the permit requires hold harmless agreements from property owner and applicant.

21. Other conditions to the permit require applicant to provide and maintain approved landscaping to reduce the impact of height, bulk and scale, and require that parking area lighting be contained on the property so as not to affect nearby properties or street traffic. The owner/responsible party(ies) are also to provide bus schedules, one-month transit passes and bicycle parking spaces in order to lessen the parking and traffic impact from the proposed development.

22. The completed project will block no protected public views. It will adversely impact some private views south and southwest and will increase shading.

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 weight" 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. If it is determined that "there will be no probable significant adverse environmental impacts from a proposal," a DNS must be issued. Seattle Municipal Code Section 25.05.340. On the other hand, if the responsible official determines that a proposal "may have a probable significant adverse environmental impact," the responsible official shall issue a determination of significance and the EIS process is commenced. Seattle Municipal Code Section 25.05.360(A).

4. Proposed is construction of a pitched roof, eight-unit apartment structure in a multi-family (L-2) zone that is developed with a mixture of older and modern multi and single-family residences. There is evidence that the new structure would increase vehicular trips and would generally heighten the competition for remaining on-street parking spaces. Some views to the south and southwest would be reduced.

5. The majority of the foregoing impacts could be viewed as adverse. Appellant has nevertheless failed to show that the impacts would be "significant." In order for the Hearing Examiner to require an environmental impact statement, appellant must show that anticipated environmental impacts will be adverse, probable and significant, i.e. of more than a moderate effect on environmental quality. Seattle Municipal Code Section 25.05.794(A). In the context as described above, the impacts will be of no more than a moderate effect. Therefore, no EIS is required.

6. Because there is no EIS of record (in which significant adverse environmental impacts would be identified) the proposal may not be denied pursuant to the State Environmental Policy Act (SEPA). Seattle Municipal Code Section 25.05.660(A)(6).

7. 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..."

8. 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 for tenants bicycle parking, transit information, and transit passes. And the Hearing Examiner is without authority to require application to provide more than one parking space per unit. In re Elmer, C.F.293040, MUP-86-077 (1984).

9. There is no evidence that the vicinity traffic flow cannot reasonably absorb the estimated fifty additional vehicular trips per day to be generated by the proposal. Also a transit stop is one block away.

10. With respect to parking, applicant is proposing 8 on-site parking spaces, one space per proposed unit. This would be consistent with the pattern of local vehicle ownership. The 34th and Wallingford project survey showed a 1:1 ratio, and only five of the six-plex residents south adjacent to applicant's site have cars. The visitor demand is reasonably calculated at an additional .5 per unit. This yields a projected, maximum spill-over of 4 vehicles that would require off-site parking.

11. Present on street utilization ranges from 70 - 85 %. The Hearing Examiner concludes in accord with the substantial weight of evidence, e.g. testimony of Ivan King, that on-street parking is generally available along Wallingford. No evidence was offered that neighboring streets could not bear any parking overflow. Although there are other developments and potential development sites (i.e. single family properties that fall within the multifamily zone) the Hearing Examiner was presented with insufficient evidence from which to conclude that this subject project would unduly impact parking or other vicinity street capacity. Seattle Municipal Code Section 25.05.902(C); Cf. In re Martin, Cunningham and SQUAD, MUP-85-065(W), CF. 294508, 294509 (1986). In this specific regard, appellant did not sustain her burden of proof.

12. There are no special problems with zoning transition in this case. The proposal site faces other L-2 zoning to the north, south and east. Further, it was not established that the proposed building's height, bulk or scale would be incompatible with existing vicinity development. The Hearing Examiner is therefore without authority to require a reduction in scale. In re Oden, MUP-84-057, 058, C.F. 293557 (1985).

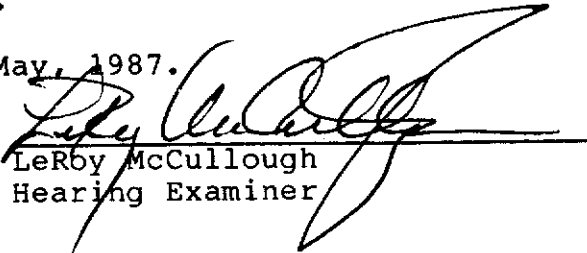
13. The Hearing Examiner is also without authority to condition a proposal in order to protect private views. In re Oden, supra.

14. Present DCLU conditions to the permit address concerns with the effect of vehicular lighting on the south adjacent property.

Decision

The DCLU decision is AFFIRMED.

Entered this 28th day of May, 1987.


LeRoy McCullough
Hearing Examiner

Concerning Further Review

Pursuant to Section 25.05.680(C), Seattle Municipal Code, 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 City Council's review on appeal shall be limited to the exercise of the City's substantive authority to condition or deny the proposal under SEPA as authorized by Section 25.05.660. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure.

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 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 23.76.36(B)(11). 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. Seattle 25.05.680.

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 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.