

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CONTINENTAL PLAZA MOTEL, INC.

FILE NO. MUP 85-051(W)
APPLICATION NO. 8500115

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

Introduction

Applicant proposes to establish a complex of 123 apartment units on property addressed as 2450 Aurora Avenue N. DCLU issued a declaration of non-significance and the adjacent property owner appealed.

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 September 25 and November 5, 1985.

Parties to the proceedings were: appellant by Margaret Pageler of Jones, Grey & Bayley, P.S.; applicant by Richard Chapin, Inslee, Best, Chapin, Doezie & Ryder, P.S.; and the DCLU Director by Ed Somers.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

After due consideration of the evidence elicited during the public hearing, and subsequent to a pedestrian and vehicular inspection of the subject site and vicinity by the Hearing Examiner, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Applicant proposes to develop the 64,900 sq. ft. area site addressed as 2450 Aurora Ave. N. with a 123-unit congregate housing project. DCLU issued a declaration of nonsignificance, with conditions, and appellant submitted this challenge to the approval.

2. The subject property is located on the east side of heavily-travelled Aurora Ave. N. immediately south and southeast of the Continental Plaza Motel complex. The site is also south of the intersection of Halladay St. with Aurora Avenue.

3. The motel's business office and coffee shop, which front directly on Aurora, are separated from the three other hotel buildings by the Birch Avenue right-of-way. Approximately 25 motel units are west of Birch Avenue and the other units are located east of Birch Avenue.

4. The Birch Avenue right-of-way is 50 ft. wide without gutters or sidewalks, and deadends at the applicant's north property line. Most of the Birch right-of-way is paved.

5. Motel patrons, neighborhood residents, visitors and others regularly park on Birch Avenue. Some 30 Canlis' Restaurant employees also park on Birch Avenue when that parking is available. The Canlis' Restaurant is directly north of Halladay on Aurora. At least one resident of a single family dwelling north adjacent to the subject site uses a footpath along the north of the applicant's property for access to Birch Avenue.

6. The applicant's lot is a former excavation site. In the 1940's, clay and other fill materials began to be deposited on-site as a result of Aurora Avenue and bridge construction, according to the Environmental Checklist. The site is designated environmentally sensitive due to the fill and to the steep hillside condition on the east end of the property. The soils engineer report of record (Exhibit 8) specifically recommends that "all building structural components...gain their structural support from native soils and/or 'structure fill', not the existing fill soils." The geotechnical consultants indicated that in their opinion, if their soils report recommendations are followed, "the risk of instability on the site will be minimal." Exhibit 14.

7. A related DCLU condition to the DNS requires that All excavations, construction of soil retaining structures, foundations and implementation of soil stability features...be installed and completed under the supervision of the engineer who prepared the soils report or other engineer with expertise in the geotechnical field approved by the [DCLU] Director.

8. Although most of the site is level, the eastern one-quarter of the lot slopes steeply down to east adjacent Sixth Avenue North.

9. Two single family residences are located within the northern portion of the subject site. The site is also developed with an abandoned service station structure along the west Aurora Avenue margin. These structures are proposed for demolition.

10. The western 75 ft. of the site is zoned BC, the remaining portion Lowrise 3 (L-3).

11. Applicant proposes to develop the 64,900 sq. ft. area site with four separate buildings designed to accommodate elderly residents. One building would offer apartments only; another building would offer lower level parking, social rooms, a gift shop, and a mini-mart, and the upper three floors for apartments. Another building would offer kitchen and dining room facilities for approximately 100 persons. Other on-site amenities will include a beauty shop, laundry and part time bank operation.

12. Applicant projects that most of the approximately 12 staff people will either car pool or use public transportation for the predominant 7:30 - 4:00 shift. However, some employees, e.g. cooks, will arrive at 5:00 a.m., and others, such as maids, at 9:30 a.m. Medium-sized truck deliveries will also occur at staggered times.

13. A total of 123 residential units is proposed along with 54 covered parking spaces. Roughly 12 of the units will be 2-bedroom units. All will have individual kitchen facilities. A residency of 150 persons is projected.

14. Principal automobile access to the site will be via Aurora and Birch Avenues. While northbound Aurora traffic has direct site ingress and egress, southbound Aurora vehicles will need to circle Sixth Avenue to Birch Avenue, and negotiate such intersections as 6th and Halladay, Halladay and Birch, and the hairpin turn at Raye and 6th Avenue. The Aurora Avenue-Halladay intersection, already at Level of Service F (forced flow), is marked at peak periods by queues that extend through the intersection. Exhibit 13. Pedestrian entry from Sixth Avenue is also proposed.

15. The proposed parking, at the general level of one space per three units, exceeds by some 20 spaces the Land Use Code requirement. Comparable living facilities offer ratios ranging from .21 (Highlander) to .37 (Washington Court) parking spaces per unit. Applicant is proposing .43 spaces/units and will in addition offer van service for shopping and other trips.

16. The evidence reflects general agreement that it is possible with proper technique to excavate for proposed construction without soils instability damage to adjacent properties.

17. The motel coffee shop, seating capacity of 30, has a 6:00-9:30 a.m. peak period. This period coincides with the peak check-out period. Approximately 30-35 motel employees are on site at a given time, including maids, laundry personnel and others. Maids specifically traverse Birch Avenue some four times per day to get to the 75 more easterly units.

18. Appellant's traffic expert predicted that approximately 52 vehicles, an increase of 24, could be expected on Birch Avenue, as a result of the completed proposal. According to the witness, the traffic could present a hazard to motel pedestrians and vehicles, not because of the volume, but due to the poorly defined street edge and to the nature of the motel operation.

19. Additionally, Birch Avenue could become an access point and holding area for construction-traffic, appellant's witnesses explained. DCLU imposed no conditions on the DNS related to noise or other construction-type impacts.

20. DCLU did require installation and maintenance of landscaping, such that views from Aurora along the south side of the structure are retained. (Aurora is a designated view protection route.) DCLU also required that applicant provide a street improvement plan meeting Seattle Engineering Department standards "and not displacing on-street parking..." Engineering subsequently approved a requirement that applicant set aside and maintain a turnaround to SED design standards. Exhibit 22. No street improvement is therefore required by the terms of the DNS.

Conclusions

1. The Hearing Examiner has jurisdiction of this proceeding pursuant to Chapters 23.76 and 25.05, Seattle Municipal Code.

2. The Director's environmental determination is accorded substantial weight, Seattle Municipal Code 23.76.36(B)(7), and the burden of establishing the contrary is appellant's. Seattle Municipal Code Section 25.05.680(1)(c). Appellant must therefore show the DCLU determination here at issue to be "clearly erroneous."

3. If a proposal may have probable significant adverse environmental impacts, a declaration of significance is required. Seattle Municipal Code Section 25.05.360(1). If no probable significant adverse environmental impact is determined, a declaration of non-significance (DNS) is appropriate. Seattle Municipal Code 25.05.340. Significant has been read to mean "of more than a moderate effect." Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976).

4. Applicant proposes to locate an elderly residential complex on a large site adjacent to heavily travelled Aurora Avenue North. The site is also accessible by Birch and Sixth Avenues. Four separate buildings will offer 123 residential units as well as banking, dining, laundry and other services. Covered parking for 54 vehicles is proposed in an amount that exceeds the zoning code

requirement. Cf. In re Elmer, C.F. 293040 (1984). The project's delivery and employee hours will be staggered. A van will be provided for resident transportation. The evidence of record was not persuasive that the expected increased traffic or parking needs would significantly impact vicinity intersections or levels of service. Construction as proposed can be done without danger of soil instability. DCLU conditions to the DNS require construction supervision by geotechnical personnel; landscaping; and an Engineering Department approved turnaround. With the foregoing in view, the DNS at issue was not "clearly erroneous." No more than a moderate effect on the quality of the environment will result from the proposal. There will be probable alterations in certain pedestrian access routes to Birch, increased vicinity auto and human traffic and increased noise and lighting. However, the substantial weight accorded the Director's determination has not been overcome and the DNS is accordingly affirmed.

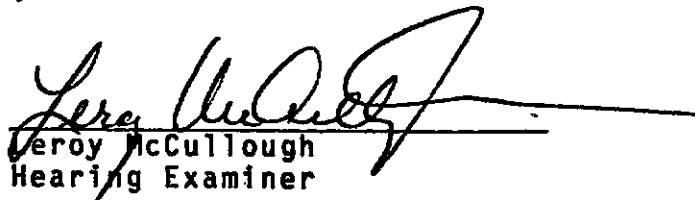
5. Proposals may be conditioned to mitigate specific, adverse impacts that are not "significant;" however, mitigation measures must be based on policies, rules, plans or regulations "formally designated in 25.05.902..." Seattle Municipal Code Section 25.05.660. The evidence does not support any further conditioning relative to parking or traffic. And, in light of the proposal's compliance with code provisions, it is questionable whether such authority would be presented. In re Elmer, supra.

6. Seattle Municipal Code Section 25.05.902(3), the "Cumulative Effects," Policy, recognizes that a single development may create adverse impacts upon facilities, such as public streets. Birch Avenue is a public street that will continue to be used by the hotel, the proposed congregate care facility and by other property owners. The capacity of Birch to serve the vicinity is directly related to its condition, before and after construction. Therefore, as an added condition, applicant shall provide a pre-construction assessment of the condition of Birch Avenue to DCLU and shall, after construction, restore Birch to a minimum pre-construction condition. Because of site proximity to motel and single family dwelling units applicant is further encouraged to limit construction activity to normal weekday working hours. Except as modified hereby, the DNS is affirmed.

Decision

The DCLU decision is AFFIRMED as modified by Conclusion 6 above.

Entered this 19th day of November, 1985.


Leroy McCullough
Hearing Examiner

Concerning Further Review

Pursuant to Section 25.05.680(2), Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fourteenth 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(2), 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(2) appeal.

If no appeal is taken pursuant to Section 25.05.680(2), 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 fourteen 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 fourteen days of the date of this decision. Section 25.05.680(3)(d).

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.