

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MAPLE LEAF COMMUNITY COUNCIL

FILE NO. MUP-89-022(W)

APPLICATION NO. 8802663

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 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on June 16, and 19, 1989.

Parties to the proceedings were: appellant, Maple Leaf Community Council represented by Jack Remick, pro se; applicant, Dick Strand by Melody McCutcheon, attorney at law; and the Director, Department of Construction and Land Use by Jay Laughlin, 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 subsequent to a visual inspection of the site and environs, the Hearing Examiner enters the following findings of fact, conclusions and decision on this appeal.

Findings of Fact

1. The proposal site is located at the northeast corner of N.E. 88th Street and Roosevelt Way N.E. The address given the proposal site is 8804 Roosevelt Way N.E.

2. The subject site is currently developed with an auto repair shop building of approximately 2,000 sq. ft. The site is within the Maple Leaf community of north Seattle.

3. The site has 101.2 ft. of frontage to Roosevelt Way and 103.5 ft. of frontage to N.E. 88th Street. Total lot area approximates 10,471 sq. ft.

4. The subject site slopes gently down to the east. Per the Environmental Checklist, Exhibit 12, the steepest slope on the site approximates 6.8 percent.

5. The site is within a linear Neighborhood Commercial 2, 40 ft. height limit zone that extends along the east and west sides of Roosevelt Way N.E. for several blocks north and south of the proposal site.

6. The NC2/40 zone is adjacent to Single Family (SF) 5000 zoning east and west of Roosevelt Way N.E.

7. Witness R. Adler lives in the residence directly east of the proposal site within the SF 5000 zone at 1014 N.E. 88th Street. His dwelling, some 39 ft. from the proposal site, is on land that is approximately 5 ft. lower in elevation than that of the project site. Also, Mr. Adler's dwelling has a substantial front setback from N.E. 88th Street. The result is that the Adler residence has a diagonal, vision up to the corner site that is the project site.

8. The SF zones extend for several blocks east and west of

the subject site and are predominantly developed with single family dwellings.

9. The vicinity NC2/040 zone is developed with a mix of smaller scale buildings in restaurant, cablevision and other sales and service uses. Vicinity development primarily consists of 1-2 story commercial and residential structures. Some of the commercial buildings extend to the Roosevelt front lot lines. Some are conjoined and others are separate structures. No vicinity development approximates four-stories at present.

10. It is noted that the Maple Leaf Reservoir is 1/2 block south of the proposal site along the east side of Roosevelt Way. It is further observed that three radio towers are in the area. The towers and reservoir exceed 40 ft. in height. However, the radio towers and the reservoir structure are markedly distinct in nature, function and open design from commercial, residential and other local development. As aberrations, they do not establish the pedestrian-level development scale.

11. As noted above, the subject corner parcel has frontage to Roosevelt Way N.E. and to N.E. 88th Street. Roosevelt Way is a major (principal) arterial that connects Northgate with the University District, south of the proposal site.

12. Northeast 88th is considered a local access street.

13. Applicant proposes to demolish the present auto repair facility and develop the subject site with a mixed use building which would offer 17 dwelling units, 2,927 sq. ft. of retail space and 26 parking spaces. The retail spaces would be used by four separate retail uses. Individual entrances would be located at the Roosevelt Way street level.

14. The proposed structure would have an average height above grade of 43 ft., approximately four stories (38 ft. and 5 ft. pitched roof). The plans call for some 1,760 sq. ft. of landscaped open space. The site perimeter would feature a mix of trees and shrubs. Trees specifically proposed for the eastern perimeter are expected to grow to a height of 40 ft. A landscaped berm is also proposed for the eastern boundary.

15. Based on the lower elevation of the east adjacent (SF 5000 zoned) site, DCLU conditioned the proposal to require a stepped back eastern facade. The language was modified after the hearing to reflect sea level elevations:

Prior to Issuance of Master Use Permit

1. The owner(s) and/or responsible party(s) shall submit revised drawings reflecting changes to the east elevation conforming to the following minimum setbacks from the eastern property line: the parking garage, up to a maximum elevation of 449.04 feet MSL, shall be set back a minimum of 5 feet; the first and second floors, up to a maximum elevation of 466.77 feet MSL, shall be set back a minimum of 20 feet; the third floor, up to a maximum elevation of 475.64 feet MSL, shall be set back a minimum of 34 feet; the fourth floor, up to a maximum elevation of 484.5 feet MSL, shall be set back a minimum of 47 feet. The ridge of a pitched roof, with a minimum of 3:12 H:V pitch, may extend a maximum of 5 feet above the stated maximum elevations for the second, third and fourth floors.

The DCLU submittal indicated that "The revisions to the language of this condition have been discussed and agreed to by all parties to the appeal."

16. A DCLU condition "Prior to Occupancy" requires building construction to conform "to the setbacks on the east elevation

reflected in the revised drawings to be submitted prior to MUP issuance."

17. A "Permanent" condition states that

the owner(s) and/or responsible party(s) shall maintain the building so that it conforms to the setbacks on the east elevation reflected in the revised drawings...

18. Regarding parking and access, applicant proposes 26 parking spaces (18 standard, 4 tandem), and 4 bicycle spaces. It is not established whether residents will pay additional fees for on-site parking. Proposed access is from and to N.E. 88th Street. Appellant strenuously objects to N.E. 88th Street access and asks the Hearing Examiner to require Roosevelt Way access. Central to the objection is anticipated increase in traffic to the N.E. 88th Street segment and a concomitant decrease in street safety and neighborhood ambiance.

19. Roosevelt Way has substantially more traffic and more commercial frontage than N.E. 88th Street. Vehicular access to 88th Street would therefore present less incidences of pedestrian-vehicular conflict. In fact, DCLU's position on permitting N.E. 88th Street access is consistent with the position taken by the Seattle Engineering Department on this project.

20. Northeast 88th Street is the first street north of North 80th that extends "straight through" from 5th N.E. east to Lake City Way. Other streets are truncated by the reservoir development or by the street grid. Motorists also use N.E. 88th to access 15th Avenue N.E. Fifteenth is west of Lake City Way and offers improved access to the express lane of I-5.

21. In its memorandum to DCLU, the Seattle Engineering Department indicated its review of the subject proposal "in relation to the Northgate Transportation Study." SED concluded that the subject project would comprise approximately 30 percent of the "P.M. traffic on 88th/12th Avenue and 89th/12th Avenue." SED therefore recommended that the project be conditioned to pay \$1,500 toward each of the two traffic circles. The stated rationale is to make arterials a more attractive alternative for non-resident traffic. Exhibit 19.

22. DCLU therefore required applicant, in the DCLU Analysis and Decision, to "contribute up to \$3,000 to SED for the construction of a traffic diverter on N.E. 102nd Street as approved by SED." The condition was intended to cover "traffic diverters at the intersections of N.E. 88th and 89th Streets with 12th Avenue N.E."

23. DCLU and SED utilize a 1.5 space/unit parking utilization rate. The same was not challenged within this appeal and is found to be reasonable. The 1.5 includes consideration of visitor demand.

24. The residential parking demand expected to be generated by the project is (17 units x 1.5 spaces/unit =) 26 spaces. The commercial demand will be for approximately 10 spaces "per ITE Parking Generation Manual." Exhibit 17, p. 8 Traffic and Parking Study.

25. The Hearing Examiner finds that the project will generate a parking demand of 36 spaces. Applicant is proposing 26 spaces. The reasonably projected spillover is 10 spaces.

26. Applicant's study area for vicinity parking extended north to N.E. 90th, east to 12th N.E. at N.E. 89th, south to N.E. 86th and to the north side of N.E. 88th to 15th N.E. See Exhibit 17, Figure 1. Since Roosevelt Way is a major arterial, the study area consisted of land on the east (project side) of Roosevelt for some 2.5 blocks, both per uncontroverted SED guidelines.

27. Parking studies were conducted 10:00 a.m. and 9:00 p.m. on Wednesday, August 31, 1988, and Thursday, September 1, 1988. Considering driveways, fire hydrants and other restrictions, there were 158 legal on-street parking spaces. At 10:00 a.m., 53 of the spaces were used for a rate of 34 percent. At 10:00 a.m., 110-111 spaces were occupied for a utilization rate of 70 percent. Exhibit 17, Table 7.

28. The SED definition of on-street parking "capacity" is 85 percent utilization. No evidence of record shows that present or projected on-street parking needs will equal or exceed 85 percent particularly for the weekday evening or daylight hours.

29. No formal study was done of vicinity Saturday parking utilization. In the unlikely event that all "residential" parking spaces are utilized at the same time that commercial parking needs are presented, a marked increase in parking needs is probable.

30. The Hearing Examiner finds that two projects proposed on 5th N.E. are across Roosevelt and approximately two blocks west of the project. They will therefore have marginal or no impact on the utilization of off-street parking near the proposal site. Those projects are 1) 8705350, 8315 5th N.E., which has a projected overflow of six vehicular and 2) 8800756, 8401 5th N.E., which has a projected overflow of four vehicles. The total overflow would raise the vicinity utilization rate to 84 percent in the unlikely event that all of the 5th N.E. spillover used the study area for parking.

31. Applicant's traffic engineer's report estimated that the "18" units would generate 110 average weekday trips. For 17 units the AWDT count would be 103.7 or 104. The 2,927 sq. ft. of commercial, dubbed general office space, is expected to generate 97 average weekday trips. Exhibit 17, p.5.

32. Appellant's witness urged use of a 6.6 factor for the apartments and 40.7 trips/day for each 1,000 sq. ft. of retail. The appellant result is 234 trips per day.

33. Appellant further suggests that based on the number of houses on N.E. 88th (10 trips/day house = 220 trips) the increased traffic will double local traffic, proportionately increase the accident rate and decrease the safety for neighborhood children.

34. The Hearing Examiner gives the greater weight to and finds in accord with the traffic engineer analysis and conclusion that approximately 201 average weekday trips are reasonably expected to be generated by the proposal with roughly 20 in the A.M. peak hour and 23 in the P.M. peak hours. Those trips will be distributed between Roosevelt, N.E. 88th Street and feeder segments.

35. It is highly improbable and therefore not appropriate to assume that all project-generated traffic will use the N.E. 88th Street segment for access.

36. It is likely, however, that project traffic exiting the site heading south will use N.E. 88th to access Lake City Way. This is because the left turn movement from N.E. 88th to southbound Roosevelt is difficult during peak hours.

37. There is no evidence of record that the N.E. 88th segment is unable to absorb the expected increase in peak or total daily traffic. Nor does the record reflect that that street system cannot accommodate the higher count projected by appellant's witness.

38. The traffic engineer submitted data, adopted by DCLU, that the Roosevelt Way/N.E. 88th Street intersection averages 2.4 accidents per year. The average accident rate for unsignalized intersections in Seattle is 1.2 accidents per year. DCLU concluded that "the proposal is not anticipated to have a

significant increase in accidents as a result of this project." Exhibit 20, p.8. Based on the expected trip distribution and nearby traffic control it was not shown that impacts on the number of accidents would be more than marginal.

39. The N.E. 88th Street - Roosevelt Way intersection will continue to operate at Level of Service C, average traffic delays, after project completion.

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code.

2. Seattle Municipal Code Section 23.76.022C.7 provides the "standard of review" for these appeals. The Hearing Examiner shall give substantial weight to the DCLU Director's decision. By case law, therefore, it is appellant's burden to show that the DCLU decision was "clearly erroneous." Brown v. Tacoma, 30 Wn. App. 762, 637 1005 (1981).

3. A specific, clearly identified adverse environmental impact, although not "significant", may serve as a basis for applying mitigating conditions to nonexempt proposals. Seattle Municipal Code Section 25.05.660A. The mitigation measures must be based on designated policies, plans, rules or regulations," Seattle Municipal Code Section 25.05.902, and must be "reasonable and capable of being accomplished." Seattle Municipal Code Section 25.05.660A.1-3.

4. The Seattle City Council has indicated that

The test of reasonableness should be limited to whether the required mitigation bears a 'reasonable' relationship to or is 'reasonable' in proportion to the identified adverse impact.

In Re the Appeals of the Queen Anne Community Council et al. (re Victoria apartments), C.F. 293623 (1985).

5. Regarding height, bulk and scale, a project may be conditioned

...to mitigate the adverse impacts of substantially incompatible height, bulk and scale.

Seattle Municipal Code Section 25.05.675G.2.b. Further, City policy is to provide a reasonable transition between areas of less intensive zoning and more intensive zoning. Third, City policy is to ensure that height, bulk and scale of development projects are

...reasonably compatible with the general character of development anticipated by the adopted Land Use Policies...for the area in which they are located...(emphasis supplied).

Seattle Municipal Code Section 25.05.675G.2.a.

6. As proposed, the project will be taller than any other local residential or commercial building. The impact of its height, however, will be mitigated from the single family zone and development to the east by distance, setback, a stepped back facade and by extensive landscaping. The single family dwelling to the east is approximately 39 ft. from the site and will view diagonally to a phase of the development. The parking garage will be set back at least 5 ft. from the east property line. The first and second floors will be stepped back a minimum of 20 ft. from the east lot line. Therefore, the view from the east will not be to a four-story bulky structure. The issue of mitigated transitions between the single family zone to the east and the site is reasonably addressed by the DCLU conditions imposed.

7. Regarding Roosevelt Way frontage, the project is in the commercial zone where a 40 ft. height development is authorized and anticipated. Although present buildings within the zone are not built to that height, the proposal was not shown to be incompatible with that "anticipated" for the zone. Seattle Municipal Code Section 25.05.679G.2.a. In re Oden, C.F. 293557, states that is inappropriate to reduce the height of a development simply because other projects are developed to a lower height. The weight given the DCLU Director on this issue of height, bulk and scale has not been overcome.

8. The parking demand from the project will not cause the on-street capacity level to be met or exceeded. The projected spillover is for 10 vehicles. Present utilization is 34 percent during the day and 70 percent during week nights. It is improbable that all of the spillover parking from the 5th Avenue N.E. projects will cross the Roosevelt arterial in search of parking. If the spillover parking demand from these projects west of Roosevelt are included, the 85 percent "capacity" level will be approached. Further evaluation by DCLU would be appropriate, however, if the ultimate commercial tenants operate on Saturdays or evenings, or if tenants are high traffic generators. Cf. Seattle Municipal Code Section 25.05.675M.2.b. Parking mitigation for multifamily development may be required only where on-street capacity is or will be at capacity. Loc. cit.

9. Given the pre-existing plan for traffic diverters along N.E. 88th Street, as modified herein, and given the distribution of traffic to and from the proposal site, no further conditions are required related to the traffic volume or speed.

10. Roosevelt Way is an arterial that has more commercial frontage than the N.E. 88th Street segment. As a principal arterial, Roosevelt Way carries a much greater volume of traffic than does N.E. 88th Street. Vehicular exit and entry to N.E. 88th Street would therefore decrease the probability of vehicular-vehicular and pedestrian-vehicular conflicts. Again, given the traffic diverters and their impact on vehicular traffic speed, the appellant has not shown that the failure to require access to Roosevelt Way is "clearly erroneous."

11. Some modification, however, is required to the conditions related specifically to access. It is undisputed that the project will generate a large share "30% of the p.m. traffic" on 88th Street - 12th Avenue and 89th Street - 12th Avenue. See Exhibit 19. And, pedestrians and vehicles from the east are likely to pass the N.E. 88th Street project driveway and site. Therefore, the project should be conditioned to minimize the potential conflict between the N.E. 88th Street pedestrian and vehicular pattern. This can be done by limiting vehicles exiting the project to a right turn only except during the peak hour defined by DCLU. During peak hours it is "unreasonable" to limit project traffic to exit via the peak congestion at the N.E. 88th Street - Roosevelt Way intersection.

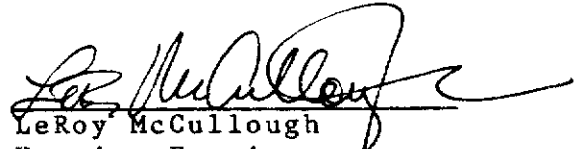
12. Further, the project is conditioned to require Engineering Department review and recommendation of the nature of the project driveway so that exiting vehicles would have maximum visibility of eastbound vehicular and pedestrian traffic. DCLU shall consider the recommendation of SED, applicant and appellant and shall subsequently issue a specification as a second condition to be met "Prior to Issuance of the Master Use Permit." Seattle Municipal Code Section 25.05.675R.2.f.i.F.

13. Finally, a DCLU imposed condition "Prior to Occupancy" specifies that applicant contribute to SED for N.E. 88th Street traffic diverters. That condition is hereby modified to allow the contribution to be made to a diverter "or other traffic control device as recommended by DCLU after DCLU's consultation with SED, appellant and applicant."

Decision

The DCLU decision is MODIFIED in accord with the foregoing.

Entered this 5th day of July, 1989.


LeRoy McCullough
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.