

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

TIM AND RENEE MUIR AND
JOHN ZEVENBERGEN

FILE NOS. MUP-88-046(W) and
MUP-88-047(W)

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

APPLICATION NO. 8707653

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Introduction

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Tim and Renee Muir appeal the decision of the Director, Department of Construction and Land Use, to approve without further conditions a proposal for a 9-unit apartment building at 4217 Greenwood Avenue N. John Zevenbergen appeals the imposition of two of the conditions of approval.

The appellants 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 16, 1988.

Parties to the proceedings were: Appellants, Muirs, represented by J. Richard Aramburu, attorney at law and Zevenbergen, represented by Sarah Mack, Hillis, Clark, Martin & Peterson, P.S.; and the Director, Department of Construction and Land Use by Faith Lumsden, 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 of record the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. A master use permit application was filed for a proposal to demolish a single family residences and to construct a 9-unit apartment building at 4217 Greenwood Avenue N.

2. The Director, Department of Construction and Land Use ("Director"), issued a determination of non-significance for the proposal and imposed a series of conditions. Appellants Muir filed an appeal challenging the decision to further reduce the size of the building and the applicant appealed two conditions:

1. The owner(s) and/or responsible party(s) shall submit revised plans showing the third floor stepped back 14' from the west wall. The resulting rooftop area may be used as a deck area for the third floor units. West side enclosures of any rooftop deck areas shall be of an open railing type to preserve the modulated appearance of the structure.

and

3. To reduce the impact of added traffic in the single family zone, the door from the parking garage to the Palatine side of the property shall be installed as an exit only door, with no admittance from the outside.

3. The site of the proposed building is a through lot with 60 ft. of frontage on Greenwood Avenue N. and also on Palatine Avenue N. The lot slopes down from Greenwood from east to west

at a rate of about seven percent until the most westerly 10 ft. where the slope increases to about 50 percent.

4. Palatine Avenue N. divides a large Lowrise 3 zone on the east, in which the subject site lies, from an SF 5000 zone to the west.

5. Properties in the block of the subject site in the L-3 zone are developed single family at the south end and multifamily in the more northerly part. Small single family houses flank the subject site, one-story to the south and 1.5 stories to the north. Further north are older, two-story multi-family buildings and a new, four-story, 29-unit, two-building apartment complex, (the "Ojala Links" project). Properties in the L-3 zone in the facing block front between N. 43rd and N. 42nd, are duplex, single family or smaller multi-family buildings.

6. On the west side of Palatine in the SF 5000 zone development is largely single family, one to 1.5 stories high.

7. The original application proposed a 9-unit apartment building with three stories over basement parking for 11 vehicles. The height above the elevation of the parking slab on Palatine would have been 37 ft. to the plate and on the Greenwood side about 29-30 ft.

8. The applicant looked at the issues raised during consideration of the Ojala Links project which were parking, traffic and bulk and scale. That project was four stories over basement parking on a 13,000 sq. ft. parcel. That applicant reduced the number of units from 32 to 29 and no conditions were imposed by the Director to mitigate bulk and scale of that proposal. Since the subject project was designed to approximate L-2 standards, the applicant felt no further reduction bulk and scale would be needed. In the Ojala Links project, vehicular access was limited to the Greenwood side so the applicant limited the access for the subject building to Greenwood. The parking requirements were increased after the other project so the applicant believed that meeting those would respond to the parking concerns.

9. Revised plans were submitted by the applicant which approximated L-2 development standards in an attempt to satisfy the neighborhood's and Director's concern about height and bulk. Because of the method of measuring height chosen by DCLU, the Palatine side of the structure would be two feet higher than those standards. The revised plans provided for a plate height of about 35 ft. above the garage slab on the west side and about 27.5 ft. on the east side. Those plans were withdrawn by the applicant.

10. The proposed building has substantial modulation on the north and the east sides. The west facade is divided into three lengths with decks projecting from the building in two of the lengths and the middle section, some 20-24 ft. wide, without decks. On the west side the average setback is 16 ft. with the closest point 9 ft. from the property line.

11. The bulk of the proposed building would be greater than the maximum permitted in the single family zone.

12. The Palatine right-of-way is 60 ft. wide. The distance from the curb at the edge of the roadway to the property line is 17.5 ft.

13. The number of parking spaces proposed meets the amended parking requirements in the Land Use Code.

14. The proposal is expected to generate a demand for 14 parking spaces (1.5 per unit). With eleven spaces provided there would be a spillover demand for three on-street parking spaces.

15. The neighborhood had done a parking study of the area on two dates early in 1988. Utilization rates, without including cars illegally parked on the east side of Greenwood where parking

is prohibited, were found to be 114 and 93 percent on the two days.

16. A parking survey done in 1986 for the project at 4421 Greenwood Avenue N. covered a wider area and also showed utilization of on-street parking at or above capacity.

17. The door on the west side of the garage was not in the original plans submitted by the applicant but was required by the plans examiner.

18. The applicant's witness pointed out that the exit door to Palatine would be locked so only residents of the building could use it.

19. The height at the highest point of the proposed structure's west facade (closest to Palatine) would be about 40 ft. above Palatine or 37.5 ft. above the parking slab. With the conditions imposed by the Director, the height of the building where it steps back would be about 30-33 ft. above Palatine or about 27 to 30 ft. above the parking slab plus deck railings if the flat area were to be use as rooftop terrace.

20. Condition 1 imposed by the Director would reduce the rentable area of the building by about 600 sq. ft., a loss of \$50,000 in value. The architect pointed out that if the top floor is removed, the pitched roof and gables over the decks which give a "residential" feel would be lost.

21. Most residential structures on the east side of Palatine in the 4200 block are set well back from Palatine with their front yards on Greenwood. The back yard vegetation largely screen those structures from view.

22. The length of the proposed building is 76 ft. plus decks. The Director's staff found that the length would not be obvious from vantage points in the single family zone and there was no evidence to contradict that finding.

23. The applicant's architect found he could have accommodated 12 units on the subject site under the L-3 development standards.

24. The subject site is landscaped with many flowering and fruit trees and other vegetation.

25. The master use permit application was made November 6, 1987, and a complete building permit application was submitted at that time.

26. Resolution 27708 was adopted October 26, 1987.

27. A petition to downzone the eighteen properties in the 4200 block of Greenwood Avenue N. to single family is before the City Council but would have no direct effect on the subject application.

26. The Director considered the scale of the Greenwood side of the proposed structure and concluded that because that area is zoned L-3, there is no authority to condition for bulk or scale. The Director considered the Palatine side and concluded that the design masses the bulk of the building close to Palatine rather than Greenwood and she questioned whether decks provide effective modulation in mitigation of that bulk. She determined that, though permitted, L-3 scale is not appropriate at this location which is on the edge of a single family zone. Relying on the policy intent of the Area Designation Policy of the Single Family Residential Areas Policies and Policy 1 of the Multi-family Residential Areas Policies for authority to reduce the bulk of the structure to mitigate its impact on lower intensity development in the adjoining zone, the Director imposed a Condition 1.

27. The Director determined that the traffic related impacts including noise, light, air quality, parking, congestion and

safety, from approximately 55 additional daily vehicle trips, 6-7 of which would be during the peak hour, would be an adverse impact which is acceptable within the multi-family zone but in need of mitigation in the single family zone. Based upon the same policy intent in the Single Family Residential Areas Policies to protect edges from intrusions of non-single family residential uses and Implementation Guideline 1 under that policy intent and Policy 1 of the Multifamily Residential Areas Policies, the Director mitigated this potential impact by imposing the condition requiring that the door on the Palatine side of the parking garage be installed as an "exit only" door.

28. In an attempt to compare the bulk of the proposed building to those existing in the area, Mr. Muir calculated a "bulk ratio" for certain properties. Bulk ratio is the approximate volume in cubic feet of the structure over the lot area. His analysis showed the existing houses on the west side of Palatine from N. 42nd north to 4227 Palatine Avenue N. have a ratio of 2.7-7.0. Those on the east side between Greenwood and Palatine, from N. 42nd north to 4229 Greenwood, range from 4.0 to 8.3. He calculates the proposed structure to have a ratio of approximately 16-18. He did not calculate the ratio of the maximum allowable structure in the single family zone.

29. The Council decision on the appeal of the Ojala Links project relied upon the change in topography and "greenbelt" for separation between the L-3 project and the single family residences.

Conclusions

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

2. The Director has authority pursuant to Section 25.05.660 to impose mitigating measures as conditions of the approval subject to certain limitations: 1) the conditions must be based on the policy formally designated in Section 25.05.902 as a basis for use of this authority; 2) the conditions must be related to specific adverse environmental impacts identified in an environmental document; 3) the conditions must be reasonable and capable of being accomplished; 4) responsibility for the mitigation measure must be proportional to the extent of the impact caused by the subject proposal; and 5) she is to consider whether other regulations would mitigate any significant impact. Section 25.05.660A.

3. The appellant applicant objects to the conditions on the grounds that there is no bulk and scale impact, there is inadequate policy basis for the conditions and the bulk condition is unreasonable. The applicant points to the evidence that the proposed structure is substantially in compliance with L-2 standards rather than the L-3 to which it is vested and is significantly smaller than the Ojala Links project which was not conditioned to mitigate bulk and scale.

4. Appellants Muir seek conditions to further reduce the bulk and scale of the structure and to maintain privacy of the single family residences by removing an entire floor and to reduce the number of units to mitigate the parking impact.

5. As the findings show, the proposed building would be larger than those facing it in the SF 5000 zone and that difference is likely to be considered an adverse impact by the residents in that zone. The city's land use policies do not automatically support mitigation because a transition in size is expected from one zone to a more intensive zone. However, the City Council has decided that the difference between L-3 scale development and single family is not consistent with the policies "...which generally call for a buffer of topography or lower scale multi-family between L-3 and single family." In re Brown, CF 296101 (1988). The City Council has found 30 ft. to be "the appropriate transitional height on the edge of a single family

zone...", In re Thaden, CF 295562 (1987), and that the L-2 height limit provides sufficient transition. 160 Lee Street, CF 294378, 294392 (1986). Because this site is on the edge of the single family zone, mitigation to effect transition in size between the single family and L-3 scale is supported by the Single Family Residential Areas Policies and the Multi-family Residential Areas Policies, specifically Policy 1. No special circumstances have been shown which would permit requiring reduction of the structure below the L-2 standards which the City Council has deemed appropriate for transition.

6. If Condition 1 has the effect of restricting the height to less than that permitted by the L-2 standards, it is in error as policy, as interpreted by the City Council, supports only reducing the height to the L-2 standard absent very unusual circumstances. Here, with the slope in lot, the L-2 standards would allow height of around 33 ft. where 37 ft. was originally proposed and revised to 35 ft. in the plans which have been withdrawn. The condition should be modified to allow a building meeting the L-2 height and rear setback standards but the Director's condition may be offered as an option.

7. The Ojala Links project is distinguished from the subject proposal because of the finding in that case that the change in topography and extensive vegetation provided a buffer or separation from the single family area. Here, the bank remaining below the proposed building would be minor and the dense vegetation would be removed so there would be no buffer.

8. As to the request to restrict the number of units to reduce the parking impact, there is no SEPA policy authority to impose such condition. Resolution 27708 amended Policy 8 of the Multi-family Land Use Policies to prohibit SEPA mitigation of parking impacts when the parking ratios established in the Land Use Code are met. The Director's authority to mitigate impacts is limited to SEPA policies in effect when she makes a decision. Section 25.05.660A.1. Therefore, since the resolution had changed the policy prior to her decision, she had no authority to impose the requested condition.

9. The applicant challenges the condition limiting the westerly door of the garage to "exit only." The Hearing Examiner is left with a firm conviction that the Director has erred. The imposition of this condition was imposed based on traffic impacts of noise, light, air quality, parking, traffic congestion and safety. Even if all seven trips to and from the site during the a.m. or p.m. peak used Palatine, instead of Greenwood where the garage access is located, the level of adverse impacts from noise, air pollution, congestion, etc., would not warrant any mitigating condition. If the condition is actually intended to mitigate the potential parking impact on Palatine, it is prohibited by Resolution 27708. Even without that limitation, the City Council, in deciding the appeal of the project referred to herein as the Ojala Links project, In re Palatine Single Family Association, CF 295247 (undated), stated "there is no city environmental policy which explicitly prohibits the spillover of multi-family parking into single family zones." The decision goes on to say that the edge protection in the policy "...was not intended by the council to prohibit the on-street parking of cars from multi-family zones on single family streets." Palatine, supra, at p.3.

Decision

The decision of the Director is modified as follows:

Condition 1 shall read:


The owner(s) and/or responsible party(s) shall submit revised plans showing either:

- a) the height and rear yard setback in conformity with Lowrise 2 standards; or
- b) the third floor stepped back 14 ft. from the west

wall. The resulting rooftop area may be used as a deck area for third floor units but west side enclosures of any rooftop deck shall be of an open railing to preserve the modulated appearance of the structure.

Condition 3 is stricken.

Entered this 3/24 day of August, 1988.


M. Margaret Klockars
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 staying 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 written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available for 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.