

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

SANDRA STEED

FILE NO. MUP-84-095(W)

from a decision of the Director APPLICATION NO. 8405394  
of the Department of Construction  
and Land Use on a master use permit  
application

#### Introduction

Appellant, Sandra Steed, appeals the decision of the Director, Department of Construction and Land Use, to issue a declaration of non-significance and condition the permit for a proposal for 1308 - 12th Avenue South.

The appellant exercised her 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 February 1, 1985.

Parties to the proceedings were: appellant, pro se, and the Director represented by Art Ward, land use specialist. The applicant waived his right to participate in the hearing.

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 applied for a master use permit to demolish a single family residence and establish the use for construction of a ten unit apartment building at 1308 12th Avenue South. The Director issued a declaration of non-significance and imposed a condition requiring landscaping on the permit. Appellant appeals these decisions.

2. The site is in a Lowrise 3 zone on the east side of 12th Avenue South. The lot is 50 by 120 ft. and abuts upon an alley with a 16 ft. wide right-of-way improved to 12 ft.

3. The apartment building is proposed to be four stories high with a pitched roof or 42 ft. The building would provide ten parking spaces, seven in a basement level garage accessed from the alley and three surface spaces with direct access from the alley.

4. The area has a mixture of residential uses ranging from single family to a 100 unit condominium across the street. The residence to the south appears to be a two story single family residence but is in duplex use. Development across the alley is mostly single family. The most prominent nonresidential use in the area is the Pacific Medical Center which is in the block north of the subject block.

5. Some dwelling units in the area enjoy views to the north and west. The large condominium has eliminated some of those

views. The proposed development would cause additional view loss.

6. Because of the demand for parking by employees of Pacific Medical Center there is virtually no on-street parking available during the day. An employee parking lot has been established six to eight blocks away with shuttle service to the hospital, however, there is a charge and employees still use the streets.

7. Residents report high incidence of crime in the area and are concerned that more rental units will encourage more crime.

8. Because of the way the alley is used, with some property owners extending their gardens and other improvements into the right-of-way, two cars cannot meet and pass in the alley. The narrowness results in cars pulling into a yard to allow another to pass, which is causing damage and is frustrating to the property owners, or having to back out.

9. The tenant in the house adjacent to the subject site whose apartment unit faces on to the site is concerned not only with loss of view but with loss of privacy.

10. The vegetation on the site, including a very large birch tree, would undoubtedly be removed for the proposed development.

11. Appellant presented Exhibit No. 3, a petition of some 133 names of persons opposing the proposed project. She indicates that the neighborhood's concern with the increase in density of population and development will be addressed by a downzone.

12. Witnesses report a high vacancy rate in the area.

13. The Director's analysis and decision discloses long term adverse impacts from view impairment, reduced light and air, increased off-site parking demand and lowered air quality. Impacts were not found to be significant because of the limited size and scope of the development.

14. The condition imposed by the Director requires landscaping as approved in the plans prior to occupancy of the building and that the owners are responsible for maintenance of that landscaping.

#### Conclusions

1. Section 23.76.36.01B7 requires that the decisions of the Director be given substantial weight by the Hearing Examiner on review. The burden, then, is on appellant to prove clear error in those decisions. The Director is to make a threshold determination as to whether an EIS is required. Section 25.05.330. If the Director determines that there will be no probable significant adverse impacts then he is to issue a DNS, which was done in this case. Section 25.05.340. The impacts would be considered "significant" if they would be more than moderate. Norway Hill v. King County Council, 87 Wn.2d 267 (1976).

2. The impacts that may be considered are limited the elements of the environment listed in the environmental checklist. Sections 25.05.315 through .335. The checklist does have questions about view loss, change in vegetation and parking and circulation. Possible impacts on crime and privacy are not a part of the consideration for the DNS. Though the evidence produced by appellant shows that there will be some view loss and any overflow parking from the proposed building will further exacerbate a bad situation, appellant as not proved that the

Director's decision, as to the degree of impact, is in error and that the impact would be more than moderate.

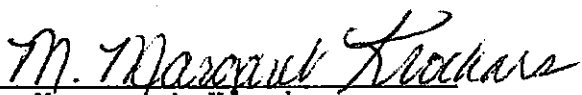
3. Even impacts which are less than significant may be mitigated by conditions imposed by the Director pursuant to policies adopted under SEPA. Section 25.05.660. The view protection policy addresses obstruction of views only from public places identified in Appendix B. Section 25.05.902(7). The Director does not have authority to impose conditions to mitigate view loss from private property. Neither the landscaping policy, Section 25.05.902(5), nor the Urban Greenbelt Plan, which is a part of Appendix A, provides for mitigating measures to preserve trees not in a designated greenbelt or for aesthetic purposes unless there is a showing of the reasonableness of that requirement.

4. There is a SEPA policy for parking and traffic, Section 25.05.902(4), which authorizes the Director to require measures to mitigate adverse parking impacts. The City Council has had occasion to address the application of that policy in relation to the code requirements, however. In the Elmer case, File No. MUP-83-077, C.F. No. 293040, the Council determined that Section 23.54.18 limits the discretion of the Director and prohibits use of SEPA policies to require more than the one parking space per dwelling unit for projects with 20 or fewer dwelling units. Therefore, the Director has no authority to require additional off-street parking for this ten unit proposal.

5. As to the impact on alley circulation, it appears that some improvement or change to the alley may be necessary to enable traffic to utilize more of the right-of-way. Appellant did not specifically request a condition to address this problem and no showing was made as to the reasonableness of having the applicant in this case make those improvements.

#### Decision

The determinations by the Director are affirmed.

  
M. Margaret Klockars  
Deputy 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 issue of compliance with 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); Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73. 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 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 taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary 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.