

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

JAMES B. POTTER AND
SEARLE W. NAESS, ET AL.,

FILES NO. MUP-87-001(W) and
MUP-87-003(W)

from a decision of the Director APPLICATION NO. 8603912
of the Department of Construction
and Land Use on a master use
permit application

Introduction

James B. Potter, applicant, appeals the imposition of a condition of approval of a master use permit for a proposed 20-unit apartment building at 6410-8th Avenue N.E. Appellants, Searle W. Naess, et al., appeal the determination of non-significance issued by the Director, Department of Construction and Land Use, and the failure to impose additional mitigating conditions.

The appellants exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

These matters were heard before the Hearing Examiner on February 18, 1987.

Parties to the proceedings were: applicant, James B. Potter, pro se; appellants by Arthur O'Sullivan, attorney at law; and the Director, Department of Construction and Land Use, by Leslie Lloyd, associate 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, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The applicant filed an application for a master use permit to demolish a single family residence and construct and 20-unit apartment building at 6410 8th Avenue N.E. The Director, Department of Construction and Land Use, issued a determination of non-significance (DNS) for the proposal and imposed various conditions pursuant to SEPA to mitigate adverse environmental impacts.

2. The proposal on which the decision was based was for a 4-story, 19-unit building with 20 parking spaces on the first level. The application had initially been for a 20-unit building. The plans were revised by the applicant to add further modulation in response to the staff's concern for transition and to attempt to get a decision on the application. The revised plans showed a "cut-out" of 8 by 12 ft. at the southeast and southwest corners and a total of 19 units.

3. Impacts identified in the DNS are short term impacts from demolition and construction activities and long term impacts, namely:

additional housing units, increased residential population, increased traffic and parking demand, altered aesthetics through increased bulk, increased coverage by impervious surface, altered landscaping..., shading of property to the north, increased noise from cars and residents/visitors, in-

creased light/glare particularly from vehicles parked on-site, increased use of alley, and increased demand on public services and utilities.

Exhibit 15, p.3.

4. The site of the proposed development is made up of two lots running between 8th Avenue N.E. on the west and a 16 ft. wide alley on the east midblock between N.E. 64th and N.E. 65th Streets. The site is zoned L-3/RC. The two lots immediately south of the subject site are zoned SF 5000. Property north of the site is zoned NC3 65'. To the east, across the alley, is L-3 zoning.

5. Development in the L-3/RC and L-3 zoned areas is largely single family in character and scale though some houses have been converted to more than one unit or other use.

6. Two blocks to the east is the Roosevelt business district. Buildings in that area are generally one and two stories high. The house immediately north of the subject site is approximately 33 ft. high. The 5-unit building at the northwest corner of 9th N.E. and N.E. 64th, which is the southeast corner of the block in which the subject site is located, is approximately 35 to 36 ft. high. No building in the block approaches the bulk of the proposed building.

7. The proposed building would be 36 ft. 9 in. high with a parapet above that. Heights of 37 ft. are permitted in the L-3 zone. The building would be 88 ft. long and 44 ft. wide with 8 ft. by 8 ft. modulation of the side walls, 4 ft. by 8 ft. in the rear wall and 4 ft. by 5 ft. in the front. The side modulation is not required.

8. The I-5 freeway, across 8th N.E., is 35 to 40 ft. high at this location. Power poles near the site are approximately 50 ft. high with cross-members at 25 to 30 ft. in the air.

9. The Director's staff identified a "substantial bulk impact and an abrupt transition in scale from this site (w/new devel) to SF sites to the south" in the environmental checklist.

10. The condition imposed by the Director to mitigate the aesthetic "bulk" impact is No. 1:

In order to provide a smooth transition in building bulk between the proposal and the single family zone to the south, the owner(s) and/or responsible party(s) shall submit MUP plans revised to show redesign of the top floor, providing an 8-ft. deep setback along the entire (88-ft. wide) south facade.

Also to "reduce the impact of height, bulk and scale" the Director required landscaping and the protection and retention of existing landscaping wherever practical.

11. Residents of the area report finding it difficult or impossible to find a parking space on the street until after 5:00 or 6:00 in the evening.

12. Many of the streets in the area have parking restrictions. Parking is prohibited on the east side of 9th Avenue N.E. and on part of the south side of N.E. 65th Street. No parking is permitted from 4:00 to 6:00 p.m. on the east side of 8th N.E. and the remainder of the south side of N.E. 65th Street. Parking on Roosevelt Way from N.E. 63rd to N.E. 65th is metered and restricted south of N.E. 63rd.

13. Residents of the area compete for on-street parking with

each other and with commuters, employees from businesses on Roosevelt Way and a large medical clinic and, to some extent, business customers. A cafe, book store and the medical clinic have evening hours and create a demand for parking.

14. The I-5 freeway right-of-way is immediately west of 8th Avenue N.E. The area under the freeway is used as a Metro park and ride lot. The lot is heavily utilized and parking overflows to the surrounding streets. A sign on the west side of 8th Avenue N.E. indicates that commuters can also park there.

15. In 1985 the Department of Engineering conducted a parking utilization survey to determine displacement for consideration of a residential parking zone for the area. Appellants counted cars parked on the street for the period February 11 through February 17, 1987, to update that survey. Both counts show high utilization in the daytime, often exceeding 100 percent, on N.E. 64th, 9th Avenue N.E. north of N.E. 63rd, and N.E. 62nd and 63rd in the block just west of Roosevelt. Those areas are highly used in the early evening as well. Both surveys show the 14 spaces on the east side of 8th N.E. to be only slightly used both day and evening. Likewise, the four spaces on the south side of N.E. 65th on the same block as the subject site are only slightly used. No figures for the capacity of the west side of 8th Avenue N.E. were provided. The appellants' parking survey showed as many as 12 cars parked in the block from N.E. 64th to N.E. 65th and as many as 9 in the block south of that. After 6:00 p.m. the highest utilization in the northern block was 5 vehicles with an average of 1.6 cars parked. In the southern block the most cars parked after 6:00 p.m. was 6 with an average of 2.6 cars.

16. The Director's staff assumed that demand for parking spaces by the residents of the proposed building would exceed the on-site supply by two spaces, at most. She based this projection on studies of vehicle ownership in other areas producing results of .66 cars per bedroom in one case and one car per one bedroom unit and 1.5 cars per two bedroom units in the other. Sixteen one bedroom units and 4 two bedroom units are proposed. She also projected eight visitors per day for the building based on a standard of .4 per unit per day. If the visitors were all present at the same time, the excess demand for parking would be for 10 spaces.

17. Residential and visitor demand for parking peaks in the evening.

18. Utilization of on-street parking is lower in the evening in this area than during the day.

19. An appellant and neighbor of the subject site, Mr. Naess, surveyed the area, consisting of 39 households, and determined that the average car ownership for the neighborhood is 1.18 cars per household.

20. If the average Mr. Naess determined held true there would be overflow of almost four cars from residents plus visitor parking.

21. Mr. Naess found, in his tallying of car ownership, that retired people owned fewer cars than working people. He believes that retired people will not live in the proposed building so the car ownership rate will be higher than the average he found for the area. He offered no foundation for his belief except his opinion that the rents would be too high for retired people.

22. The statement "...the availability of parking...and in the Park and Ride lot under the freeway is adequate to handle the occasional overflow" is in error since residential parking is prohibited in that lot.

23. The Director's staff representative who analyzed the proposal for environmental impacts offered the opinion that even without the park and ride lot being available to residents, the overflow can be accommodated on the street, specifically 8th Avenue N.E.

24. The Director's staff projects a total of 108 vehicle trips per day to be generated by the proposed apartment building.

25. An off-ramp from the I-5 freeway south of Ravenna sends heavy traffic north on 8th Avenue N.E. to N.E. 65th Street. Neighbors report that trucks turn east on N.E. 64th to reach Roosevelt to avoid the lights on N.E. 65th.

26. According to Exhibit 13, the 1985 traffic flow map, 8th N.E. carries an average of approximately 5,000 vehicles per week-day.

27. The projected addition to that traffic would have a very minor impact.

28. The alley midblock from N.E. 64th to N.E. 65th is currently unpaved. Some of the residents of property abutting the alley use the alley for access to their parking. One house was described as being located quite close to the alley. Residents are concerned about the additional traffic in the alley from residents of the proposed development and from motorists using it as a by-pass of the light at 65th and 8th if the alley is improved.

29. Improvement of the alley to Engineering Department satisfaction was required by the Director as a mitigating measure pursuant to SEPA. The improvement contemplated is paving a 15 ft. wide width from the subject site north to N.E. 65th Street.

30. The subject site currently has a single family residence on it with trees in the rear and a laurel hedge some 20 ft. tall along the western boundary.

31. A master use permit has been applied for to construct an 102-unit apartment building at 67th and Roosevelt. Northeast 65th Street, an arterial, intervenes between the proposed 102 unit apartment building and the subject site. Two other apartment buildings, one with 23 units and one with six to nine units, have been proposed for construction on the west side of the I-5 freeway, some 6 blocks away.

32. Extensive improvements have been made to the house at 808 N.E. 64th Street including the addition of a dormer which overlooks the subject site.

33. The house on the north side of the subject site would be shaded by the proposed building.

Conclusions

1. If the Director determines there will be no probable significant adverse environmental impacts from a proposal she is to issue a DNS. Section 25.05.340. A determination of significance requiring that an environmental impact statement be prepared is to be issued if the proposal may have "a probable significant adverse environmental impact." Section 25.05.360. A "significant" impact is one that has a "reasonable likelihood of more than a moderate adverse impact on environmental quality." Section 25.05.794A. The decision of the Director is to be given substantial weight by the Hearing Examiner on review. Section 23.76.022.C.7. To overcome that weight, appellants must show that the Director's decision is clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

2. The focus of appellants' case was on parking, traffic

and bulk and scale impacts. Increased population and shadow impacts were also mentioned.

3. Increase in population, in itself, is not an environmental impact but may be evaluated in terms of the effect of the population on the other elements of the environment such as traffic, parking, etc. The shadowing of the one house would not be considered more than a moderate impact on the environment.

4. While the overall parking situation in the immediate area was shown to be very difficult in the daytime, the Director's determination that the peak time for visitor and residential use is evening and that there is adequate available space on 8th N.E. to accommodate the overflow was not shown to be in error.

5. The addition to the traffic flow on the two arterials was not shown to be significant.

6. While the bulk of the building would make it out of scale with the existing development, that impact would not be significant. Some of the factors leading to this judgment include the fact that the height would not be markedly different from some existing structures, the zoning of the property adjacent to the north which allows for 65 ft. height and greater bulk, the potential for development of similar scale to the east and the substantial freeway structure to the west.

7. Since none of the other impacts alone, or combined, would be significant, the decision to issue a DNS was not shown to be clearly erroneous.

8. The Director has authority to impose conditions pursuant to SEPA to mitigate environmental impacts subject to certain limitations. Section 25.05.660. The limitations on that authority are that the conditions must be based on policies designated in Section 25.05.902 as bases for such conditioning; the conditions must relate to impacts clearly identified in the environmental document for the proposal; the condition must be reasonable; and the applicant can be held responsible for mitigation only to the extent the impacts are attributable to applicant's proposal. Section 25.05.660.A.1, 2, 3, 4.

9. The applicant contends that it was error to impose the condition requiring the 8 ft. setback on the south side of the top floor. He asserts that he has already provided bulk mitigation by modulation, that the difference in bulk between his proposal and the structure which could be built in the single family zone is not great and that the policies do not support further reduction in bulk because the L-3 zone itself with its development standards is intended to provide the transition between the single family and commercial zones. It is true that Mr. Potter has provided more modulation than is required but in the Director's judgment it is not enough to provide that transition. The land use policies describing the Lowrise 2 zone indicate that that classification is to provide a transition between the single family structures and multi-family buildings. That language does not appear in the Lowrise 3 description. The locational criteria for Lowrise 3 includes one requiring a break or separation between a smaller scale development and that which can be achieved under the Lowrise 3 standards. The designation as L-3 by the Council does indicate the Council's intent that buildings meeting those standards are appropriate for the area, however, the Council indicated in both Oden Investment, C.F. 293557, and SQAD, C.F. 294378 and 294392, that a reduction in the height or bulk below the zone maximum may be justified where the proposed project is on the edge of a zone where transition may not be accomplished by the zoning. The Director has determined that this is such a case and the applicant's evidence does not show error in that determination.

10. Appellants urge that additional conditions be imposed. The conditions requested by appellants would effect a 30 percent reduction in bulk, limit the height to three stories while retaining the condition requiring that the top floor be set back 8 ft. as now required for the 4th floor, require the retention of two large trees adjacent to the alley and require the addition of 15 to 20 ft. tall trees along the south lot line shared with 808 N.E. 64th Street.

11. While the adopted land use policies provide a basis for conditioning to effect a transition in bulk and height, the degree of reduction requested by appellants would have the effect of substituting single family standards for the L-3 standards and would not result in a gradual transition but an extension of the bulk of the single family zone. The Council has recognized authority to condition to provide the transition but clearly intended by the zoning designation that some greater bulk than can be achieved in the single family zone is appropriate. The request for the 30 percent reduction and greater than one-story reduction in height would not be reasonable. The condition imposed by the Director requiring greater setback at the fourth story to give the appearance from the adjacent single family property of a 3-story building is a reasonable means of mitigating the bulk and height impact and would provide transition. The Director's conclusion not to require additional mitigation to reduce the parking demand which the neighbors suggest could be achieved by reducing the bulk was not shown to be in error.


12. There is policy authority pursuant to SEPA in Section 25.05.902E to require landscaping when "it can provide a buffer between incompatible land uses or zones such as between parking areas and pedestrian ways." The measure proposed to require retention of two large trees adjacent to the alley when the same zoning exists across the alley would not be authorized by this policy. No other policy basis was suggested. The Director has included a condition to reduce the impact of height, bulk and scale requiring approval of a landscaping plan. Trees along the boundary separating the L-3-zoned property from the adjacent single family property would be authorized by the landscaping policy quoted above and could be included in the plan approved by the Director.

13. No error being shown in the Director's determination as to conditioning of the project, the decision should be affirmed.

Decision

The Director's determinations to issue a DNS and condition the project are affirmed.

Entered this 5th day of March, 1987.


M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

Pursuant to Seattle Municipal Code Section 25.05.680(C), 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 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 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(C) 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 23.76.22(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. 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. Section 25.05.680(D)(4).

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.