

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

BLAINE McCOOL for KELVIN GREENSTREET
LOUANN B. FREEBURG

FILE NO. MUP-81-105(V,CU,W)
FILE NO. MUP-81-107(V,CU,W)
APPLICATION NO. 81176-0145

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

Introduction

Applicant proposes to construct a triplex with front yard parking at 2311-15 West Plymouth. The Department of Construction and Land Use (DCLU) issued a conditional declaration of non-significance, conditionally approved the variance request for front yard parking and denied the conditional use request for a triplex. Applicant appealed the imposition of the variance condition relating to parking restrictions and also appealed the denial of the conditional use-triplex request. Opponent, Freeburg, appealed the declaration of nonsignificance (DNS) and the grant of the variance. The two appeals were consolidated hereunder.

The appellants exercised their rights to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: appellant-applicant by Thomas M. Walsh and Amy L. Kosterlitz, Walsh and Kosterlitz; appellant-opponent by Richard U. Chapin, Inslee, Best, Chapin, Uhlman and Doezie, P.S.; the Director of the Department of Construction and Land Use by Ed Somers, environmental specialist.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on March 16, 1982. The record was left open to March 19, 1982, for applicant's submission of additional material addressing whether a variance was, in fact, required for the project.

After due consideration of the evidence elicited during the public hearing and as a result of the personal inspection of the subject property and surrounding area 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 construct a triplex at 2311-15 W. Plymouth. The subject site, presently vacant except for vegetation, is irregularly shaped and has 54 ft. of frontage on an unopened portion of W. Plymouth. Topographically, the lot slopes steeply south, away from the opened Plymouth Street end.

2. The more northerly part of the subject site is zoned Duplex Residence High Density (RD 5000). The southerly portion, roughly triangular in shape, is zoned Single Family Residence High Density (RS 5000), with its hypotenuse adjacent to General Industrial (IG) zoning on the east and southeast.

3. As was concluded by DCLU, the RD 5000 portion of the site is considered to contain approximately 5,686 sq. ft. of area when the 25 ft. zone boundary extension per Section 24.12.040(C) is included. Without the extension fiction, the RD 5000 zoned area is 4,336 sq. ft.; the RS 5000 zoned area, 3,203 ft. for a total lot area of 7,539 sq. ft.

4. The lot is designated as part of the Magnolia Greenbelt. Page 21, Urban Greenbelt Plan, 1977.

5. Applicant proposes on-site development of a triplex to be located on the RD 5000 portion of the subject site pursuant to Section 24.66.020 as a transitional (more intensive) use. No development is proposed for the RS portion of the lot. A 21 ft. setback from the front (north) property line is proposed as is a 5 ft. west side yard. Additionally, three on-site parking spaces are proposed, one to be located along the west property line perpendicular to W. Plymouth Street. For this space, W. Plymouth Street is proposed for the access turn radius. Applicant's Exhibit 3. The remaining two spaces would begin in the northeast corner of the lot and would be parallel to east-west Plymouth Street. The proposed turn radius for the spaces is in the front setback. As part of his application, therefore, applicant wishes the entire 54 ft. of frontage to be paved and used for parking/access. The parking area would be uncovered and without walls. The third unit would be the bottom unit, at roughly 80-90 ft. elevation.

6. Parking in surfaced front yard areas is common in the subject vicinity. Unrefuted was applicant-witnesses' testimony that of 10 vicinity lots examined, five had parking in areas less than 20 ft. from the front property line. Properties that have surfaced front yard parking include the west adjacent property and the two story triplex and nine unit apartment building directly across the street from the proposed site. However, as described by appellant, the project proposed by the applicant would be the only one, save another property of applicant's (the west adjacent property), where an entire blacktop of the front yard area is proposed.

7. The lot west adjacent to the subject site is developed with a balconied, three story triplex built in 1965 and owned by the applicant. Continuing westerly, there is a fourplex and a third multifamily dwelling. A steep, undeveloped vegetated hillside is to the south and east of the subject site, although immediately east adjacent to the subject property is a designated 15 ft. unimproved alley. A two story triplex is located almost directly across Plymouth. This triplex abuts an alley to its east. West adjacent to this two story triplex is a three story nine unit apartment building. The area between these two structures is paved and used for parking. Continuing westerly from the nine unit apartment building, there is a duplex, single family dwelling, a fourplex and a second single family dwelling.

8. The elevation of the west adjacent triplex is roughly 120 ft.; of the proposed triplex, 110 ft. The triplex directly across Plymouth has a rooftop elevation of approximately 108 ft.; its west adjacent three story nine unit structure, 125 ft.

9. The unopened portion of W. Plymouth is marked by dense vegetation, including trees, some of which are deciduous and topped. There is also a hedge in the middle of W. Plymouth which provides an elevation level of approximately 105 ft. Some trees' height in this area approximate 110 ft. in elevation. Reference Applicant's Exhibit 5.

10. The top floor of the west adjacent triplex will suffer no loss of view by the triplex. However, this triplex has windows at the north (east) and south (east) sections of the building. Some view blockage of the view resulting from the northerly windows will result although views from the southeasterly windows will be past the construction project.

11. Much of the view of the nine unit dwelling across Plymouth is via the unit's east windows. Immediately east of this nine unit structure is "courtyard" parking, then the two story triplex. Accordingly the principal view from the nine unit structure is to the south. Some view of the proposed project will result, although courtyard parking serves to block what would be an apparent view from a ground story corner window of the nine unit structure. The view from the bottom floor of the two story triplex view will not be significantly affected.

12. Appellant and husband own the triplex and nineplex across W. Plymouth. Appellant testified that the upper units of the triplex look out over Elliot Bay and Mt. Rainier while the lower level looks out over a landscaped area. With applicant's project, opponent predicted, both levels would see the stilts of the proposed project. Appellant was of the opinion that the top two units of the triplex would lose the Elliot Bay view; and that the reduced views would mean a loss of \$25-\$75 per month in rental income per affected unit.

13. On street parking is at a premium in the vicinity. Accordingly, one opponent-witness felt that the project, resulting in more residents and guests, would compound the problem. A March 6, 1964, decision by the City of Seattle Board of Adjustment concluded that

Because of relatively inadequate street access and presently overcrowded on-street parking situation, (that) construction of a triplex without required off-street parking on-site would operate to the detriment of other properties in the area.

14. Variance relief to provide off-street parking in the required front yard area was granted February 10, 1964, for the property at 2321-25 W. Plymouth.

15. In addition to testimony, several letters opposing the subject application are of record. Objections fell into categories of concern with the current off-street parking situation (several correspondents calculated that only two curb spots existed east of the 2320 W. Plymouth address, serving 26 existing rental units); slide control/slope stability; increased traffic and vehicles; negative impact on the greenbelt and its flora and fauna; and the impact on views.

16. Neither appellant provided particular testimony on the environmental issues.

17. As reflected in the contour intervals included in applicant's Exhibit 1, the plot plan, the subject site has a small triangular northwest corner that is moderately level, serving as the only portion of the site at or near street grade. South of this level area is the sudden drop-off. This frequency of intervals, denoting steepness of the slope, is decreased as one proceeds west of the subject site, such that the west adjacent property is located on more level ground. The level spot of that west adjacent property reaches to roughly 50 percent of that property's depth. The aerial topography map, Applicant's Exhibit 2, shows a marked decrease in the frequency of contour intervals for properties north and west of the applicant's subject site.

18. A soils study and report included an evaluation of the subsurface conditions, the stability of the site, recommendations for site development and recommendations for support of the proposed structure. That report of record concluded that

With proper design and construction, development of this site in the manner planned would not decrease the inherent stability of the terrain... In our opinion the level of risk inherent in development of this site is no greater than many other sites, which have already been developed in the Seattle area. We believe that the level of risk is in the range that is normally acceptable for this kind of structure... Nevertheless, it must be understood that in the event of a very major earthquake in the Puget Sound region, this site, developed or undeveloped, could be prone to failure.

19. DCLU denied the necessary conditional use approval for the more intensive triplex use and granted the variance from the front yard parking prohibition on the conditions that

- (1) Coverage of the front yard shall be allowed for a 20 ft. by 25 ft. uncovered parking deck only, and the remainder of the front yard shall be maintained in landscaping.
- (2) The contractor shall be required to carry a liability insurance policy in the amount of \$500,000 naming the City of Seattle as additional insured for property damage as a result of earth-slide.
- (3) The contractor shall be required to post a bond with the City of Seattle in the amount of \$500,000 for the City to complete any work not completed by the contractor, according to the permit drawings, that is necessary to protect the adjacent properties.
- (4) The design drawings must include, but are not limited to the following:
 - a) A minimum of two profile drawings running N and S and E and West showing the ground surface, soil conditions below, the building structure, adjacent building elevations and streets building structure.
 - b) A subsurface drainage plan, surface drainage plan, and roof drainage plan stamped by a licensed civil engineer.
 - c) Structural and foundation drawings stamped by a licensed structural engineer.
 - d) The soil engineer of record shall be present during all excavation, back-fill and foundation and drainage system installation. The permit drawings and documentation shall include the requirement.

20. DCLU also issued a declaration of nonsignificance for the project, noting the applicant's proposal to construct the conditional use triplex on the subject "environmentally sensitive" designated property. The DNS description noted that the proposal would increase coverage of earth; that increases would occur in, among other items, run-off, noise, traffic, parking, population, housing, use of street system and potential traffic hazard to "a minor extent". The document concluded that with the imposition of the following conditions no significant impacts on the environment would be anticipated:

- (1) The contractor shall be required to carry a liability insurance policy in the amount of \$500,000 naming the City of Seattle as additional insured for property damage as a result of earthquake.
- (2) The contractor shall be required to post a bond with the City of Seattle in the amount of \$100,000 for the City to complete any work not completed by the contractor, according to permit drawings, that is necessary to protect the adjacent properties.

(3) The design drawings must include but are not limited to the following:

- a. A minimum of two profile drawings running N and S and E and West showing the ground surface, soil conditions below, the building structure, adjacent building elevations and streets building structure.
- b) A subsurface drainage plan, surface drainage plan and roof drainage plan stamped by a licensed civil engineer.
- c) Structural and foundation drawings stamped by a licensed structural engineer.
- d) The soil engineer of record shall be present during all excavation, backfill and drainage system installation. The permit drawings and documentation shall include the requirement.

21. Applicant appealed the DCLU variance condition limiting the coverage of the front yard; applicant also appealed the transitional use denial. Opponents appealed the issuance of the variance and the DNS.

Conclusions

1. Based on the impacts recognized in the Director's DNS and by the conditions imposed therein it appears that the Director adequately considered the impacts of the proposal on the subject area. An extensive site evaluation and soils report is part of the record. Considering the foregoing and considering that the decision of the Director is to be accorded substantial weight pursuant to Section 24.84.170, the decision of the Director on the DNS is affirmed. The record is devoid of particulars which would show the clear error required to overturn the Director's assessment.

2. As to the variance, the steeply sloping topography of the subject site is a unique condition not created by the applicant which, without variance relief, would deprive the applicant of development rights and privileges enjoyed by other properties in the same vicinity. Section 24.74.030. Because of the topography, more forward construction and access is required. Denying variance relief in this instance would impose an undue and unnecessary hardship on the applicant.

3. Further, the requested grant of variance as conditioned herein would not exceed the minimum necessary for relief nor, in light of the front yard parking patterns extant, constitute a grant of special, inconsistent privilege to the applicant. The remaining criteria of Section 24.74.030 are also met.

4. Although the subject property is in an area designated as Greenbelt, development thereon is not prohibited inasmuch as the property is privately owned. Further, the stated objective in Policy I of the Multifamily Policies, "to increase opportunities for new housing development in order to insure the adequate capacity for future housing need" is acknowledged.

5. This decision assumes the applicability of Section 24.66.020 to the instant case. No interpretation of record was requested nor issued suggesting the contrary. Nevertheless, the request for the transitional use for a triplex should be denied.

Construction of a duplex is permitted outright; however, the addition of the third unit as an administrative conditional use would increase traffic and parking to the extent that it would be materially detrimental to the public welfare, particularly in light of the request for the extensive front yard coverage/parking as proposed, and considering the minimum requirement of one parking space per unit noted in the Multi-family Policies. On-street parking is currently at a premium and front yard area parking is extensive. The situation should not be compounded any more than is absolutely required.

6. The decision of the Director is affirmed subject to the following modifications: the front yard variance is granted on the condition that on site parking be limited to two spaces and that such paving as is necessary for parking and on-site turning radius is allowed as determined by the Department of Engineering; 2) landscaping as approved by the Department of Construction and Land Use shall be provided in the front yard parking area consistent with the report from the Department of Engineering; 3) the parking area shall not be covered nor have any walls. The conditions imposed by the Director effectively require applicant's cooperation with structural and soils specialists; accordingly no additional conditions pertaining thereto are imposed.

Decision

The decision of the Director is AFFIRMED subject to the modification in Conclusion 6, above.

Entered this 2nd day of April, 1982.


Leroy McCullough
Hearing Examiner

Further, DCD's

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.

For: [illegible]
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