

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DOC FREEMAN'S, INC.

FILE NO. W-78-013

from an environmental determination
of the Superintendent of Buildings

The appeal is GRANTED and the matter is remanded
to the Superintendent of Buildings for a new
threshold determination.

Introduction

The appellant, Doc Freeman's, Inc., filed an appeal from a Declaration of Significance, hereinafter, DS, prepared by the Superintendent of Buildings with regard to appellant's proposal to demolish a single family residence and a four-unit apartment structure and to construct an addition to an existing warehouse at 1060 North 34th Street.

The appellant exercised his right to appeal pursuant to Section 20, Ordinance 105735.

Parties to the proceeding were C.M. McCune and Glenna Hall, attorneys at law, representing the appellant, and Ellen Peterson, Assistant City Attorney, representing the Superintendent of Buildings.

This matter was heard before the Hearing Examiner on July 13, 1978, and the record remained open until July 26, 1978, for submission of post hearing memoranda.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The development proposal by the appellant is to construct a 60 foot by 130 foot warehouse addition to the rear of an existing warehouse and shop building. A single family residence and four-unit apartment building would be demolished. A demolition permit would be required as would building-use, electrical and mechanical permits.

2. The Superintendent of Buildings, for the lead agency, issued a Declaration of Significance on May 31, 1978, and filed it with the S.E.P.A. Public Information Center on that date. The appellant filed an appeal from this determination June 14, 1978.

3. The Superintendent cited potential significant adverse impacts associated with land use, population, housing, aesthetics, recreation, and removal of two structures listed on the Urban Resources Inventory for Fremont in the DS.

4. The subject property at 1060 North 34th is a sloping through lot between Albion Place and Woodland Park Avenue North zoned Manufacturing (M). Directly to the south of the subject property is a warehouse used by the appellant. The subject property is developed with two wood frame structures, one a single family residence and the other a four-unit apartment building. The structures are presently unoccupied but were occupied at the time appellant purchased the property.

5. The M zone extends both east and south from the subject property. West and north is General Commercial (CG) zoned property. A single family residence occupies the lot immediately to the north on Woodland Park North. Across to the east, a warehouse is to be constructed.

6. The apartment building on the subject property is listed as a building significant to the City and the single family residence as a building significant to the community in "An Inventory of Buildings and Urban Design Resources for Fremont". The Inventory was prepared in 1975 by the Historic Seattle Preservation and Development Authority with financial assistance from the National Endowment for the Arts and the City of Seattle. Neither structure has been designated nor nominated as an historic landmark pursuant to the Landmarks Preservation Ordinance. Twenty-two buildings in the Fremont area are listed in the inventory as significant to the City. One has been designated as a landmark.

7. The appellant, by its agent, Mr. Dodd, submitted an environmental checklist to the Building Department in connection with its application for a building-use permit, April 27, 1978.

8. The Environmental Analyst, as representative of the Superintendent, issued the DS because she did not have information sufficient to assess the environmental impact of the proposal. The areas that she believed could have potential impacts but for which she had insufficient information are listed in Finding #3.

9. The information she requested from Mr. Dodd, and did not receive, was as follows: what other examples of this type and period of architecture exist in the immediate area, Fremont and the City as a whole; how they related to the building group 1½ blocks northwest, and how the proposal would affect the integrity, visually and culturally, of the group; existing uses and zoning of adjacent properties and those in the immediate neighborhood; the number of legal non-conforming uses; the ratio of non-conforming uses to permitted uses in the area; the number of conversions from legal non-conforming to permitted uses; any existing potential problems of incompatible adjacent uses; specifications of the proposed use--the type of operation, the number of employees, the number and frequency of truck deliveries, noise and traffic generated by deliveries, length of existence of present use, plans of previous owner to change use; report on existing structural conditions of the buildings; potential impacts which could result of potential incompatibility of adjacent uses; effects of increasing the intensity of use on the site; number of demolition permits issued since the Fremont Neighborhood Improvement Plan (NIP); number of construction permits issued for rental housing in the immediate area; number of conversions involving demolition of residential structures; number of residents displaced; population density in the immediate vicinity; the displacement figures for the area since the adoption of the NIP and the rate of displacement; number of housing units lost; vacancy rate of structures in the immediate vicinity; the available housing supply--single family residences versus multi-units; the housing shortage in the immediate vicinity; transportation and circulation; delivery routes; the size of trucks, the loading, and the amount of truck traffic that would be generated; the existing traffic volume; the amount of truck traffic; the noise and hazard extent of the current traffic; the amount of truck traffic generated compared to the traffic generated by the existing structures; incidences of accidents; hazard potential to bikeways; contour map and diagrams showing existing views and extent of view

blockage (existing and proposed); existing public view corridors to the ship canal; affect on views of one structure inventoried as significant to the City and one significant to the community; measures to mitigate visual impacts; proposed impact on proposed bikeways and the proposed fishing pier at the end of Stone Way in Waterway 22; means to recover materials from structures if demolished, potential recycling and careful means of demolition; disposal site of debris; final landscaping plans identifying what existing vegetation would remain, which removed and which moved; all temporary impacts associated with demolition and construction; potential for catalyzing redevelopment; effect on growth rate, density and distribution.

10. The Fremont NIP proposes a bikeway for Woodland Park Avenue North and for North 34th.

11. The proposed warehouse addition would be recessed into the grade and would project approximately 10 feet above grade at the north property line. This is approximately 15 feet below the existing apartment structure. The building would extend closer to the street on the sides than the existing structure. The single family residence immediately to the north on Woodland Park North would lose a part of its view to the southeast at street level but gain southward view at the second story. Views from other properties are expected to improve. No obstruction of any public vista is anticipated.

12. The checklist indicated that the structures are in a "poor state of repair". The Environmental Analyst did not inspect the interiors of either structure. Evidence adduced at hearing showed a serious state of disrepair and structural deterioration. Neither the Historic Preservation officer nor the person writing who prepared the inventory viewed the interior of the structures.

Conclusions

1. "The procedural requirements of SEPA", that is the environmental impact statement, (which provides, inter alia, a detailed analysis of the effects of the proposed action) and the procedures for public and agency review and input, are to be "invoked whenever more than a moderate effect on the quality of the environment is a reasonable probability". Norway Hill v. King County Council, 87 Wn. 2d 267, 278, 552 P.2d 674 (1976). The guidelines interpreting and implementing SEPA require that the lead agency base the threshold determination upon "information reasonably sufficient to determine the environmental impact of a proposal". WAC 197-10-330(1). If the information the lead agency has is not reasonably sufficient it can request further information from the applicant, may initiate further studies itself or may consult with other agencies with jurisdiction over the proposal. WAC 197-10-330(1)(a)(b)(c). Then, if none of these avenues yields information reasonably sufficient to assess the potential impacts of a proposal an EIS is to be prepared.

2. The Superintendent had a completed checklist, the building plans (plot plan, floor plan, elevations, sections, foundation and roof), letters from the City's historic preservation officer, one of the preparers of the inventory and a representative of the Fremont Community Council, and the survey form from which to assess the impacts plus site inspections and consultations with the Neighborhood Planner assigned to that neighborhood and others. Other information had been requested orally, of the appellant but was not produced. The Superintendent determined that the information on hand was not reasonably sufficient to assess the potential impacts and issued a DS.

3. Factors not listed in the checklist are not to be considered in making a threshold determination (WAC 197-10-330(1)) and therefore the lack of information about factors not listed may not be used as a basis for requiring an EIS. WAC 197-10-100(3) states that "(t)his information shall be limited to those elements on the environmental checklist for which, as determined by the lead agency, information accessible to the lead agency is not reasonably sufficient to evaluate the environmental impacts of the proposal". (emphasis added).

4. Most of the information requested of the applicant is arguably within the elements of the checklist. One exception is the requirement of analysis of the effect on views from private properties since the check list specifies obstruction of "any scenic vista or view open to the public." Also the recreation element is directed only to "existing recreational opportunities." Therefore, information requested in connection with views from private property not open to the public and for proposed recreation facilities are not within the scope of those elements.

5. The issues to be resolved are whether the additional information is actually needed and if it is, whether the request has gone beyond the scope of the threshold determination. As to the scope the Guidelines offer this admonition. "Agencies may not require a complete assessment or 'mini-EIS' at this stage." WAC 197-10-100(2). The record gives the clear impression that this is precisely what has been done.

6. The depth of analysis required for the element Housing which overlaps Land Use slightly, is an example. The applicant was directed to supply information as to the number of demolition permits for a certain period, number of construction permits for rental housing, number of conversions involving demolition of residential structures, number of residents displaced, rate of displacement, number of housing units lost, vacancy rate of existing structures, vacancy rate of structures in the immediate vicinity, the available housing supply-single family residences versus multi-units and housing shortage in the immediate vicinity. While more can be conceived of for an EIS, this could certainly be considered sufficient for the housing portion of a mini-EIS, when one is considering the impacts of the demolition of five units.

7. Additional information requested for the other elements from the applicant is similar in degree and therefore beyond what may be required of an applicant at the threshold level.

8. The next step necessary in this review is to determine whether the Superintendent had available or had accessible to him information reasonably sufficient to determine if there was a "reasonable probability of more than a moderate effect on the quality of the environment." The action involved is the issuance of various permits for the demolition of 5 units and construction of an addition to an existing warehouse on property zoned Manufacturing (M) and having a similar Comprehensive Plan designation as the result of an update by the Neighborhood Plan.

9. The elements of the environment for which additional information was requested are; (8) Land Use, (11) Population, (12) Housing, (18) Aesthetics, (19) Recreation and (20) Archeological/Historical.

a. Land Use

The Superintendent had accessible to him, in addition to the checklist description of the proposal, answers as to future plans, and explanation of "yes" answer, Kroll Maps showing zoning of the property and area surrounding and use of each of the structures, with access also to his own files to check any questionable use, and the final EIS for the Fremont NIP and the NIP itself. These documents are reasonably sufficient to determine the effect of the change proposed.

b. Population

The Superintendent had information as to the number of units to be removed, knew that they are currently uninhabited, had consultations with the neighborhood planner and had the Final EIS for the Fremont NIP and the NIP. With those documents and that resource he had reasonably sufficient information to assess the potential impact.

c. Housing

The Superintendent had the information listed in "Population", above, plus the letter from the community council representative. That information is reasonably sufficient to assess the potential impact on housing.

d. Aesthetics

The Superintendent had the building plans, the information from the checklist that the building would be 15 feet lower than the apartment building, etc., and made site visits. Only views from public vistas and places open to the public may be considered so site visits would provide information sufficient to make the necessary assessment.

f. Recreation

The record is not clear as to whether the fishing pier exists. If it does not, information as to effects on it and the proposed bikeways was requested improperly.

g. Archeological/Historical

The Superintendent had the checklist which contained explanatory material as to the physical condition of the structures, letters from the City's Historic Preservation Officer and preparer of the inventory, the inventory survey form and had accessible to him the inventory itself. The question as to other examples of flats of this style and period was answered in the letter received, that few, if any, remain in their original condition and could be confirmed by the Superintendent by consulting inventories of other neighborhoods.

10. The information the Superintendent had accessible to him was reasonably sufficient to make the threshold determination. The matter should be remanded to the Superintendent for a new threshold determination based on available information which now includes the additional information adduced at the appeal hearing.

Decision

For the above reasons the appeal is GRANTED and the matter is remanded to the Superintendent of Buildings for a new threshold determination.

Entered this 10th day of August 1978.

M. Margaret Klockars
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Deputy Hearing Examiner