

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

EASTLAKE COMMUNITY COUNCIL

FILE NO. W-79-042

from an environmental determination
of Building Department

The appeal is DENIED and the Declaration of Non-Significance with minor revisions of the checklist attachment is affirmed.

Introduction

The Eastlake Community Council, appellant, filed an appeal from a declaration of non-significance issued by the Building Department for a proposed action at 216-20 East Lynn Street.

The appellant exercised its right to appeal pursuant to Section 20 of the SEPA Ordinance (105735, as amended).

Parties to the proceeding were: Appellant, represented by Janet E. Quimby, Evans & Quimby, Inc. P.S.; the Building Department represented by Elizabeth A. Huneke, Assistant City Attorney; and William S. Tsao and Company, proponents, represented by Michael E. Jacobsen, Clinton, Fleck, Glein & Brown, attorneys at law.

This matter was heard before the Hearing Examiner on January 22 and 24, 1980, and continued for submission of written legal argument.

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. Proponents propose to demolish a triplex residence located at the northwest corner of the intersection of East Lynn Street and Franklin Avenue East and construct a three-story over basement, seven-unit apartment building with seven parking spaces.

2. The Building Department, by Ann Marlow, environmental analyst, filed a final declaration of non-significance (DNS) on November 28, 1979, and published the issuance of demolition and use permits.

3. Appellant filed its appeals from the DNS and permits on December 13, 1979. The appeals were consolidated for hearing.

4. The threshold determination was based on the misinformation, provided by proponent, that the residence was single family.

5. The three units have been rented at rates below the HUD fair market rent levels so three low-income housing opportunities would be lost. The vacancy rate in rental housing in the Eastlake area is extremely low.

There has been a continual loss of single family type structures by conversion to or replacement with multi-unit structures in the Eastlake community. The proposed action would contribute to this trend in conflict with the goals of the community to maintain the diversity of housing types.

6. The analyst required a good faith effort to locate other housing acceptable to the present tenants. The property owners contacted other owners of rental properties in the neighborhood and asked to be notified of any vacancies to be able to inform the present tenants of the subject property. They also agreed to forego one month's rent.

7. The house on the subject site is identified as a "Building Significant to Community" in the Eastlake/Cascade, An Inventory of Buildings and Urban Design Resources.

8. East Lynn Street is a collector route and slopes steeply down to the west. At the time of the threshold determination the analyst had not obtained traffic counts for East Lynn but was familiar with the street from her site visits and other work in the area. Traffic counts made in 1979 show approximately 6,400 average daily trips on East Lynn. Lynn Street is also a truck route and is used by busses according to a resident of the area.

9. East Lynn is used as an access route to and from the freeway on-ramps at Newton and Roanoke and from the Broadway District and other points to the University. There is a stoplight at the Eastlake-Lynn intersection. There is a stop sign for East Lynn at the Lynn-Boylston intersection. During the morning rush hour queues form on Lynn Street from the light at the Eastlake intersection. During the evening rush hour they form down Lynn Street from the stop sign at the Boylston intersection.

10. When cars are parked on both sides of Franklin Avenue East one lane for traffic remains.

11. According to the environmental analyst the proposed development can be expected to generate between 28 and 49 vehicle trips per day and a demand for up to 9 parking spaces above those provided on-site, assuming ownership of two cars per unit and an average of .25-.33 cars per unit guest demand.

12. Parking for the structure would be located in the basement level with the entrance and exit driveway to East Lynn. The driveway rises from the garage to East Lynn with a rockery obscuring views of traffic from on-site vehicles and of the vehicles from the street.

13. A paved area is to be provided on-site west of the driveway to allow cars backing from the garage to turn to face the street when entering it. Because of the parking layout, it is foreseeable that when the garage is full, cars will not be able to turn around inside so will need to use the outside back-in space. The space is to have a "no parking" indication however it is reasonably foreseeable that it will be used on occasion by delivery and other vehicles for parking.

14. Parking is not permitted on the north side of Lynn Street between Boylston and Eastlake, on the west side of Franklin adjacent to the subject site or on two of the four half blocks on the south side of Lynn Street.

15. On-street parking is heavily utilized in the Eastlake area and specifically in the area of the subject site. The subject site and many others with structures pre-dating the present zoning code do not provide off-street parking. Employees and customers of the businesses along

Eastlake compete for on-street spaces along Franklin and other residential streets in the daytime and evening. Many vehicles are parked illegally, i.e. in the alleys, because of high demand. The area is also used by commuters who drive to Eastlake, park on the streets, and ride busses to their ultimate destinations.

16. The analyst concluded that the excess parking demand can be accommodated on-street within an area with a radius of 800 ft. of the subject site. She believed, at the time of her threshold determination, that the Zoning Ordinance prescribes an 800 ft. standard but concluded at hearing that she was not correct.

17. The Eastlake-Lynn intersection experiences a high incidence of accidents. Six accidents have been reported between January and mid-September, 1979. The expected increase in volume from the proposed project would cause less than 1 percent increase in accident potential.

18. The Eastlake area has a combined sewer system with a high occurrence of overflows at outfall points into Lake Union. The overflows occur frequently during the rainy months and occasion the dumping of raw sewage into the lake in the vicinity of the houseboats.

19. The analyst assumed a storm water detention plan was filed prior to the threshold determination but did not know the specifics of the proposal. Systems are not completely effective because of continuing maintenance requirements. The analyst recognized in the environmental checklist the decrease in absorption because of the increased overcovering of the soil.

20. The analyst determined that the increase in sewage from an additional four units would have negligible effect on the system.

21. A Council Resolution, No. 26072, recognizing the Goals and Policies of the Eastlake Neighborhood provides for consideration and documentation of the relationship between a proposal or decision and the Goals and Policies by the City.

22. Appellants contested specifically the conclusions of the analyst with regard to traffic and parking, housing, land use and sewer and drainage.

Conclusions

1. An environmental impact statement is required by the State Environmental Policy Act (SEPA) only when there is a major action which would have a significant adverse impact on the environment. The Court, in establishing a guideline as to what is significant, has held that the "procedural requirements of SEPA... should be invoked whenever more than a moderate effect on the quality of the environment is a reasonable probability." Norway Hill Preservation and Protection Association v. King County Council 87 Wn.2d 267 (1976).

2. Section 20(4), Ordinance 105735, as amended, requires the hearing examiner to accord the determination of the Building Department substantial weight.

3. The environmental analyst is not permitted to consider factors not specifically addressed by questions in the checklist in making the threshold determination. WAC 197-10-360.

4. The analyst based her decision as to the effect on "Land Use" and "Housing" on the erroneous information received from the proponent and that misinformation is reflected in

her explanations of each and should be corrected. The appellant has not proven that the replacement of the three low-cost housing units with seven higher cost units would have a significant effect on either housing or land use, however. The loss of a structure significant to its community because of its architectural characteristics and antiquity was not shown to be legally significant to the present or planned land use. The incremental effect of the one structure on the trend of loss of diversity in housing types is not large enough to be legally significant.

5. The resolution recognizing the Goals and Policies of the Eastlake Neighborhood did not make that document a plan for land use which could affect the analyst's decision as to impact on land use as an adopted neighborhood improvement plan could. Therefore, consideration of it in the threshold determination would be improper.

6. The analyst's response to the checklist question on utilities, "Will the proposal result in a need for new systems, or alternations to the following utilities:...(d) sewer or septic tanks...(e) storm water drainage?" was not shown to be in error. The parties agreed that combined storm water and sewer system is antiquated and ineffective, however, the appellants did not prove that the addition to the effluents is greater than negligible nor that that amount would have a significant impact.

7. The environmental analyst was shown to be familiar with the heavy use of East Lynn Street and the hazards associated with it. The additions to the traffic volume and hazard from the new units are too small to cause more than a moderate effect on either. Backing onto the street, while hazardous, is likely to occur infrequently so would not be significant.

8. The record shows that additional demand for on-street parking is probable and the answer to checklist question No. 13(b) should have been "yes". Even at the worse case figure of nine, because the existing units have no legal parking the net effect would be less and cannot be considered significant. While the new cars may be "absorbed," that absorption will have its negative effects -- forcing others to shift to other blocks, increase the incidence of illegal parking, etc.

9. The appellant has not proved that the individual impacts, when taken together, would have a significant adverse impact on the environment.

Decision

The appeal is DENIED and the declaration of non-significance with minor revisions of the checklist attachment is AFFIRMED.

Entered this 17th day of February, 1980.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).