

FINDINGS AND RECOMMENDATION  
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Application of

Bill Matthews for Denny Ward

FILE NO. CC-8500968  
C.F. NO. 293856

for a council conditional use  
pursuant to the provisions of  
Title 23, Seattle Municipal Code,  
(Zoning Ordinance 86300, as amended)

Recommendation:     The application should be conditionally  
                          GRANTED.

Introduction

Applicant proposes construction of a five unit condominium on a General Commercial (CG) zoned site addressed as 5273 Seaview Avenue N.W.

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

The Director's report, submitted by the Department of Construction and Land Use (DCLU), recommended that the application be conditionally granted.

This matter was heard before the Hearing Examiner on October 8, 1985. Applicant was represented by T. Ryan Durkan and the DCLU representative was Hermia Ip. Neighbors appeared pro se.

After due consideration of the evidence presented by the applicant, the information provided by the Director's report, all evidence elicited during the public hearing and subsequent to the personal inspection of the subject property and surrounding area by the Hearing Examiner, the following shall constitute findings of fact, conclusions and recommendation of the Hearing Examiner on this application.

Findings of Fact

1. Applicant proposes to demolish two single family residences and establish a five unit condominium at 5723 Seaview Avenue N.W. Because the site is zoned General Commercial (CG) Council Conditional Use approval is required pursuant to Chapter 24.52, Seattle Municipal Code.

2. The subject site is located south of the Shilshole Marina and is designated Urban/Stable by the Shoreline Master Program. The site has approximately 88 ft. frontage on the west adjacent Salmon Bay Waterway.

3. The site is bordered on the east by a 15 ft. wide city right-of-way. Immediately east of this access way is a portion of the Great Northern Railroad right-of-way. Continuing easterly and up the scrub and vegetation incline is Seaview Avenue N.W., the area's major arterial. There is an approximate 10 ft. topographical drop from the railroad right-of-way to the site's access way.

4. The railroad property is infrequently used.

5. The site's lot area approximates 9,931 sq. ft. Of this area approximately 8,788 sq. ft. is considered dry land.

6. The site is developed with two single family houses and detached garages that the owner describes as "beyond repair". Housing demolition licenses are required for the proposed demolition of the existing structures. That requirement is appended as a DCLU recommended condition of Council approval.

7. Development to the south and north of the subject site consists of single and multi-family dwellings. Of the approximately 31 residential buildings in the immediate vicinity, all accessed by the 15 ft. right-of-way, 27 are single family houses that are principally one-story above street grade. A four story, 8-unit condominium is located approximately 200 ft. south of the subject site. The remainder of the structures are generally two stories.

8. Applicant's plans call for construction of a four-story structure, including daylight basement level, with a west elevation of 39 ft. An enclosed stairwell structure would add another 8.5 ft. to the height. The east elevation also approximates 39 ft. Because of the relationship that the proposed structure would have to existing development, DCLU recommended that approval be conditioned to limit the average roof grade to no more than 10 ft. above the grade of Seaview Avenue N.W. and that the structure include no more than three units. The recommended height limitation was DCLU's recognition of concerns about public upland views. The density and height limitation were DCLU's response to a prior Council decision concerning 5501 Seaview Avenue N.W., File No. X-77-025.

9. Applicant is proposing to provide view corridors along the north (10 ft.) and south (18.5 ft.) portions of the site.

10. On July 25, 1985, DCLU issued a project declaration of non-significance (DNS) which is incorporated herein by reference. The DNS predicted increased traffic, noise and light, and water runoff. The DNS also observed that:

The change from a single family residence to a four story multi-family structure will alter the view and change the visual character of the site; however, there are view corridors proposed along the north and south portions of the site to ensure that views to the water are maintained...Although there are several short and long-term environmental impacts...there are no significant impacts.

One condition attached to the DNS prohibits any view obstruction in the north and south view corridors. The DNS was not appealed.

11. The proposed building will be visible to motorists and residents from the upland area east of Seaview Avenue N.W.

12. The proposed structure will be within RM 800 development standards. Because of the view corridors proposed, and because the 35 ft. maximum elevation is measured from the average grade level (17.2 ft.) the proposal also meets Shoreline Master Program development standards.

13. Applicant initially proposed six covered parking spaces, of which two would be in the carport. Subsequent to the application, applicant has secured easement rights from Burlington Northern to an 85 ft. x 25 ft. area that will be used for an additional 10-11 parking spaces. Exhibit 4. The Viking Condominium Association withdrew its objection to the proposal as a direct consequence of the additional parking proposed. Principal remaining neighborhood concerns included view blockage, density and precedent. Some letters, however, favored the proposal as an improvement to the area.

14. A Metro transit stop is within 100 yards of the site.

15. Although the lot area could accommodate up to 11 units, testified applicant, he requested his architect to design the smallest, most economically feasible structure for the site. The architect recommended a 5-unit complex. According to applicant, if his project is limited to three units, which would result in an approximate cost of \$450,000.00 per unit, he would lose the property. The architect added that the height limit recommended by the DCLU would cause the units to be too small and that therefore the project would not be viable.

16. One opponent, who found the economic argument to be irrelevant, recommended no approval of any structure in excess of two stories without a flat roof.

17. Applicant projects that the proposed structure will have a height of approximately 22 ft. from the street level, and that its view from upland properties will be obscured by the grade and intervening vegetation.

18. Notice of the application appeared on one of the applicant's garages adjacent to the 15 ft. right-of-way. The sign was therefore not visible from the Seaview arterial or from the bluff. Of record is a DCLU September 5, 1985, affidavit that at least four placards of the conditional use application were "conspicuously" posted within 300 ft. of the subject site, and that mailed notice was given to all property owners within 300 ft. of the subject property's boundaries. Similar affidavits covered notice of the environmental determination and of the variance, Shoreline Substantial Development permit application (April 15, 1985). The variance was subsequently determined to be unneeded since view corridors were to be provided.

#### Conclusions

1. The Council Conditional Use criteria stated at Seattle Municipal Code Section 24.52.100 (A) would be met by approval of the proposed construction as conditioned herein. The uses near the subject site and in the immediate vicinity are single and multifamily residential. They are not of the type to create a nuisance or adversely affect the subject area's desirability for living purposes. Seattle Municipal Code Section 24.52.100 (A)(1).

2. The subject lot is relatively small and is sandwiched between a narrow, 15 ft. wide right-of-way and the Salmon Bay Waterway. Access is therefore limited. East of the right-of-way is a vegetated bluff rising some 14 ft. to a rail line that is infrequently used. No "established commercial development is nearby. The site is currently in residential use. Therefore, residential development will not usurp land better suited for commercial usage. Seattle Municipal Code Section 24.52.100 (A)(2).

3. Regarding the third criterion, DCLU, proponent and at least one opponent offered conflicting view points. DCLU states that their recommended height limit is per Council precedent; opponent complained that DCLU's reading of the precedent was incorrect and negatively gratuitous. Proponent considered the cited precedent as distinguishable on the facts, in part because approximately 2,600 sq. ft. of dry land was available in the Kack case, File No. X-77-025, supra. Secondly, argued applicant, since the SEPA DNS was not appealed, no authority remains to condition the proposal, and the Kack restrictions were not challenged in a judicial forum.

4. In re Kack, X-77-025, C.F. 284595, involved an application to build a four unit condominium in the CC zone at 5501 Seaview Avenue N.W. The Council noted the Kack area's primarily residential development; that the proposed structure would be out of scale with

existing land uses; that at approximately 20 ft. above street grade, the structure would be higher than structures on neighboring properties; and that the structure "would cover a much larger proportion of the buildable site". The Council then approved the structure for no more than two units and on the second condition that the average roof grade not exceed 10 ft. above the grade of Seaview Avenue N.W.

5. With respect to SEPA, the Hearing Examiner considers the Kack decision to have imposed conditions based on the recognized vicinity development patterns, not on impacts delineated pursuant to SEPA. Kack is precedential. Secondly, the Hearing Examiner is not prepared to conclude that failure to utilize the specific SEPA conditioning process prohibits the decision-maker from imposing conditions via a separate mechanism particularly where the (conditional use) criteria specify that the reviewing body "may impose requirements and conditions...as may be deemed necessary for the protection of other properties in the zone or vicinity and the public interest". Seattle Municipal Code Section 24.74.010.

6. With further respect to conditions, Kack indicates that conditions may be imposed to protect existing residential development patterns extant within a commercial zone. Stated differently, the "surrounding development" referenced in Seattle Municipal Code Section 24.52.100 (A)(3) may be residential or commercial.

7. Applicant's further reference to Kack is provocative. The applicant's site is 9,931 sq. ft. in area, with a dry land portion of only 8,788 sq. ft. Applicant presented that since the Kack site offered 2,600 sq. ft. of dry land and a duplex was approved, suggesting a ratio of 1 unit for 1,300 sq. ft. of dry land, his site could yield approximately seven units, while only five are requested. For reasons stated below the Hearing Examiner declines to adopt this recommended, single-dimensional methodology.

8. While the upland view of the developed site will be impeded by the topography and vegetation, distinguishing it from the nearby 8 unit condominium and from the Kack site (see photos, Exhibit 17), the development will impede street level views of the water from Seaview Avenue N.W. and from the 15 ft. access way. It is also clear that with the exception of the four story 8 unit condominium, the proposed height and bulk will be inconsistent with the prevailing residential pattern.

9. As noted above, Kack stands for the proposition that in the CG zone, residential construction may be conditioned on a compatible development proposal (See photo, Exhibit 17 for relation of the Kack development to environs). As proposed, applicant's 5-unit condominium would be incompatible in density, height and bulk to the prevailing development. Some modification to the plan is therefore appropriate.

10. The Hearing Examiner adopts the DCLU recommendation that the average roof grade shall be no more than 10 ft. above the grade of Seaview Avenue N.W. This height would approximate the predominant current one-story above grade pattern and would also protect and enhance views from the upland portion.

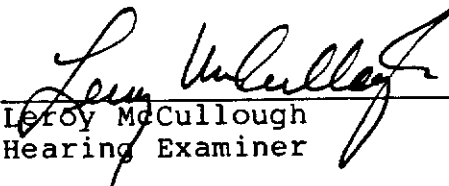
11. The density issue is much more elusive, notwithstanding the Kack decision. The applicant is proposing adequate off-street parking. There is at least one 8-plex in the vicinity. Applicant has 8,788 sq. ft. of dry land versus less than 3,000 sq. ft. of dry land offered in Kack. The site is zoned commercial. North and south view corridors are proposed. In recognition of these salient factors, applicant should be allowed to attempt construction of up to five units, but only within the height parameters of Conclusion 10, above. The Hearing Examiner also recommends incorporation by reference of the conditions of the DNS, and upon the further condition that housing demolition approval be secured prior or issuance of a building permit.

12. At least one commenter suggested fault with the DCLU notice, especially placement of the sign some 14 ft. below the railroad right-of-way. The statement of concern, however, is deemed insufficient to challenge the adequacy of the notice as indicated by the DCLU affidavits(s) of record.

#### Recommendation

For the reasons stated in the Conclusions above, the Hearing Examiner recommends that the City Council approve the application with conditions stated in Conclusions 10 and 11, above.

Entered this 22nd day of October, 1985.

  
Leroy McCullough  
Hearing Examiner

#### Concerning Further Review

Pursuant to Section 23.80.10.E, Seattle Municipal Code, any person substantially affected by or interested in this recommendation may submit a petition in writing to the City Council requesting further consideration. The petition must be filed with the Council no later than fourteen days of the date of this recommendation and should be addressed to the City Council, Land Use Committee, Municipal Building, Seattle, Washington 98104.

The petition should clearly identify specific objections to this recommendation and the relief sought; however, the petitioner should not include any additional evidence or exhibits as the Council's consideration will be based upon the record of the Hearing Examiner's hearing. If the Council determines that a factual error exists in the record or that important information is missing, the Council may have the record supplemented pursuant to Section 23.80.10.E.3 or 23.80.10.E.4. At its public meeting the Council may allow oral or written arguments based on the record.

