

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

In the Matter of the Application of

SHELTER VENTURES, INC.,

FILE NO. CC-8505493
C.F. NO. 294519

for a Council Conditional Use

Introduction

Shelter Ventures, Inc., applied for Council Conditional Use authorization for dwelling units in a CG zone at 2048 Fairview Avenue East.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code.

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

This matter was heard before the Hearing Examiner on October 13, 1986.

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, the following findings of fact and conclusions shall constitute the recommendation of the Hearing Examiner on this application.

Findings of Fact

1. The applicant proposes to demolish five duplexes and construct a 32-unit apartment building at 2048 Fairview Avenue East. The westerly half of the subject site was zoned General Commercial (CG) at the time of application so Council Conditional Use authorization is required for dwelling units proposed for that portion of the property.

2. The subject site is a 12,020 sq. ft. parcel with frontages on Fairview and Minor Avenues East and East Boston Street. The property slopes down to the west with a 10-12 ft. change in elevation.

3. A zone boundary divides the subject site. The easterly half is part of the Lowrise 3 (L-3) zone extending east from the 2000 block. The westerly half, which was zoned CG at the time of application, is now a part of the Lowrise/Residential-Commercial (L-1 RC) zone extending north and south along the eastern side of Fairview. The westerly half of the site is also within the Urban Stable/Lake Union (US/LU) shoreline environment. An L-1 zone extends north from Boston along Minor.

4. Development and uses surrounding the site include: apartment buildings and a single family residence ranging from one to four stories on the east side of Minor Avenue East; commercial uses in two-story buildings on the west side of Minor in the block shared with the subject site; three and four story apartment buildings at the northeast corner of the intersection of Minor and Boston; a two story multi-family building at the northwest corner of the intersection of Minor and Boston across the street from the subject site; a one and one-half story residence converted to commercial use at the northeast corner of the intersection of Fairview and Boston, across from the site; accessory parking lots on the east side of Fairview within the same block and south of the site; and floating home moorages on Lake Union on the west side of Fairview across from the site.

5. The streets serving the site are Fairview Avenue East, classified as a Commercial Access street but without sidewalk,

curb or gutter improvements, and East Boston Street and Minor Avenue East, both classified as Residential Access streets and fully improved. Eastlake Avenue East is located two blocks east of the site and is the principal arterial serving the area.

6. On-street parking in the vicinity of the subject site is heavily used. The demand is particularly great because of the floating home community. Many moorage owners provide no accessory parking so residents must compete for on-street parking. Some competition also comes from businesses along Eastlake.

7. The proposed development of the site is a building with four stories of residential units over one level of parking in the basement. The height of the structure would be 38.13 ft. above finished grade on both Minor and Fairview or, because of planned excavation, 30.5 ft. above existing grade on Minor and 36.88 ft. on Fairview. Because of the excavation the structure would rise 2 1/2 stories above the sidewalk on Minor. The structure would be 89 ft. wide. A total of 42 parking spaces would be provided in the garage and at surface in the setback from Fairview.

8. A determination of non-significance (DNS) was issued by the Director, Department of Construction and Land Use (Director), for the proposed project. The DNS was challenged by the Floating Homes Association and Eastlake Community Council as co-appellants. The determination was affirmed by the examiner in a separate decision. The Director identified the following adverse environmental impacts: temporary construction-related impacts including soils disruption, dust, noise, mud on the street, impairment of traffic flow and parking demand for construction workers' vehicles; increase in air contaminants from increased traffic; increased storm water runoff from increased impervious covering of the site; increased noise levels from traffic; excessive bulk and scale on Fairview; private view alteration; increased light from exterior illumination; and increased traffic.

9. The Director imposed conditions pursuant to SEPA to mitigate the adverse impacts identified. Those conditions include controls on construction activity; a reduction in the width of the building along Fairview to 75 ft. and increased modulation if the condition she recommended for the conditional use regarding bulk is not adopted; approval of a preliminary drainage control plan; street improvements; landscaping; and further review if the unit-to-parking ratio should drop below 1:1.3. These conditions will supplement any conditions of the conditional use imposed by the City Council.

10. Separate shoreline approvals will be necessary for the proposal.

11. The Engineering Department has reviewed a traffic study submitted by the applicant and indicates that its concerns about on-street parking impacts have been addressed.

12. Numerous letters of objection to the proposed project to the Director from residents of the area and property owners discussed concern with the size of the structure, parking congestion and increased demand, traffic on Fairview, crime, view preservation, loss of "family"-type housing, air pollution, area character, loss of duck nesting area, loss of trees, devaluation of property, affect on bicycle route proposal and the sewage system. Letters were also received in support of the project because of the additional housing that would be provided and because of the deterioration of the existing buildings.

13. The representative of the Floating Home Association stated that the community he represents supports residential use of the site and believes the L-1 RC standards are appropriate for the area.

14. Fairview Avenue East is heavily used by pedestrians and bicyclists.

15. The Director projects that the development would generate up to 190 person trips per day with an afternoon peak hour volume of 15-20 vehicular trips coming from different directions.

16. The Director determined that the provision of on-site parking in the proposal would be sufficient to accommodate all resident demand for parking and most of the visitor demand.

17. The community group appellant of the DNS provided additional information that suggests there may be overflow of up to 9 vehicles. The parking availability survey done for the applicant shows that this overflow could be accommodated on-street within one block of the subject site. According to appellant's witness, other studies have shown that on-street parking utilization is at 100 percent.

18. The applicant has offered to provide angle parking for up to six cars partly in the street right-of-way on Fairview for public use if a street use permit can be obtained and the Engineering Department agrees to modification of the street improvement standards. That offer has the support of the Floating Homes Association. The Department of Construction and Land use has no objection to that plan.

19. The Director recommends that the application be conditionally granted upon the following condition:

1. Residential development of the site shall conform with the L-1 RC development standards of the Land Use Code. An exception shall be made to allow parking within the Fairview Avenue setback but no closer than 5 feet from the property line and screened with landscaping and a 3-foot tall solid fence or wall.

At hearing the intention of the Director was clarified that this condition apply to the CG-zoned half of the lot, as discussed in the analysis preceding the recommendation.

20. A description of the project which would result from the recommended condition was provided at hearing. The number of units would be reduced to 29 and parking to 39 spaces for a unit-to-space ratio of 1:1.34. The height, width and modulation would conform to the L-1 standards.

21. The chief differences between development under L-1 standards and the recommended condition are 1) that L-1 requires ground-related units where that is not required by the condition, and 2) L-1 requires private, landscaped open space where that is not required by the condition.

Conclusions

1. Council Conditional Use authorization is required for the western half of the site because it was zoned CG at the time of the application, Section 24.52.100, and the applicant has elected to proceed under the CG standards. Section 23.04.010(D). The applicant argues that it has a right to the laws (CG zoning) in force at the time of its MUP application, ergo, the City may not impose conditions restricting development to less than what RM 800 standards would allow. Section 24.52.100, the law applicable at the time of application, provides:

The following uses permitted when authorized by the Council in accordance with Chapter 24.72:

A. Dwelling units..., subject to the following additional conditions:

1. When nearby or associated uses and other conditions in the immediate environs are not of the type to create a nuisance or adversely affect the desirability of the area for living purposes,

2. When residential development will not usurp land which is needed for and better suited to commercial usage by virtue of special attributes such as railroad access and proximity of established commercial development,

3. When structural bulk incident to residential use will not adversely affect surrounding development; provided that in no event may RM 800 zone bulk regulations be exceeded;...

Chapter 24.72 which included provisions for Council conditional uses including reference to conditional use standards in Section 24.74.010 authorizing imposition of conditions for the protection of the public interest, has apparently been repealed and was not a part of the Land Use Code at the time of application. The following definition of "conditional use" was extant at that time:

"Use or structure, conditional" means uses permitted in this subtitle as principal or accessory uses when authorized by the Director, the Hearing Examiner on appeal, by the Council, and subject to specified conditions. (emphasis supplied).

The applicant, then, was entitled to a conditional use if the standards were met and subject to conditions for the protection of the public interest.

2. When the standards of Section 24.52.100 are applied it is concluded that the nearby uses are not of a type that make the area undesirable for living purposes. On the contrary, the area appears to be extremely desirable for residential use. This is borne out by the recent rezoning from CG to L-1. As to the second criterion, there is no evidence that the site is better suited to commercial usage or needed for commercial development. Again, the most recent zoning shows official recognition of that conclusion.

3. Finally, while RM 800 bulk standards would not be exceeded, the bulk proposed has been shown to be incompatible with the scale of existing development. City land use policy is to minimize appearance of bulk and promote compatibility of scale. See Multi-Family Land Use Policies and Neighborhood Commercial Land Use Policies. The condition recommended by the Director is a reasonable means to assure compatibility. Neighbors feel that it does not go far enough and that the development of the easterly half of the site should also be restricted. The only authority for restriction of that development is through SEPA and no further conditions were shown to be justified. The CG-zoned development cannot be reduced to less than that which would be permitted outright under the new zoning unless there is authority under SEPA or shorelines regulations. No additional conditions were shown to be appropriate under SEPA and the remaining standards of the L-1 RC classification do not relate to the scale of the building. Shorelines determinations are to be made later.

Recommendation

The Council Conditional Use should be approved subject to the condition that residential development of the CG-zoned (now L-1 RC) portion of the site conform to L-1 RC development standards of the Land Use Code, specifically height, width, depth and modulation. Parking may be allowed within the Fairview Avenue setback but no closer than 5 feet from the property line and screened with landscaping and a solid fence or wall at least 3 ft. tall.

Entered this 28th day of October, 1986.

M. Margaret Klockars
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Deputy Hearing Examiner

Notice of Right to Petition
For Further Consideration

Pursuant to Seattle Municipal Code Section 23.76.054, as amended, any person substantially affected by a recommendation of the Hearing Examiner may submit a petition in writing to the City Council requesting further consideration. The petition must be submitted within fifteen days after the date of mailing the recommendation of the Hearing Examiner and addressed to: City Council, Urban Redevelopment Committee, Municipal Building, Seattle, Washington 98104. The request for further consideration shall clearly identify specific objections to the Hearing Examiner's recommendation, facts missing from the record, and the relief sought.

Pursuant to Seattle Municipal Code Section 23.76.054(D), if there is no request for further consideration Council action shall be based on the record established by the Hearing Examiner.

The City Council Urban Redevelopment Committee should be consulted for further information on the Council review process.