

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

In the Matter of the Appeal of

JAMES C.Y. KOH

FILE NO. S-80-045

from a determination of the
Director, Dept. of Construction and Land Use

The decision of the Director is affirmed.

Introduction

James C.Y. Koh, appellant, appeals a condition imposed by the Director of the Dept. of Construction and Land Use (Director) on a use permit for property at 4223 - 12th Avenue N.E.

The appellant exercised his right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: James C.Y. Koh, represented by Lester J. Gillis and the Director, represented by Ross Radley, Assistant City Attorney.

This matter was heard before the Hearing Examiner on September 16, 1980.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance (86300, as amended).

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 appellant constructed a 24 unit building at 4223 - 12th Avenue N.E. One half of the basement was devoted to parking and the other half remained undeveloped for potential use as a Chinese restaurant. A total of 26 parking spaces was provided.

2. Because of various zoning and financial constraints, appellant determined that the restaurant use is infeasible and that residential use would be appropriate. He applied, in 1979, for a use permit for one dwelling unit with seven bedrooms for which he would provide one on-site parking space.

3. Appellant consulted with the University District Community Council which endorsed his proposed plan for use of the basement which plan included rental to students who do not own cars and provision of a bicycle rack. Some suggestions for revision of the layout of the unit were incorporated into revised plans appellant then filed.

4. A declaration of non-significance (DNS) for the proposed unit was filed conditioned upon a limitation to two bedrooms to mitigate otherwise significant adverse environmental impacts "associated with additional demand for new parking, in an area where on-street demand has been demonstrated to be consistently at or over capacity." No appeal of the DNS was filed.

5. On September 3, 1980, the Director published his intention to issue a use permit for the unit limited to two bedrooms.

6. Appellant filed his appeal.

7. The Zoning Ordinance requires a minimum of one off-street parking space per dwelling unit, so a minimum of one space would be required for the proposed unit. Section 23.3.

8. A Study of Parking Characteristics in the University District was conducted by the Engineering Department, at the Building Department's request, in the southwest portion of the University District and reported in 1979. The

study concluded that in this area the demand for parking varies directly with the number of bedrooms and recommended that 1.25 - 1.50 spaces per studio unit, 1.50 - 1.75 spaces per one bedroom unit and 2.5 spaces per two bedroom unit be required.

9. The DNS estimated that demand for 8 - 10 parking spaces would be generated by a seven bedroom dwelling unit.

10. Appellant has committed one of the 26 parking spaces on the subject property to satisfy the parking requirement for an adjacent property he owns. One parking space is available for the proposed unit.

11. On-street parking is "at or over capacity" in the area, according to the DNS. No evidence to the contrary was offered.

12. Appellant charges rent separately for the on-site parking spaces. Some are rented to non-residents.

13. The proposed lease provision limiting rental of the bedrooms to only those who do not "own a car in the neighborhood" is a private agreement between the parties to the lease which the City cannot enforce.

14. Appellant can rent a two bedroom unit to up to 8 unrelated students, the same number that could occupy a seven bedroom unit.

15. There is a shortage of dormitory housing at the University of Washington.

Conclusions

1. Section 19, Ordinance 105735, as amended, authorized the Director to reasonably condition a proposal to mitigate adverse environmental impacts. The existence of the potential impact was not challenged through an appeal of the conditional DNS and the record in the instant appeal supports the finding of adverse environmental impact.

2. Section 3 of Ordinance 107678, which establishes policies for conditioning or denying permits under SEPA, relates specifically to parking and traffic impacts and requires the Director to examine the additional need for parking and the availability of on-street parking. As a part of the review of a permit application, he is then authorized by that section to require measures to mitigate adverse impact from parking.

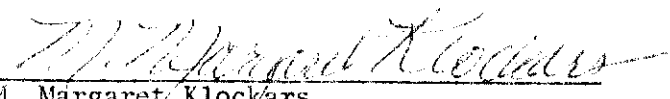
3. The Director's determination is to be regarded as prima facie correct, according to Section 25.44, and the burden of proving the contrary is on the appellant.

4. Appellant failed to show that his proposed measures to lessen the impact of his new unit, a bicycle rack and the lease provision, would be effective. Further, the fact that he could rent a two bedroom unit to the same number of people as a seven bedroom unit under the Zoning Ordinance, does not overcome the evidence that the demand for parking in this part of the University District is directly related to the number of bedrooms. The possibility of renting to the same number of people does support the reasonableness of the condition limiting the number of bedrooms, since the owner's ability to enjoy a reasonable economic return would not necessarily be impaired by the condition. Since the burden of proof is on the appellant, according to Section 25.44, and the appellant has not shown error in the determination, the decision must be affirmed.

Decision

The decision of the Director of the Department of Consturction and Land Use is affirmed.

Entered this 5th day of October 1980.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal

Pursuant to Section 20A of the SEPA Ordinance (105735, as amended), a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth (15th) day after the date the decision appealed from is filed with the SEPA Public Information Center. The appeal must be filed with the City Clerk. Rules have been adopted by the City Council governing the appeal procedure and should be reviewed prior to filing an appeal.

The City Council will only review issues relating to compliance with Section 19, Ordinance 105735, as amended. Section 19 relates to substantive authority to condition or deny a proposal on environmental grounds.