

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

In the Matter of the Appeal of

BESSIE B. BROLIN

FILE NO. MUP-83-081 (W)  
APPLICATION NO. 83-452

from a decision of the Director of  
the Department of Construction and  
Land Use on a master use permit  
application

Introduction

An owner of property adjacent to the proposed 1616 Summit Avenue development site appealed the Department of Construction and Land Use (DCLU) Director's declaration of non-significance and the Director's approval for proposed design departure.

The appellant exercised her right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on January 6, 1984.

Parties to the proceedings were: appellant by attorney Samuel M. Jacob; CHG International, project applicant, by Randy Potter; and the DCLU Director by Leslie Durkee.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

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

Findings of Fact

1. The basic facts are not in dispute. CHG International proposes to construct a 50 unit apartment building at the south-east corner of the Olive Street-Summit Avenue intersection. CHG plans for 32 two-bedroom, 16 one-bedroom and two studio units.

2. The site of the proposed construction, addressed 1616 Summit Avenue, is in present use as a surface commercial parking lot of approximately 85 spaces. The site, approximately 100 ft. deep, is also used as sole access to the rear yard of the south adjacent single family dwelling at 1606 Summit Avenue, owned by appellant.

3. The proposed construction site is in a midrise (MR) zone that is primarily developed with three or four story apartment buildings. The southern lot line of the subject site divides the MR and neighboring General Commercial (CG) zone. Uses south of the site include retail, commercial, light industrial and some residential uses. The subject vicinity is well served by public transportation.

4. CHG proposes to construct two four story buildings on the subject site that will be connected by glass enclosed second and third story skybridges. Building exterior would be alternating wood frame and stucco. Building height would approximate 42 ft., 18 ft. below the 60 ft. MR building height maximum. The fourth story of the building would be set back from the eastern edge of the site, such that, according to applicant, westward views of east abutting properties and solar availability will be less impacted.

5. Principal pedestrian entry would be via a Summit Avenue oriented central plaza. The proposed 52 space garage, designed to serve as the base structure, would be accessible from north abutting Olive Street. The garage would project above ground. DCLU noted that proposed construction met all code setback requirements.

6. After a review of the application, submittals and related materials the DCLU Director issued a declaration of nonsignificance (DNS), determining thereby that no environmental impact statement was required. The Director also granted requested design departures for (a) structure depth (b) facade modulations and (c) above ground projections of the garage. DCLU imposed landscaping and construction hour limits on approval of the DNS. The design departure was also granted on several conditions, including "variation in texture or pattern...along the base structure" and along the walls of the structure; and installed and maintained landscaping. The owner of the south adjacent property submitted this appeal.

7. It is undisputed that proposed construction will eliminate the current on-site parking. The disagreement concerns the parking and traffic impact of the proposed construction.

8. Prior to issuing the DNS, DCLU annotated the environmental checklist submitted by applicant. The conclusion was that the soil disruption, air quality deterioration and other temporary construction impacts would not be significant; nor would long term impacts, such as increased noise and light spillover, given the existing environment of intense development-related high noise, traffic and parking demand.

9. The final checklist noted increased vehicular movement and parking demand. Appended was a parking lot study by Stepan and Associates, Inc., conducted over the period December 9-15, 1982, "with a...minimum of two visits per day". The peak recorded use of 23 vehicles was calculated at 27 percent capacity, 9:18 a.m., Thursday December 9. The study concluded that the several other privately owned parking lots within 500 ft. of the site (generally operating at 50 percent capacity), coupled with the "readily available" evening and weekend on-street parking meant that "excess capacity still far exceeds demand", notwithstanding conversion of the subject site to a use more intense than a parking lot.

10. Based on her observations, appellant testified that vicinity drivers often circle looking for parking spaces; that some bumper to bumper parking existed south; and that the lot, previously in scarce use (\$1.00 per hour), is now 75 percent occupied (\$1.25 all day) each day.

11. In addition to the DNS, appellant also protested potential construction of "some element of the proposed structure" within approximately 5 ft. of the subject property's south property line. Upon public hearing request from appellant, proponent agreed on the record that no mechanical device would be constructed along the building's south side, the formerly proposed site for a garage-level vent.

12. Appellant then withdrew the garage projection appeal element from appeal consideration, since the projection would principally face Summit Avenue (west) anyway.

13. A maximum 65 percent building depth is allowed in the MR zone. Section 23.45.52.B. For this proposal the same would equal 65 ft. since the lot is 100 ft. deep. Applicant, however, proposes a depth of 67 ft. as an alternative to increasing project height. Proposed building width is 109 ft., 41 ft. less than the Code maximum for buildings with modulated front facades.

Section 23.45.52.A.2. When the front of a building is not modulated per the standards of 23.45.54.C or D the maximum structure width is 40 ft. Section 23.45.52.A.1.

14. For facade modulation privileges, the minimum depth is 8 ft. and the width 10 ft. Section 23.45.54.C. When balconies with a minimum depth of 6 ft. and a minimum area of 60 sq. ft. are part of the modulation a 6 ft. modulation depth minimum is allowed. Section 23.45.54.C.1.

15. No party contested the DCLU finding hereby adopted that the planned second, third and fourth story facades are modulated per development standards. Modulations on the north and south facades of the two buildings, however, are 7 ft. deep and 10 ft. wide; the decks are 52.5 sq. ft. in area. Design departure relief was accordingly requested.

### Conclusions

1. The Hearing Examiner has jurisdiction of these proceedings pursuant to Chapter 23.76, Seattle Municipal Code. Pursuant to Chapter 23.76, the Director's Master Use permit decisions

shall be given substantial weight, except that, for any decision which includes determinations on a variance, conditional use or special exception, that part of the Director's decision shall be given no deference.

Section 23.76.36.B.7. Accordingly, the Director's environmental and design departure decisions here at issue shall be given substantial weight. Cf. Sections 23.76.30; 23.76.36.B.

2. Appellant's challenge was insufficient to overcome the weight accorded the Director's decision. Considered against appellant's general traffic and parking opinion are the results of a parking study (December 9 through December 15) which showed peak use at 23 of the 85 spaces. Other public parking lots are within 500 ft. of the subject site. The area is well served by public transportation. Increased vehicular movement and demand were adequately acknowledged in the "final" checklist. Similarly, the temporary and long term (use) impacts were acknowledged. Therefore, the Director's issuance of the DNS was not proved to be "clear error". Brown v. Tacoma, 30 Wn.App. 762 (1981). An environmental impact statement is not required unless 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). Such is not the case here.

3. The remaining issues concern design departure. In multi-family zones design departure may be allowed in order to, inter alia, "improve solar access"; "minimize view obstruction"; "to use techniques other than modulation to reduce the appearance of bulk"; or to "preserve a desirable existing architectural and siting pattern". Section 23.40.10.A. Section 23.40.10.B provides that design departure may be sought from "the following development standards in multi-family zones: 2. maximum structure depth. 4. modulation". The Director may condition design departure approval on the alteration of other elements of the project. Section 23.40.10.F.

4. Appellant urges that since the proposed (south and north side) modulations are smaller than the Code specifies, and since applicant is not proposing to decrease the building width, the design departure request should be denied, particularly as it relates to allowing the building to extend closer to appellant's property.

5. CHG is proposing a lot depth of 67 ft., slightly more than the 65 percent allowed for a mid-rise structure. Section 23.45.52.B. Structure depth may exceed 65 percent subject to conditions specified in Section 23.45.52.B.2. Those conditions include

- a. The total lot coverage shall not be greater than that which would have been possible by meeting standard development requirements for maximum width, depth and setbacks.
- d. Structures with depth greater than sixty-five percent of lot depth shall be modulated along the side setback, according to the standards of subsection 23.45.54.C.

6. Subsection 23.45.54.C essentially provides that a modulation shall at minimum be 8 ft. deep and 10 ft. wide, unless balconies of at least 60 sq. ft. in area are part of the modulation, in which case the minimum modulation depth is 6 ft. CHG is proposing modulations only 7 ft. deep, without any offsetting 60 sq. ft. area balcony.

7. However, the provisions of Chapter 23.45 are clearly subject to the design departure relief of Section 23.40.10. Specific to this case Section 23.40.10 states that relief from maximum structure width, depth and modulation may be sought. Thus, if the criteria are met, the minimum 8 ft. by 10 ft. modulation and maximum 65 percent depth development standards may be modified pursuant to Section 23.40.10.

8. The record sufficiently shows that the proposed design solution meets several criteria for design departures although only one such criterion need be met. It is apparent that the developer could achieve more square footage by construction of a six story building, sans modulation, as opposed to a four story building as proposed. The shorter building will, however, improve solar access between buildings and beyond; minimize westward view obstruction; and assist in preserving the existing vicinity pattern of primarily four story apartment buildings. In addition, design specifications will include frame siding and other features to reduce the appearance of bulk. The DCLU Director's design departure approval was in accord with the spirit and letter of the Code and is accordingly affirmed.

9. As resolution of the issues relating to the garage projection and proposed construction of a (ventilation) structure along the south side of the building has been noted on the record, they are no longer proper subjects for Hearing Examiner consideration.

#### Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 19th day of January, 1984.

  
Leroy McCullough  
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App 418 (1977); JCR 73 (1981). Should such request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.

Any decision of the Hearing Examiner which reviews compliance with Section 25.04.190, Substantive Authority to Condition or Deny, is subject to appeal to the City Council pursuant to Section 25.04.210.