

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

EASTLAKE COMMUNITY COUNCIL

FILE NO. MUP-84-029(W)
APPLICATION NO. 8400100

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

Introduction

Appellant, Eastlake Community Council, appeals the failure of the Director, Department of Construction and Land Use, to further condition the master use permit for a proposal at 2216 Minor Avenue East to mitigate certain adverse environmental impacts.

The appellant exercised its 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 May 3, 1984.

Parties to the proceedings were: appellant represented by Daniel Reiss, President; the Director represented by Amy Luersen, land use specialist; and the applicant, Joseph L. Brotherton.

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 applicant applied for a master use permit to demolish two single family residences and construct a twelve unit apartment building at 2216 Minor Avenue East. The Director issued a declaration of non-significance (DNS) and conditioned the permit. Appellant filed an appeal challenging the decision for failure to include conditions to mitigate certain adverse environmental impacts.
2. The site of the proposal is a 60 by 110 ft. parcel fronting on Minor Avenue East and abutting upon an alley.
3. The property is in a Lowrise 3 zone. Across Minor, to the west, the zoning is Lowrise 1. Behind the subject property to the east, across the alley, the Lowrise 3 zone continues.
4. The other properties on the block face are all multi-family developed under the former RM 800 zoning and are three or four stories high. To the east, across the alley, are four single family residences and five apartment buildings.
5. The proposed structure would be 37 ft. 4 in. high which would appear to be a story higher than the others on

the block because it would not be recessed into the hillside as the others are.

6. Residences to the east of the subject property have views of Lake Union over the existing houses. The proposed structure would obstruct some of those views.

7. There is no evidence in the record that any view from a designated scenic viewpoint or route would be affected.

8. Parking demand is very heavy in the area. Appellant's witness suggested the demand comes from workers in the area's businesses and commuters who drive to the area to park and then take a bus as well as residents and guests.

9. When vehicles are parked on both sides of Yale Avenue East which is the street east of Minor, there is room for only one lane of travel. Because of this many area travelers use the alley behind the subject property to reach East Lynn Street two blocks away.

10. The subject property is approximately 200 ft. from the end of the alley. Therefore, traffic generated by the apartment building would not traverse the entire length of the alley.

11. Parking is permitted only on the west side of Minor Avenue East.

12. Several studies of the Eastlake community's parking situation and needs have been done. Exhibit 12 from the 1978 study of neighborhood capacity for traffic, of waste water and of land use by the University of Washington Associates shows heavy usage and an estimated car ownership of 1.26 cars per unit. Appellant's witness testified that the streets are virtually full. This testimony was not controverted.

13. The proposed apartments would be small, one bedroom units of less than 700 sq. ft. area and would be priced accordingly. Because of their size the applicant expects that most would be purchased by single persons.

14. The development would include twelve off-street parking spaces, four off the alley and eight accessible via a driveway from the alley. Tenants' and owners' second cars and guest cars would have to compete for on-street parking.

15. The garbage dumpster would be located so as not to interfere with use of the parking spaces.

16. The Director imposed a condition requiring that bus passes and transit schedules be provided each tenant for three months.

17. The area has a combined sewer system which overflows into Lake Union when overloaded. The environmental checklist states, under "Utilities", that "existing systems should be adequate."

18. A retention basin is required to be provided on the property to reduce the rate of runoff from the property.

19. The development would result in additional load on the combined system from the sewage produced by the additional ten units.

20. The Goals and Policies of the Eastlake Community Council were considered by the Director in the decision on this application. It was determined by the Director that Housing and Zoning Policies 1 and 2 were implemented with the adoption of the new

code and mix of various zoning designations for the area. Since the proposed project is consistent with the designation chosen for this part of Eastlake (L-3) it is not in conflict with those Goals and Policies.

21. There is no space on the site to add parking spaces.

Conclusions

1. The Director has the authority pursuant to Section 25.04.190 to reasonably condition any proposal to mitigate or prevent adverse environmental impacts which have been identified in the environmental documents based on policies adopted pursuant to SEPA.

2. The Hearing Examiner must give substantial weight to the decision by the Director. Section 23.76.36.B.7.

3. While appellant was not specific about conditions it desired, it would appear that they are reduction in height by reducing the number of units or recessing the structure into the slope, reducing the number of units to reduce the demand for on-street parking, traffic generated and addition to the sewer system, and, in the alternative, requiring more parking spaces.

4. Though the record shows that a residence or residences to the east are likely to lose some or all of their views, the City has not adopted a policy to preserve private views so no condition may be imposed for that purpose.

5. There is authority to modify the project to lessen the impact on the sewer system in that Section 25.04.510 recognizes that a single development may create an adverse effect on facilities when aggregated with the impacts of prior development. The Hearing Examiner cannot find that the Director erred in not imposing such a condition for two reasons. First, though the environmental checklist says that, as to "sewer or septic tanks" the proposal will result in a need for new systems or alterations, it also indicates that the existing systems should be adequate and does not disclose any impact on the sewer system in the DNS. Secondly, appellant did not provide any quantitative evidence of the impact to allow consideration of the reasonableness of limiting the number of units in relationship to the amount or degree of impact on the sewer system. Without evidence that the condition is reasonable, it cannot be imposed.

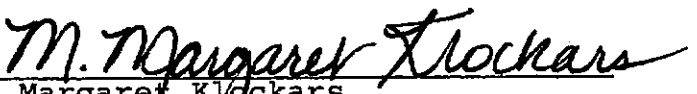
6. As to parking, the Director determined that he had no authority to increase the number of spaces required as a condition to mitigate the impact because the project does not have more than 20 units bringing into play Section 23.54.20.D, Parking Quantity Exceptions. Whether that code provision supercedes Section 25.04.520, the environmental policy for parking and traffic, as the Director apparently believes, need not be determinative, however. Even if the Director has the authority, the condition must be a reasonable condition. Given the size of the units and, therefore, the small likelihood of owners having second cars, and the impossibility of providing more on-site parking, a condition requiring a reduction in the number of units would not appear to be reasonable. It is appellant's burden to show that a requested condition is reasonable. The showing that other projects have provided parking at a higher ratio, alone, does not satisfy that burden.

7. Appellant has not shown that the desired conditions would be based on policies adopted pursuant to SEPA or, in some instances, the requested condition is reasonable. Therefore, the Director's decision must be affirmed.

Decision

The decision of the Director is Affirmed.

Entered this 17th day of May, 1984.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal

Pursuant to Section 25.04.210, Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the 14th 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 on the 1st floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure.