

Office of the Comptroller
City of Seattle

Tim Hill, Comptroller

January 15, 1985

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OFFICE OF HEARING EXAMINER

Mr. William J. Justen, Director
Dept. of Construction & Land Use
City of Seattle

Dear Sir:

The City Council at its meeting on January 14, 1985, adopted the recommendation of its Land Use Committee on Comptroller's File No. 293586, entitled:

SEPA Appeal of Walter Johnson and Rita C. Zurcher
from the decision of the Hearing Examiner to affirm
the decision of the Director of the Department of
Construction & Land Use on a Master Use Permit
Application for property at 4542 Meridian Avenue
North, as modified in the Examiner's Report.

The Committee recommendation is as follows:

The petition be denied.

Sincerely,

Tim Hill
Comptroller & City Clerk

By:

Virginia Miller
Assistant City Clerk

VM:dm

cc: Parties of Record

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

In the Matter of the Appeals of

WALTER JOHNSON AND
RITA C. ZURCHER

FILE NOS. MUP-84-065(W) and
MUP-84-063(W)

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

Introduction

Appellants submitted separate appeals from a declaration of non-significance issued by the Department of Construction and Land Use concerning proposed construction of two multi-family buildings at the address of 4542 Meridian Avenue N.

The appellants exercised the 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 September 7, 1984.

Parties to the proceedings were: Walter Johnson, pro se; project applicant Donn Etherington, pro se; and the DCLU Director by Jim Barnes. No representative appeared on behalf of appellant Zurcher.

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. Project applicant proposes to demolish two single family structures and establish on-site two multi-family buildings. The 21 new condominium units are to be no more than 470 sq. ft. in living area and either one bedroom or studio type units. Project applicant proposes 22 parking spaces, ten of which would abut an east bordering fence. Appellant Johnson's residence is located approximately 4-5 ft. from that fence which marks the common property line. The remaining 11 spaces are proposed to be located under the building. Vehicular access will be to N. 46th Street where a curb cut already exists. The proposal address is 4542 Meridian Avenue N.

2. The subject property is located at the southeast corner of Meridian Avenue North and North 46th Street. After rising approximately 4 ft. above street grade the 1,970 sq. ft. lot is generally level.

3. The project site is in an area of mixed zoning. While the subject site is under the multi-family designation of Lowrise 2 (L-2), its east adjacent half-block is zoned Single Family 5000. Single family zoning and development are also north, across North 46th Street, where the Home of the Good Shepherd activity center is located. South parallel to North 46th is North 45th Street and its strip of Community Business (BC) zoning that extends north to within approximately one lot of the subject site.

4. Most of the homes in the area are of the circa 1914 era. Consequently, one witness estimates, approximately 50% of the homes are without garages.

5. The average weekday traffic for Meridian Avenue is approximately 3,400 vehicles. North 46th traffic is less. North 46th also is narrower and allows parking along both sides, effectively leaving one lane of through traffic on many occasions.

6. Some photographs of record show available on-street parking in the immediate vicinity of the subject site. However, as DCLU acknowledges, "on-street parking bordering the subject site is used to capacity (i.e. is more than 85% occupied) at peak evening periods."

7. There is bus service along Meridian Avenue North and along North 45th Street to downtown Seattle and to the University District, respectively.

8. DCLU issued a declaration of non-significance (DNS) for the subject project, contingent on several conditions. One is that applicant provide 10 bicycle spaces. Another is that applicant provide bus passes and schedules to each purchaser of the condominium units for a period of three months. The third condition is that all of the development's exterior lighting be shielded and directed down. The fourth condition relates to the east margin and to landscaping and is repeated in full below:

A 6 ft. high solid wood fence shall be installed along the east margin of the parking area to shield the adjacent residences from noise and parking and light and glare. Additional landscaping shall be provided on this margin. Revised landscape plans shall be reviewed and approved by DCLU Land Use Division prior to issuance of the Master Use Permit. The plans shall include retention of the existing cedar tree.

9. Two appeals followed. The appeal letter of Rita C. Zurcher, MUP-063(W), complained of traffic congestion, parking and incompatibility of the proposed development. Walter Johnson's appeal letter, MUP-065(W), stated concerns with traffic, vicinity parking, and the specific on-site parking plan which would direct ten of the 21 parking spaces toward the Johnson residence. Appellant Johnson also responded to a hearing inquiry with yes, an environmental impact statement should be required. No one appeared at the hearing to pursue the Zurcher appeal. Nevertheless, testimony was offered by the Johnson appeal witnesses that the proposed development was incompatible.

10. DCLU annotations to the environmental checklist acknowledged that the proposed development would be out of scale with east adjacent single family development and zoning.

11. As to noise the checklist annotation acknowledged a temporary increase due to construction noise and the more general increase associated with habitation of the 21 units. The specific DCLU annotation noted that "the location of open parking within 4 ft. of the adjacent house to the east can be partially mitigated by installation of a sound absorbing fence along the east margin."

12. Regarding traffic and circulation appellant Johnson and supporting witnesses were of the opinion that the 21 proposed units would effectively mean 42 additional cars in an area already suffering from extreme parking and traffic congestion. One witness projected that along with the young, middle-class tenants, the neighborhood could also expect boats and other recreational type vehicles. Opponents submitted no supporting survey or similar material on the expected traffic and circulation pattern.

13. The portion of North 45th near the subject site offers a dime store, restaurants, two movies, two beer parlors and other businesses. Special attention was directed to the truck delivery traffic and to traffic from evening movie patrons. The Examiner finds as testified by one opponent that from 6:00 p.m. to 1:00 a.m. on-street parking in the subject vicinity is so extremely limited that residents are effectively "parked in" and are subject to blocked driveways. Also, the project applicant surmises that the major share of the neighborhood parking and congestion problem is created by the theater traffic.

14. Wallingford Avenue North is two blocks west of Meridian; Corliss Avenue North two blocks east. The Seattle Engineering Department is studying the feasibility of a residential parking zone (RPZ) which would be inclusive of the area between Corliss and Wallingford Avenues and south of N. 47th and N. 46th street. The project applicant's site lies roughly midway between the eastern and westerly bounds of the contemplated RPZ.

15. Transportation/circulation was the subject of extensive annotations to the environmental checklist by the DCLU witness-analyst. The notes show for example, that according to a Seattle Engineering Department survey of Queen Anne, University District and First Hill, the average visitor parking rate for one bedroom units was .45 per unit on weekdays and .95 per unit on weekends. The notes further show that a specific Capitol Hill study resulted in a .29 rate "per unit/day for one-bedroom units". The DCLU decision and annotation apply at a .40 visitor factor to arrive at the conclusion that for the 21 proposed units there will be an increased parking demand of "8 or 9 spaces."

16. The DCLU report further considered the "ITE Technical Committee Report 6A" average number of trips generated per day for lowrise apartments (5.4). The figure was not challenged by opponents. Applying that factor to the 21 proposed units, an additional 113 trips per day will be generated by the completed project. Approximately ten percent of the 113 trips per day, or 11 trips, will be added to the existing evening peak hour condition. It was not shown that these figures were in error, nor that the existing environment was unable to accommodate the increased vehicular activity.

Conclusions

1. The Director's environmental determination is to be accorded substantial weight, Section 23.76.36(B)(7), and the burden of proving a contrary position is that of the appellant. Further, a negative threshold determination, i.e., a DNS, will be upheld upon review unless it is proved to be clearly erroneous. Brown v. Tacoma, 30 Wn App. 762 (1981). As to environmental impact statements, unless more than a moderate effect on the quality of the environment is a reasonable probability no environmental impact statement (EIS) is required. Norway Hill Preservation and Protection Association v. King County Council, 87 Wn 2nd 267 (1976).

2. In light of the burden of proof requirement and the fact that no prosecution of the Zurcher appeal was of record that appeal, MUP-84-063, is dismissed. However, since the issues raised in the Johnson appeal, MUP-84-065, reflect the bulk of the Zurcher concerns, the succeeding comments should be considered in evaluating both appeals.

3. Appellants have alleged that the subject proposal will result in increased traffic, parking, noise and incompatibility of development. However, the presentations have not overcome the substantial weight that the ordinance provisions give the DCLU decision.

4. It is undisputed that the subject vicinity already experiences severe traffic congestion during certain periods due in no small measure to the parking habits of theater patrons. Appellant Johnson and supporting witnesses offered generally that the proposed 21 units would effectively mean 42 additional cars and possibly recreational vehicles for the subject vicinity. On the other hand, the Department of Construction and Land Use utilized studies which indicate a specific range of expected visitors per one bedroom unit. The DCLU decision also included projections of the number of trips to added daily to the existing environment. Appellants offered no evidence which called the DCLU computations into question or which would have required the Examiner to re-evaluate same.

5. In Brown v. Tacoma, supra, the Court recognized that although a 34 unit condominium would have some impact on nearby single family zoned properties, the impacts were not shown to be any more than "moderate". The present case is similar. Although near single family zoning and development, the subject site is in fact zoned for multi-family use and is proposed for multi-family development. The record fails to reflect that impacts are expected to any greater degree than projected by DCLU or that the impacts will be of more than a moderate degree. Therefore, the requisite "clear error" was not shown. No EIS is required. The Examiner would also note that although compatibility is not technically at issue since the Zurcher appeal is dismissed, the checklist did acknowledge the inconsistency between the single family development and the proposed multi-family development.

6. Section 25.04.190 gives the DCLU Director the authority to deny or reasonably condition "any proposal so as to mitigate or prevent adverse impacts". Although the DCLU decision acknowledged occasions of extremely limited parking in the area the Director did not require project applicant to add any more than the 22 on-site parking spaces presently proposed for the 21 units. The decision was not shown to be clearly erroneous. The Seattle City Council indicated in In Re Elmer, MUP-83-077, C.F. 293040, that "DCLU was to be prohibited from using SEPA policies to require more than one parking space per dwelling unit

for projects with 20 or fewer dwelling units.", reference Section 23.54.18. If 40% or more of the units exceed 1200 sq. ft. of living area, up to 1.25 spaces per unit may be required. None of the units proposed are in excess of 470 sq. ft. Thus, the Director could not have required the project applicant to add more parking spaces. Elmer specifically allowed the Director to consider bicycle parking and transit passes as subjects not specifically within the scope of Section 23.54.18. The parameters of Elmer were observed in this case by the Director when he imposed a condition of 10 bicycle parking spaces and the requirement for three month transit passes for the condominium purchasers.

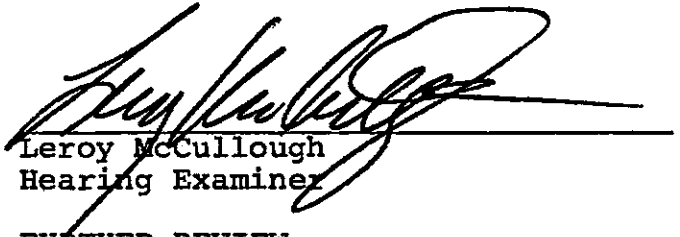
7. Concerning the east property line fence the DCLU analyst observed that the surface parking within 4 ft. of the Johnson house to the east could be responsible for certain noise, but noted that that noise could be partially mitigated by installation of a sound absorbing fence. Particularly due to the proximity of the Johnson home to the project applicant's east lot line, this DCLU condition should be amplified to specifically state that:

the fencing and landscape plan be reviewed and approved specifically for mitigation of noise and light impacts by persons or agencies recognized by DCLU as having expertise in the respective areas.

Decision

The decision of the DCLU director is Affirmed as modified herein.

Entered this 20th day of September, 1984.


Leroy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW

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 fourteenth day after the date the decision appealed from is filed with the SEPA Public Information Center. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.04.210. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure.

If an appeal is taken pursuant to Section 25.04.210, the time for judicial review of the underlying governmental action and/or other SEPA issues is stayed until the City Council renders a final decision on this Section 25.04.190 appeal.

If no appeal is taken pursuant to Section 25.04.210, the decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review of the decision on the underlying governmental action must be filed in King County Superior Court within fourteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.36(B)(11); Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73. Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075 (6)(c). SEPA issues may be added to the request for review within 30 days after the date of this decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 400 Seattle Municipal Building, Seattle, Washington, 98104, within fourteen days of the date of this decision. WAC 197-11-680 (4)(d).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost for preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104. As an alternative to the written transcript, RCW 43.21C.075(6)(b) provides that a tape may be used for court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review.