

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ROBERT B. PAULSON AND CYNTHIA T. BARNETTE

FILE NO. MUP-85-056(W)  
APPLICATION NO. 8503061

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

#### Introduction

Appellants appeal the decision by the Director, Department of Construction and Land Use (DCLU), to issue a determination of non-significance for and conditionally approve a proposal to demolish a two unit apartment building and establish use for the future construction of a three story, 16 unit apartment building with surface parking at 1312 6th Avenue North in Seattle.

The appellants exercised their 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 24, 1985, and the record was left open for submission of further evidence to October 2, 1985.

Parties to the proceedings were: appellants pro se; the DCLU Director represented by Clay Leming, land use specialist; and the applicant, pro se.

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. An application for a master use permit was filed for a proposal to demolish a two unit apartment building and establish use for the future construction of a three story, 16 unit apartment building with surface parking at 1312 6th Avenue North in Seattle. The Director issued a determination of nonsignificance (DNS) pursuant to SEPA and approved the proposal subject to conditions limiting the use of loud equipment during normal working hours on weekdays, required landscaping and shielding of lighting.

2. The subject site is a 60 ft. by 100 ft. parcel and located on the east side of 6th Avenue North, 60 ft. south of its intersection with Lee Street, in the Queen Anne neighborhood. Properties in this vicinity are Lowrise 3 (L-3) zoned and developed with a mixture of single family residences, duplexes and apartments.

3. The applicant proposes to demolish the existing duplex and establish use for the future construction of a three story, 16 unit apartment building with 16 off-street parking spaces. A demolition license (HPO 85-100) has been applied for in compliance with the Housing Preservation Ordinance.

4. Due to the unavailability for public review of the plans for several days, the comment period was extended by the Director beyond the June 28, 1985, initial comment period. Subsequently, two petitions and one letter in opposition to the project were received.

5. Issues raised by appellants concerned increased traffic and unavailability of on-street parking, availability of public water, fire protection, increase of crime, solar access and view blockage, general aesthetics and stable soil conditions.

6. A substantial increase in noise levels and a decrease in air quality during demolition, site preparation and construction is anticipated. These impacts are temporary in nature and limiting the hours of construction will lessen the impact. A slight increase in ambient and nuisance noise levels over the long-term can also be anticipated due to increased human activity on the site and additional vehicular movement, however, these impacts are not substantial.

7. There will be a slight increase in population in the area due to the addition of 16 studio units, but no significant adverse impacts are identified. Transit ridership levels will also slightly increase.

8. The amount of flora will be reduced due to vegetation removal associated with site preparation. Landscaping as submitted with plans for this project requires the addition of substantial planter boxes near the top of the fence on the north property line. The addition of view obscuring fences on the other margins of the site will minimize aesthetic impacts.

9. The proposed project would increase lighting levels, due to normal building lighting and the lighting of the parking area. However, conditions imposed to reduce and shield lighting downward and away from adjoining residentially developed property will reduce adverse impacts.

10. Adequate water pressure is a problem on portions of Queen Anne, however, the Water Department indicates that this proposed project would not adversely affect water pressure and that it would not be necessary for water tanks or pumps to be installed on the subject site.

11. Off-street parking is proposed at the ratio of one space per unit for the 16 studio units.

12. There are several apartment buildings that are similar in scale to the proposed project near the subject site. Although there are many single family residences and lower density, multifamily projects in the vicinity, a three story structure is not substantially out of relation to surrounding developments.

13. Increased erosion potential during construction and increased impervious surfaces will increase the rate and amount of storm water runoff. Compliance with the Grading and Drainage Ordinance will minimize erosion and control the rate of storm water runoff.

14. Concerns were raised as to the ground soil stability of the site. The site is not designated as environmentally sensitive by the City, and no known slide has occurred on the site. However, there was a slide in connection with the structure located at 620 Comstock Street which is on the same block as this proposed development. Further, to the north of the subject site, across Lee Street, is a large designated area of environmental sensitivity, due to potential and known slides. Significant slide activity has occurred in the steeper areas north of Lee Street, east and west of Aurora Avenue North. The majority of these problems appear to be involved with the initial widening of Aurora Avenue North or fill placement on private property.

15. A soils engineer's report concerning the subject site concludes that there is no reason why the potential presence of groundwater should be a deterrent to the proposed development. If groundwater is found at the project it can be dealt with in an appropriate

manner prior to completion of the project. The soils engineer will conduct a geotechnical investigation to ascertain the character of the soils on the subject property and will furnish a report containing recommendations for temporary and permanent groundwater control, as well as for foundations and any other requirement.

16. While some evidence exists indicating minor soils problems and groundwater seepage, no evidence exists to support a finding that this project will adversely affect the stability of the ground soil.

17. A survey of available on-street parking was submitted by the applicant. The survey indicates substantial availability of on-street parking within the immediate area of the subject property.

18. No evidence was presented pertaining to an increase in crime or inadequate fire protection due to the proposal in the immediate vicinity.

19. The proposed height of the building will be 37 ft. with 10 ft. of additional stair tower to the roof. Views from public places and designated scenic routes will not be impacted. The single family residence immediately to the north of the subject site will have some view blockage and loss of sunlight due to the project.

### Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.76, Seattle Municipal Code. Seattle Municipal Code Section 23.76.36(B)(7) requires that substantial weight be accorded the Director's environmental determination. Appellants' burden, therefore, is to show that the Director's decision to issue the DNS to be clearly erroneous. The burden of proof was not met in this case and the Director's decision is affirmed.

2. Section 23.45.46 of the Seattle Municipal Code requires one off street parking space per dwelling unit be provided. Section 23.54.20(D) of the Seattle Municipal Code allows an exception giving the Director discretion to allow up to 1.25 parking spaces per unit if the apartment structure contains more than 20 units. Since there are only 16 units for this structure, the exception for increased off-street parking is inapplicable.

3. In In re Elmer, C.F. No. 293040, MUP-83-077, the Seattle City Council stated that:

The legislative history of the multi-family policies and implementing land use code provisions indicate that DCLU's discretion to require additional off-street parking in multi-family zones was intended to be limited by Seattle Municipal Code Section 23.54.18...

4. As stated in the Council decision of In re appeal of Oden Investment and Kinnear Park Condominium Association, File Nos. MUP-84-057(W), MUP-84-058(W), C.F. No. 293557, Elmer resolved that

...in the case of parking there was clear legislative history showing that parking in multi-family areas was to be governed by these specific provisions in the multi-family code.

Therefore, it was not clearly erroneous for the Director to approve the parking one to one ratio.

5. As to traffic, the evidence fails to show that any significant increase in traffic problems will be attributable to the project.

6. The L-3 zoning accommodates the proposed development. The City Council's Oden decision states that

...in order to justify a reduction in height below the zoned maximum, it must be shown either that the project presents unusual circumstances which would not have been contemplated as part of the rezoning of the area or that the project is on the edge of a zone where the problems of transition are not fully accommodated by the zoning...

7. As to scale, Oden states that it is inappropriate to require a reduction "merely because the surrounding buildings are developed to a lower height...." No evidence was presented justifying a reduction in height or scale for this project.

8. No adverse impacts have been identified concerning fire protection or crime.

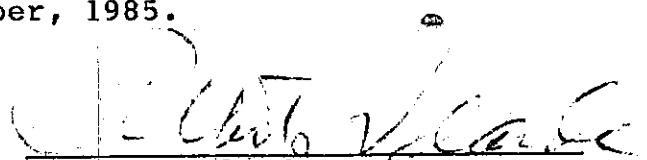
9. This project will not adversely affect existing water pressure in the vicinity. Impacts pertaining to noise levels and a decrease in air quality are temporary in nature and will be adequately minimized by the conditions pertaining to use of loud equipment during normal working hours. The proposed project would not adversely affect adjacent residential properties pertaining to increased lighting levels, aesthetics, flora, population increase or noise levels. As was determined by the Director, the view and solar blockage impacts on the north adjacent dwelling will not be significant.

10. Seattle Municipal Code Chapter 22.800, the Grading and Drainage Ordinance, in part protects life and property from loss and damages by flooding, landslides, strong ground motion and soil liquifaction, accelerated soil creep, settlement and subsidence, abnormal erosion and other potential natural hazards. Consequently, the proposed construction project will have to address groundwater and seepage prior to the issuance of the building permit. Therefore, the project will not adversely impact the subject site or the immediate vicinity's ground soil stability. A DNS is appropriate unless it is probable that adverse impacts on the environment would have more than a moderate adverse effect on the quality of the environment. Norway Hill v. King County Council, 87 Wn.2d 267 (1976). While appellants' loss of view will occur, that impact alone is not sufficient to make the overall impact of the project, given its minor impacts in other areas identified in the DNS, more than moderate. The DNS should be affirmed.

#### Decision

The Director's determinations are affirmed.

Entered this 11<sup>th</sup> day of October, 1985.

  
Alberto Velarde

Hearing Examiner Pro Tempore

Concerning Further Review

Pursuant to Section 25.05.680(2), 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 of the decision appealed from is filed with the SEPA Public Information Center. The City Council's review on appeal shall be limited to the exercise of the City's substantive authority to condition or deny the proposal under SEPA as authorized by Section 25.05.660. 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 25.05.680(2), the time for filing a request 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 25.05.680(2) appeal.

If no appeal is taken pursuant to Section 25.05.680(2), 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. 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 issued 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. Section 25.05.680(3)(d).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost of 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, 5th Floor, 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 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 findings. Any other party may designate additional portions of the taped transcript relating to issues raised on review.