

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CONCERNED CITIZENS OF GEORGETOWN

FILE NO. MUP-85-068(W)
APPLICATION NO. 8502881

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

Introduction

The appellant 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 November 18, 1985.

Parties to the proceedings were: appellant by Estelle Shirey, applicant by Steven P. Elkins, Elkins & Co., and the DCLU Director by Ed Somers.

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 subject property is located on the west side of Ellis Avenue South and is zoned Community Business (BC). Ellis Avenue is an arterial street.

2. The lot, with approximately 80 ft. frontage to Ellis Avenue and 100 ft. deep, is currently developed with a single family residential structure.

3. Applicant proposes to demolish the residential structure and establish a two-story office building. The lower story would be reserved for storage use. After its environmental review of the proposal DCLU issued a determination of nonsignificance, conditioned on landscaping. Appellant then submitted this appeal.

4. The site is in the Georgetown area between Bailey Street to the north and Eddy Street to the south, and is surrounded on its north, south, west and east, across a 9-10 ft. wide alley, by single family dwellings. The DCLU report notes that "the block including the subject site...contains fourteen existing residences in addition to two other businesses."

5. According to appellant, the proposal has adverse consequences for the vicinity since this west side of Ellis has been specifically proposed by the Mayor for single family (SF 5000) zoning.

6. Acme Foods is one of the local businesses fronting on Ellis Avenue. The testimony presents, and the Hearing Examiner finds, that Acme and other large company trucks sometimes block Ellis Avenue traffic. In addition, some trucks have transgressed local curbs and lawns. Appellant cited specific concerns with the impact of increased truck and other traffic that they expect from the proposal.

7. The single family structure on-site is occupied by Sparkman Electric Co. The company's proposed building will be operated by the three main partners and a secretary.

8. Access to the screened parking area for nine vehicles will be via the east alley. The company's nine "trucks" consist of Volkswagens and other 3/4 to 1 ton vans.

9. The number of spaces proposed meets the zoning code requirement.

10. The company is a 24-hour service organization that specializes in off-site repair and service. Because the job sites are scattered, some of the 15 company employees take the company vans home with them, and are assigned from there. Rarely are all company employees and vehicles on site at the same time.

11. The Environmental Checklist reflects a projection of 50 employees. This number, however, is based on maximum occupancy load per square footage and is not representative of applicant's plans.

12. One DCLU annotation to the Checklist projects increased use of public services "to a minor extent" due to the increased number of employees.

13. Although appellant voiced concerns with the siting of the public notice, against the building vs. more closely to the right-of-way, no evidence was presented that sign placement or content was illegal.

Conclusions

1. The Hearing Examiner has jurisdiction of this proceeding pursuant to Chapters 23.76 and 25.05, Seattle Municipal Code.

2. The Director's environmental determination is accorded substantial weight, Seattle Municipal Code 23.76.36(B)(7), and the burden of establishing the contrary is appellant's. Seattle Municipal Code Section 25.05.680(1)(c). Appellant must therefore show the DCLU determination here at issue to be "clearly erroneous."

3. If a proposal may have probable significant adverse environmental impacts a declaration of significance is required. Seattle Municipal Code Section 25.05.360(1). Otherwise, a declaration of non-significance (DNS) is appropriate. Seattle Municipal Code 25.05.340. Significant has been read to mean "of more than a moderate effect." Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976).

4. The essential question then is whether the proposal will have more than a moderate effect on the quality of the environment. That environment includes a Commercial Business zone; arterial frontage; and trucking and other nearby business activity. The business addition will have some negative effect on the surrounding single family strip, but the effects will not be significant.

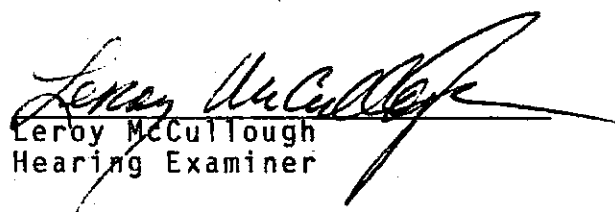
5. Applicant is proposing to access the subject site via an alley. The number of proposed trips for the nine vehicles was not shown to be significant, particularly since some of the company vehicle trips will not originate at the subject site, and since the usual service is away from the subject site. It was not shown how or whether the applicant's activity would exacerbate the vicinity traffic environment; and the burden of proof is appellant's. Under these circumstances, the expected impacts will not be "of more than a moderate effect."

6. Appellants also suggest a moratorium on non-single family development until action on the Mayor's proposed zoning is concluded. The Hearing Examiner is without authority to order such a moratorium. Finally, although the site is surrounded by single family uses and the proposal is for a business use, the effect on the environment will not be "significantly" adverse. No EIS is required for this project.

Decision

The DCLU determination is AFFIRMED.

Entered this 2nd day of December, 1985.


Leroy McCullough
Hearing Examiner

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 23.76.36(B)(11). 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. 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, 400 Yesler Building, 5th Floor, 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 finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review.