

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ELENA ANDRESEN

FILE NO. MUP-86-029(W)
APPLICATION NO. 8506143

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

Introduction

Appellant, Elena Andresen, appeals the decision of the Director, Department of Construction and Land Use, to issue a determination of non-significance for, and impose conditions on, a proposal to construct an addition to an office building at 607 19th Avenue East.

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 June 20, 1986.

Parties to the proceedings were: appellant, Elena Andresen, pro se, the Director by Leslie Lloyd, associate land use specialist, and the applicant, Contract Design Unlimited, Inc., by Skip Downing.

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 an existing building and construct an addition to the remaining office building on the site at 607 19th Avenue East. The Director, Department of Construction and Land Use, (Director) issued a determination of non-significance (DNS) pursuant to SEPA and imposed certain conditions on the proposal. Appellant filed this appeal.

2. The Director identified the following short-term environmental impacts all caused by construction activities: dust, noise and parking congestion. Long-term impacts identified in the DNS are: slight increase in traffic and demand for parking and appearance of structural bulk. With mitigation measures the impacts were not considered to be significant.

3. The mitigation measures recognized in the analysis were: spraying water to control dust; construction during the day and only on weekdays for noise; construction vehicles and personnel parking on-site to reduce on-street parking demand; additional parking to satisfy Title 24 requirements; better signs directing visitors to the parking lot to reduce on-street parking demand; limitation on the amount of seating in the restaurant to control parking demand; landscaping and modulation to minimize appearance of bulk.

4. The Director imposed the following conditions in her decision:

- 1) Landscaping shall be provided per approved plan prior to final occupancy of the building. Maintenance of the landscaping shall be the responsibility of the owner(s).

- 2) Loud equipment, including but not limited to pavement breakers, pile drivers, jackhammers, sandblasting tools, crawlers, tractors, compactors, drills, graders, compressors and other similar equipment is strictly limited to normal working hours (8:00 a.m. to 5:00 p.m.) on weekdays.
- 3) In order to control dust, the contractor shall periodically sprinkle the site and adjacent streets.
- 4) Provide at least two directional signs to assist visitors in locating and using the off-street parking facility. One shall be located at the main entrance to the office building and shall be visible to approaching motorists. The other shall be provided in the restaurant. Additional directional signs are encouraged as needed to achieve the desired result of business patrons using the off-street lot instead of on-street spaces.
- 5) If the proposed restaurant space (2,176 square feet) is leased to a restaurant or other food service use, no more than half of the area (1,088 square feet) may be used for seating. If the space is leased to any other type of business or retail use, a use permit shall be obtained to change City records.

5. The Director's representative asked that Condition 5 be changed to show a total restaurant space of 1,608 sq. ft. and one half, 804 sq. ft., due to recalculation of the space shown on the plans.

6. The site of the proposed addition is the northerly 47 ft. of a 145.8 ft. by 120.2 ft. lot on the west side of 19th Avenue East between East Mercer and East Roy Streets. The lot currently contains a 19 space parking lot, an office building and a single family residence which has been in office use since 1982.

7. The single family residence structure would be demolished and a 6,370 sq. ft. addition to the office building would be constructed for a net increase floor space of 3,172 sq. ft. The height of the building would be 25 ft. and the design provides for modulation. The lot which slopes down to the east, would be excavated to accommodate a street grade, first level. The parking lot would be reconfigured to provide 23 parking spaces. Access to the new addition would be both from the parking lot and the street. Loading access would be at the rear from the alley.

8. The use of the new addition is proposed to be office with a restaurant at the street level.

9. The site is part of a NCl-40 zone, along 19th Avenue E., but was BI (Intermediate Business) at the time of the decision. Across the alley to the west is a single family zone, to the south across Mercer Street is a multiple residence zone. Across 19th to the west is NCl-40 with L-3 to the east of that.

10. The uses in the area of the proposal are mixed and include Seattle Housing Authority low income housing units to the south across Mercer, single family residences to the east across the alley, single family residences on two lots north of the subject site, St. Joseph Catholic Church and school on the block to the north, the Surrogate Hostess restaurant and retail store on the east side of 19th across from the church, single family residences south of the restaurant, the Russian Center at the northeast corner of 19th and Roy, Parkside Health Care, a nursing facility, Pelican Bay

Artist Cooperative with residences, offices and store front businesses on the east side of 19th across from the subject site and a funeral home at the southeast corner of 19th and Mercer.

11. Pelican Bay, the nursing home, the Russian Center and most of the single family residences provide no off-street parking. Patrons of the Surrogate Hostess seeking parking far exceed the supply. Classes and events at the Russian Center bring many cars. People attending St. Josephs do not always use that parking lot either because of preference, because it is full, or because it is in use as a playground. The result is high demand for the on-street parking spaces in the area.

12. A survey of residents of the neighborhood showed their concern with parking, traffic, dust, dirt, noise, security, crime, use of sidewalks, size and design of the building, odors, and alcohol-related behavior of restaurant patrons. Some 75 percent of the surveyed residents oppose a restaurant on the site and 67 percent oppose any service or product-oriented business on the site.

13. A study of street parking performed by Skip Downing on some 13 days with more than 45 counts showed an average occupancy rate in the area one block in each direction of 78.9 percent, or 77 spaces vacant, on an average. Downing designed his study to conform to the methods recommended by the Engineering Department. The study showed that Mercer Street, between 19th and 18th, south of the site, is one of the least used. There is a total of 25 spaces in that area and about 9 spaces are occupied on the average.

14. A daytime 30 minute parking zone is located in front of Pelican Bay businesses. There seems to be some expectation that those spaces should be available only to those businesses.

15. The funeral home had approximately 50 funerals last year at the funeral home itself. The funeral home has off-street parking but some overflow occurs on occasion.

16. On-site construction crew size should be 4-8 people, depending on the work being done at a particular time.

17. The nursing home has elderly patients, some of whom walk along 19th Avenue for exercise. Sixty employees arrive in three shifts. No parking is provided for employees or visitors.

18. An approximately 100 ft. length of the west side of 19th Avenue E. north of Mercer has been marked for no parking to improve the sight lines at that intersection. This has removed several on-street parking spaces. Some area residents or business people would prefer a blinking light and crosswalk at that location to assist pedestrians and avoid the loss of parking.

19. A sign on Mercer restricting through traffic may deter patrons of the offices or businesses on the subject site from using the parking lot since they must use Mercer to reach the alley.

20. The existing parking lot is generally less than half full. All employees now use the lot, as do most visitors.

21. The Director's staff considered 19th Avenue E. as an alternative access point to the parking lot. It was rejected because it would be contrary to two City policies: to locate driveway access away from busy streets with alleys preferred and to screen parking lots. The changed access would require the removal of existing vegetation and open up the lot to view.

22. The applicant prefers to keep the alley access because an 8 ft. diameter drain pipe, part of the drainage retention system, which lies across the front of the property, would have to be moved.

23. The BI zone under Title 24 exempts the first 2,000 sq. ft. of restaurant from a parking requirement. Under Title 23 the exemption applies to the first 2,500 sq. ft. No parking for the proposed restaurant would be required under either.

24. Excavation for the project would involve moving some 635 cubic yards of dirt, about 350 of those away from the site and the remainder into the hole that was the basement of the single family house which is to be demolished. The amount to be removed is comparable to that of a basement of 1,500 sq. ft. single family residence.

25. The nursing home opens windows for ventilation on warm days so residents could be bothered by construction noise and dust.

26. Weather records show approximately nine days with westerly winds in the months of June through September.

27. There are four schools in the vicinity, so many children walk through the area to and from school.

28. Area children play in Mercer Street, on occasion, and on the sidewalk and in the alley.

29. The area, police sector C, beat 1, shows a fairly high incidence of crime. Neighbors fear this could be increased, especially vandalism, because of the availability of construction materials. They also object to bringing additional cars to the area which may force them to park further away from their front doors.

30. The Surrogate Hostess restaurant occupies approximately 4,320 sq. ft. of area compared to the proposed restaurant's 1,608 sq. ft.

31. The BI zone allows heights of 60 ft. and 100 percent lot coverage.

32. There are several large buildings in the vicinity including the three-story Pelican Bay building, two-story nursing home, three-story apartment buildings and the church.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter and these parties pursuant to Section 23.76.022.

2. Section 25.05.340 provides that if the Director determines that the proposal will not cause significant adverse environmental impacts she is to issue a DNS. Her decision to issue a DNS is to be given substantial weight by the Hearing Examiner. Section 23.76.022. The burden is upon appellant to prove that the Director's decision is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. In Norway Hill v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976), our state supreme court has provided a guideline for when environmental impacts are sufficiently significant to require an environmental impact statement (EIS). A DNS is appropriate unless "more than a moderate effect on the quality of the environment is a reasonable probability." Norway Hill, supra, p. 278.

4. Appellant has not met her burden of proving the Director was wrong about parking impacts. The evidence produced showed the neighbors' legitimate concern about the existing parking situation and what effect new businesses would have on it. There was no showing, however, that the Director relied on erroneous information about the existing situation or added demand. The evidence of available unused on-site parking and the on-street vacancy rate

supports her determination that the impact would not be more than moderate. The evidence showed no other environmental impact to be significant because of their short duration or limited degree. Therefore, the Director's decision to issue a DNS should be affirmed.

5. The Director may not deny the master use permit for a proposal unless there are significant adverse impacts identified in an EIS which cannot be reasonably mitigated. Section 25.05.660(1)(e). Since there are no significant adverse impacts her decision not to deny the permit is not in error.

6. Appellant urges that a series of conditions be imposed to mitigate construction impacts to wit: 1) no on-street parking for construction vehicles, equipment or personal vehicles with enforcement of the prohibition; 2) security fencing around the site plus lights and warning signs; 3) twice-daily sprinkling of the site and streets and weekly removal of debris on sidewalks and streets; 4) 8:30 a.m. start time; and 5) elimination of the street level entry to reduce the amount of excavation.

7. Appellant requests the following conditions to mitigate the parking impact: 1) that the size of the offices be limited and no service use be permitted; 2) that no restaurant be permitted at street level; 3) that the on-site parking lot be opened to area residents during non-business hours; 4) that signs be provided to direct customers to the parking lot or that the entry to the lot be directly from 19th Avenue; 5) that angle parking be provided on the south side of the Pelican Bay building; 6) that angle parking be provided in the Mercer Street right-of-way south of the subject site; and 7) that more of 19th Avenue be restricted to 30-minute parking but not to apply to area residents.

8. To mitigate bulk and aesthetic impacts the appellant requests that the "scope" of the building be reduced including removal of the street level portion, and that significant landscaping be required including shrubbery and trees that reach the top of the building and vines or plants to cover at least 55 percent of the exposed facade facing 19th Avenue E.

9. Mitigating measures must be related to adverse impacts clearly identified in the environmental documents, must be reasonable and must be based on policies designated in Section 25.05.902 as a basis for exercise of SEPA's substantive authority. Section 25.05.660.

10. The Director imposed certain measures to mitigate construction noise and dust impacts. The applicant agreed that an additional condition requiring that construction workers park on-site may be imposed. Each of the impacts appellant wishes to have mitigated, with the exception of excavation and security, has been addressed. There was no evidence that the Director's decision as to the amount of mitigation was in error. No adverse impact from lack of security was identified in the environmental documents and appellant has shown no policy providing authority for the kind of mitigation requested. The Director did not err in failing to require security fencing, lighting, etc. As to the requested condition prohibiting excavation of the front of the lot, the evidence shows that impacts will be short in duration and will not exceed that from excavation for a single family residence. No policy authority for imposing such a condition was cited by appellant nor known to the examiner. The Director did not err.

11. As to the requested conditions to mitigate parking impacts, the Director did impose the requested requirement that signs be posted. She also limited the area which may be used for restaurant seating to alleviate the demand for parking by restaurant patrons. The use restrictions requested by appellant are not reasonable given the zoning of the area nor are they authorized by any SEPA policy.

While there may be need for street improvements, that need is not the result of any impact of the proposal so the law does not permit requiring the applicant to bear the cost of improvements nor does it permit conditioning the project on those improvements occurring. The examiner cannot require that the private parking lot be opened to neighborhood residents because it is obvious that it is not the impact of the proposal that would be mitigated since the request is for the lot to be available during non-business hours. Moreover, appellant has cited no authority for such a condition. Finally, the request that access to the lot be provided from 19th was shown to violate two City policies so the Director did not err in discarding that option.

12. Appellant urges that conditions be imposed reducing the bulk of the proposed addition and requiring landscaping to obscure the building. While distaste for the design, character and size of the existing building and proposed addition was expressed, no facts were adduced as to incompatibility in scale. The record does show several large buildings in the immediate vicinity, including the Pelican Bay building. The record does not support mitigation of bulk. As to landscaping, the Director has required landscaping. No impact has been identified which would warrant the type or extent of landscaping requested by the appellant so the requested condition is not reasonable.


13. Appellant has not shown the Director's determinations to be clearly erroneous so, with the addition of the condition agreed to by the applicant, those determinations must be affirmed.

Decision

The Director's decision to issue a DNS is affirmed and the decision to condition the proposal is modified to add the following condition:

- 6) Construction workers shall be required to park their personal vehicles in Contract Designs Unlimited's parking lot or otherwise on-site.

Entered this 7th day of July, 1986.


M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

Pursuant to Seattle Municipal Code Section 25.05.680(C), a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 25.05.680(C), 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(C) appeal.

If no appeal is taken pursuant to Section 25.05.680(C), 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 fifteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.22(C)(12)(c). 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 fifteen days of the date of this decision. Section 25.05.680(D)(4).

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.