

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

MARY HANSON AND GRIGGS IRVING

FILE NOS. MUP-86-040/041(W,CU)
APPLICATION NO. 8506762

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

Introduction

Appellants filed separate challenges to the DCLU Director's issuance of a declaration of non-significance for a 16 unit apartment structure proposed for 4011 Whitman Avenue North.

The appellants exercised the right to appeal pursuant to the Chapters 23.76 and 25.05, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on August 14, 1986. Appellants consented to joint pursuit of the appeals.

Parties to the proceedings were: appellants, both pro se; applicant by Derrill Bastian, Esq. and the Department of Construction and Land Use (DCLU) by Leslie Lloyd.

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, and following a visual inspection of the subject site and vicinity, 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 fronts on the west side of Whitman Avenue North and is located between North 40 and 41st Streets. To its rear, the site abuts a 16 ft. wide alley that is paved for 15 ft. of its width. Continuing to the west are low-scale commercial zoned (C1-40') properties fronting Aurora Avenue North, including office buildings.

2. The subject site is presently developed with a single family dwelling, a shed and a detached garage accessible from the adjacent alley.

3. The site slopes an average of approximately 7 degrees from the rear to the front of the lot.

4. As are the other properties on the west side of Whitman, the subject property is zoned Lowrise 2 (L-2). This L-2 zone continues north along Whitman to at least North 45th Street. To the south, the L-2 zone ends at North 40th Street. There the L-3 commences.

5. The zoning along the east side of Whitman is different. The block front facing the subject property between North 40th and 41st Streets is zoned Single Family 5000. This Single Family block front is across North 41st Street from an L-2 zoned block front and across the street to the south (North 40th) from an L-3 zoned block front. More Single Family 5000 zoning does extend eastward to and beyond east parallel Woodland Park Avenue North.

6. Vicinity development, particularly along Whitman Avenue between North 40 and 41st Streets, is predominately single family. As appellant Hanson describes it there are 18 buildings

on the subject block. Of those only one is an apartment (4017 Whitman), although there is a church and a duplex "on the corner of 40th and Whitman." See Appellants' photo Exhibit 1. Appellants and other vicinity correspondents are very interested in protecting the block from construction or other activity which would detract from the family oriented ambience of the block.

7. The 4017 apartment building is north adjacent to the subject site and has parking access from Whitman Avenue North.

8. Applicant proposes to demolish all development currently on the subject site and construct a 3-story 16-unit apartment building with underground parking for 16 vehicles. DCLU required applicant to revise the plans to show two additional parking spaces at the southwest corner of the site. The plans call for automobile access to Whitman Avenue North via a 10 ft. wide curb cut and driveway. The Whitman parking entry would be screened from street view by a solid garage door.

9. Appellants' most strenuous objections to the proposal centered on this plan for vehicular traffic to invade the block with some projected 86 vehicle trips per day. Accordingly, one of appellants' request is that the applicant be ordered to use alley access.

10. Per appellants and their witness-architect, it is physically feasible to have the basement parking accessible from the alley. Appellants' architect included no economic feasibility or cost projection in his analysis and conclusion to that effect.

11. Applicant's architect, a real estate agent, testified that the appellants' recommended approach would be too costly and thus non-feasible. This architect responded that he had done no study on the minimum number of units needed to make the project economically viable. The Hearing Examiner finds that deeper (more costly) excavation would be required for alley access to basement parking and that fewer parking spaces and units would be likely if alley access were used.

12. The Hearing Examiner finds no vehicle approach or route to the site particularly unsafe, inclusive of Aurora to North 41st. The record supports no finding that the anticipated increase in Whitman Avenue traffic will detract in any major way from the automotive or pedestrian safety level.

13. Applicants propose a total of five one-bedroom units, inclusive of a lower level two-bedroom unit, for the 4011 apartment building. Applicant proposes a building front setback of 20 ft. 5 in. and a structure height of 30 ft. 4 in.

14. For the front lot line area, applicant proposes a 6 inch thick, 35 ft. high concrete retaining wall that would enclose part of the extensive landscaping proposed for the entire site perimeter.

15. As one condition of the declaration of non-significance (DNS) of record, DCLU required that the landscaping plan include planting of four street trees along the Whitman Avenue planting strip and that applicant provide some trailing plant along Whitman "in order to soften the appearance" of the proposed retaining wall. DCLU decision, p.7.

16. Dust, erosion, noise, traffic and other temporary construction-related impacts are expected to result from the proposal.

17. Long term impacts include increased light and glare, increased vehicular traffic and more noise activity generated by the increase in the population. The southerly views of the north adjacent apartment building will also be affected. No protected view will be affected. More water runoff is expected due to the increase in the amount of non-permeable surface. This is expected to be mitigated by compliance with the City's Grading and

Drainage Control Ordinance.

18. There is parking congestion in the vicinity, especially along Whitman Avenue North and North 40th Street where cars park over curbs and in other illegal ways. Legal spaces were occasionally available when illegal parking occurred.

19. Curbside parking is prohibited along the west side of Whitman Avenue North between North 40 and 41st Streets, and along the north side of North 40th Street. Between 4-6 p.m. weekdays, no parking is allowed on the east side of Aurora Avenue.

20. Appellant Irving's parking study showed by way of illustration that on Sunday, August 10, 1986, at 10:45 p.m., all 14 of the "available slots" on Whitman Avenue, between North 40th and 41st Streets, were utilized (100%) and that there was 1 car illegally parked. Statistics for the same date show that the defined overall area utilization was 47%, or 53% if illegal spaces are included. Appellants' Exhibit 4. Woodlawn and Aurora were generally excluded. According to appellant Hanson, people would probably prefer not to park on Woodlawn because of its steepness.

21. A more formal study was done at applicant's request by The Transpo Group, transportation planning and traffic engineering consultants. Appellants offered no dispute with the methodology or results, which tended to support appellants' claims. Applicant's Exhibit 5. This study included Aurora Avenue and Woodlawn in its overall study area and peak hour figures to accommodate the Aurora Avenue restrictions.

22. For the 4000 block of Whitman, Exhibit 5 determined that 15 spaces were possible. Of those 15, on Thursday, August 7, 1986, at 5:00 p.m., 8 or 53% of the spaces were occupied; Thursday, August 7, 1986, at 10:45 p.m. 15 (100%) were occupied and on Friday, August 8, 1986, at 8:45 p.m. 11 or 73% were utilized.

23. In another illustration, in the 3900 block of Whitman, 13 cars were parked (at 108% usage) on August 8, 1986. Exhibit 5.

24. Parking utilization along other block fronts was generally less intensive, particularly along Aurora Avenue, and along North 42nd and North 41st Streets. Exhibit 5.

25. The Transpo analysis concluded and the Hearing Examiner finds that there are 287 off peak and 251 peak hour parking spaces available in the Transpo study area.

26. The Seattle Engineering Department Multi-Family Parking Study for Queen Anne Hill, First Hill, and the University District was used by the Transpo Group study for spillover and accommodation projections. That study suggests a resident parking demand of 1.02 parking spaces per unit and an additional parking demand of 0.39 guest vehicles per unit. At 16 units, the residential parking demand would be $(16 \times 1.02) = 16.3$, and the guest demand 6.2, or a total of approximately 22.5. Applicant is proposing a total of 18 parking spaces.

Conclusions

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

2. Appellants request that the building be reduced from 16 to 11 units; and that access be required to be from the alley. Appellants would also like to see applicant provide more on-site parking. These and the anticipated increases in traffic, noise, parking congestion, light and glare with the concomitant deterioration of the block's lifestyle and the impact on the single family zoned properties constitute the principal bases for appellants' appeals.

3. It is specifically noted that appellants pursued no request that an environmental impact statement issue. Nor have appellants requested absolute denial of the project.

4. There are two possible routes by which appellants' aims could be achieved. The first is the application of Seattle Municipal Code Section 23.45.32 B 3 which addresses multi-family zone standards. Subsection A.1. states that one off-street parking space per unit is required. Subsection B.1, "Access to Parking," provides:

3. Street or alley access permitted. Access to parking may be from either the alley or the street when the conditions listed in subsection B 2 do not apply, and one (1) or more of the following conditions are met:

- a. The alley borders a single-family zone
- b. Topography makes alley access infeasible.

5. There is no definition of "feasible" in the Land Use Code. Appellants argue that the "feasible" means "do-able," or physically possible. DCLU and applicant are of the view that "feasibility" includes economic and other practical considerations.

6. Seattle Municipal Code Section 23.45.32 B 2 requires street access to parking when alley access would create a "significant safety hazard or when the lot does not abut a platted alley."

7. The other route for attaining appellants' objective is via the SEPA provisions, Chapter 25.05, Seattle Municipal Code. It is this approach which is most directly taken by the evidence of record.

8. The Code requires that DCLU's environmental determinations be accorded "substantial weight," Seattle Municipal Code Section 23.76.022(C)(7). It is therefore the appellants' burden to show that the DCLU decision, in this instance a DNS which does not require alley access, is "clearly erroneous." Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976).

9. Seattle Municipal Code Section 25.05.660 places limitations on the imposition of conditions to mitigate environmental impacts. First, the mitigation measure must be based "on policies, plans, rules or regulations formally designated in Section 25.05.902 as a basis for the exercise of substantive authority..."

10. In addition, mitigation measures must be related to specific, adverse environmental impacts that are identified in the proposal's environmental document, Section 25.05.660(1)(b); and must be "reasonable and capable of being accomplished." Seattle Municipal Code Section 25.05.660(1)(c).

11. The DCLU Director's decision is to approve without further conditioning the proposal for 16 units and 18 parking spaces to be accessed from the alley. Appellants have not shown the Director's decision to be "clearly erroneous" and the DCLU determination is therefore affirmed.

12. The L-2 zoned site is generally surrounded on three sides by block faces that are designated L-2, L-3 and C1-40. It is one block east of Aurora Avenue North. The site faces single family zoning only to its east, across Whitman Avenue. The site is adjacent to a 15-unit multi-family structure which also faces the single family zoning to the east.

13. It is generally agreed that the Whitman-North 40th Street vicinity experiences parking congestion. However, the Hearing Examiner concludes that there is less of a parking crisis

in the 2 1/2 block vicinity including along North 42nd, and North 41st and Aurora Avenue, and that appellants failed to prove that there was insufficient on-street parking to accommodate anticipated project demands.

14. Assuming a residential parking demand of 16 and a guest demand of 6 vehicles per unit (see Finding 23, above) there would be a demand for approximately 22 parking spaces. (These figures assume that all guests and residents would be on-site/in the vicinity at the same time.) Applicant is proposing a total of 18 parking spaces. The additional 4 spaces that would be needed represents a small fraction of the spaces available within the defined study area. The Hearing Examiner would reiterate here his view the specific segment of Whitman Avenue would offer little if any opportunity for new guest or resident parking.

15. This case is therefore distinguished from that concerning 1430 1st North where the Council decided to reduce the number of units from 9 to 6 in recognition that the "parking spillover estimated...can be accommodated, if at all, only on adjacent streets which are themselves at or near parking capacity." MUP-85-065(W), C.F. 294508, C.F. 294509.

16. Therefore, based on the evidence of record and pursuant to the foregoing, it would not be "reasonable" to require applicant in this case to reduce the number of units. Seattle Municipal Code Section 25.05.660(1)(c).

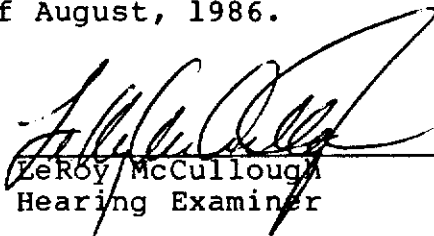
17. Appellants also failed to sustain their burden of showing that DCLU was in clear error for failing to require alley access. The record is devoid of evidence which would indicate that Whitman Avenue North is unable to safely absorb the new traffic expected to result from the proposal. The fact that no parking is allowed on the west side militates against parking availability, but apparently enhances egress and ingress from the site.

18. Further, the environmental document did not "clearly identify specific adverse impacts." Without this identification, the Hearing Examiner is without authority to impose any mitigation measures. Seattle Municipal Code Section 25.05.660(1)(b).

19. The DCLU decision is therefore affirmed.

20. The Hearing Examiner has made no decision on the interpretation of Seattle Municipal Code Section 23.45.32 B 3 and no such decision is appropriate herein because no formal interpretation has been requested. Further, Hearing Examiner jurisdiction of this case is only through the provisions of Chapter 25.05, Seattle Municipal Code.

Entered this 29th day of August, 1986.


Zerkoy McCullough
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.