

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

In the Matter of the Appeal of

CENTRAL BALLARD COMMUNITY COUNCIL

FILE NO. MUP-86-070(W)
APPLICATION NO. 8603468

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

Introduction

Appellant, Central Ballard Community Council, appeals the environmental determination by the Director, Department of Construction and Land Use, for a proposed 6-unit apartment building at 2029 N.E. 61st Street.
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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 October 27, 1986.

Parties to the proceedings were: appellant group represented by Linda Scher, the Director represented by Julia Gibb, land use specialist, and the applicant MKD Development Company Inc., by Victor Malen.

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. MKD Development Company, Inc., applied for a Master Use Permit to demolish a single family residence and to construct a 6-unit apartment building at 2029 N.W. 61st Street. The Director, Department of Construction and Land Use, by Julia Gibb, issued a Determination of Non-significance (DNS) for the project. The subject site is a midblock lot with 5,000 sq. ft. of lot area in a Lowrise 2 (L-2) zone in Ballard.

2. The L-2 zone extends to the west, north and east and to the middle of the block to the south. The zone contains a mixture of single family residences, duplexes and small apartment buildings along with churches and some small businesses. The block face which contains the subject site and between 20th Avenue N.W. and 22nd Avenue N.W. has a church on each end, three duplexes and about six single family houses. Across the street the block face facing the subject site has a church at the west end, three duplexes and about seven single family residences. To the rear or south of the subject site is a single family residence flanked by single family residences on each side.

3. An environmental checklist was submitted by the applicant and reviewed by the Director's staff. Impacts identified in the checklist are described in the DNS. Those impacts include traffic and parking impacts, land use, neighborhood character, height, bulk and scale, increased air emissions, runoff, altered landscaping, increased use of electricity, increased noise, and view blockage. The impacts are not expected to be significant.

4. The Director imposed conditions requiring compliance

with the Grading and Drainage Control Ordinance as part of the building permit review, limiting the use of loud equipment to 7:30 a.m. to 6:00 p.m. on weekdays, providing horizontal slats on deck railings, providing a 6 foot fence along the sides and rear lot lines and the fence is to include horizontal slatting, requiring windows to be framed with colors contrasting with the building facade, requiring a landscaping plan which is to include shrubbery along the front facade of the building and requiring that the landscaping be maintained.

5. The Director based her assessment of parking impacts from the proposed use on several recent studies by the Engineering Department. The peak parking demand for apartments is expected to be 1.9 spaces for a 2-bedroom unit and 1.5 spaces for a 1-bedroom unit. The demand, then, for this project was calculated to be 10.6 spaces for residents and visitors where six spaces would be provided on-site leaving an estimated 4.6 space spillover for on-street parking.

6. Parking is permitted along both sides of the street.

7. A bus route runs along 24th Avenue N.W. which is one long block to the west.

8. Appellant's witnesses, residents of the area, and those commenting in letters, describe parking in the area as very difficult. In addition to cars relating to houses without off-site parking, there are the three churches on the corners of the block.

9. Appellant provides information that the Seventh-Day Adventist Church at the northeast corner of 22nd and 61st has 80 to 90 members and meets on Tuesday and Wednesday evenings and Saturday mornings. The Glad Tidings Assembly of God at the southeast corner of 22nd and 61st has approximately 35 members and meets on Wednesday, Friday and Sunday evenings and Sunday mornings. The Church of the Divine Man at the southwest corner of 20th and 61st has 50 to 60 members and meets Monday through Friday evenings and Sunday mornings.

10. Appellant has counted 38 parking spaces in the block between 20th Avenue N.W. and 22nd Avenue N.W. In addition there are 19 driveways in which a vehicle could be parked. Using the parking demand figures from the engineering studies of 1.9 space per unit for 2-bedroom and 1.5 for 1-bedroom appellant has calculated a demand from the neighborhood of 59 spaces. The record does not reflect whether the existing use on this site is counted. In addition to that demand is the demand from the churches. If only one vehicle can be parked in each driveway of the 19 driveways the demand from the existing development would exceed the supply by two spaces without considering the demand from the churches.

11. The Engineering Department typically considers the area in a 2 to 3 block radius to be available for on-street parking from a particular development.

12. The N.W. 61st Street right-of-way is shown to be 66 ft. wide on Exhibit 23, the Kroll map. The improved lanes for travel and parking are 25 ft. from curb to curb. If cars are parked on both sides only one car may travel down the street and any oncoming cars must pull into a driveway space or a vacant parking space.

13. The Director has based the projection of trip generation by the site on the ITE Trip Generation Manual and expects an average of 36 trip ends per day. Three to five trips would occur during peak hours. The analysis represents the worst case because there is no recognition of existing traffic from the single family residence of an estimated ten trips per day.

14. In the period 1981 to October, 1986 eleven accidents have been reported at 22nd Avenue N.W. and N.W. 61st and two at 20th Avenue N.W. and N.W. 61st. Nine of the eleven occurred in 1985 and 1986 and the two at 20th and 61st occurred in 1986.

15. Appellant reports that work hours of the residents vary. A survey shows that in October two residents work swing shifts, four work night shifts, three had varying shifts and 18 maintained daytime hours.

16. If the workday patterns of the residents of the street vary from those normally experienced the peak hour impact of traffic should be less in that the traffic would be spread more evenly throughout the day.

17. Eight children under high school age reside on the block.

18. Many of the residents' are investing time and money in remodeling and restoration projects for their homes.

19. Of the 20 single family and duplex residences on the two block faces 15 are one to 1 1/2 stories high and five are two stories high. The three churches have heights of approximately 51 ft., 35 and 36 ft. The block faces show high structures at each end and dip down at midblock which is where the proposed site is.

20. The maximum permissible height in a single family zone is 30 ft. with an exception for pitched roofs to 35 ft. The L-2 zone has the same height limits.

21. Only two of the houses on 61st Street between 20th and 22nd Avenues N.W. have been built since 1947.

22. The zoning of the area was changed from RD 5000, which was a duplex zoning, to the L-2 in 1982.

23. Various documents and facts were presented to support appellant's view that the L-2 zoning is inappropriate for the area, is contrary to the neighborhood improvement plan and that densities are exceeding that anticipated by the City Council at the time of the rezoning. These facts and opinions are not relevant to the consideration of the environmental appeal.

24. A property owner on N.W. 60th Street, behind the subject site, tells of a report of a natural stream running north and south between her property and the adjacent property and her observation of some sinking in that area. Another property owner reports basement flooding when there has been three or more days of rain.

25. The applicant's representative indicated that limiting the hours for the use of noisy construction tools and equipment to between 8:00 a.m. and 5:00 p.m. on weekdays would not create any hardship for the developer.

26. The letters and comments from residents of the area show a high degree of "community" and the fear that a 6-unit building would destroy the cohesiveness that now exists.

27. Because this would be only the second project of its size under the 1982 zoning in the zone appellant fears that it would serve as precedent for further development.

28. The environmental determination took into consideration applications pending for development in the area and approved applications.

29. Appellant requests that an EIS be required or that conditions be imposed to require sufficient parking for the demand

or reduce the demand by reducing the number of units, provide parking for construction vehicles and to impose restrictive measures to assure safety, to maintain the existing character of the area by requiring family low to middle income occupancy, reducing the number of units and providing on-site play space, add to the requirement of the Drainage Control Plan that community input be acquired by giving the community notice when the construction permit is applied for, limit the hours of use of noisy construction equipment to 8:00 a.m. to 5:00 p.m. Monday through Friday, require that all permits including the SEPA determination be displayed on-site and that demolition on the site be conducted only from 8:00 a.m. to 5:00 p.m. on weekdays.

Conclusions

1. Appellant has raised three issues in this appeal: 1) whether the Director erred in issuing a DNS for the project; 2) whether additional conditions should have been imposed to mitigate adverse environmental impacts; and 3) whether the area is properly zoned. Only the first two may be considered by the Hearing Examiner in this appeal.

2. A DNS is appropriate if the Director "determines there will be no probable significant adverse environmental impacts" from the proposal. Section 25.05.340(1). "Significant" means "a reasonable likelihood of more than a moderate adverse impact on environmental quality." Section 25.05.794. Appellant failed to show that any of the impacts identified by the Director would be more than moderate. While appellant did show that the immediate block between 20th and 24th could have difficulty providing parking for the additional 4 or 5 vehicle overflow from the subject site, there was no showing that that could not be absorbed within a reasonable radius of the site. Further the traffic generated by the project of some 3 to 5 additional vehicles in the peak hour at worst case cannot be reasonably viewed as having more than a moderate impact.

3. The Director has authority pursuant to Section 25.05.660 to impose conditions to mitigate adverse environmental impacts when that measure relates to an impact clearly identified in the environmental document, when the condition is based on a policy adopted pursuant to SEPA and when the condition is reasonable and capable of being accomplished. The Director has imposed a series of conditions none of which were appealed by the applicant but which appellant urges are inadequate to sufficiently mitigate the impacts of this project.

4. Appellant urges that the number of units be reduced to reduce the traffic generated and the demand for parking exceeding that supplied on-site. While City Council action on a previous case shows that there is policy support for reducing the number of units it should be recognized that the parking situation in the prior case was unusually severe and has not been shown to be in this case. Here, there was no showing that the 4 or 5 extra vehicles could not be accommodated within a reasonable radius of the site. The presence of the three churches clearly adds to the pressure on the on-street parking, in particular on Sunday mornings and Wednesday evenings, however, it was not shown to be reasonable to reduce the size of the project for the small additional demand.

5. Appellant asks that conditions be imposed to encourage a family-oriented and low income use. A specific condition was not proposed however there was suggestion by members of the appellant group that either the single family residence be retained or duplex use be permitted. Also the requiring of a play area on-site could be a part of the family-oriented character. Language in the neighborhood improvement plan for the area was cited supporting maintenance of that character and the neighborhood improvement plans are included in Appendix A as SEPA policies. The Adams Neighborhood Improvement Plan, however, is outdated in that

it discusses the City Council's decision to deny a rezone from duplex residence zoning to multi-family zoning when the Council has, in 1982, made that decision so the intent for the area has changed. Therefore, no authority can be said to exist for the imposition of conditions which would require either single family or duplex use under the current zoning.

6. The Director has imposed a condition requiring compliance with the Grading and Drainage Control Ordinance, however appellant asks that notice of the application be required so that the community is aware and can comment. There is no authority under SEPA policies since the City has adopted the Comprehensive Drainage Control Ordinance.

7. The Director has limited the hours of use of noisy construction equipment. Based only on the agreement by the applicant, the Hearing Examiner will modify those hours to restrict use of loud equipment to the hours of 8:00 a.m. to 5:00 p.m.

8. There is no SEPA policy found by the examiner which would permit the condition urged that permits including the SEPA determination be displayed. There may be a code requirement but it does not appear to be within those codes and regulations adopted as SEPA policies.

9. While not specifically set forth as relief requested, there appears to be a contention that the height of the building should be reduced to be more compatible with existing development. Policy authority has been found to exist in the Multi-Family Residential Areas Policies for reduction in height, bulk and scale when at a zone boundary and needed for transition. In this case the property is one block from a zone boundary so is not at the zone boundary and the neighboring zone allows structures of greater bulk. The size that would be necessary to reflect existing development would be smaller than that now allowed by the single family zone and therefore would not be reasonable. A condition then cannot be imposed for failure to meet two of the requirements for conditioning.

Decision

The decision of the Director to issue a DNS for the project is affirmed. The conditions imposed by the Director are affirmed except as modified below:

During Construction

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 the hours of 8:00 a.m. to 5:00 p.m. on weekdays. No loud equipment shall be used on weekends or holidays.

Entered this 12th day of November, 1986.

M. Margaret Klockars
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.