

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

WILLARD L. AND MAXINE L. BEAN

FILE NO. MUP-86-085(W)
APPLICATION NO. 8604797

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

Introduction

Appellants challenge the decision of the Director, Department of Construction and Land Use, to issue a determination of non-significance and impose conditions on the approval for a proposal to construct a 30 unit apartment building at 1922 - 42nd 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 December 16, 1986.

Parties to the proceedings were: appellants, Willard and Maxine Bean, pro se; the Director by Cheryl Waldman, land use specialist; and the applicant, Donald Thoreson, 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. Donald Thoreson applied for a master use permit to demolish three single family residences and construct a 30-unit apartment building at 1922 42nd Avenue East. The Director conducted environmental review and issued a determination of non-significance (DNS) and imposed conditions.

2. The subject site comprises five lots, some 17,718 sq. ft., at the southeast corner of 42nd Avenue East and East Newton Street. The site is elevated as much as 5 ft. above street level and slopes gently toward the north. It abuts at the rear a 19 ft. wide alley. It is developed with three, 2-story, single family houses and a two car garage.

3. The site is part of a Lowrise 2 (L-2) zone which extends to the south and across the street to the west. To the east and southeast of the site, along 43rd Avenue and Madison Street, the zoning is NCl 30'. SF 5000 zoning begins north of East Newton Street and on the east side of 41st Avenue East.

4. Development in the zone includes some low single family houses, a 3-story triplex directly across the street which is just nearing completion and two 3-story structures each housing 8 units on the other side of 42nd approximately three lots to the south. To the north in the SF 5000 zone are single family homes with a few multiple family developments. In the NCl 30' foot zone along Madison and 43rd are low-level, mostly 1-story and an occasional 2-story buildings, housing restaurants, taverns, shops, services and other businesses.

5. The proposal is for two buildings, connected by a sky bridge, three stories high with parking for 38 vehicles, 32 under the building and six at the surface in the rear. Access to the

parking would be via the alley. The buildings are to be 42 ft. high, utilizing the sloped roof exception, 60 ft. wide and 78 ft. deep. There would be a 19 ft. front yard setback, 23 ft. rear yard setback except at one corner where it would be 10 ft. because of the lot line angle, 10 ft. south side yard and 5 ft. north side yard.

6. The Director's staff conducted the environmental evaluation of the proposed project. The short term impacts identified in the DNS would be those during construction which were found to be temporary and relatively minor. Long term impacts included increased noise, traffic, parking demand, emissions, light and glare and general human activity.

7. Conditions were imposed by the Director to mitigate construction noise, to increase on-street parking by restoring the existing curb cut on 42nd, to require landscaping and maintenance of that landscaping and to require that exterior illumination be directed away from street traffic and other properties.

8. The staff's assessment of parking demand to be generated by development of the site was based on a parking study which was required of the applicant and on data generated by a study commissioned by the Department. The staff, based on its own study, assumed vehicle ownership would result in 33 vehicles connected with the site. Since the proposal includes parking for 38 vehicles the demand for resident on-street parking was determined to be less than that of the existing development. Also considered was the addition to on-street availability of 2 to 3 spaces from the removal of an existing curb cut on 42nd East.

9. Appellants' witnesses contend that the average vehicle ownership used by DCLU does not reflect ownership patterns in Madison Park because Madison Park residents are more affluent than the average City resident. To support that position they cite a 52-unit condominium building on 43rd Avenue East with 78 vehicles for average ownership of 1.5 vehicles per unit and two buildings with a total of 16 units with 25 cars for an average of 1.56 vehicles per unit.

10. The staff used the results of the applicant's survey of the area on-street parking utilization, 50 to 70 percent, in reaching the conclusion that on-street spaces would be adequate to accommodate overflow visitor parking demand. The area surveyed was 41st Avenue East, 42nd Avenue East and 43rd Avenue East from East Lynn on the north to East Blaine just south of Madison, both sides of East Lynn, East Newton and East Blaine. The consultant followed the directions of DCLU and the Engineering Department on calculating the available parking spaces and then calculated utilization at four times, a Saturday at noon, a Thursday at 3:00 p.m. and twice on Wednesday at 7:30 p.m. and 11:00 p.m. That survey considered a total of 505 on-street spaces.

11. A parking survey was done by Roger del Moral, a witness for appellants and neighbor of the subject property. The survey was done on one day at 2 hour intervals over a 16 hour period. The area surveyed was Newton Street 1/2 block west and 1 block east, 42nd from Newton south to Madison (partially a 2 hour zone for the commercial district), 43rd from Newton to Madison, 43rd north from Newton to Lynn and the alley between 42nd and 43rd north and south 200 ft. The neighbors' survey included a total of 169 legal spaces, though the method for determining the number of spaces where they are not marked was not described. The data provided show that at 6:00 a.m. utilization exceeded 100 percent, at noon it was 75 percent, at 8:00 p.m., 91 percent and at 10:00 p.m., 98 percent. One of appellants' witnesses, an Engineering Department employee, examined the data and concluded that the utilization of legal spaces, i.e., exclusive of illegal parking, was around 80 percent.

12. Parking in the area surveyed by the neighbors is virtually at capacity.

13. Available parking on 41st Avenue East was not included in the neighbors' survey but was in the consultant's survey. On-street parking utilization is much lower on that street.

14. Parking now occurs in front of the curb cuts to the existing parking on-site so the elimination of the curb cut would not really increase on-street parking space.

15. The alley which would be used for access to on-site parking also serves the commercial establishments along Madison and 43rd and is heavily used by delivery vehicles. It allows two-way traffic between 42nd and Newton. Many cars are also regularly parked in the alley. Delivery vehicles at times block access to the alley.

16. Forty-third Avenue East is one way north and 42nd Avenue East is one way south. Forty-first Avenue East is a two-way street. Residents of the proposed buildings would approach by turning left from Madison at either 41st or 43rd and then travel Newton to the alley. A traffic circle has been installed on 41st and East Newton.

17. Witnesses express concern that residents might enter the one-way 42nd illegally for the short distance to the alley to avoid going the extra distance around the block.

18. Appellants' witnesses propose that the alley be made one-way to avoid congestion.

19. The Engineering Department reviews all proposed projects involving 20 or more units and submits comments regarding any concerns. No comments were received from the Engineering Department by DCLU on the proposed project.

20. An estimated 180 vehicle trip ends would be generated by the proposal.

21. The proposed buildings would contain 24 fireplaces. Use of those fireplaces could have some effect on air quality.

22. The Director estimated that there would be an increase of 30-42 residents on the site, adding that population to the area. Appellants' witness estimates that 59 people would be housed in the structures assuming that 80 percent of the single bedroom units would house two people, 25 percent of the two bedroom units would house 2 people, 45 percent of the two bedroom units would house 3 people and 30 percent of the two bedroom units would house 4 people.

23. The shadow which would be caused by the buildings on the site, without consideration of the effect of modulation, is shown on exhibit 14. On December 21st, the shadow would cross 42nd in the morning and cross Newton at noon and in the afternoon.

24. Neighbors fear the shadow would result in a higher incidence of black ice on the street and increase heating costs of the houses on Newton Street.

25. Residents of the area wish to preserve the character of the area, described by one as a "small village" and believe the proposed project to be out of character. Witnesses find renters less desirable than owners as neighbors.

26. The elevation of the parking level was based on the maximum permitted steepness of the ramp so it could not be further excavated.

27. The area of the 23 ft. setback in the rear is utilized for the ramp to the parking and on-grade parking.

28. The lots across 42nd are similarly elevated above the street.

29. East Newton Street is 66 ft. wide.

30. Extensive landscaping is proposed by the applicant including the retention of two large cedars.

31. Appellants' witnesses strongly oppose the action of the Council in rezoning the area to L-2 when the community's recommendation was Lowrise 1.

Conclusions

1. If the Director determines that there will be no probable significant adverse environmental impacts from a proposal, she is to issue a DNS. Section 25.05.340. "Significant" means "a reasonable likelihood of more than a moderate adverse impact on environmental quality." Section 25.05.794(1).

2. The Director's determination is to be accorded substantial weight by the Hearing Examiner on appeal. Section 23.76.022(C)(7). To overcome that weight appellants must show the determination to be clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. Appellants' challenge to the determination addressed parking and traffic, bulk and scale of the building, loss of sunlight and increased noise. Various other concerns were raised at hearing by appellants' witnesses.

4. While the proposed structures could interfere with solar access of houses across Newton at certain times and shadow the street, those impacts would not be considered significant. The DNS acknowledged increased noise from vehicles but found that impact not significant. The record shows no error in that determination.

5. Appellants' parking survey utilization rate is substantially higher than the rate relied upon by the Director. The difference can be attributed to the area surveyed for each since on-street parking utilization is much less on 41st East which was not considered in appellants' survey. Given appellants' worse case estimate of an excess of 10 residents' vehicles plus guests seeking on-street parking and the on-street availability to the west, it does not appear that the Director's determination that the parking impact would not be significant is erroneous.

6. The evidence of difference in bulk and scale of the proposed buildings and the development surrounding does not show a significant adverse impact.

7. The Director's decision to issue a DNS was not shown to be clearly erroneous.

8. The Director has the authority to impose conditions to mitigate adverse impacts pursuant to Section 25.05.660. The impacts must have been identified in the environmental documents; the mitigation measures required must be based upon policies designated for that purpose in Section 25.05.902; and the measures must be reasonable and capable of being accomplished. Section 25.05.660(1).

9. Appellants contend that the Director should have imposed conditions making Newton the front yard to increase that setback thereby reducing shadowing, requiring alley improvements and making the alley one-way south, reducing the density of the pro

posal, requiring more parking and reducing the height by one story.

10. No policy was cited, nor found by the examiner, giving the Director authority to require that the building's orientation be changed to increase a setback to reduce shadows except that in Section 25.05.902(8) which applies only to publicly owned parks. Therefore, the Director was not shown to have erred by not imposing such a condition.

11. The only alley improvement requested was changing the flow to one-way south. The project would add to the use of the alley, however, the Engineering Department, which would advise on such a change, did not comment as to the need for such a change. The record does not show whether such condition would be reasonable. The Director did not err in not imposing that condition.

12. No policy was cited, or identified by the examiner, authorizing the Director to reduce population density except based on the effects of that density which must be specifically shown.

13. The Director does not have authority to require a parking ratio of greater than one-to-one except under certain conditions when she can increase the required ratio to a maximum of 1.25 per unit. In re Elmer, CF 293040, Section 23.54.020B. The applicant has proposed 1.27 spaces per unit so the Director cannot require more. The City Council has determined that in special circumstances, authority is available to reduce the number of units to reduce probable excess demand. In re SQAD, CF 294378, 294382. While on-street parking is fully utilized in two directions, one block to the west it is readily available. This does not constitute a circumstance to make requiring the reduction in number of units a reasonable condition.

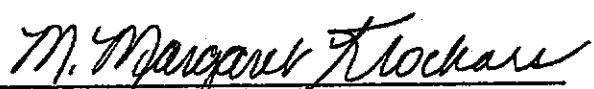
14. The DNS identified the bulk and scale of the buildings as a probable adverse impact. Various design features, i.e., modulation, pitched roof, are viewed by the Director as mitigation of the differential. The height proposed is permitted by the L-2 zoning and this zoning was intended to provide a transition in areas adjacent to single family zoning. This "transition" is not viewed as appropriate by the community because 1) the height permitted in the commercial zone along Madison is the same and 2) the height of existing development in that zone is lower than that proposed. Moreover, the structures will appear to be taller than others also built to the height limit because of the elevated mound they will sit upon.

15. The City Council has recognized SEPA authority in the Multi-Family Land Use Policies to mitigate bulk impacts when there are unusual circumstances which would not have been fully contemplated as part of the zoning decision or when the bulk presents a transition problem. The Director considered the bulk and determined that the transition from L-2 to SF 5000 was achieved through the modulation, landscaping and the separation provided by East Newton Street. With L-2 or NCl zoning on three sides, only transition to the north needs to be considered. The evidence does not show that the Director erred in her determination that no conditions are needed to effect that transition.

Decision

The Director's determinations are affirmed.

Entered this 31st day of December, 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.