

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

LINDA JAMES-MCCRAE AND
ILENE STARK SMITH

FILE NO. MUP-86-090(W)
APPLICATION NO. 8603751

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

Introduction

Appellants challenge the adequacy of conditions imposed by the Director, Department of Construction and Land Use (DCLU), on proposed construction of a 4-story, 9-unit residential structure at 6806 Oswego Place N.E.

Appellants exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code, and pursuant to the environmental protection provisions of Chapter 25.05, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on January 7, 1987.

Parties to the proceedings were: appellants, pro se; project applicant by Robert Baronsky, Esq.; and the DCLU Director by Ed Somers, associate land use specialist.

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. Applicant proposes to demolish a 2+story, 3-unit apartment and construct on-site a 9-unit, 4-story apartment building on a parcel addressed as 6806 Oswego Place N.E. Applicant proposes 9 on-site parking spaces.

2. DCLU determined that the proposal would not have a significant adverse impact upon the environment and therefore declined to require an environmental impact statement (EIS). The determination of non-significance (DNS) did include conditions which (1) require installation and maintenance of approved landscaping (2) limit the use of loud construction equipment to normal working hours, and (3) require notification of tenants in rental and lease agreements "that only one parking space is available per unit." Further, one parking space must be assigned to each unit without cost to the tenants of that unit."

3. Appellant Linda James-McCrae owns the adjacent property addressed 6808 Oswego Place N.E. and intends to relocate there for retirement. Appellant Ilene Starke Smith lives on the opposite side of the proposal site. Both request an EIS for the proposal, and/or that the height and scale of the building be reduced, preferably with underground parking. Noise, pollution and traffic were principal concerns expressed.

4. The proposal site is a Lowrise 3 (L-3) parcel located on Oswego Place approximately 2 blocks west of the Green Lake Playfield and approximately .25 block north of the Marshall Seattle Alternative High School. This segment of Oswego is parallel to N.E. Ravenna Boulevard between N.E. 68th and N.E. 70th Streets. The subject site was zoned for multi-family use prior to the 1983 L-3 zoning.

5. The surrounding area to the east, north and south is also zoned L-3. To the west is the Neighborhood Commercial 2, 40 ft. height limit zone (NC2/40').

6. Surrounding development includes single family residences south and east and apartments to the west. The north adjacent lot is being developed with an apartment and at the north end of the block is a 24-26 unit apartment building and a fire station. (The evidence varied as to the number of units.) The Hearing Examiner therefore does not agree with appellants' suggestion that the proposed construction is inconsistent with present or projected vicinity development.

7. No appeal was submitted on the 24-26 unit apartment building although the Seattle Fire Department did oppose the building for a variety of reasons. Other than appellants' general recount, the record reflects no Seattle Fire Department comment of the subject proposal for 9-units.

8. In the opinion of James-McCrae, the expected increase in resident population, particularly in conjunction with the nearby alternative school use, spells an increased crime rate. Appellants submitted no Seattle Police Department or other data supportive of this conjecture.

9. Appellants recalled that Oswego is often jammed, with parking on both sides. Per the DCLU witness, the Engineering Department has observed parking to be a continual problem in the subject area. Stark Smith suggested that the increased surface traffic, added to the existing John Marshall traffic, will impact the safety of children. There is no evidence, however, that the project will cause any marked increase in pedestrian or other safety hazards.

10. The Hearing Examiner finds in accord with the testimony of transportation/traffic witness Markley, founder and Principal Engineer of Transportation Solutions and member of the Institute of Transportation Engineers, that there are approximately 209 on-street parking spaces within an approximate 2-block walking distance. See Exhibit 8.

11. Markley's parking survey for Saturday, January 3, 1987, 8:15 p.m., Sunday, January 4, 1987, 4:30 p.m. and Monday, January 5, 1987, 1:20 p.m., showed the evening parking demand (27-32 percent occupancy) to be lower than the 48-57 percent daytime occupancy. The day figures are attributable to school, business and institutional day uses.

12. Markley projected that the 9-unit building would generate a need for 1.02 resident and 0.39 guest spaces per unit, or approximately 13 spaces. (The witness explained that while other resident unit-to-parking space requirement ratios have been discussed, the 1.02 and .39 figures are consistent and reasonable. This assessment was disputed or controverted by no evidence of record.) The demand for 13 spaces, less the 9 on-site spaces proposed by applicant, leaves an estimated spillover of 4 spaces. The Hearing Examiner finds that although Oswego is a narrow street where on-street parking can be at a premium, the study area, deemed reasonable by the Examiner, can accommodate the anticipated parking overflow from the applicant's project and the 11-14 vehicle spillover from the 24-26 apartment unit proposed north of the site. The parking study shows, for example, that none of the six available spaces was occupied during either of the three survey times on Weedin Place at N.E. 68th Street. Weedin Place is east parallel to Oswego Place. Farther south, also along Weedin Place, none of the 37 on-street available parking spaces was occupied during either of the three survey periods. However, all 19 parking spaces on the west side of Oswego were occupied during the Monday afternoon survey period (100%). At the same time, 11 of the 13 east side spaces were occupied (85%).

13. Some 18-20 vehicle trips per day are expected to be generated by the proposal with peak volumes at 7:00 a.m. - 8:00 a.m. and 5:00 p.m. to 6:00 p.m. Exhibit 1.

14. The site is approximately one block from a public transit stop.

15. Appellants' general suggestion that auto and other pollution will significantly increase to a detrimental level is supported by no evidence of record.

Conclusions

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

2. The Hearing Examiner is required to give "substantial weight" to the DCLU Director's environmental determination. Therefore, appellants have the burden of showing that the decision to issue the subject DNS (with conditions) was "clearly erroneous." Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. If it is determined that "there will be no probable significant adverse environmental impacts from a proposal," a DNS shall be issued. Seattle Municipal Code Section 25.05.340. If, on the other hand, the responsible official determines that a proposal "may have a probable significant adverse environmental impact," the responsible official shall issue a determination of significance and the EIS process is commenced. Seattle Municipal Code Section 25.05.360(A).

4. Therefore, to prevail, appellants must show the environmental impacts to be (1) adverse (2) "significant," i.e., offer a "reasonable likelihood of more than a moderate adverse impact on environmental quality", Seattle Municipal Code Section 25.05.794(A), and (3) probable, i.e., "likely or reasonably likely to occur..." as opposed to remote or speculative. Seattle Municipal Code Section 25.05.782.

5. The evidence supports a conclusion that there will be increased traffic and human population activity, and that the new vehicles will add to the existing immediate parking crunch. However, the unrefuted evidence shows that a rough two block area can in fact absorb spillover parking from the subject 9-unit as well as from a larger more northerly apartment proposal. There is inadequate evidence that crime will increase, or that auto or other pollution will increase to an adverse, significant level. The site, zoned L-3, is surrounded primarily by L-3 zoning and development. Commercial zoning is west. The facts of this case fail to support a conclusion that an EIS is required.

6. For similar reasons, the DNS should be affirmed as presently conditioned. Environmental impacts that are not significant may nevertheless be mitigated if they are specific, adverse and are clearly identified in environmental documentation. Seattle Municipal Code Section 25.05.660(A)(2). However, the mitigative conditions must be "reasonable", Seattle Municipal Code Section 25.05.660(A)(3) and "shall be based on specific policies, plans, rules or regulations formally designated" as a basis for the exercise of substantive authority. Seattle Municipal Code Chapter 25.05.660(A)(1).

7. Seattle Municipal Code Section 25.05.902 includes policies on cumulative effects; and on parking and traffic. The subject proposal is approximately one block from a public transit stop. Nine on-site parking spaces are proposed. The two-block radius can accommodate anticipated spillover from the subject project and a larger, northerly project of 24-26 units. It is therefore not "reasonable" to require a reduction in the number of units to reduce the number of autos to be parked on site per the proposal.

8. Similarly, it is not reasonable to require modification of the height, bulk, scale or density of the project. The site is surrounded by either multi-family or commercial zoning. It is not on the edge of a less intensive zone. And,

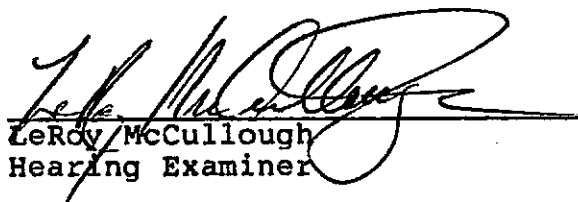
In order to justify a reduction in height below the maximum, it must be shown either that the project presents unusual circumstances which would not have been contemplated as part of the rezoning of the area or that the project is on the edge of a zone where the problems of transition are not fully accommodated by the zoning.

In re Oden Investment and Kinnear Park Condominium Association, MUP-86-057/058(W) (May 1985), C.F. 293557. Neither Oden criterion is satisfied here. As conditioned, the DNS is therefore affirmed.

Decision

The DCLU Director's determination is AFFIRMED.

Entered this 22nd day of January, 1987.


LeRoy 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 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.