

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

In the Matter of the Appeal of

WARREN BAKKEN AND JOHN AYLWARD

FILE NO. MUP-86-055(W)  
APPLICATION NO. 8602217

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

Introduction

Appellants appeal the decision of the Director, Department of Construction and Land Use, to impose certain conditions on the determination of non-significance pursuant to SEPA for an addition to an apartment building at 4230 - 12th Avenue N.E.

The appellants exercised their 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 1, 1986.

Parties to the proceedings were: appellants represented by James J. Brown, Clarke, Bovington and Cole, and the Director represented by Cliff Portman, senior 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. Appellants applied for a master use permit to construct an addition to a 20-unit apartment building at 4230 - 12th Avenue N.E. They were advised at a pre-application conference on February 28, 1986, that there would be no SEPA review of the proposed project. By letter dated June 6, 1986, they were advised that the project was not exempt from SEPA and an environmental checklist would be required. The Director issued a determination of non-significance subject to certain conditions on August 21, 1986. This appeal followed.

2. The proposal is to construct a three-story addition and add a fourth floor to an older building which now contains 20 one-bedroom units. Nine of the one bedroom units would be converted to four four-bedroom units and five three-bedroom units. The addition would add 22 bedrooms to the existing units. The property officially has six off-street parking spaces though more cars are usually accommodated. No parking spaces would be added.

3. The Director's Analysis and Decision, Exhibit 4, states that parking demand exceeds supply in this area. This was unrefuted.

4. The Director relied on a study done by the Seattle Engineering Department, the University District Parking Study, completed June 18, 1986, for the parking demand which would be generated by the additional bedrooms. The data show that the total demand of the building would be for 32 spaces. After discounting for existing demand and the six spaces, the Director found the additional demand would be for 12 spaces.

5. The Director concluded that the additional parking demand may constitute a significant impact if not mitigated when it is aggregated with the existing development on the subject site and in the area.

6. To mitigate the effect of expansion on the cumulative parking situation the Director imposed the following condition:

1. The plans shall be revised to show five, three bedroom units and 15, one bedroom units, or any other mix that would produce no more than a five space parking demand based on the Seattle Engineering Department's University District Parking Study, dated June, 1986.

7. The magnitude of the condition results from the Director's analysis that a "moderate" increase in parking demand would be 25% or 5 spaces so not to exceed a moderate increase, the number of units would have to be reduced to not exceed demand for 5 spaces.

8. Appellants surveyed car ownership in three apartment buildings they own. Of the 25 one-bedroom apartments in the buildings, 16 had one car and nine had no car for a ratio of .72 cars per apartment.

9. The University District Parking Study was based on 52 units (40% return on a 130 unit survey) in six recently completed complexes, all of which provide one parking space per unit and charge a separate fee for parking. The survey itself indicates the study did not show a strong correlation between number of bedrooms per unit and vehicle ownership rates.

10. Appellants questioned the external validity of the University District Parking Study as a tool to project demand for parking at an older building where parking is not provided for every unit and rents may be lower. Appellants also challenged the statistical reliability adequacy of the sample size for four bedroom units and the study's arithmetical correctness. Appellants provided no statistical analysis of the study's data.

11. The average number of vehicles per unit for various bedroom counts obtained by dividing the number of units with each count into the total number of vehicles for that type of unit does vary from that given on the summary memorandum so it appears that arithmetical error has occurred. The calculation for one-bedroom units agrees with the study's 1.25. Two bedroom units would have 2.0 instead of 1.78. Three bedroom units would have 1.68 instead of 1.78. Four bedroom units, based on seven units, would have 2.43 instead of 2.44 and the calculation for units with five or more bedrooms, based on a sample of two units, agrees with the study's 1.0.

### Conclusions

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

2. To make the threshold determination, the responsible official is to determine whether the proposal may have a probable significant adverse environmental impact. If she determines there will be none she is to issue a DNS. Section 25.05.340. If she determines there may be a significant impact she is to issue a determination of significance. Section 25.05.360. The determination made here was that there may be a significant adverse impact unless a condition is imposed to reduce the impact to a moderate level. Our Supreme Court has determined that a "significant" adverse impact is one that is more than moderate. Norway Hill v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976). Appellants neither challenged this approach, which varies from

the procedures authorized by the chapter, nor presented any evidence to refute the conclusion that there may be more than a moderate impact without the condition. They do object to the condition, itself.

3. The Director is authorized to impose conditions to mitigate adverse impacts pursuant to Section 25.05.660. That section requires that the conditions be based on policies designated as the basis for SEPA mitigation; that the impact be clearly identified in an environmental document and the condition be stated in writing; and that the mitigation measure be reasonable and capable of being accomplished.

4. The Director relied on the cumulative effects policy, Section 25.05.902, as the basis for substantive authority. The policy intent is to encourage other transportation modes, modify off-street parking requirements or make other requirements as necessary to assure reasonable access and flow. The Director is given authority to mitigate adverse parking impacts in that section. Further, the impact is clearly identified in the DNS.

5. Appellants object to the timing of the environmental review and to the use of a study completed after their application was made. The delay in making the environmental determination is unfortunate but no remedy is available in the administrative review process. As to the use of a study completed after application, the timing of the study is clearly consistent with SEPA. Section 25.05.535 provides specifically that if the agency concludes it does not have sufficient information it may make its own study.


6. Appellants' chief contention is that the condition is unreasonable in that it is based on a faulty and unreliable study. In support of that contention they produced data which suggest a different demand figure. The examiner is convinced that the University District Parking Study as a predictor of the parking demand of an older building which provides little parking is questionable. Reliance on the study, which acknowledges there is no "strong" correlation between number of bedrooms and car ownership, as the sole basis of the condition is error.

7. Further, appellants contend that, even using the study's results, the amount of demand relating to the new addition was miscalculated. Assuming the external validity of the study and using the corrected averages, the demand generated by 22 one-bedroom units would have been for 27.5 parking spaces. Provision, or lack of, for that demand is, in effect, grandfathered so no additional parking can be required for the existing development. The structure with proposed addition would generate a total demand for 34 spaces so the difference, 6.5 spaces, would be the demand caused by the addition. The Director had concluded that any demand for over 5 additional spaces would be more than moderate. Her condition was designed to eliminate all additional demand. The Director must address the issue of whether it is reasonable to require that all additional demand be eliminated or whether mitigation is sufficient.

#### Decision

The matter is REMANDED to the Director for further analysis of the probable parking impact and consideration of the appropriate level of mitigation.

Entered this 16<sup>th</sup> day of October, 1986.

  
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