

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

THE CENTRAL BALLARD COMMUNITY
COUNCIL

FILE NO. MUP-87-002(W)
APPLICATION NO. 8605079

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

Introduction

Appellant challenges the adequacy of conditions imposed by the Department of Construction and Land Use (DCLU) Director on proposed construction of a 2-story, 6-unit residential structure on property addressed as 1757 N.W. 61st.

Appellant 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 March 5, 1987.

Parties to the proceedings were: appellant, pro se by Dennis Canty; project applicant by James Klontz, pro se; and the DCLU Director by Clay Leming, 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 an existing circa 1906 single family structure addressed as 1757 N.W. 61st Street and construct on-site a 2-story, 6-unit apartment building with basement parking for six cars. Appellant, Central Ballard Community Council, challenged the DCLU Director's determination of non-significance, and the adequacy of conditions imposed on the permit.

2. The subject site is a 4750 sq. ft. area parcel that is 95 ft. deep. It has 50 ft. of frontage to the north abutting N.W. 61st Street right-of-way. The site is approximately 3 platted lots east of 20th Avenue N.W. and approximately 11 lots west of the 17th Avenue N.W. right-of-way.

3. The subject "block" consists of some 30 platted lots fronting the north and south sides of N.W. 61st. The northerly and southerly "block fronts" that comprise the block have alley access to the rear.

4. The great majority of the lots are without driveways. Applicant's site is an exception. Applicant proposes to remove the driveway. Theoretically, this will increase the street frontage available for parking.

5. Most of the homes on the subject "block" are single family structures. However, there is a church near mid-block on the south side of N.W. 61st and an apartment at the southeast corner of N.W. 61st Street and 20th N.W. Development at the southwest corner of 20th N.W. and N.W. 61st includes an apartment

building and another church.

6. The subject site is part of a large L-2 zone that extends north to N.W. 65th and south beyond N.W. 60th. The zone's west boundary is near 24th Avenue N.W. and the east boundary near 15th N.W.

7. Appellant's letter of appeal cited several concerns, some of which were amended or deleted at the Hearing Examiner hearing. A remaining topic of major concern was "parking and traffic." Parking is allowed on both sides of N.W. 61st. However, when cars are parked on both sides, only one lane of traffic remains. According to appellant witnesses' general statements, the site is en route to the Adams School. Since the proposed development will increase vicinity traffic and on-street parking, the witnesses continued, the development will (therefore) have a negative impact on vicinity safety and liveability.

8. Appellant presented general observations but offered no parking survey or availability data.

9. The Hearing Examiner finds in accord with applicant's submittal that the most intensive incident of on-street parking occurred during a Sunday evening church service (31 cars), and that some 10 unused parking spaces remained available at that time. The second most intensive use noted was at 11:05 p.m. Tuesday, March 3, 1987 when 12 cars were parked on the north side and 7 on the south side of N.W. 61st. (Exhibit 9).

10. Another six-unit apartment is proposed for 1733 N.W. 61st, approximately five lots east of the subject site and within the same block front.

11. DCLU projected that each proposed apartment would generate a parking spillover of 1.5 vehicles, i.e. a total of 3 cars would be unable to use on-site parking and would therefore "spillover" into the on-street parking supply.

12. The DCLU representative acknowledged that no study had been done of the impact of full L-2 development of this area.

13. The annotated Environmental Checklist and the DCLU Analysis and Decision projected a temporary increase in noise levels and a decrease in air quality during "demolition, site preparation, and construction."

14. With respect to the construction, one condition imposed by DCLU restricts "loud equipment" to "normal working hours (7:30 a.m. to 6:00 p.m.) on non-holiday weekdays." Appellant desires to limit equipment use from "(8:00 a.m. and 5:00 p.m.) daily, Monday through Friday only." Appellant based its recommendation on the consideration that residents would appreciate the additional rest.

15. Recognizing vicinity properties' reliance on the alleyway for access, DCLU's second "Condition(s) of Approval after Issuance of a Building Permit" required that the "contractor and/or responsible party...take the steps to make the alley free and clear of any construction related materials and passible (sic), at all times." Before "Final Occupancy of the Building," DCLU required installation and maintenance of landscaping and a fence; and that exterior lighting be shielded and directed "downward away from adjoining residential developed properties."

16. Appellant's letter of appeal also requested that a drainage control plan be included with the project application. DCLU responded credibly that a drainage control plan ordinarily accompanies the application for a building permit. Project applicant added that drainage and other structure specifics would be addressed via the Building Code processes.

17. Applicant has applied for a housing demolition permit (HPO-86-237) as required by the Housing Preservation Ordinance.

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, appellant has the distinct burden of showing that the decision to issue the subject DNS and to approve the permit (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. To prevail on the DNS Challenge appellant must therefore show the proposal's environmental impacts to be (1) adverse (2) "significant," i.e., to 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..." Seattle Municipal Code Section 25.05.782.

5. The evidence supports the conclusion that during construction there will be an increase in noise levels. On a long-term basis, the evidence is sufficient to show an increase in traffic parking activity and in other areas typically associated with an increase in human population. Further, the DCLU witness admits that no comprehensive analysis has been done to cover the potential development under the L-2 zoning.

6. However, this proposal's impacts on the quality of the existing environment were not shown to be "more than moderate." Addressing the issues raised by appellant, there is inadequate evidence from which to conclude that pedestrian or vehicular safety would be more than moderately impacted by the subject proposal. The evidence shows that during the most intensive period of on-street parking some 10 spaces remained available. The evidence strongly indicates that projected spillover from this and the other 6-unit project can be accommodated by existing parking supply. A review of all of the evidence shows that no EIS is required.

7. Although not "significant" environmental impacts 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). Mitigating 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).

8. Given the vicinity's ability to absorb projected parking spillover from the two projects proposed for the block, it is not "reasonable" to require a reduction in the number of units. This conclusion was recognized by appellant's representative in hearing. The question of sensitive (historical) design was also excised from the challenge. No evidence supports the appellant's stated desire for specific provision of construction vehicle parking; nor for any amendment to the noise condition imposed by

DCLU. The concerns regarding drainage are jurisdictionally left to Chapter 22.800, Seattle Municipal Code, and are addressed at the building permit stage.

9. Finally, it was concluded above that the impacts of subject proposal, in conjunction with a neighboring proposal, would not be significant. The Hearing Examiner was presented with no other referenced projects for this "block" or vicinity. The evidence of record therefore fails to show that the subject project's parameters should be modified to facilitate or accommodate other potential demands for streets or other public services/facilities. Seattle Municipal Code 25.05.902(C).

Decision

The DCLU decision is AFFIRMED.

Entered this 10th day of March, 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 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.