

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JUNICHI TSUJI, ET AL.

FILE NO. MUP-87-022(W)
APPLICATION NO. 8701302

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

Introduction

Appellant, Junichi Tsuji, for himself and for other area residents appeal the decision of the Director, Department of Construction and Land Use to issue a declaration of non-significance (DNS) for a proposal to construct a four (4) unit apartment building at 3036 - 4th Avenue West.

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 June 12, 1987.

Parties to the proceedings were: appellant, Junichi Tsuji, and area resident, Rosemary Newman; the Director, Department of Construction and Land Use by Cheryl Waldman; and the applicant, Serafin Tamayo.

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. The applicant proposes to construct a four (4) unit apartment building and maintain the present development of the lot which is a duplex, and a three (3) car garage. The duplex and three (3) car garage is at the rear (east portion) of the lot and is oriented to the alley. A three car parking area is located in the front yard of the lot and has access from a curb cut on 4th Avenue West.

2. Observing the 20' setback requirement for front yards, the new development would front the duplex and the garage, utilize the paved surface of the front yard that presently serves as a three (3) car parking area for an enclosed two (2) car garage with one open parking space, and eliminate the "orchard-like" setting of the remainder of the front yard.

The 60 by 127 foot lot would then accommodate the existing duplex and three (3) car garage and the proposed two (2) story, four (4) unit apartment plus the enclosed two (2) car garage with an open parking space. Within the four (4) proposed units, seven (7) bedrooms were originally proposed.

3. The block containing the subject site, as well as the immediate area is zoned Lowrise 1. The block is encircled by properties designated Lowrise 1 or Institutional Lowrise. A major institution, Seattle Pacific University, is located one block north. One block southwest is a cemetery, south is an elementary school and one block southeast is a park. Single family zoned areas are found south and east of the site sandwiched in between the cemetery and the park, and then, east

of the park. North of the site to the Lake Washington Ship Canal no single family zone is found.

4. From the credible testimony of an area resident, the Hearing Examiner finds the trend of development in the area to be a major institution expansion by the University. No new single family development in the area was referenced by appellant or by area residents. The Hearing Examiner does not find that the area containing the subject site to be single family zoned nor suited for single family residential usage.

5. Although the streetscape along the block containing the subject lot is stated to be of single family structures by credible testimony of the appellant, the Hearing Examiner finds that the block is zoned Lowrise 1. The block across the street is zoned Lowrise 1 and Institutional Lowrise. At the rear of the subject lot, the properties abutting the alley to the east are zoned a more intensive use, Lowrise 3.

6. The Hearing Examiner finds that construction of the four (4) unit apartment building will transform a portion of the lot's front yard from an open and green area to an apartment structure but the proposal is stated to be in compliance with all zoning requirements. Each of the four (4) proposed units would, as stated through credible testimony of the Director's representative, have the minimum of 300 sq. ft. of private open space as required by the Land Use Code. The record discloses that a common area between the existing duplex and garage and the proposed apartment building will be provided as well.

7. The applicant stated in credible testimony and the Hearing Examiner finds that modulation and landscaping will be provided to mitigate the impact of bulk of the apartment building upon the surrounding properties.

8. Applicant in further credible testimony stated that the design, roofline, building width, scale and character of the proposed building was in conformity to that of the other properties in the area. This testimony was disputed by the lead appellant. Lead appellant's and area resident Newman's presentation was that the structures in the immediate area were all single-family structures. The Hearing Examiner does find that single family residences are found in the blocks in the immediate area but that the residences all exist in a Lowrise 1 designated zone.

9. Credible testimony from the applicant and the record discloses that the subject lot is on a 10 percent grade that slopes to the north and east and for this reason the proposal will have up to 4 ft. of the first level of the proposed building below street level. Applicant argues and the Hearing Examiner finds that this land characteristic will mitigate the impact of bulk of the proposed building.

10. Area residents complain of blockage of views if the proposal is permitted. No policy or code authority was presented in this regard and the Hearing Examiner finds no authority which protects private views from private residences.

11. In response to questioning, applicant testified that the soil at the site was clay and the Hearing Examiner finds that this subject had been filed in the documents submitted for approval for the DNS.

12. Limiting access to the property to the alley was argued by appellant and area residents to promote conformity to the practice followed by other area residents. Applicant has stated in credible testimony that the present development prevents access to the front portion of the lot. The Hearing Examiner does not find that Seattle Municipal Code, Section 23.45.018B.1 that requires alley access and prohibits street access, operates

to foreclose the applicant's presently existing curb cut for the lot as the proposal's parking will be situated at the front of the lot. The Hearing Examiner finds that the curb cut is presently being utilized by the applicant and that the curb cut will not be given up voluntarily by the applicant.

The record discloses that DCLU has noted that 4th Avenue West is not an arterial and that vehicles leaving the subject site may back out on to the street while exiting.

13. Requiring applicant to restrict and guarantee the actual number of tenants was urged by appellant and other area residents to control the impact of the number of new residents in the area. Applicant in credible testimony stated that he has attempted to design a reasonable development of his property. The Hearing Examiner finds that applicant's exercise of development rights comparable to other area property owners could result in an even larger, eight (8) unit apartment building on the site as was stated through the credible testimony of the applicant.

14. Applicant, as a concession to the area residents and as a gesture of his goodwill, indicated that he would reduce by one, one of the bedrooms presently designed for the larger apartment unit of the proposed apartment building. The Hearing Examiner finds that this is a condition voluntarily imposed by the applicant on his proposal and would make the proposed development more compatible to existing development in the area.

15. In addition, the applicant agreed to attempt to control tenants' unsightly parking in the driveways by prohibiting tenants from parking in driveways and by preventing tenants from utilizing the car garages as storage areas. The Hearing Examiner does find that the tenants do not presently park in assigned garages. Applicant agreed to draft conditions into his rental agreements and to evict tenants who would not comply. The rental agreement will be shown to area residents. The Hearing Examiner finds that this is another concession by the applicant to the area residents and that this condition is also voluntarily imposed by the applicant on his proposal.

16. Credible testimony by the Director's representative indicated the proposal's spillover parking demand of three (3) cars, based on a 1.5 ratio, can be absorbed by the existing availability of street parking. Parking is permitted on both sides of 4th Avenue West. Appellant disputes the accuracy of the three (3) car spillover demand and indicates that the spillover is probably eight or more cars. The Hearing Examiner finds that appellant has offered no evidence to contradict the testimony of the Director's representative.

Applicant's depiction of a basically vacant street scene was disputed and contradicted by area residents in their testimony. The Hearing Examiner does find that when Seattle Pacific University is in session, street parking is utilized by students who commute to the University but that as classes end, the streets in the area become available for parking.

17. Credible testimony by an area resident establishes that Seattle Pacific University will undergo expansion in the future and that students will avoid the cost of pay parking by parking in the streets and that this will further compound the parking problems in the area. The Director's representative acknowledged the cumulative effect on the demand for parking if applicant's proposal were to be granted but the Director's representative indicated that this would not be an adverse impact to the area because the apartment generated parking demand could be met.

18. The Hearing Examiner does not find appellant nor area residents to have established that the proposed parking situation will have an adverse impact on the area. It is acknowledged that student parking on the residential streets, presently, and in the

future are concerns that must be addressed by Seattle Pacific University in its plans for expansion.

19. Construction impacts are stated by the Director's representative to be an impact to the area but because of the temporary nature of the impacts, these impacts are stated not to be significant adverse impacts. The Hearing Examiner finds that the DNS was conditioned in this regard.

20. Appellant's and area residents' attempt to characterize applicant as a slum lord was directly refuted by applicant's credible testimony that he is the owner of only the subject lot in question. The Hearing Examiner makes no finding as to the type and kind of maintenance that will be provided by the applicant.

21. Appellant and area residents presented concerns over present noise, pedestrian safety, building materials, parking violations, building and zoning code violations, interpretation of codes and regulations as well as an disagreement with the environmental checklist. No documentation or specific evidence was presented to the Hearing Examiner in regards to their concerns and contentions. These matters are not related to this appeal regarding applicant's proposed development.

Conclusions

1. An environmental impact statement is required if the responsible official determines that a proposal may have a probable significant adverse impact on the environment. Seattle Municipal Code Section 25.05.360. A significant impact is present "whenever more than a moderate effect on the quality of the environment is a reasonable probability." Norway Hill v. Kind County Council, 87 Wn. 2d 267, 278, 552 P.2d 674 (1976).

2. The Director of DCLU found an impact of increased street parking demand from applicant's proposal but not finding this a significant adverse impact, did not require an EIS. The existing street parking is concluded to adequately satisfy this impact and that, therefore, mitigation is not required of the applicant.

3. The Director found an impact of bulk due to the present "orchard-like" setting of the lot's front yard but with required setbacks and landscaping imposed on the proposal, the development is in conformity with existing development in the vicinity. The Hearing Examiner concludes that the slope of the site will further mitigate the appearance of bulk on the surrounding properties.

4. Area residents' submittals and appellant's presentation at the public hearing dispute the Director's conclusions that the impacts are not significant adverse impacts. However, there has been no showing that the factual bases for the Director's decision are in error. No evidence was presented which contradicted the Director's conclusions. The Hearing Examiner therefore concludes that there is not a sufficient basis for reversal of the Director's decision given the standard of review of Seattle Municipal Code Section 23.76.36(B)(7) which requires that the Director's decision be given substantial weight.

5. The Hearing Examiner is not persuaded by appellant's and area residents' arguments and therefore does not conclude that the Residential Areas Policies of the Land Use Code of the Seattle Municipal Code, Section 23.16.002 that states as its purpose, "the preservation and maintenance of the physical character of single family residential areas", operates to prevent applicant from exercising his property rights to construct an apartment building on his lot located in a Lowrise 1 zone.

6. The Hearing Examiner concludes that the appellant's

arguments were made from the SEPA Policies Manual and that the relevant provisions are now codified in the Seattle Municipal Code, SEPA Policies and Procedures, Section 25.05.902, Appendix A. Appendix A includes the Multi-Family Residential Areas Policies, Seattle Municipal Code, Section 23.16.002(B) and the provisions for Lowrise 1 zones, Seattle Municipal Code, Section 23.45.002 et. seq., which are relevant to this proceeding.

7. The Hearing Examiner concludes the proposal should be conditioned pursuant to the DCLU decision as follows:

A. During Construction

1. In addition to the Noise Ordinance requirements, to reduce the noise impact of construction on nearby properties, the owner(s) and/or responsible party(s) shall limit construction to the hours of 7:30 a.m. to 6:00 p.m. on non-holiday weekdays.

B. Prior to Occupancy

1. The owner(s) and/or responsible party(s) shall provide landscaping according to the plan approved by the Land Use Code Specialist. Any street tree damaged or removed during construction shall be replaced. The four existing apple trees shall be relocated on site per approved plan.
2. The owner(s) and/or responsible party(s) shall direct and shield illumination of building exteriors so that all lighting is contained on the property and nearby properties or street traffic are not affected by light or glare.

C. Permanent

1. The owner(s) and/or responsible party(s) shall maintain all landscaping per approved plans.
2. The owner(s) and/or responsible party(s) shall direct illumination of building exteriors so that all lighting is contained on the property and nearby properties or street traffic are not affected by light or glare.

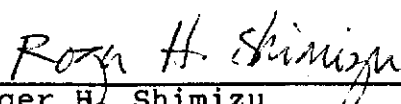
D. Additional

1. The owner should redesign the large apartment unit to provide two bedrooms only.
2. The owner shall include in his rental contracts language which prohibits tenant parking in driveways and tenant use of the garage for storage which would preclude parking for automobiles. The rental contracts should be made available for inspection by the area residents.

Decision

The Director's decision to issue a DNS with permit conditions as modified is AFFIRMED.

Entered this 23rd day of June, 1987.



Roger H. Shimizu
Hearing Examiner Pro Tempore

CONCERNING FURTHER REVIEW

Pursuant to Section 25.05.680(C), Seattle Municipal Code, 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 City Council's review on appeal shall be limited to the exercise of the City's substantive authority to condition or deny the proposal under SEPA as authorized by Section 25.05.660. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure.

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 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 23.76.36(B)(11). 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. Seattle 25.05.680.

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.