

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

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In the Matter of the Appeals of

DONALD B. WALTER AND
CHERYL AND ERNEST WILSON, ET AL.

FILE NO. MUP-87-078(W) and
MUP-87-080(W)

APPLICATION NO. 8605815

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

FINAL DECISION FOLLOWING
REMAND

This matter was remanded to the Director, Department of Construction and Land Use, by the Hearing Examiner in the decision entered February 17, 1988, to reconsider the safety of the locations of the driveway to the parking garage and the adequacy of the sight distance for vehicles entering N.W. 85th Street from 28th Avenue N.W.

The Director issued responses to the remand on February 25, 1988, and March 15, 1988. No further objection was filed by any party to this action so no further hearing was deemed necessary. Based on the responses of the Director, the following additional findings of fact, conclusions and modified decision are entered.

Findings of Fact

1. The Engineering Department evaluated the location of the driveways to the parking garage in relation to the intersection and found that the driveway locations are acceptable except that the north driveway must be ten feet clear of the south alley edge. Since the Engineering Department specifically reviewed the locations for safety and has greater expertise in traffic safety than any other witness in this record, its finding is accepted by the hearing examiner as true.

2. The Engineering Department evaluated the adequacy of the sight distance for vehicles entering N.W. 85th Street from 28th Avenue N.W. It found that the sight distance is adequate but that use of planter boxes along N.W. 85th could restrict sight distance and the parking of cars on the east side of 28th N.W. from the corner to the driveway could also interfere. The Engineering Department proposed conditions requiring planting at grade and restricting parking with the cost borne by the developer. The examiner accepts as true this evaluation of the adequacy of the sight distance.

3. Restricting parking on 28th N.W. from the corner to the driveway would reduce the available on-street parking by about two cars. This would not cause a significant impact or require additional parking on-site.

Conclusions

1. The decision of the Director should be modified to add the following conditions:

1. The north driveway shall be reduced in width to provide a 10 ft. space between the driveway and the alley as required by the Engineering Department.

2. The developer shall grade the subject site along the alley edge to the permanent alley grades shown on the building grade sheet.

3. Street trees in the planting strip along N.W. 85th Street shall be planted on grade, not in raised planter boxes.

4. Parking shall be restricted along the east side of 28th Avenue N.W. from N.W. 85th Street to the south driveway and be shown on the plans, and the cost of the restriction shall be borne by the developer.

Decision

The decision of the Director is modified by the addition of the conditions listed in Conclusion 1, above.

Entered this 28th day of March, 1988.

M. Margaret Klockars
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 for 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.

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

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APPLICATION NO. 8605815

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Introduction

Donald B. Walter and Cheryl and Ernest Wilson, et al., appeal the decision of the Director, Department of Construction and Land Use, on a master use permit application for a proposed apartment building at 2760 N.W. 85th Street.

The appellants 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 February 2, 1988.

Parties to the proceedings were: appellants Wilson, et al., represented by Paul Sikora, Cairncross, Ragen & Hemplemann, P.S.; the Director, Department of Construction and Land Use by Ed Somers, land use specialist; and the applicant, Donn Bodine, pro se. Appellant Walter was not present but submitted a letter describing his concerns. His request for a continuance to allow his attendance was denied.

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 subject of these appeals is the decision on the master use permit application for a 28-unit apartment building at 2760 N.W. 85th. The Director, Department of Construction and Land Use ("Director"), issued a determination of nonsignificance ("DNS") for the proposal and imposed conditions pursuant to SEPA. The proposal is the latest in a series of applications and proposals. In 1980 or '82 a permit was obtained, but expired, for a 17-unit condominium. In 1985 an application was filed for a 22-unit building. The decision to grant that application was appealed in 1986 to the Hearing Examiner, then to the City Council which remanded it to the Hearing Examiner. The Hearing Examiner imposed conditions limiting the height and length of the structure. A new application was filed under the NCL zoning for a 33-unit building. The building was modified to reduce the length and resulted in 31 units. The DCLU staff required further reduction of the building in the current application. The two appeals challenge the decision on the latest proposal.

2. The site of the proposed building is at the northeast corner of the intersection of 28th N.W. with N.W. 85th Street. Five platted lots comprise the parcel with 140 ft. of frontage on N.W. 85th and 98 ft. on 28th N.W.

3. The subject property and properties to the south, across N.W. 85th, and to the west, across 28th N.W., are zoned NCL 30'.

Properties across the alley to the north and to the east are zoned single-family.

4. At the time of the earlier decisions most of the structures in the immediate area were one to two stories high so the four-story structure proposed then was judged to be out of scale. To mitigate that difference conditions were imposed reducing the height of the roof ridge line by 8 ft. but retaining the pitched roof, and reducing the length of the building by 8.5 ft. The design features which gave the appearance of two buildings were to be retained or the building stepped down more at the west end to reflect the slope of the lot.

5. The structure now proposed would be three stories high at the east end and two stories at the west end over a parking level which is partially above ground at that end. The structure is designed to meet the 30 ft. height maximum of the zone so the roof ridge line will not exceed 35 ft. The structure is to be 122.5 ft. long and 95 ft. deep. The parking garage would be entered from 28th N.E. and contain 31 parking spaces for the 28 units. One driveway would be located 30 ft. north of the south property line. The second would be about 78 ft. north of the south property line.

6. A 12 ft. wide alley separates the subject site from single-family properties on the north. The last application had provided parking off the alley. The parking was moved underneath the building to improve the relationship of the building to those properties.

7. In addition to the single-family residences to the north there is an eight-unit building across 28th N.W. to the west, small stores with apartments above across N.W. 85th to the south and a small multi-family building to the southeast. To the east of the site is a duplex.

8. Since the time of the decision on the last application, several more three-story houses have been constructed on properties north of the subject site. Where there were three, three-story houses, there are now eight. The prevailing scale along N.W. 85th and 28th N.W. remains unchanged.

9. In response to DCLU direction, an 18 ft. recess in the north facade was created which gives the appearance of two wings, each approximately 40 ft. long. There is some modulation in the south facade but no comparable recess. Modification resulted in the elimination of three units.

10. The building now proposed is 8.5 ft. shorter in length than the one considered by the City Council. The east wing has been reduced 9.5 ft. in height and the west wing 18.5 ft. The depth of the building has been increased.

11. The land use specialist found that the present proposal represents a sensitive increase in scale between the NC and R zones. He found that though, overall, it is larger than structures in the single-family zone, the design with a two-story facade along the west line and a facade that steps up from two to three stories along the north line provides transition to the smaller scale of the adjoining zone and is consistent with the height of the adjoining zone.

12. Northwest 85th Street is an arterial. Especially during heavy traffic all four lanes are used for travel although parking is permitted in the outside lanes. The street slopes up to the east with a crest one block east of 28th N.W. at Earl Avenue N.W. The street gains some 10 to 12 ft. in elevation over the block.

13. Twenty-eighth N.W. is a smaller street but is a south bound bus route to N.W. 85th where the bus turns east. The street is two lanes wide. The bus stop is at the corner so blocks that lane when occupied by a bus.

14. The applicant is required to dedicate 9.5 ft. to street

use to widen the street and to improve it with a sidewalk, curb, gutter, etc. A condition imposed by the Director requires that improvements be made "to Seattle Engineering Department requirements."

15. Appellants' witnesses report difficulties with sight distance currently when trying to enter traffic from 28th N.W. Ed Somers disagrees that there is a problem. The evidence is inconclusive as to whether the building would reduce the site distance at the intersection with Dan Hardin stating that it would and Ed Somers that it would not.

16. A one-story "rental office" is to project to the south property line beginning about 20 ft. from the west property line (after dedication) or 30 ft. from the curb. This could easily be overlooked on the plans. According to the plans, the south property line is 12 ft. from the north curb of N.W. 85th.

17. It appears that where there was an almost unobstructed view across the subject property as a driver approached N.W. 85th, the proposed building would create a much smaller sight triangle.

18. Appellants request that the building be pulled back 20 ft. from the south property line to improve visibility at the intersection.

19. The standard for distance between an intersection and a driveway used by the Engineering Department, according to Ed Somers, is 10 ft. Dan Hardin, a resident of the area and an environmental analyst for the City of Bellevue, regards the location of the closer driveway as a traffic safety problem since there is not adequate distance for a car turning right from N.W. 85th to stop if a car is pulling out of the garage to go south on 28th N.W. Bellevue's standard is a minimum of 100 ft.

20. The street turn proposed at the southwest corner of the subject property meets Engineering Department standards. Mr. Wilson testified that a radius return is needed instead of a right angle return. This would require that some additional property be dedicated to street use. No part of the structure is proposed to be built on the area which would have to be dedicated. The record does not show whether the building would be required to be set back further.

21. Ed Somers testified that the Engineering Department did look at the site plan with regard to street dedication but had no comment on the location of the driveway. He stated that the proposed sight triangle at the intersection meets Engineering Department standards.

22. The parking demand projected for 28 units is 42 spaces. The garage would accommodate 31 cars leaving 11 to seek parking on the streets.

23. The parking survey done by the applicant showed an utilization rate of just over 25 percent for the 78 spaces considered. An additional 11 cars could be accommodated on the street.

24. The supply of parking used in the survey included spaces on N.W. 85th which are now largely unused. Appellants contend that the spaces should not be considered as "available" because the parking lanes are used for travel. If those spaces are excluded from the available supply current utilization would be approximately 35 percent so there is space on the other streets to accommodate the overflow.

25. In addition to the greater setback from N.W. 85th, appellants ask that the depth of the building be reduced to 59 ft., the number of units be reduced to 17, the lot coverage be limited to 43.5 percent, the floor area be limited to 14,782 sq. ft., that proposed in the earlier application, the applicant be required to provide 1.5 parking spaces per unit, the space for the dumpster be designated on the plans and the dumpster be

screened, and the requirements associated with the dedication for street widening be stated in greater detail and incorporated in the site plan.

26. The applicant stipulated that the dumpster would be screened.

Conclusions

1. Appellants seek further conditions to mitigate adverse impacts of the proposed development. The Director is authorized to impose conditions on a proposal to mitigate adverse impacts with the following limitations: the conditions must be based on policies designated in Section 25.05.902 as bases for the exercise of substantive authority; the conditions must be related to environmental impacts identified in the environmental documents; the conditions are to be reasonable and capable of being accomplished; and the applicant can be held responsible for implementing mitigating measures only to the extent attributable to the impacts of the proposal. Section 25.05.660.

2. One of the goals of the Neighborhood Commercial Area Land Use Policies, which policies have been adopted as a basis for SEPA mitigation, is to:

Provide for transition in scale and use between residential and commercial areas, buffering residential areas from the impacts of heavier commercial uses, wherever possible.

Section 23.16.020. The Director considered this policy and decided that though the proposed structure is larger than the single-family structures, as designed it provides a transition in scale so no further mitigation is necessary or appropriate. The two single-family zone boundaries, east and north, are those to be considered and it appears that the northern boundary is the more sensitive. The structure accommodates the transition by both stepping down toward that zone and by providing the recess to give the appearance of less mass. With height no greater than adjacent single-family uses and the design that has been proposed the transition would be effected. Appellants have not shown error in the Director's decision as to the scale of the building. Lot coverage and floor area are aspects of the bulk of the building so failing to limit either of those was not error.

3. Appellants urge that the number of units, or density, be limited to provide transition in scale and use. "Scale" is regarded by the Hearing Examiner as the physical relationship of the mass of the structures to each other. Since density may be unrelated to scale, limiting density would not be an appropriate way to affect scale. The policy also refers to a transition in use but the use, multi-family, is established by the zoning. Moreover, the City Council has specifically recognized that density is not an adverse environmental impact in itself. The City Council decided that only the effects of density on utilities, traffic, parking, etc., can be evaluated under SEPA. In re SQAD, C.F. 294378 and 294392 (1986). Appellants presented evidence of traffic and parking impacts and those may be considered.

4. No error was shown in the Director's decision not to require the provision of additional parking where the spillover can readily be accommodated on the street and future development potential is not shown to be great.

5. As to traffic safety, appellants have raised two specific concerns: the effect of the building on the sight distance for entry into N.W. 85th Street traffic and the proximity of the driveway for the parking garage to the intersection. Though the Engineering Department did see the site plan and had no comment on either of those items, the evidence presented by appellants shows the potential for life safety hazard which overcomes the showing that the Engineering Department did not comment. Therefore, the matter should be remanded for

consideration of those two issues by the Engineering Department. Appellants' suggestion for a different corner should be considered by the Engineering Department if modification is necessary for safety.

6. Appellants desire specificity as to the detail for street improvements. The Director's condition requiring improvements "to Engineering Department requirements" is not in error.

7. Appellants have not shown any ground for imposing a condition as to the location of a garbage dumpster. The applicant agrees to screen the dumpster. Further, the decision is based on the provision of 31 parking spaces so the dumpster cannot be placed to reduce that number. Since no other impact from the dumpster's placement was suggested no condition may be imposed.

Decision

Based on the foregoing, the matter is remanded to the Director to request that the Engineering Department evaluate the safety of the location of the driveway to the parking garage in relation to the intersection and the adequacy of the sight distance for vehicles entering N.W. 85th from 28th N.E.; to impose any conditions which are determined to be needed as a result of that evaluation; and to notify the parties and the Hearing Examiner of that determination within 14 days of the date of this decision. Any party to this action may file written objections to that determination with the Hearing Examiner within 10 days of the date of that determination. Unless a request for further hearing is made and granted, the Hearing Examiner will issue a final decision based on the record, the additional determination of the Director and any objections filed.

Entered this 17th day of February, 1988.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner