

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

In the Matter of the Appeal of

ANDREW AND KAYE HALL

FILE NO. MUP-88-015(W)  
APPLICATION NO. 8606880

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

Introduction

Appellants, Andrew and Kaye Hall, appeal the decision of the Director, Department of Construction and Land Use, on a master use permit application for a medical office building at 4520 42nd Avenue S.W.

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 May 9, 1988.

Parties to the proceedings were: appellants, pro se; the Director, Department of Construction and Land Use, represented by Arthur Ward, land use specialist; the applicant, Greg Vornbrock, pro se.

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. Greg Vornbrock applied for a master use permit to demolish a single family residence and construct a three-story medical office building at 4520 42nd Avenue S.W. The Director, Department of Construction and Land Use, issued a determination of non-significance (DNS) pursuant to SEPA and approved the application subject to conditions restricting construction hours, requiring improvement of the alley, installing and maintaining landscaping and protecting surrounding properties from light and glare.

2. Appellants challenge the Director's failure to specify the required improvements to the alley and to impose further conditions requiring landscaping on the alley side of the building, more on-site parking to restrict noise in the alley, to reduce the size of the building and require more setback to reduce the shadowing of their property. In addition, a number of technical challenges to the Director's determination of required parking, type of parking and aisle width, sight triangle at the alley were raised. The examiner ruled that the Hearing Examiner had no authority to consider these matters under a master use permit appeal.

3. The site of the proposed development is in an NC3 65' zone. An alley separates this zone and an NC3 85' zone from an L-3 zone to the east.

4. The applicant proposes parking on the building's first level with cars entering from 42nd Avenue S.W. and exiting via the alley.

5. The alley abutting the subject site has a right-of-way

16 ft. wide and is surfaced with gravel. Fences, retaining walls, landscaping, etc. connected to other properties may be encroaching on the right-of-way.

6. The applicant submitted a traffic and parking report prepared by a traffic engineer. The Seattle Engineering Department "backed up" the traffic consultant's report, according to the land use specialist. Based on that report, the Director's land use specialist identified a maximum parking spillover of 18 vehicles.

7. Surveys of the parking on surrounding streets showed an average weekday utilization of the on-street parking at 39 percent.

8. A parking lot across 42nd Avenue S.W. from the subject site is leased by the Junction Shopping Center in West Seattle, Inc., from West Seattle Trusteed Properties, Inc. The land use specialist relied upon the representation by the traffic engineer and applicant that the parking lot would be available for overflow parking from the proposed building. That lot contains 93 parking spaces and at the time surveyed on two weekdays was 39 percent and 47 percent occupied.

9. Appellants presented a letter (Exhibit 7) to Ms. Hall from the executive director of the lessee of the parking lot stating that the parking lot may not be counted toward required parking for new buildings and the spaces are for Junction shoppers only.

10. The land use specialist introduced a "covenant" (Exhibit 6) which he testified shows that the parking lot is available to the subject property for non-required parking. That covenant is unsigned, does not have exhibits attached referred to in its body and has other attachments which are not referred to in its body so cannot be relied upon by the examiner.

11. The land use specialist and the applicant both represent that the property pays an assessment for the parking lot; that the patients of the medical offices in the proposed building are defined as shoppers and would be permitted to use the parking lot but that employees would not.

12. Appellants predict that patients who find the building parking full will exit through the alley and make several passes through the alley while waiting for an opening in the building.

13. Given the ready availability of street parking and parking in the lot there is no more reason to believe that the drivers will persist in their quest for building parking than that they will park in the street or in the lot.

14. Appellants contend that the absence of a sight triangle at the building exit to the alley will create a hazard.

15. The traffic engineer looked at the building exit and found sufficient sight visibility, in part because of the width of the driveway.

16. Appellants note that there will probably be additional redevelopment of lots on the alley which will add traffic to the alley.

17. Condition No. 2 of the decision is as follows:

To ensure reasonable access and flow of increased traffic egressing to the unimproved alley from the subject use, the alley is to be improved from the south property line to S.W. Oregon Street according to the standards of the Seattle Street Design Manual, as per Director's Rule 10-85 and SEPA Policies Section 25.05.902D.1.C.

18. The Seattle Engineering Department indicates it will require that the alley be surfaced with concrete for a 15 ft. width from the south property line north to the street. Drainage with a controlled release facility will also be required as well as retaining walls, as necessary.

19. No landscaping is proposed for the alley side of the building where there would be no setback.

20. The Director did not find any incompatibility between a three-story medical office building in the rear of L-3 zoned properties at the alley.

21. Because of the topography, houses across the alley are at a lower elevation than the alley. The applicant does not believe that any landscaping placed at the alley would be visible to them.

22. None of the houses across the alley are oriented toward the alley. Their garages and fences abut the alley.

23. Construction hours are limited to 7:30 a.m. to 6:00 p.m. and none on weekends to control noise impacts on surrounding residential development.

#### Conclusions

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

2. The decision of the Director is to be accorded substantial weight by the Hearing Examiner and appellants must overcome that weight with a showing that the decision is clearly erroneous. Section 23.76.022C.7; Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981). The Director may require reasonable mitigation measures as conditions on the basis of policies adopted pursuant to Section 25.05.902 where an adverse environmental impact has been identified in the environmental documents and to the extent attributable to the impacts of that proposal. Section 25.05.660.

3. Appellants have not shown that the level of specificity in Condition 2 is clearly erroneous where the condition specifies the standards that will be used in those improvements.

4. The SEPA landscaping policy is intended to promote aesthetic compatibility or reduce runoff or erosion. Since the Director did not find any incompatibility between the building and the rear of the L-3 zoned properties at the alley there was no adverse impact identified. But even if there was a small impact, the setback necessary to add any substantial landscaping would not be reasonable. The Director did not err.

5. The appellants ask for the building size to be reduced and setback required to mitigate the shadow cast by the proposed building on their property. The only SEPA authority available to the Director is that regarding shadow on publicly-owned parks. Therefore, she had no authority to impose the requested conditions.

6. Appellants did not prove that the sight distance available at the exit to the alley would be hazardous so there is no error.

7. As to noise, appellants seek control on construction noise and reduction in the amount of alley traffic, presumably through more on-site parking or less floor space. The impact of construction noise is adequately dealt with through the condition limiting the hours of construction. The record does show that there will spillover parking. The burden was on appellants to show that the Director was wrong in her conclusion that this would be readily accommodated on nearby streets and in the lot in that instead those cars would make repeated passes through the building and then the alley seeking building parking. Appellants


scenario was not shown to be more likely than the assumption made by the Director. There was no error.

8. Finally, appellants raise the issue of accommodation of future development which may need to use the alley. The cumulative effects policy provides for consideration of the needs of subsequent projects. No specific facts were presented however on either potential demand or capacity of the alley. Appellants, therefore, failed in meeting their burden.

Decision

The decision of the Director is affirmed.

Entered this 24th day of May, 1988.

  
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 decision is filed with the SEPA Public Information Center the same day that the decision is signed by the Examiner. The SEPA Public Information Center telephone number is 684-8322. 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.