

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

PHILLIP E. ROBINSON, ET AL.

FILE NO. MUP-88-016(DD)(W)
APPLICATION NO. 8701075

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

Introduction

Appellants, six neighborhood residents, appeal the decision of the Director, Department of Construction and Land Use to approve design departures for width, depth and modulation standards and the declaration of non-significance (DNS) for a proposal to demolish a single-family residence and to construct a 17-unit, five level apartment building.

Appellants appealed pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on May 16, 1988.

Parties to the public hearing were: appellants represented by Phillip E. Robinson and Richard Wilson, pro se, the Director, Department of Construction and Land Use by James Barnes, and applicant, Neal Thompson for the property owner, E.T. Sleem by Stanley N. Kasperson, attorney at law.

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 site is located at 4557 - 45th Avenue S.W. in a Lowrise 2 (L-2) zone on the west side of 45th S.W., 50 ft. north of S.W. Alaska Street and has approximately 100 ft. of frontage on 45th S.W. The lot slopes to the west to a 20 ft. wide unimproved alley. From the record, the Hearing Examiner finds that the lot slopes steeply (30 percent) as it abuts the alley.

2. The site is presently developed with a single family residence which is to be demolished. The lot area is approximately 11,700 sq. ft. The Hearing Examiner finds that the applicant has filed for an appropriate demolition permit, #HPO 86-191.

3. The area lying west across the alley is zoned Single Family 5000. East across 45th S.W. is a half-block that is zoned Lowrise 3/RC and developed with three and four story apartments. Further east across that block's alley, the half-block is zoned NC2/40' along 44th S.W.; the next half-block is zoned NC/65' and the next half-block is zoned NC/85' which is the business corridor along California Street. Abutting to the north is a duplex and abutting to the south is a single family residence.

4. Appellant Wilson's presentation, through his exhibits, was that the area is predominantly a single family residential area but the Hearing Examiner finds that the site's location is in a multi-family zone and that the development pattern is a mix

of single family residences in multi-family zones and that the half-block containing the site is separated from the large single family zone to the west by the alley.

5. The proposal is to demolish the house, excavate approximately 4500 cubic yards and to construct a terraced, 5 level, 17-unit apartment building. Access to the 20 off-street parking spaces would be from the alley off S.W. Alaska Street. The Hearing Examiner finds as stated by the applicant's architect that the design departures for width, depth and horizontal modulation are proposed to lessen the impact of bulk to the surrounding properties.

6. Although the appellants have appealed the Director's approval of the design departures for width, depth and modulation, the appellants made no presentation in regards to these matters. Public comment resulted in residents sending in seven letters, two petitions with 100 residents' signatures in opposition to the proposal based on the design departures and concerns relating to the alley in terms of vehicle traffic, pedestrian safety, parking, noise and increased density. At the public hearing, appellants raised further issues of crime, rodents, fireplace pollution, construction impacts and concerns of access by a handicapped neighbor and a resident who utilizes the alley. Appellants further demanded that applicant be required to pave the entire length of the alley as a condition for grant of approval of applicant's proposal. Both appellants, Wilson and Robinson, during the hearing stated that they did not have objections to the design departures as much as they had objections to the fact that a multi-family structure was being constructed on the site. The Hearing Examiner finds that the appellants' presentation was directed to the Director's declaration of non-significance. The appeal regarding the design departures was not pursued by the appellants.

7. The Hearing Examiner finds that appellants presented no evidence nor contradicted the Director's representative's presentation regarding adequate on-street parking for the proposal. Nor did appellants contradict applicant's survey of low vehicle trip generation per day from an apartment building twice the size of the proposal at the end of California Street as characteristic of the area's tenants.

8. Appellants concerns over pedestrian safety, fireplace pollution, rodents, crime, noise, property values, construction impacts, alley access by neighbors and population density were not shown to be substantial impacts. The Hearing Examiner finds that the presentation made in these regards did not cite authority that would require conditioning of the proposal.

9. The Director's representative indicated that because of the residents' expression of concern over noise during construction, the noise from construction will be restricted to less than 55 dba. The Hearing Examiner finds as was stated by the Director's representative that short term impacts from demolition and construction will cause a decrease to air quality in the area but because the impacts are temporary in nature, the impacts are not significant.

10. Testimony from the appellants reveal that the alley, for the most part, is unusable except for garbage trucks and other high clearance vehicles such as a four wheel drive vehicle. The Director's representative stated that the applicant is required to upgrade the alley from the site's property line to S.W. Alaska in anticipation that the responsible city department will at some time in the future improve and pave the remaining north portion of the alley.

Conclusions

1. The following conclusions are based on the provisions of Seattle Municipal Code, Chapter 23.76 and, 25.05 as well as on City Council and court precedent. 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. King County Council, 87 Wn.2d 267, 278, 552 P.2d 674 (1976).

2. Area residents' letters and petitions, and appellants testimony and presentation at the public hearing dispute the Director's decision that there are not significant impacts created by the proposal. But there has been no showing that the factual bases for the Director's decision are in error. A mere difference of opinion is not a sufficient basis for supporting an appeal.

3. The Hearing Examiner concludes that the impacts relating to vehicle traffic, parking, pedestrian safety, alley access, pollution, crime, noise, density, property values, and construction impacts are not significant adverse impacts. There is no authority for the Hearing Examiner to require applicant to decrease the size of his proposal nor to require applicant to pave the entire length of the alley.

4. The Hearing Examiner concludes that there is not a sufficient basis for reversal of the Director's decision given the standard of review of Section 23.76.22(C)(7), Seattle Municipal Code, which requires that the Director's decision be given substantial weight.

5. The Hearing Examiner concludes that the proposal should be conditioned as found in the DCLU decision:

CONDITIONS

Prior to Issuance of a Construction Permit

1. The owner(s) and/or responsible party(s) shall submit concept alley improvement plans approved by the Seattle Engineering Department or the Board of Public Works, as appropriate.

During Construction

2. 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 not use equipment registering more than 55 dba at the property line or 50 feet, whichever is greater on weekends or holidays and may use it on other days only between 7:30 a.m. and 6:00 p.m.

Prior to Occupancy

3. The owner(s) and/or responsible party(s) shall provide alley improvements as approved by the Seattle Engineering Department (SED) or be bonded to the satisfaction of SED for construction.
4. The owner(s) and/or responsible party(s) shall direct and shield illumination of parking areas or building exteriors so that all lighting is contained on the property and nearby properties or street traffic are not affected by light or glare.

Permanent for the Life of the Project

5. The owner(s) and/or responsible party(s) shall maintain all landscaping per approved plans.

Decision

The Director's decision is AFFIRMED.

Entered this 26th day of May, 1988.

Roger H. Shimizu
Roger H. Shimizu
Hearing Examiner Pro Tempore

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.