

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CRAIG E. SCHUMAN AND  
PAMELA A. MORSE

FILE NO. MUP-88-018(W)  
APPLICATION NO. 8706918

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

#### Introduction

Appellants, neighborhood residents, appeal the decision of the Department of Construction and Land Use Director to issue a declaration of non-significance (DNS) for a proposal to demolish a single-family residence and to construct a nine-unit apartment building addition at 2419 N.W. 58th Street.

Appellants submitted this appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on May 23, 1988.

Parties to the public hearing were: appellants, pro se; the Director, Department of Construction and Land Use, by Faith Lumsden; and applicant by architect Garrett Larsen.

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 property is located on the south side of N.W. 58th Street in the Ballard area. The street address is 2419 N.W. 58th Street.

2. The western 45 ft. of the 100 ft by 100 ft. lot is developed with a three-story, four-unit apartment building. The eastern 55 ft. is developed with an older two-story residential structure.

3. Applicant proposes to demolish the residential structure and construct on-site a four-story nine-unit addition to the existing apartment building. The new addition would offer three residential floors over a first floor parking garage. Some 2725 sq. ft. of at grade open space is proposed. Included in the landscape plan are eight trees, including two new street trees; shrubs, and groundcover.

4. The proposal calls for adding 11 parking spaces in the garage. The vehicles would use the four-unit's existing driveway and curbcut.

5. The site is located near the eastern edge of a Lowrise 3 (L-3) zone, between 26th and 24th Avenues N.W. to the west and east respectively. Zoning along 24th N.W. is Neighborhood Commercial 3 (NC3) and Midrise/Residential Commercial (MR RC). The L-3 zone generally extends west one block west of 24th N.W. to 28th N.W. where it abuts a Single Family (SF) 5000 zone.

6. The vicinity is developed with a mix of single and

multi-family residences. The east adjacent lot is developed with a two-story apartment building. Other multi-family buildings within the block are 2-3 stories in height. Two new four-story buildings are within a block west of the subject site.

7. The proposed building's maximum height is 42 ft. Although modulation is proposed, the subject apartment structure will generally be larger than the other structures within the block. Buildings in the L-3 zone are allowed a height of 37 ft. and an additional 5 ft. for a pitched roof.

8. Northwest 58th is paved for a width of approximately 25 ft. The street is improved with curbs, gutters and sidewalks. Vehicles are often parked on both sides of N.W. 58th. When this occurs, only one lane of through traffic remains. The one lane can accommodate emergency vehicles.

9. There is no record of frequent accidents in the vicinity.

10. The Hearing Examiner finds in accord with the applicant's parking survey that on Monday, December 21, 1987, 41 percent of 145 parking spaces within 800 ft. of the project site were utilized. On Tuesday, January 5, 1988, 43 percent were utilized. The parking survey was done per Seattle Engineering Department standards.

11. The Hearing Examiner also finds that there is a perception by the neighbors that nearby on-street parking is at a premium. This is not borne out, however, by the traffic study, Exhibit 5. On the January 5, 1988 date referred to in Finding 10, above, the data shows for the south side of N.W. 58th (where the project site is located) that 4 of 15 on-street parking spaces were utilized, and that 8 of 20 spaces were utilized on the north side of N.W. 58th. These block fronts are located between 26th N.W. (to the west) and 24th N.W. (to the east).

12. The standard parking generation ratio is 1.5 vehicles per unit. The proposed nine-unit building would yield, applying this ratio, the need for 13.5 (14) spaces. The existing four-unit would need six spaces. Considering the four existing spaces and the 11 proposed for the new building, an overflow of five vehicles could be expected. These five vehicles would raise the percentage of on-street parking spaces utilized to roughly 46 percent.

13. Assuming a 20 car overflow from four projects under consideration in the vicinity (39 units total), the utilization rate increases to 87 spaces or 60 percent.

14. The annotated Environmental Checklist indicates a projection of six trips/unit per day (SED figures). These projections, 54 per day for the nine-unit project, are reasonable.

15. These 54 trips, spread over a 24 hour day, were not shown to be of any particular negative consequence to vicinity traffic safety and flow.

16. Among other items, the DCLU decision required the applicant to do the following as conditions to the permit:

- limit construction hours to 7:30 a.m. - 6:00 p.m. on non-holiday weekdays
- provide and maintain approved landscaping
- install a view obscuring fence around parking garage openings

17. One of the permanent conditions required by DCLU is the following:

To minimize traffic and parking impacts on the

surrounding community, the owner(s) and/or responsible party(s) shall include all charges for on-site parking in the sale price or rental fee and each unit shall be assigned a parking space. No additional parking fees shall be charged for the assigned space.

18. The subject site is within the Ballard Fremont Pilot Study area. Effective November 13, 1987, the area became subject to development limitations. However, it is undisputed that the subject proposal "vested under a completed building permit application on October 28, 1987..." Analysis and Decision, page 2. The project is therefore reviewed under L-3 standards that predated the interim controls.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code.

2. Seattle Municipal Code Section 23.76.22(C)(7) provides that the DCLU Director's environmental determination shall be given "substantial weight." Appellants' burden is to show the DCLU decision to be clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. Appellants request that an environmental impact statement be required. For the Hearing Examiner to require preparation of an EIS, the appellants must show adverse impacts that are significant and probable. Seattle Municipal Code Section 25.05.360(A). "Probable" means "likely or reasonably likely to occur;" it does not refer to remote or speculative consequences. Seattle Municipal Code 25.05.782. A "significant" impact is one with "a reasonable likelihood of more than a moderate adverse impact..." Seattle Municipal Code Section 25.05.794.

4. The proposed building will increase traffic, increase the utilization of on-street parking spaces and will affect the building scale of the vicinity. However, these and the other identified impacts were not shown to be "significant." Therefore, no EIS is required.

5. Regarding bulk and scale, the project site is in an L-3 zone. East of the site is a two-story multi-family dwelling. Two three-story high apartments are present in the immediate vicinity. Four-story apartments are one block west. The site is on the edge of no single family zone. The proposed building's impact, while possibly adverse, is not significant.

6. Regarding parking impacts, the record shows that the total project would add a five car spillover to the demand for on-street parking. The weekday evening utilization rate approximates 41-43 percent at present and would approximate 46 percent with the project. Although the spaces may not be located directly adjacent to the site, the spaces within 800 ft. are accessible and are appropriately considered.

7. Considering other proposed projects, the utilization rate will approximate 60 percent. It is noted by DCLU that these other projects will draw on a different 800 ft. radius. The potential area for parking is therefore larger.

8. The 54 vehicle trip per day increase in traffic count was not shown to be significant.

9. Environmental impacts that are not "significant" may nevertheless serve as bases for mitigation. The impacts must be specific and clearly identified, and the resultant mitigation must be "reasonable." Also, the mitigation must be based on specific policies or regulations formally designated for consideration by Seattle Municipal Code Section 25.05.902. Seattle Municipal Code Section 25.05.660(A)(2).

10. As noted above, the anticipated parking spillover is five vehicles. This can be accommodated within a reasonable distance of the project. The increase in traffic will not be of particular adverse consequence.

11. The height, bulk and scale of the project will be mitigated by modulation and landscaping. Further, the building is in scale with other vicinity structures. Again, the site is on the edge of no single family zone.

12. The increased density alone cannot sustain a condition requiring that the project be reduced in scale.

Decision

The DCLU decision is AFFIRMED.

Entered this 7th day of June, 1988.

LeRoy McCullough  
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 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.