

AUG 0 2 1988

SEPA
PUBLIC INFORMATION CENTER

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

WILLIAM ANDERSON

AND

JON WAITE, ET AL.,

FILE NO. MUP-88-034(P)
APPLICATION NO. 8800086FILE NO. MUP-88-036(W)
APPLICATION NO. 8800206

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

Introduction

The appellants exercised their 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 July 18, 1988.

Parties to the proceedings were: William Anderson by John Markuson, pro se; John Waite and Ken Kutner, co-lead appellants, pro se; applicant by Terri Smith, attorney at law; and the DCLU Director by Arthur Ward, associate land use specialist.

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 these appeals.

Findings of Fact

1. The applicant proposes to subdivide a parcel at 6116 22nd Avenue N.W. into two parcels. Appellants are area residents who have submitted separate appeals from the Director's conditioned approval of the short division application. One appeal alleges that the proposal should have been further conditioned or denied based on environmental grounds. In that the appeals are both from the same decision, the appeals had been consolidated to the hearing date herein and opportunity was made available for presentations on both appeals.

2. The subject property is located in a Lowrise 2 (L-2) zoned area, is 10,000 square ft. in area and is located at the southeast corner of the intersection of 22nd Avenue N.W. and N.W. 62nd Street. The lot extends 100 ft. along N.W. 62nd and 100 ft. along 22nd N.W. The lot is presently developed with a single family residence with a detached garage that was constructed in 1906.

3. Applicant proposes to demolish the existing structures and construct a triplex on each lot. Both structures will be oriented east-west on the subdivided lots. The required demolition permit has been obtained, HPO 88008.

4. Each triplex will be two stories. The height will be 24 ft. to the top of the pitched roof and 3 off-street parking spaces will be provided at the front of the structures. Access will be from 22nd Avenue N.W.

5. Three blocks north of the subject lot is N.W. 65th, which is an arterial. Seven blocks south is the major arterial, N.W. Market Street. Immediately to the south of the lot is a church, to the east is a two story duplex, to the north across N.W. 62nd is a two story apartment building, and to the west is a one story apartment building. Development in the area is a mix

of one and two-story apartment buildings and single family residences.

6. During the comment period, 20 of the 22 letters which were received objected to the proposal based on arguments that the project would impact their neighborhood adversely in terms of auto related problems of parking, traffic, congestion, accidents, safety, aesthetics, population density, and construction related impacts such as noise and dust. One letter and apparently several inquiries were made to the Landmarks Preservation Board in regards to the historical aspect of the residence. The Hearing Examiner received a letter from that Board dated July 13, 1988 indicating that the application regarding the subject residence was determined to be inadequate. Absent a designation by the Landmarks Board, the Hearing Examiner finds that appellants' request for delay in this proceeding for rendition of that Board's determination is inappropriate.

7. At the public hearing before the Hearing Examiner a neighbor the representative of appellant, William Anderson, presented motions and objections in regards to his appeal; and co-lead appellants, John Waite and Ken Kutner, called witnesses, presented evidence into the record and introduced a petition from 30 area residents that opposed applicant's development. Of major concern were the impacts related to an increased number of automobiles in the area.

8. According to the DCLU decision in regards to the auto related issues, in particular, parking, mitigation was not required of the applicant based on a parking utilization study conducted February 10, 1988, which found that 43.5 percent of the available parking spaces were utilized. Based on the projection of the project's 3 car spillover and an additional 10 car spillover demand from other vicinity projects that could be absorbed on the surrounding streets, the Director concluded that additional demand for parking would not be an impact to the area's streets. The utilization rate was calculated to increase to 48 percent. The Director's representative indicated that this percentage of utilization was later confirmed by his own observation of the parking utilization on the streets in the area. These studies were conducted via "windshield surveys."

9. Area residents' recent parking utilization surveys following Engineering Department guidelines show a startling difference in utilization percentages. Exact measurements were made by tape which resulted in 40 more parking spaces being identified than in the applicant's survey but the count of parked vehicles on two separate week nights found utilization rate percentages of 101 percent and 89 percent.

10. The area residents' survey of July 13, 1988 found 352 automobiles parked on area streets (cars were found to be parked illegally in the planting strip areas in front of buildings) for a 101 percent utilization rate and 310 automobiles were found to be parked on area streets on July 14, 1988 for an 89 percent utilization rate. Based on the fact that these parking surveys were not disputed and that DCLU did not present current, contradictory figures to challenge appellants' surveys, the Hearing Examiner finds that the appellants' surveys reflect the present parking situation in the area and that the percentages indicate an adverse impact to the area. The Hearing Examiner does not find that applicant's parking survey of February 10th had vested to the application as argued by the Director's representative.

11. Mitigation is not required of the applicant's project. See City Council Resolution #27708 which amends Policy 8, Quantity of Required Off-Street Parking in Attachment "A" to Resolution 26579 which adopts the Multi-family Land Use Policies. The resolution was signed by City Council President Pro Tem Virginia Galle on October 26, 1987. Implementation Guideline #1, Quantity of Required Parking, states that the overall off-street parking provided for new development of multi-family housing shall approximate the City's average parking demand by establishing parking ratios that reflect the likely demand of the units' occu-

pants. For 10 or fewer units per structure the ratio is 1.10 spaces per unit which the Hearing Examiner finds the applicant proposes for the structures. Resolution No. 27708 also states that no other mitigation shall be required under SEPA review or any other administrative review procedure.

12. Testimony revealed that a "high" accident rate exists at the intersection one block south of the site at 22nd Avenue N.W. and 61st N.W. The city traffic engineer concluded that the traffic increase due to the applicant's project would not substantially affect that condition. The Hearing Examiner finds no adverse impact in this regards.

13. The city arborist testified regarding tree removal. Appellants and witnesses testified regarding character of the neighborhood, north-south orientation of the structures, Adams Neighborhood Plan, Seattle's Growth Plan, Victoria Towers case, Sunset Hill Community Club recommendations, Seattle Neighborhood Coalition Report, the report from OLP, policies, land devaluations, possible down zoning to a single family residential zone and hazardous waste dangers.

14. The Hearing Examiner did not find these matters to be directly applicable nor directly related to the applicant's project. The Hearing Examiner finds the development trend in the neighborhood to be multi-family, not single family structures, and that the proposed development does not threaten the existing character of the neighborhood. The Hearing Examiner finds that the proposed height, scale, and bulk are in character with that of other structures in the area.

15. Appellants' argument of preservation of the residence as a means to provide affordable housing in the area was rebutted by applicant's presentation that the residence was in need of substantial repairs to bring the building up to code standards.

16. The record and Director's representative's presentation indicated that there was adequate drainage, water supply, sewage disposal, access for vehicles, utilities, fire protection and conformity to Code requirements as to height, access, screening, setbacks, modulation and open space. Short-term construction impacts were stated to be slight due to their temporary nature. Long-term impacts were found to be mitigated by the Director-imposed conditions on the proposal.

17. Applicant did volunteer to self-impose the following conditions upon the project:

- a. provide a copy of the leases to DCLU;
- b. agree not to require payment for parking;
- c. agree to conduct construction between 8:00 a.m. to 5:00 p.m.;
- d. agree to water the work area to hold down the dust during demolition and construction.

18. The Hearing Examiner, not finding prejudice, denied appellants' motion(s) of prejudice directed at the Hearing Examiner and the Director's representative. The Hearing Examiner's off the record statements to an area resident after hearing a DNS appeal of another property in the Ballard area were that citizens are not provided legal counsel for the appeal and that facing a rich developer, his attorney and architect, etc. and the city land use specialist defending the Director's decision was akin to David taking on Goliath. The Hearing Examiner does not find prejudice to pro se litigants as a result of either statement. The Director's representative explained that his use of the term, viligante, expressed in his interoffice memo was not meant in its literal and figurative sense as applied to the Ballard community council and the Hearing Examiner so found.

19. Other motions to dismiss regarding: the consolidation, untimely notices, mistyping of a file number and for continuance were not found to be persuasive and were denied. Appellants' request for an after hours hotline phone number was not found to

be within the Hearing Examiner's authority.

Conclusions

1. Jurisdiction of this appeal is 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." The appellants burden is to show the DCLU decision is clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. Appellants request an Environmental Impact Statement for the proposal. In order for the Hearing Examiner to require the preparation of an EIS, appellants must show that adverse impacts are significant and probable. Seattle Municipal Code, Section 23.76.360. A "significant" impact is one with "reasonable likelihood of more than a moderate adverse impact..." Seattle Municipal Code, Section 23.05.794. A "probable impact" is an impact "likely or reasonably likely to occur." Seattle Municipal Code, Section 25.05.782.

4. The Hearing Examiner concludes that testimony regarding tree removal, structure orientation, Adams Plan, Growth Plan, Victoria Towers litigation, OLP report, Land Use Policies, community organizational reports and recommendations, etc. do not show impacts that are significant in regards to the proposal.

5. The Hearing Examiner concludes that the Director's conditioning mitigates impacts that were identified and addressed and that these impacts were not significant in regards to the proposal. The applicant has additionally agreed to further condition his proposal to mitigate auto related impacts.

6. The impact of greatest effect of applicant's proposal would be from the added spillover demand of 3 parking spaces that the proposal will create to the surrounding streets. The additional spillover demand of 10 from nearby developments is concluded to not encompass the same 800 foot radius of the applicant's proposal and thus, not all of the 13 spillover demand will be concentrated at the applicant's site. The utilization rate is high but is not so significant as to require an EIS in this L-2 urban development. cf. Brown v. Tacoma.

7. Some impacts, though not "significant", may at times require mitigation but the impact must be specific and clearly identified and the mitigation must be reasonable. Reducing the number of units of the structures can not be concluded to be a reasonable mitigation measure. Additionally, the mitigation must be based on specific policies and or regulations that are formally designated for consideration by Seattle Municipal Code, Section 25.05.902. Seattle Municipal Code, Section 25.05.660(A)(2). And, Resolution No. 27708, adopted October 26, 1987.

8. The applicable and relevant Code provision of Seattle Municipal Code 23.34.40 states that no short plat shall be approved unless all of the following facts and conditions are found to exist:

1. Conformance to the applicable Land Use Policies and Land Use Code provisions;
2. Adequacy of access for vehicles, utilities, and fire protection, (Seattle Municipal Code 23.54.10);
3. Adequacy of drainage, water supply and sanitary sewage disposal;
4. Whether the public use and interests are served by permitting the proposed division of land.

9. The Hearing Examiner concludes there is adequate vehicle access, drainage, water supply, sewer disposal, and conformity to Land Use Codes and Policies. Although the public use and in-

terest would seem to be violated by additional parking demand, the public use and interest as defined by the City Council in Resolution No. 27708 is concluded as dispositive.

Decision

The Director's decision as modified by the inclusion of the conditions agreed-to by applicant is Affirmed.

CONDITIONS:

I. CONDITIONS - SEPA (MUP-8800206)

A. Prior to issuance of a Master Use Permit

1. To reduce the impact of increased bulk and scale, the owner(s) and/or responsible party(s) shall provide three sets of landscape plans approved by the City Arborist and the Land Use Specialist. This plan shall modify the proposed plan by: addition of five 3 to 3-1/2 inch trees approved by the City Arborist; preservation of the existing northerly sycamore maple tree; and, the bark noted on the current plans shall be replaced with sod. In order not to obstruct sight distance, shrubs noted at the northwest corner of the lot shall be of a species not to exceed 32 inches of height at maturity.

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 limit construction to between 7:30 a.m. and 6:00 p.m. on non-holiday weekdays.
3. To provide protection for the existing northerly sycamore maple street tree, no less than 10 ft. around this tree (see condition #1) shall be fenced off at the onset of construction and no equipment or construction activities will be allowed within that area at any time during construction.

Prior to Occupancy

4. To reduce the impact of increased bulk and scale, the owner(s) and/or responsible party(s) shall provide landscaping according to the plan approved by the Land Use Specialist. The owner(s) and/or responsible party(s) shall submit to the Construction Inspector an affidavit from a landscape professional that the landscaping is installed per plan. The affidavit shall include that the protective conditions relating to the preservation of the sycamore maple have been met.
5. The owner(s) and/or responsible party(s) shall direct and shield illumination of parking areas and building exteriors so that all lighting is contained on the property and impacts on nearby properties and street traffic are minimized.

Permanent for the Life of the Project

6. The owner(s) and/or responsible party(s) shall direct and shield illumination of parking areas and building exteriors so that all lighting is contained on the property and impacts on nearby properties and street traffic are minimized.
7. The owner(s) and/or responsible party(s) shall maintain all landscaping per the approved plans.

II. CONDITIONS - SHORT SUBDIVISION (MUP 8800086)

A. Conditions of Approval Prior to Recording

1. The owner(s) and/or responsible party(s) shall submit the recording fee and final recording forms for approval. Have the surveyor provide legal descriptions to provide the southerly lot with a minimum 6 inch wide utility easement (for side sewer). Sign the declaration sheet as Annette Parker (former name) as well as Annette Ackermann.
2. The owner(s) and/or responsible party(s) shall add the conditions of approval after recording on the face of the plat or on a separate page. If the conditions are on a separate page, insert on the plat (For conditions of approval after recording see page ____ of ____."

B. Condition of Approval Upon Application for Construction Permits on Parcels A and B

3. The owner(s) and/or responsible party(s) shall attach copy of the recorded short plat to the construction permit plans.

III. NEW CONDITIONS

A. Stipulated by Applicant:

1. agree not to require payment for parking.
2. provide a copy of leases to DCLU
3. agree to water the work area to hold down dust during demolition and construction.
4. agree to conduct construction between 8:00 a.m. and 5:00 p.m.

Entered this 2nd date of August, 1988.

Roger Shimizu
Roger Shimizu,
Hearing Examiner Pro Tempore

CONCERNING FURTHER REVIEW OF
HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

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 party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

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 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, Seattle, Washington 98104, (206) 684-0521.

CONCERNING FURTHER REVIEW

Pursuant to Seattle Municipal Code Section 23.76.024, 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, 5th Floor Municipal Building, 684-8322. 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 23.76.024, 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 the City Council appeal.

If no appeal is taken to the City Council, 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. 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. See Chapter 43.21C. RCW and Chapter 25.05, Seattle Municipal Code

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.