

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

In the Matter of the Appeal of

WALLINGFORD COMMUNITY COUNCIL,  
JOHN W. STANSELL AND  
JEANNINE L. CHAMBERS-SPARKMAN AND  
TUCKER SPARKMAN

FILE NO. MUP-88-059(W),  
FILE NO. MUP-88-060(W) and  
FILE NO. MUP-88-061(W)

APPLICATION NO. 8801011

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

Introduction

Appellants challenge the decision of the Director, Department of Construction and Land Use, on a master use permit application for a 29-unit multifamily development proposed for 3414 Burke Avenue North.

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 October 4, 1988.

Parties to the proceedings were: appellants Wallingford Community Council by Gregory Hill, land use chair, Stansell, pro se, and Chambers-Sparkman, pro se; the Director by Malli Anderson, land use specialist; and the applicant, Kauri Investment Ltd., by Patrick Corr and Jim Potter.

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 applicant filed a master use permit application for a proposal to demolish two single family residences and construct two 9-unit apartment buildings and one 11-unit apartment building at 3414 Burke Avenue North. The Director issued a determination of nonsignificance (DNS) and imposed conditions to mitigate various environmental impacts. Appellants filed appeals alleging that the decision was made on inadequate or outdated information and that additional mitigating conditions should have been imposed.

2. The site of the proposal is midblock on the east side of Burke Avenue North. It is comprised of two lots with street frontage of 120 ft. The site is in a Lowrise 2 (L2) zone situated on the southern boundary of the zone next to a C1/40 ft. zone. The L2 zone extends to the east and west of the site and north to North 35th Street. Three 120 ft. long lots lie on the north side between the subject site and the street. A single family zone extends north of North 35th Street.

3. Surrounding uses include three single family residences on the lots abutting the north side of the site, a parking lot for an aeronautical factory to the west, a single family residence on the south side in the commercial zone with shops south of that and a congregate care facility to the east.

4. The proposed three buildings, two on the northern portion of the site and one on the southern, would contain a total of 29 units with a basement parking garage under the buildings for 37 cars. Access to parking would be at the southerly end of the lot.

5. The site slopes down to the south.

6. An environmental checklist was prepared for the project. It discloses that there would be partial obstruction of views of Lake Union and downtown Seattle; there would be light from windows and headlights; and that the completed project would generate 177 vehicle trips per day, among other impacts.

7. The Director's analysis and decision identified an on-street parking demand from the project for seven spaces, view blockage which impact was partially discounted by the greater height allowed in the C1/40 zone to the south, a limited shadow impact but the analysis of that impact was based on a misunderstanding of the proposal, additional traffic and construction impacts of dust and noise.

8. The Director imposed a series of conditions to mitigate the adverse impacts from the project. They include landscaping to reduce the impact of height, bulk and scale, notification of potential residents that only 1.27 parking spaces per unit are available to reduce the parking impact, an assignment of one parking space to each unit and inclusion of charges for parking in the sale or rental amount both to minimize traffic and parking impacts.

9. The Seattle Engineering Department conducted a study of parking utilization in the North 34th Street corridor, Meridian to Stone Way. The study showed that the utilization rate varied by time of day reaching as high as 80 to 90 percent in the afternoon.

10. The applicant submitted to the Director the results of a parking study done in June, 1988. The area covered by that study was from North 34th to North 36th Streets on Burke Avenue North and from Burke Avenue North east to Meridian Avenue North on 35th Street. Counts were taken on two weeknights after 9:00 p.m. Of the 79 spaces on the street an average of 25 spaces were occupied for a utilization rate of 32 percent.

11. In response to the criticism of that study that the area is an atypical residential area because of commercial related parking, another survey was conducted in September which took counts at 11:00 to 11:30 a.m. and 5:30 to 6:00 p.m. on each of three weekdays. Those counts showed an average utilization of 75 percent at 11:00 a.m. and 33 percent at 5:30 p.m.

12. The parking spillover from the proposed project of seven vehicles is based on average ownership of 1.5 vehicles per unit and provision of 37 parking spaces. The land use specialist pointed out that peak parking demand for residential projects would be during the evening hours. This was uncontroverted.

13. Since the Engineering Department's survey of parking utilization, at least three projects have been approved or constructed: the "Egypt", a 59-unit apartment building at North 34th and Wallingford which displaced an employee parking lot, a 9-unit apartment building at North 35th and Burke providing 10 parking spaces and a Quadrant office development which location was not stated. The spillover from the 9-unit building, estimated to be four vehicles, would have the same peak period and seek parking in the study area so combined with the proposal spillover would bring the evening utilization to 47 percent. Spillover from the "Egypt" would not necessarily seek parking in the study area as the "Egypt" is at the south end of the block to the west. But, if all spillover were to park in the study area, utilization during the peak residential parking period could rise to 70 percent.

14. Utilization of 85 percent is considered capacity for on-street parking.

15. There are other proposals pending in the area. AvTech is requesting a rezone of property across the street for office expansion. A cement factory is proposed on Pacific and a building for offices and laboratories or all offices is proposed at Meridian and Pacific.

16. Mr. Stansell has observed an increase in the number of traffic accidents of late. AvTech trucks and garbage trucks pass through residential streets. Illegal parking such as parking too close to intersections also increases traffic hazards in the area.

17. The decision's discussion of shadow impacts is based on the land use specialist's misreading of the plans. Believing that the one building would be adjacent to the L2 lots developed with single family residences, she concluded that because only a 65 ft. wide building, 22 ft. tall would be involved, the shadow impact on the rear yards of the properties to the north would be primarily on the center lot and there would be "adequate access to sun during the morning and afternoon hours."

18. The plans show two buildings, each 27 ft. high and 40.5 ft. long, with a courtyard 18 ft. wide between them, set back 6 ft. from the north property line. Therefore, the shadow impacts would actually be greater on the two outside lots than on the center lot.

19. Views of Lake Union and downtown Seattle are available down Burke Avenue North. The northern structure next to the street would be set back 10 ft. from the property line, which is 6 ft. back from the sidewalk, and would narrow that view. Existing views from the houses to the north would also be affected by the proposed structures.

20. Burke Avenue North is not is listed in Appendix B as a public place for view protection.

21. Appellant Wallingford Community Council contends that properties fronting on the south side of North 35th Street should have been zoned single family at the time of the mapping of the area under the "70 percent rule."

22. The density of the subject proposal is 1.5 times that predicted in the final environmental impact statement for the multifamily policies and code revisions and exceeds the maximum predicted density for the L3 zone in that document.

23. The Engineering Department study of North 34th Street was done to address cumulative impacts of development on traffic in that corridor. The levels of service (LOS) at the intersection with Stone Way is currently at D and expected to go to E during the p.m. peak with future development. At Wallingford it is expected to go from LOS C to F. The addition of a left turn lane would improve the LOS for left turning movements from F to D. The report says that traffic will increase on residential streets as drivers attempt to avoid delays on North 34th. The additional 147 vehicle trips generated by the proposed project would be distributed to both North 34th and 35th Streets and some would continue north to reach grocery stores and other services.

24. The Engineering Department advised the Director's staff that no traffic study was needed for the proposal. The additional traffic was not considered a significant increase over the existing traffic volumes.

25. Ms. Chambers, who owns one of the single-family houses north of the subject site, is concerned about loss of privacy due to the number of windows overlooking the backyards of the three houses.

26. The driveway to the underground parking is to be at a

slope of 20 percent, the maximum allowed by the Engineering Department. Exhibit 2 shows that the distance in front and to the right of a car leaving the garage where a driver cannot see is much greater where the car is slanted uphill. The exhibit shows that a driver in a Volvo cannot see for 22 ft. to the front and 10 ft. to the right of the car.

27. The Engineering Department found that the sight triangles meet its standards.

28. Applicant's architect testified that he is aware of other driveways with similar slopes.

29. Reducing the slope of the driveway would require elimination of some parking spaces in the garage.

30. The Engineering Department reviewed the slope and location of the driveway and determined the driveway to be safe for pedestrians as well as meeting standards.

#### Conclusions

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

2. The Director is required to base her threshold determination on information "reasonably sufficient to evaluate the environmental impact of a proposal...." Section 25.05.335. One of the appellants alleged that the Director used incomplete and outdated information about the cumulative impacts of traffic and parking due to recent and proposed development.

3. Appellants are correct that applicant's parking study, used by the Director, did not consider any spillover from the approved 9-unit project on the block which would use the study area for parking. Those vehicles could be accommodated on the streets within the study area along with those from the proposed project so would not have created a condition where the project would cause a probable significant impact on parking. Other projects were either too speculative to be considered or far enough away that they would not affect the study area. Further, the Engineering Department study of the North 34th Street corridor gave the Director information about cumulative traffic. Appellants did not show that the Director had insufficient information to make the threshold determination.

4. The land use specialist was in error as to the exact shadow impacts from the proposed structures on the adjacent private properties. However, appellants did not show that with the correct layout, the shadow impact would be significant.

5. Appellants ask that a number of mitigating measures be imposed as conditions of approval. The Director is authorized to impose conditions to mitigate adverse environmental impacts subject to the limitations listed at Section 25.05.660A: the conditions must be based on policies adopted pursuant to Section 25.05.902; the impact to be mitigated must be clearly identified in an environmental document; the measure must be reasonable and capable of being accomplished; responsibility for implementing the measure must be proportional to the impact attributable to the proposal.

6. The Director's decision to impose or not impose conditions pursuant to SEPA is to be given substantial weight by the Hearing Examiner. Section 23.76.022C.7.

7. The Director has no authority to impose conditions on approval of this proposal to mitigate view impacts, shadow or solar access impacts, privacy impacts, or those impacts relating to height, bulk and scale. As to views, the City Council has iterated that SEPA protection is limited to specified public views. In re Oden Investment, C.F. 293557 (1985). Similarly, the Director's authority as to mitigation of shadow impacts is limited to those affecting certain parks, school grounds, etc.

Section 25.05.902H. The examiner has found no SEPA policy providing authority for privacy protection.

8. Resolution 22708, which applies to this project, amended Policy 8 of the Multi-family Land Use Policies to eliminate any authority to mitigate parking impacts under SEPA when the development standards for parking are met.

9. Adverse impacts from the height, bulk or scale of proposed development meeting the zoning standards may be mitigated in limited circumstances, i.e., when extraordinary or unusual circumstances which would not have been contemplated as part of the zoning of the property are shown or when a problem of transition between zones because of an "edge" condition exists. Oden, supra. No unusual circumstances were shown and there is no edge condition in that the site is separated by 120 ft.-deep lots and a street from the single family zone.

10. There is SEPA policy authority available for traffic, Section 25.05.902D, which allows imposing requirements "...as necessary to assure reasonable access and flow." Section 25.05.902D.1.c. Two kinds of traffic impacts were shown: the addition of vehicular trips using, to some extent, overburdened North 34th Street; and an additional hazard for pedestrians on the sidewalk in front of the driveway to the garage. To address the former, the Director referred in her decision to the signing of a "no protest" agreement for street improvements. That agreement should have been required as mitigation of the traffic impacts under SEPA. As to the danger to pedestrians in front of the sloping driveway, the Director should have imposed a condition requiring some kind of warning device or sign to alert drivers to the hazard.

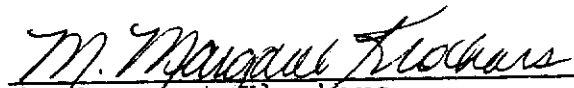
#### Decision

The Director's decision is modified to add the following conditions:

1. Prior to issuance of a master use permit, the owner shall sign an agreement that the owner will not protest an LID for traffic improvements on North 34th Street. This agreement is to run with the land.

2. Prior to occupancy, the owners and/or responsible parties shall install a warning device or sign, to be approved by the Engineering Department, to alert exiting drivers to the possible presence of pedestrians.

Entered this 19th day of October, 1988.

  
M. Margaret Klockars  
Deputy Hearing Examiner

#### 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 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 this 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 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, 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.