

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

In the Matter of the Appeal of

THERESA M. DEIR

FILE NO. MUP-89-039(W)  
APPLICATION NO. 8707933

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

Introduction

Theresa M. Deir, on behalf of a group from the Lawton Park Neighborhood, appeals the decision of the Director, Department of Construction and Land Use ("DCLU"), to conditionally approve the application of Paul Pierce for a Master Use Permit to demolish an existing single family residence and to establish the use for the future construction of a three-story, eight-unit apartment building with commercial office space on the first floor and nine parking spaces in the basement. The appellant also appeals DCLU's State Environmental Policy Act ("SEPA") and City SEPA Ordinance Determination of Non-Significance ("DNS").

The appellant exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code. This matter was heard, following proper notice, on August 29, 1989 and on September 15, 1989. Mrs. Deir was represented by Paul Gillingham and DCLU was represented by Arthur Lee.

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. Paul Pierce represents the owner of property located at 3144 West Government Way in Seattle (the "Site"). The Site, zoned NC-1/40' (Neighborhood Commercial 1/40' height), is a 4,000 sq. ft. parcel located on the west side of West Government Way. The Site is on the south slope of Magnolia Hill near Discovery Park. It has 40 ft. of frontage on West Government Way, is 100 ft. deep and located on a level area above a ravine which, due to its slope and soils conditions, is classified as environmentally sensitive.

2. The Site is developed with a one story single family residence and landscaping, which includes lawns, shrubs and two large, mature trees in the rear of the site.

3. Property immediately north of the Site is developed with a one-story single family residence in a SF 5000 zone. Property to the south is vacant and commercially zoned. Other properties on West Government Way, south and southwest of the Site, are also zoned NC-1/40' and L3/RC (Lowrise 3/Residential Commercial). There are several one and two story neighborhood businesses and several three and four-story apartment buildings in the vicinity.

4. Access to the Site is via West Government Way. The design of West Government Way, including an "S" curve near the Site, contributes to problems related to auto and pedestrian safety and parking in the vicinity. There is an unimproved alley with a 16 ft. wide right of way behind the Site. The alley provides access to several single family residences located north and west of the Site in neighborhoods zoned SF 5000. Although

the applicant does not plan to use the alley to access the Site, no provision has been made to prevent residents, visitors or patrons from using the alley for temporary access and parking.

5. The property owner proposes to demolish the existing single family residence. The design of the structure which will replace the residence has undergone several design changes. It began as a four-story, 10 apartment unit mixed commercial/residential development with 12 parking spaces. The current plan is to construct a three-story mixed use commercial/apartment building with a total of 1,361 sq. ft. of office use and associated storage, eight apartment units and nine parking spaces in a basement garage (the "Proposed Project"). The eight apartment units would accommodate 12 to 16 people, depending on whether one assumes an average occupancy of 1.5 or two persons per household. The proposed mixed use project is consistent with the intent of the NC-1 zone for the site.

6. The Proposed Project would have no setbacks along the south property line facing a commercially zoned vacant lot, and an 8 in. to 11 ft/8 in. setback along the north property line, with 5 ft. balconies in the 11 ft./8 in. setback. The Proposed Project would rise 30 ft. high with a 9 ft. high stairway serving a penthouse along the south side, and 2 ft. to 5 ft. high parapets, including open rails along the north, east and west sides of the building.

7. The applicant proposes to remove all existing landscaping at the Site, including two mature tree-- a large female Cedar with seedlings and a large Spruce-- located in the rear of the Site. Removal of the two trees is undesirable and will result in adverse visual and aesthetic impacts. However, it is not possible to save the trees because the trees and/or their root systems are in the foundation area for the basement parking garage and three apartment units above. This impact should be mitigated in the final landscape plan.

8. The Site is underlain by fill to an undetermined depth and is near a sensitive area. According to a preliminary soils report and other soils information provided by the applicant, there are no unusual soils conditions at the Site. However, that information is only preliminary. Further soils analysis, including but not limited to test borings evaluated in light of actual building design and more detailed information about construction and drainage, will be required.

9. The Site is not designated as environmentally sensitive and it is not identified as a slide potential area on the Seattle Engineering Department Slide Potential Map. However, the Site is near a sensitive area and adjacent residents have expressed concern about potential soils impacts that may result from the grading and excavation required to prepare the Site for construction.

10. Dust and emissions from construction activity will temporarily worsen air quality in the immediate vicinity of the Site. While local air circulation patterns may be changed by the new building, there is no evidence that these changes will result in long-term impacts to adjoining properties.

11. The Proposed Project would partially shade the adjacent single family home. This could result in increased energy consumption resulting from greater reliance on artificial lighting and heating, and reduced potential for energy savings on hot water. The new building would also require the adjacent homeowners to change plans for the installation of a solar water heating system. Light and glare impacts associated with the Proposed Project should be mitigated, if reasonable mitigation is possible.

12. Construction noise, particularly during site preparation, could create significant noise impacts on adjacent residences. Mitigation measures should be imposed to minimize those impacts.

13. The Proposed Project is consistent with the zoning history of the Site since 1923 and is consistent with the comprehensive plan designation for this portion of the Lawton Park Neighborhood. The Proposed Project meets the NC1-40' zoning requirements and is therefore consistent with applicable codes related to transitions between commercial and residential zones.

14. An "edge" condition exists between the more intensive mixed use NC1-40 zone and the less intensive SF-5000 residential zone. The Proposed Project's rear and side property line setbacks are generally consistent with requirements of the Land Use Code. A minor correction must be made to set back the railing located over the commercial space and garage, to 5 ft. from the property line. The railing must also be corrected to be completely open, instead of being partly solid and partly open. Edge impacts will include the shading affects of the height, bulk and scale of the Proposed Project. There will be a reduction of natural light and privacy for the appellant, who occupies the adjacent residential dwelling. Seven windows on the south side of the appellant's home which open toward the Proposed Project and are a source of air circulation and natural light and warmth, will be affected. However, to preserve natural light through these windows it would be necessary to reduce the height of the Proposed Project to less than what would be allowed in a single family zone. This would not be reasonable.

15. The construction of eight apartment units to be occupied by from 12 to 16 people will not generate sufficient traffic to adversely affect existing streets and intersections. The office use and apartment units, together, are expected to generate approximately 119 to 143 Average Weekday Trips (AWDT). These trips would primarily impact West Government Way, a well traveled arterial with traffic volumes of about 10,790 vehicles per day. Therefore, the traffic generated by the Proposed Project would have an insignificant impact on traffic volumes and intersections. Moreover, there is no evidence that the AWDT generated by this project, combined with the temporary and long term AWDT expected to be generated by other projects, including the proposed Metro's West Point Secondary Sewer Treatment Facility, will have cumulative impacts on traffic conditions which justify mitigation by the applicant.

16. There is conflicting evidence about the availability of on-street parking on West Government Way and therefore about the impact the Proposed Project would have on parking availability. Construction activity will temporarily increase local demand for on-street parking. The applicant would construct nine off-street parking spaces to serve the eight apartment units and 1,361 sq. ft. of office use in the Proposed Project. According to DCLU, only one of the nine spaces will be available for daytime commercial use. The estimated parking demand for commercial space of this size is about 2.41 to 3.29 spaces per 1,000 sq. ft. Therefore a daytime parking shortage of up to four spaces could result. DCLU's estimated residential and commercial parking demand during evening hours will exceed supply by up to 17 spaces. This spill-over demand would have to be accommodated by on-street parking. The attractiveness of on-street parking is affected by perceptions of the relative safety of leaving a vehicle on West Government Way. In addition to design considerations, including the "S" curve on West Government Way and the street's width, traffic volumes generated by existing residents and patrons of existing commercial destinations, Metro and school buses, sludge and construction trucks and vehicles accessing Discovery Park could be factors in decisions about whether to park on West Government Way.

17. Public services in the area will not be affected by demands resulting from construction of the Proposed Project.

18. Utilities in the area will not be affected by construction of the Proposed Project as long as the applicant does not make road improvements in the rear alley; and as long as residents, patrons and visitors of the Proposed Project do not use the rear alley to access the Site. A recently constructed

sewer line in the rear alley would be affected by road improvements and could be affected by regular use of the alley as a roadway or for parking.

19. A public meeting was held on January 19, 1989 to allow people the opportunity to review plans for the Proposed Project and to give comments.

20. Public comments were received prior to the hearing by DCLU and during the hearing. The comments, including two petitions opposing the Proposed Project (containing 158 and 38 names respectively) raised issues which included: blockage of sunlight and solar access (on the adjacent residential property) adverse impacts to the single family zone because of the Proposed Project would be out of scale with the north side of West Government Way, adverse soils conditions and potential impacts to adjacent properties, removal of trees from the rear alley for the proposed access, impacts to a nearby park, intrusion of privacy, lack of parking and traffic safety. Additional issues of appropriateness of zoning and lack of consistency with historical neighborhood planning efforts to control development in the vicinity of the project were raised at the public meeting.

#### Conclusions

1. DCLU has authority, during its initial environmental review, to consider a project's impacts and its contribution to cumulative impacts; and, has limited authority to impose reasonable and lawful conditions on approval of the application to mitigate adverse impacts. Where existing ordinances are deficient, conditions may be imposed through SEPA to mitigate adverse impacts.

2. If properly conditioned, the Proposed Project, would not result in significant adverse environmental impacts. Therefore, an Environmental Impact Statement is not required and the Master Use Permit should be conditionally approved. The following conclusions and analysis are pursuant to SEPA Policies, 25.05.665 through 25.05.675.

3. Soils: Site preparation will require removal of all vegetation, including two mature trees. Therefore, a detailed soils report, including but not limited to test borings and analysis, should be prepared by the applicant. The detailed soils report along with plans showing full structural, landscape and drainage detail should be submitted to DCLU prior to application for a construction permit. If DCLU concludes that existing regulations do not provide adequate mitigation for adverse soils impacts, the applicant should be required to submit a plan for mitigation of the adverse impacts to DCLU. DCLU shall coordinate review of the mitigation plan, which should be approved prior to issuance of a construction permit. The applicant shall comply with all applicable regulations including, the Grading Drainage Ordinance.

4. Under authority of SEPA policies, the applicant shall comply with the following conditions for mitigation of construction impacts:

- a. submit three copies of a full soils report, which shall include but not be limited to test borings, analysis of borings, specific recommendations for design, alley and property line shoring, construction staging and technique, and drainage, reevaluation of potential impacts on the adjacent residence in light of test boring information, and recommendations to prevent any such impacts. One copy shall be submitted directly to the Land Use Specialist along with plans showing full structural, landscape and drainage detail, all of which shall be marked for inclusion in the Master Use Permit file. The other two copies of the soils report, along with a mitigation plan, if

required, shall be included with the construction permit application.

b. the recommendations of the above-mentioned soils report shall be implemented if they adequately mitigate adverse impacts. If DCLU concludes that adverse impacts are not implemented, the applicant shall submit a mitigation plan which addresses DCLU's further concerns. The recommendations of the soils report and or the mitigation plan shall be implemented in the construction plans. All of the above shall be subject to DCLU review and approval during construction permit review.

c. the owner(s) and/or responsible party(s) shall complete a statement of minimal risk from construction of the project, and submit the statement after review of the construction plans, but before issuance of the construction permit.

5. Plants and Landscaping: The removal of all existing landscaping at the Site, including two mature trees will adversely impact the environment. New landscaping will be provided, including 11 trees and upper level planter boxes. If analysis of the detailed soils report required in paragraph four, above, results in a conclusion that soil stability at the Site and to nearby properties, particularly the sensitive area and the adjacent residence, will be adversely affected, the applicant shall implement all recommendations of the soils report and/or the mitigation plan. The applicant shall comply with landscaping requirements under the Land Use Code and Director's Rule 41-88. Moreover, under authority of SEPA policies, the applicant shall, in conjunction with the landscape plan, select those new trees and vegetation which most effectively mitigate soils, visual, aesthetic and other impacts caused by the removal of all existing vegetation, particularly the two mature trees; and which add vertical modulation and screening of the building facade. The design, location and content of the planter boxes should be approved by DCLU and be consistent with the specifications in the DCLU Analysis and Decision herein.

6. To further mitigate the Proposed Projects potential impacts on adjacent residential property at 3140 West Government Way, the applicant shall, at the election of the homeowner, either:

(a) landscape along the common property line to a depth of 3 ft.; or

(b) construct a fence along the common property line which is reasonable in cost and which accomplishes objectives of increased visual privacy, noise reduction and improved aesthetic appearance.

7. Traffic and Parking: Construction activity will cause temporary local traffic impacts. However, no mitigation is required. There is no persuasive evidence that longer term traffic impacts alone or in conjunction with other proposed projects, should be mitigated by the applicant. Only nine off street parking spaces will be constructed in conjunction with the Proposed Project. However, parking demand generated by the residential and the commercial uses will exceed nine spaces during both day and evening hours. Although it appears that there will be sufficient on-street parking to absorb this additional demand, it is unclear whether cars will park on West Government Way due, in part, to its configuration and a resulting perception that it is unsafe. As a condition pursuant to SEPA, the applicant shall work with the Seattle Traffic Engineering Department to: (a) evaluate the need for additional signage or traffic controls on West Government Way in the immediate vicinity of the Proposed Project; (b) to develop an appropriate signage

plan to reasonably limit or prohibit parking by residents, visitors and patrons of the Proposed Project in the unimproved alley way behind the Site.

8. Height, bulk and scale: An edge condition exists between the NC1-40' zone and the less intensive SF-5000 zones to the north and west. Except as specifically discussed in other sections of this decision, no materially adverse edge impact is expected. The project is comparable in height, bulk and scale with the size of development allowed in the SF-5000 zone. Design and materials which minimized potential impacts resulting from loss of privacy, and noise impacts shall be used in walls, doors and windows on the North side of the Proposed Project.

9. Air Quality: Temporary impacts caused by dust and emissions from construction activity should be mitigated by the applicant. Under authority of SEPA policies, the applicant should use appropriate non-chemical wetting techniques at the Site during construction in order to minimize dust and emissions impacts. The applicant shall also use appropriate non-chemical wetting techniques at the end of each work day to minimize dust and emissions build-up at the construction Site.

10. Energy and Natural Resources, Light and Glare: The proposed three-story building will shade the adjacent residence to the north. This shading will increase energy consumption. However, there is no evidence that this shading would be significantly different than would result from the construction of a tall single-family dwelling at the Site or than is experienced by other homes in the Seattle area as a result of new, more intense construction on an adjacent building site. Exterior lighting must be shielded and directed away from adjacent uses.

11. SEPA policies provide mitigation for shading of public open spaces but not for private residences. The SEPA energy policy is oriented toward mitigation of energy consumption on the site, but mitigation of off-site impacts is not precluded. To mitigate off-site energy impacts, however, significant impacts related to the specific design of the Proposed Project must be identified. If the off-site energy impact is general to all similar development, the effect of requiring mitigation would be to supplant the zoning regulations with SEPA. This, the Examiner cannot do. Therefore mitigation to provide more solar access than for a tall single family residence would be an unreasonable condition. The applicant shall only be required to comply with applicable provisions of the Seattle Energy Code.

12. Noise and Vibration: Due to the close proximity of the adjacent residence, there will be temporary noise and vibration impacts during construction of the Proposed Project. Under authority of SEPA policies for construction impacts, all construction shall be limited to the hours of 7:30 am to 6:00 pm on non-holiday weekdays and impact pile driving shall be prohibited. These conditions shall be posted on the property to inform the public and workers. The applicant shall comply with all other applicable regulations related to construction activity.

13. Wildlife and Ecosystem: There is no evidence of adverse impacts which would require mitigation.

14. Housing and Land Use: The Proposed Project is not inconsistent with the history of planning efforts for this portion of the Lawton Park neighborhood and is consistent with the Comprehensive Plan. There is no evidence of adopted policies or regulations which limit development in the vicinity of the Proposed Project to a height of 1 to 2 stories. Moreover, this Master Use Permit, application is an improper forum to address the appellant's concerns about whether the Site is properly zoned. The Examiner lacks authority in this appeal to change the designated zoning of the Site. The applicant shall apply for a housing demolition license.

Decision

The DCLU decision, reaching a Determination of Non-Significance, with conditions, is Affirmed, as further conditioned.

Entered this 9th day of October, 1989.

  
Christopher Mathews  
Hearing Examiner Pro Tempore

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, Room 1320 Alaska Building, 618 Second Avenue, 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.