

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

In the Matter of the Appeal of

SAM PECK, PRESIDENT
OLD JOHN HAY FAMILIES FOR
NEIGHBORHOOD PRESERVATION

FILE NO. MUP-89-045(W)
APPLICATION NO. 8807108

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

Introduction

Sam Peck appeals the decision of the Director, Department of Construction and Land Use, to approve without further conditions a proposal for a 16-unit apartment building at 467 Newton Street.

The appellant 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, 1989 and the record remained open to to October 17, 1989 for supplemental briefings. An additional period was added for further reply.

Parties to the proceedings were: appellant by C. Bartlette Stroupe, attorney at law; applicant by G. Richard Hill, attorney at law, Hillis Clark, Martin & Peterson; and the Director, Department of Construction and Land Use by Jan Mulder, 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 this appeal.

Findings of Fact

1. Applicant, David Sigl, applied for a master use permit to demolish a single-family residence and develop a three-story, 16-unit apartment building on property addressed as 467 Newton Street. Parking on-site for 21 vehicles is also proposed. DCLU issued a determination of no environmental significance (DNS) on the project and approved the master use permit with State Environmental Policy Act (SEPA) conditions. The conditions principally addressed landscaping and construction noise.

2. Sam Peck, President of the Old John Hay Families for Neighborhood Preservation, submitted this appeal from the DCLU decision. The appellant group requests that the Hearing Examiner require applicant to prepare an environmental impact statement (EIS); that the Hearing Examiner deny the project outright; or, alternatively, that the Hearing Examiner impose further mitigation to address the proposed building's adverse impacts on neighborhood height, bulk, scale and character.

3. The basic facts are principally undisputed. The subject site is located at the southwest corner of Newton Street and 5th Avenue North. Although generally level, the lot rests approximately 15 ft. above the street and is separated from street level by steep slopes and retaining walls. The site is located at approximately the same elevation as property to the north, across Newton Street.

4. The proposal site consists of four narrow lots (11, 12, 13, 14, Block 67, Supplemental Plat of Collins Addition), each of which is approximately 25 ft. wide and 119 ft. deep (east-west). The total lot area approximates 11, 868 sq. ft. The site is presently developed with a 2-story, vacant single family residence and detached garage. The principal structure enjoys a substantial setback from the 5th Avenue North right-of-way such that the view south is consistent with the setback pattern north of West Newton Street.

5. The proposal site is zoned Lowrise 3 (L-3). It is at the northern edge of the zone which terminates at the midpoint of north adjacent West Newton Street. North of West Newton is a Single Family zoned neighborhood. L-3 zoning is, however, west, south and east of the proposal site.

6. Development in the north adjacent single family zone is primarily single family. Development within the L-3 zone includes a variety of apartment buildings and single family structures. For example, west adjacent to the site are two successive structures in single family use, the more westerly of which has frontage to Bigelow Avenue North.

7. West of Bigelow North and south of West Newton Street, but still within the western edge of the L-3 zone, is a row of six structures in single family use.

8. Southwest of the proposal site are multi-family structures with frontage to Bigelow North that have 15 and 5 units. Directly south of the proposal site is a 12 unit, three-story brick structure. This three-story structure is sited west of the proposal site's existing structures. From the north, the view of the three-story structure is partially obscured by the existing residence on the proposal site. To the east, across 5th Avenue North, are 4, 6, 7, 8, and 9-unit multifamily structures. Because of their lower elevation, however, these structures seem to be visually distinct from the west side of 5th North.

9. Many of the single family zoned are large (two-stories +) structures 20-20 ft. wide.

10. West Newton Street is a 60 ft. wide right-of-way that is paved to 24 ft. When cars are parked on both sides, only one lane of traffic can pass through.

11. Bigelow Avenue North, one block west of the project, is classified as an Historic Landmark Route. The classification only affects development within that street right-of-way.

12. The 16 apartment units proposed will add approximately 98 vehicle trips per day with eight of the trips occurring during the morning peak and 11 during the evening peak period. Fifth Avenue North is a minor arterial. The evidence of record is that the infrastructure can reasonably accommodate increased traffic.

13. Fifth Avenue North begins to curve to the west and slope down to the south, beginning at a point near the subject property's south property line. This curvature and slope impair one's visibility from the north of multifamily and other existing development located on the west side of 5th Avenue North.

14. Applicant proposes to demolish the existing single family dwelling and construct a three-story 16-unit apartment building on-site. The new 90 ft. wide structure would offer a 16.37 ft. setback from 5th Avenue North. This means that the new building will intrude into the visual ambience presently enjoyed with the existing building, i.e. the visual line offered by the present structure from the north will be disrupted.

15. The 21 parking spaces for the new building would be located on the west edge of the lot. Ten of the spaces will be located under the west end of the structure and the remaining 11

will be at the west edge of the property but several feet below the grade of the west adjacent property. Impacts of headlight glare will be further reduced by the presence of a 6 ft.-high fence near the entrance and by construction of 5-6 ft. high solid wood fence to be constructed atop the retaining walls located at the west and south property lines.

16. Applicant is proposing beveled siding and a pitched-roof for the structure. With the 5 ft. addition allowed for a pitched roof, and a 2.5 ft. bonus for the sloped site, the proposed building height is 37.5 ft., the maximum height allowed.

17. The existing rockeries along the east and north edges are proposed to be retained. New landscaping for the site will include such vegetation as scotch pine, red maple trees, flowering and evergreen shrubs and ground cover.

18. Applicant's proposal complies with city modulation standards and with the interim L-3 zoning standards (which means that L-2 development standards control).

19. Appellant suggests that the proposed apartment could be built without disrupting the single family - based integrity of the streetscape (5th North), such as by reducing facade width from the proposed 90 ft. to 50 ft. The 50 ft. total would be composed of a 30 ft. forward segment and a remaining 20 ft.-wide portion stepped back 15-20 ft. so that it would be less visible along 5th North. Appellant also suggests consideration of other proposals to enhance architectural (bulk and scale) compatibility with the single family homes to the north, e.g. three stories above grade, one below grade; addition of dormers, etc.

20. Although no issue of parking impact was actively pursued in the appeal hearing, the Hearing Examiner would observe that 16 units would be reasonably expected to generate a demand for 19 or 20 parking stalls (1.5 per unit). As applicant is proposing 21 off-street parking spaces. A marginal impact on the parking supply-availability is anticipated.

21. Appellant states its concern that existing, older apartment buildings do not have off-street parking and that this contributes to a shortage of area parking. In addition, they continue, some "60 new apartment units" were not considered; nor the development of John Hay site. Exhibit 20. These factors contribute to the adverse cumulative effect of the proposal, per appellant's written presentation.

22. The record reflects an apprehension but no evidence that the proposal will set a trend for more intense development of other L-3-zoned properties that are single family use. Nor does the record reflect the existence of any plans to develop the John Hay site.

Conclusions

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

2. Appellant has the burden of showing that the DCLU decision is clearly erroneous. This is because the Seattle Municipal Code accords DCLU environmental determinations "substantial weight." Seattle Municipal Code Section 23.76.022C.7; Brown v. Tacoma, 30 Wn. App. 762 (1981).

3. The Hearing Examiner cannot deny the project unless impacts identified in an EIS of record cannot be mitigated. As there is yet no EIS, the Hearing Examiner cannot here deny the project. Seattle Municipal Code Section 25.05.665; 660A.6.

4. The Hearing Examiner could, however, order preparation of an EIS if appellant showed that significant probable adverse impacts would result from the proposal. This appellant has not done. The change in the streetscape, density and development

patterns could be characterized as adverse. However, they will present no more than moderate impact on the quality of the environment. That environment consists of large single family homes, curving streets, and midsize multifamily dwellings that will seem compatible with the three-story, 16 unit building proposed.

5. The more challenging question is whether DCLU should have imposed further, specific conditions on the project. The Hearing Examiner concludes that appellant failed to overcome the substantial weight accorded the DCLU decision and the same is therefore affirmed.

6. The subject site is within a multifamily zone of single family and multifamily zoning is east, west and south of the project site. South adjacent to the site is a 12-unit apartment structure. The single family zoning, to the north, is separated by the Newton Street right-of-way. Many of the single family homes in the vicinity are large brick homes that are two-stories in height.

7. The proposed apartment building will be oriented to 5th Avenue North, to other L-3 zoned property. Its proposed height of 37.5 ft. is not, given the area's sloping topography and curved streets, substantially out of character with existing development. The height is similar to the height allowed for single family development. Further, the elevation is similar.

8. The gravamen of the appeal is whether a greater front setback should be required, and whether other design features should be made to allow the visual continuity extant to remain after the project is concluded.

9. Seattle Municipal Code Section 25.05.660 provides the overview of the substantive authority to mitigate environmental impacts which are adverse but which are not significant. Mitigation measures must be based on specific policies, plans, rules or regulations that have been adopted. Also, mitigation measures must be "reasonable" in relation to the impacts sought to be mitigated. In Re Appeals of Queen Anne Community Council et al., C.F. 293623.

10. Seattle Municipal Code Section 25.05.675G is the SEPA policy specific to "height, bulk and scale." Height may be limited, bulk modified, or development repositioned to mitigate identified adverse impacts of "substantially incompatible height, bulk and scale." Seattle Municipal Code Section 25.05.675G.2. The Hearing Examiner is unable to conclude that the proposed height, bulk and scale is "substantially" incompatible.

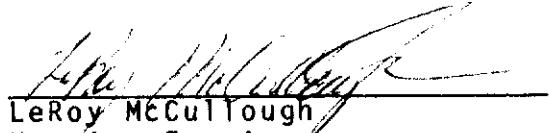
11. Further, the proposal is consistent with the interim regulations for the L-3 zone. It is "reasonably compatible with the general character of development anticipated" by the Land Use Policies for the subject area. Seattle Municipal Code Section 25.05.675G.2.a The new building will front to other L3-zoned properties on 5th Avenue North and is separated from the single family zoning by the Newton Street right-of-way. The "problem" of transition, as reflected in the view line, is insufficient on this record to require further conditioning. Cf. Crown Hill, C.F. 296101.

12. No clear error in the DCLU decision was shown with respect to the impact of parking, or cumulative effects.

Decision

The DCLU decision is AFFIRMED.

Entered this 1st day of November, 1989.


LeRoy McCullough
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 issued 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 from the Office of Hearing Examiner, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104, 684-0521. 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.