

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

In the Matter of the Appeal of

LAURELHURST COMMUNITY CLUB

FILE NO. S-88-002

from an interpretation of the
Director, Department of
Construction and Land Use

Introduction

The Laurelhurst Community Club appeals the interpretation of the Land Use Code by the Director, Department of Construction and Land Use, regarding whether a proposed medical office pavilion is permitted as part of, or accessory to, Children's Hospital and Medical Center.

The appellant exercised the right to appeal pursuant to the Seattle Municipal Code, Section 23.88.020 as amended.

Parties to the proceedings were: appellant, Laurelhurst Community Club, represented by its attorney, Peter J. Eglick; the Director, Department of Construction and Land Use, by the City Attorney, Michael P. Monroe, assistant; and the respondent, Children's Hospital and Medical Center, by Mitchell J. Olejko and John Keegan, Davis Wright & Jones.

This matter was heard before the Hearing Examiner on April 4, 5, 6, 7, and 11, 1988.

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 findings of fact shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The Laurelhurst Community Club ("Laurelhurst") asked the Director, Department of Construction and Land Use ("Director"), to issue a formal interpretation of the Land Use Code on the question of whether the project proposed by Children's Hospital and Medical Center ("Children's") under application MUP 8602396, the medical office pavilion, is permitted as part of, or as accessory to, the hospital, a designated major institution.

2. The Director issued an interpretation on December 28, 1987, deciding that "the medical office/laboratory building proposed under MUP 8602346 (sic) is permitted at Children's Hospital and Medical Center."

3. Laurelhurst filed an appeal of the interpretation on January 14, 1988.

4. Upon Children's Hospital and Medical Center's Motion for Affirmation of the Director's Interpretation and for Summary Dismissal of the Laurelhurst Community Club's Appeal of the Director's Interpretation, the examiner ruled that the Director's interpretation was erroneous to the extent it relied upon the assumption the code permits any accessory use customarily incidental to an institution providing medical services in general and not specifically Children's.

5. Children's is a regional pediatric, tertiary care center for a four-state region. This means it cares for only children, provides all elements of health care and provides that care in a comprehensive way. Children's has three service missions: pa-

tient care, education and research. Its delivery of patient care is unique among hospitals in that private and salaried physicians work side by side.

6. The uses proposed to be housed in the new structure are storage in the basement level, clinical laboratories on one level, research laboratories on another and physician and administrative offices on two levels.

7. The physicians occupying offices in the new building would be on the medical staff of Children's, i.e., would have admitting privileges there, but could be those paid directly by Children's or the University of Washington ("salaried") or private physicians.

8. There are some 1,000 members of the medical staff. Most are pediatricians who admit patients to the hospital fairly infrequently and whose offices are best located in the area where their patients live. A much smaller number are very active on the hospital staff, involved in high numbers of admissions, teaching and educational programs at the hospital.

9. Physicians with offices in Children's existing facility include 100 to 120 salaried physicians and approximately nine private physicians.

10. Children's has outpatient facilities or "clinics" for the diagnosis and treatment of children in its main facility and at several other locations such as in Federal Way, the central area and on the east side. These clinics do not differ in operation from private physicians' offices except as to the recipient of revenues. Clinics have existed in the main facility since the time the facility was located in Laurelhurst, in the 1950's.

11. Private physicians now rent space at Children's. The average size of office space is 80 to 100 sq. ft. Those with their own staff have additional space. The physicians may rent examining room space on a hourly basis and may rent nursing staff from the hospital. Certain supplies and equipment are provided.

12. Office space in the proposed building would be considerably larger than the space now provided and would include space for receptionists, nurses and examination. Physicians would supply their own staff.

13. The physician offices in the proposed building are intended for specialists dependent on the hospital for their daily patient activity. Some 100 physicians are in the category of those who need offices relatively close to Children's. Approximately 30 physicians would be housed in the proposed pavilion.

14. Children's does not pay taxes on the office space it now leases to private physicians.

15. Some of the new office space may be utilized for administrative offices of the hospital.

16. Clinical laboratories have been a part of Children's operation since prior to 1979. Their diagnostic function is necessary to the operation of the hospital.

17. Children's has been the location of the University of Washington's virology laboratory since the 1960's, which is not proposed at this time to be moved. The University of Washington has expanded its virology lab with a facility at the University of Washington. The size of the laboratory at Children's has remained the same.

18. Children's has had an isolation room for 20 to 25 years. A P-3 laboratory is a clinical service/research area where viral agents can be isolated. Children's has not decided if it needs a P-3 laboratory or if one is needed it would be in the new building.

19. Research is a major and growing component of a tertiary care pediatric center. Children's has long been actively involved in research to benefit its patients directly from results of investigation and indirectly through recruiting outstanding physicians who are attracted by the research opportunities and activity. Areas where there have been long term connection between patient care and investigation and research are infectious diseases, hematology/oncology, neonatology, virology, laboratory medicine and pathology. As other research programs are proposed the determination as to whether the research protocol is appropriate for Children's will be based on the general criteria that it should have potential benefit for children, it should enhance the care of Children's patients and should direct itself toward childhood diseases.

20. Research laboratories have been located at Children's on the eighth floor since the mid-to-late 1970's. The research protocols underway depend upon the current interests of the medical staff and funding available and on the needs of Children's clientele.

21. Research protocols usually run about three years so there is a continuing flux in the research projects going on. The institutional review board reviews three to ten proposed protocols each month.

22. The Director concluded that storage use is permitted as accessory to the hospital use. This conclusion was not contested by Laurelhurst as to that storage related to the hospital or clinical laboratories. Appellant suggests that storage space related to the medical offices and research laboratories would not be permitted unless offices and research laboratories are permitted.

23. Children's has been affiliated with the University of Washington's School of Medicine since the mid 40's. The Department of Pediatrics is located primarily at Children's and has been since prior to 1979. The Department of Pediatrics functions in all areas of Children's mission: patient care, research, education and advocacy.

24. In a 1985 report, Research and COHMC: An Assessment and Recommendation, from the chairman of the Department of Pediatrics to the medical director at Children's, there is a reference to a transfer of selected programs from the Department of Pediatrics at the University and CDMRC to Children's and a discussion of specific new programs which would be targeted for having their base at Children's including endocrinology, neurology, nephrology renal transplantation and neurosurgery.

25. The Director concluded that storage use is accessory; that research facilities, training facilities and medical clinics are "commonly associated", with hospitals; that diagnostic laboratories are intrinsic to the hospital use; that research is an intrinsic function of a medical center; and that medical offices are "commonly associated" with hospitals'. She further recognized that the physician offices which care for outpatients are synonymous with "clinics" which are specifically permitted as accessory uses to institutions in Section 23.48.004A.

26. The underlying zoning for Children's campus is SF 5000 which would not permit medical office or medical research use.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Chapter 23.88.020.

2. The interpretation of the Land Use Code issued by the Director is to be accorded substantial weight by the Hearing Examiner. Section 23.88.020E.5.

3. Appellant contends that medical offices are not uses

customarily incidental to hospitals and that the proposed expansion of existing uses effects a change in the character and nature of those uses making them no longer permitted by analogizing to legal nonconforming uses. Children's contends that all the proposed uses are part of the principal use but, if determined not to be, are all accessory uses customarily incidental to Children's.

4. Unless research laboratories are shown not to be intrinsic to a hospital use, i.e., not a part of the principal use institution providing medical service, the nature of the research conducted could change without affecting the laboratories status under the Land Use Code. Since there was no evidence adduced to show error in the Director's conclusion that research is intrinsic there is no restriction on changing the nature or character of that research.

5. Since "clinics" or physicians offices are accessory uses under Section 23.48.004A, they are permitted at Children's only if customarily incidental to Children's. Section 23.84.004A. The record shows that Children's not only has its own clinics but is unique among hospitals in its relationship with private physicians in that a limited number of private physicians see outpatients in offices leased from Children's. That practice establishes the "custom" at Children's.

Appellant argues that the expansion from just a few physicians' offices to perhaps 30 of much greater size so alters the character of the use that it is a different use and as such is no longer customarily incidental to Children's. The record supports appellant's contention that the private physician offices will be larger and they will operate autonomously where now they function in a symbiotic relationship due to the use of nursing staff, examination rooms, etc., which must be coordinated with Children's. However, the analogy to nonconforming use status is not entirely apt because of the differing policies involved. Public policy regarding nonconforming uses is to restrict those uses with a view toward eventual elimination. Keller v. Bellingham, 20 Wn.App. 1, 587 P.2d 881 (1978). On the other hand, the Major Institution Policies recognize the need of institutions to grow and change. Section 23.16.010. Protection for adjacent neighborhoods from effects of expansion of an historical use is through in the master plan triggers and SEPA. The Director's interpretation permitting the physician offices was not erroneous.

6. Appellant alleged in its appeal that use of space by the University of Washington in the project and cooperation between Children's and the University of Washington violate the major institution policy to limit institutional expansion in the prohibition against rental of facilities within one mile of the institution. No legal argument was presented on those allegations so they will be treated as abandoned. As observed by Children's, however, there is no evidence of proposed use of the new building by the University of Washington.

7. Appellant objected to the failure of the Director to require any written guarantees from Children's as to the use and restrictions on users of the proposed space. Appellant misapprehends the function of a code interpretation which is to decide the "...meaning, application or intent" of the Land Use Code as it applies to a specific property. An interpretation has no relation to enforcement. Only the permit and its conditions, granted on the basis of an interpretation, may be enforced.

8. No error affecting the ultimate decision of the Director on this interpretation having been shown, that decision should be affirmed.

Decision

The decision on the interpretation of the Director is affirmed.

Entered this 16th day of May, 1988.

M. Margaret Klockars
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Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

The decision of the Hearing Examiner in this case is the final administrative determination by the City, 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 must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such a request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.