

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

PETER STATEN, et al.

FILE NO. MUP-81-067 (V, CU, W)  
APPLICATION NO. 81140-0059

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

#### Introduction

Applicant, Museum of History and Industry, seeks authorization to rent out a portion of the parking lot at 2161 East Hamlin for football parking.

The appellants exercised their right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: Appellants by Thomas H. DeBuys, attorney at law and Peter Staten; Department of Construction and Land Use (DCLU) by Ed Somers, assisted by Gordon Crandall, assistant city attorney; project applicant by Dr. James R. Warren, pro se.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300) as amended, unless otherwise indicated.

This matter was heard before the Hearing Examiner on November 3, 1981.

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 subject site is located in the Single Family Residence Medium Density (RS 7200) Zone at 2161 East Hamlin Street. The property is generally between the University of Washington Arboretum on the east, the Montlake residential area on the west and the Interstate 520 freeway to the south. The Lake Washington Ship Canal is to the north.

2. The Museum of History and Industry was built on the subject site in 1951 under the auspices of the Historical Society of Seattle and King County, founded in 1911. That society is a private non-profit organization which agreed to donate the building to the City in keeping with the society's goal to preserve the area's heritage and history. The museum is located on property either owned or leased to the City of Seattle and operated by the City's Department of Parks and Recreation.

3. The museum is generally open six days a week although on occasion they have been open seven days per week. Museum parking consists of small lots on the north, south and west of the building. One large lot to the east of the museum contains 101 spaces.

4. Automobile access to the museum and parking lot is from E. Hamlin Street and 24th Avenue East, the west adjacent street. A concrete barrier described as approximately 6 inches

in height is located northwest of the museum, designed to prevent northbound 24th Avenue traffic from entering the Montlake residential area. Credible testimony was that the barrier did not meet with constant success.

5. The University of Washington (Husky) Stadium is located north of and across the Montlake bridge - Lake Washington canal, but considered within walking distance. Because of its proximity to the Husky Stadium, the area is impacted by a large number of automobiles seeking parking facilities and also by pedestrians who have parked farther south and choose the Montlake community route to Montlake Blvd., then to the stadium.

6. The museum and its parking areas are not visible to the majority of the residential properties to the west.

7. The museum parking lot has been used for football parking at least since 1974.

8. The museum parking lot is designated for museum, arboretum, Foster Island and Waterfront Trail patrons.

9. The applicant requests a conditional use and incidental variances to allow 109 of the existing accessory museum parking spaces to be used for football fan parking for the six or seven University of Washington home football games and to charge an hourly or daily fee. In this manner, applicant reasoned, funds would be generated which would be used to regulate the parking lot and incoming traffic. A minimum number of spaces (20) would be reserved for museum users, whereas currently there is a lack of control and reserved areas for the museum patrons; parking for them is practically non-existent during the times of conflict with home football games, according to applicant. The applicant-witness noted further that in his observations football fans parking free at the museum tended to be noisier and less tidy, and tended to stay longer. The witness further noted that roughly 90 percent of the traffic from the museum parking lot exits via 24th Avenue East, south and southeast of the Montlake residential community.

10. Conditional use authorization was accordingly sought to establish an accessory parking lot not located on the lot of the principal use. In addition, variances to (a) allow hourly or daily charges for parking and (b) to require less than the minimum required parking for the museum/auditorium/banquet facility (280 spaces required, 139 provided, 20 proposed) were sought.

11. By the decision here appealed, DCLU granted the variance relief requested, conditionally granted the administrative conditional use, and issued a State Environmental Policy Act (SEPA) declaration of non-significance (DNS).

12. In September, 1981, DCLU issued project applicant a temporary permit to use the subject parking area for football fan parking. That permit expired October 12, 1981. During the tenure of that permit a DCLU staffperson, admittedly not an expert in traffic, made a site visit September 12, 1981, from approximately 11:00 a.m. to 2:00 p.m. coinciding with anticipated peak pedestrian and automobile traffic attributed to the University of Washington home football games. That witness noted the pedestrian traffic through 24th; that parking at the museum went smoothly; and that on two other unofficial occasions she had walked through the subject area en route to football games. Between 200-400 people walk to the Husky Stadium for football games through the Montlake residential area, using alleys as well as the streets to reach Montlake Blvd. and the Montlake bridge.

13. In anticipation of the football games, some fans start and arrive parking in the subject vicinity as early as 7:00 a.m.; kick-off time, at least on the September 12, 1981, occasion when a DCLU witness was present, was at least five hours later.

14. When the 1981, temporary parking permit expired and during the first affected home game, there was a decrease in vicinity traffic; conversely, traffic was heavier during the tenure of the temporary permit.

15. The DCLU DNS noted that

...The proposal would increase traffic, auto emissions, noise, headlight glare, use of police protection and of the existing parking area, and may result in an alteration of circulation pattern and potential increase in traffic hazards on surrounding streets on a temporary basis before and after football games.

With consideration of the facts that the parking lot is already in use informally during football games, the football traffic already exists in the area, and no expansion of the existing parking lot is proposed, we conclude that the proposed use of the parking lot will not substantially change the existing situation. Furthermore, all traffic exits across the 24th Avenue East bridge and not through the residential area to the west. Although we foresee several effects, we find no significant impacts resulting from the proposed use of the parking area.

16. Similar variances were approved for use of the Montlake School playground area as a parking facility in X-78-204 and X-80-100.

17. The DCLU conditions on the administrative conditional use were designed to prevent the detriment resulting from overflow traffic spill-over to the adjacent residential areas. One such condition provided that

...The parking lot commercial use shall only be allowed on the days of home University of Washington football games.

The Seattle Department of Parks and Recreation acknowledged that the museum was a nonrent paying tenant and that that tenant had "a problem". That Department, however, took no position either for or against the subject application.

18. Several vicinity residents oppose the application. Among their objections were their concerns that the subject automobile traffic would be unrelated to the neighborhood; that the subject neighborhood was already impacted by pedestrian and automobile traffic with the attendant loss of privacy; negative precedent of having a commercial parking lot in a residential neighborhood; that the applicant had no standing to seek the subject relief since applicant had no property ownership; and that application approval would sanction a currently intermittent nuisance. Specifically, as related to the DNS, opponents charged that the DCLU analysis was inadequate and that the site visits by the DCLU staff person, admittedly not an expert in traffic affairs, was incomplete. Opponents charged that no mention was made, for example of the number of cars that would be attracted to the neighborhood if the application were approved.

#### Conclusions

1. Appealed from environmental determinations of the Director of Construction and Land Use will be accorded substantial weight. The burden of establishing a contrary position is that of the appellant. Section 24.84.170; Hearing Examiner Appeal Rule 3.7.

2. The DNS, the Environmental Checklist and the evidence of record show that DCLU was apprised of and considered the special characteristics of the subject neighborhood. Adverse impacts of the proposal were acknowledged, including increased traffic, automobile emissions and the impact on surrounding streets on a temporary basis. It was noted specifically in the DNS that the parking lot is already in use informally during football games. Although the evidence of record suggests a decline in automobile traffic directly attributed to the lapse of the temporary parking permit it cannot be definitely concluded that in the subject context "more than a moderate effect on the quality of the environment is a reasonable probability." Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267 (1976). Accordingly, the DNS is affirmed.

3. The issue of whether the applicant has standing under present real property privileges is a matter more properly reserved for resolution by applicant and the property owner.

4. The Hearing Examiner may authorize a conditional use if it is determined that same will not be materially detrimental to the public welfare or injurious to the property in the subject zone or vicinity. In addition, the authorization should be consistent with the spirit and purpose of the zoning ordinance. Further,

In considering applications for conditional uses, the Hearing Examiner shall consider the nature and condition of all adjacent uses and structures. 24.74.010.

5. Where unique real property conditions would prevent an applicant from comparable development privileges without variance relief; and that contemplated relief neither exceeds the minimum necessary for relief, constitutes a grant of special privilege nor proves materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located, variance relief may issue. Section 24.74.030.

6. The subject case is distinguished from the application concerning the Montlake School, X-78-204, X-80-100, in several respects. First, the museum and other uses such as the arboretum and nature trail uses are coextensive with the hours proposed for football parking use. Concomitantly, no reduction in the parking area of the Montlake School was proposed by way of the subject application. Further, it was noted in X-80-100, that no material detriment was reported from the previously approved use (X-78-204) of the property for University of Washington football parking.

7. In the subject case the DNS noted the potential for increased traffic and hazards. Lay observation noted the decreased traffic during the lapse of the 1981 temporary permit. Although the proposed automobile traffic would be generally oriented away from the residential area, adverse consequences from increased pedestrian traffic remain.

8. Section 24.18.060, cited by the Director, permits accessory conditional uses per Section 24.16.070. Section 24.16.070(C) notes that parking areas accessory to a permitted use, when not located on the lot of the principal building, under conditions specified in Section 24.64.160 may be permitted by the Hearing Examiner. Section 24.16.160 specifically provides that in residential zones

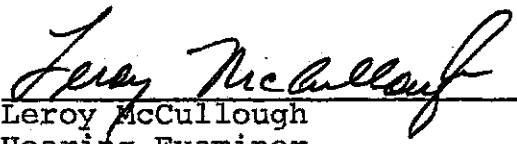
no charge for use of (such) parking areas shall be made in any R zone except on a weekly or monthly basis, provided that in an RMH 350 Zone, hourly or daily charges may be made.

9. Under the unique circumstances of this case, the proposal for hourly or daily fee parking, although admittedly on a limited seasonal basis, would contravene the spirit and purpose of the zoning ordinance and would prove materially detrimental to the welfare of the residentially zoned properties in the subject vicinity by attracting non-area traffic to the vicinity. Further, the public welfare would be harmed by the devotion of the subject parking lot to uses exclusive of arboretum and other such patrons. Additionally, while applicant proposes to use funds generated in order to assist in controlling the traffic and to secure the parking lot, the Examiner is not persuaded that the application sought presents as the only means of addressing these issues. Accordingly, the variance relief sought in the instance exceeds the minimum necessary for relief.

Decision

The DNS is AFFIRMED. The administrative conditional use and variances are DENIED.

Entered this 17th day of November, 1981.

  
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Leroy McCullough  
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal 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.