

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

In the Matter of the Appeal of

HENRY F. FURMAN AND DON KENNEDY, ET AL.

FILE NO. MUP-82-071(CU,W)
APPLICATION NO. 82-303

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

Introduction

Appellants, Henry Furman and Don Kennedy, et al., appeal the decision of the Director of the Department of Construction and Land Use (Director) conditionally granting an administrative conditional use to establish a fast food restaurant and issuing a declaration of nonsignificance for property located at 4216 University Way N.E. in Seattle.

Appellants exercised their right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: appellants, acting pro se; applicant, Burger King, represented by Tom Fishburne, and the Director represented by Cliff Portman.

Two hearings were held pursuant to this appeal. The first hearing was held on October 25, 1982, and presided over by Hearing Examiner Pro Tempore, Sally Pasette. The second hearing was held on May 19, 1983, and presided over by Hearing Examiner Pro Tempore Al Velarde.

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 proposes to remodel the existing building at 4216 University Way N.W. and establish 3,400 sq. ft. of fast food restaurant (Burger King) use on the first floor with storage on part of the second floor. The remainder of the second floor will be used for office and/or retail space. The current shell of the existing building will be the nucleus to remodel into a two story building. The first floor of the existing building will be extended to the street. A second story will be built upon the existing structure. The restaurant will contain 116 seats for patrons.

2. The subject lot is 40.65 ft. by 103 ft. containing 4,187 sq. ft. It is currently developed with a 1½ story commercial building of approximately 2,967 sq. ft. of ground floor funeral home use with two second story apartment units at the rear of the building above the funeral home. The property is zoned Community Business (BC) and is located in the University District business area.

3. On September 10, 1982, the Director conditionally granted an administrative conditional use to establish a fast food restaurant on the subject property; issued a declaration of nonsignificance; and denied a variance to waive the required off street parking.

4. On September 24, 1982, Henry Furman and Don Kennedy appealed the conditional granting of an administrative conditional use to establish the fast food restaurant and the declaration of nonsignificance. The applicant did not appeal the denial of the variance.

5. During the October 25, 1982, hearing, the applicant indicated a desire to modify the proposal. On November 3, 1982, Hearing Examiner Pro Tempore Sally Pasette issued an Order of Remand requiring the Director to reconsider the modified plan of applicant.

6. On April 1, 1983, the Director issued a new decision based on applicant's modified plan. The Director issued a declaration of nonsignificance and conditionally granted an administrative conditional use to establish a fast food restaurant at the proposed site. The four conditions issued by the Director are as follows:

- (1) Adequate refuse receptacles shall be placed prominently near the entrance/exit, inside the restaurant.
- (2) At least three exterior litter containers shall be provided within the property line of the parking area.
- (3) Street trees, consistent with Landscaping Standards, Street Use Permit requirements and City Arborist recommendations shall be provided prior to issuance of Certificate of Occupancy. The parking area shall be landscaped as per plan.
- (4) The parking spaces shall be reserved exclusively for users of the proposed restaurant and retail space. The spaces shall be clearly marked to ensure such use.

7. On April 6, 1983, appellant Don Kennedy appealed the Director's declaration of nonsignificance and issuance of conditional granting of an administrative conditional use.

8. The parking requirement for the new uses is 27 spaces. The present building used to be a funeral parlor with 15 parking stall allotments "grandfathered" in before the current land use code was adopted. A 15 space credit applies to the site, necessitating 12 parking spaces. Applicant proposes to provide those at 4120 University Way N.E. by lease agreement with an existing parking spot.

9. Parking is in very short supply in the University District. A parking and traffic study on the Burger King proposal was prepared by Wilsey and Ham, dated October 22, 1982, and admitted into evidence. Testimony was elicited from Gary E. Kruger of Wilsey and Ham who is a qualified expert on parking analysis. Mr. Kruger concluded that there would be no significant impacts on University District parking by allowing the Burger King proposal.

10. The University District area is heavily pedestrian oriented.

11. Applicant's proposed usage is compatible and consistent with other uses in the vicinity due to the existence of other fast food restaurants in the vicinity. No walk-up or drive-through windows will be built at the proposed site. Andy Shiga, the current land owner of the proposed site, attempted to have 13 Coins, the Black Angus, and the Sea Galley restaurants come onto the proposed site but they refused due to their higher prices and the current market conditions in the University District.

12. The environmental checklist submitted by the applicant indicates temporary emission during construction; that exhaust from the kitchen of cooking odors will be discharged above the second floor roof, approximately 28 ft. above the alley; a temporary increase in noise during construction; an increase in pedestrian traffic noise on the sidewalk during mealtime hours; and moderate additional vehicular movement and demand for additional parking.

13. Appellants allege that a substantial increase in noise would occur due to vehicular traffic attempting to patronize the Burger King restaurant during the late-night and early morning hours which would awaken sleeping neighbors in apartment buildings. The hours of operation of the Burger King restaurant will be between 7:00 a.m. and 11:00 p.m., therefore no late hour traffic noises will occur.

14. Appellants further alleged that substantial drug usage and drug traffic occurs in the University District near the proposed site. "Punks" also tend to currently congregate and loiter near the vicinity of the proposed site. Appellants failed to provide relevant evidence which would indicate a probability that the proposed Burger King restaurant would contribute to drug usage and/or drug traffic, loitering or any other illegal activities.

15. Appellants further alleged that the proposal would create a litter problem at the proposed site. The Director has recommended that the applicant place adequate refuse receptacles near the entrance/exit, inside the restaurant and at least three exterior litter containers within the property line of the parking area. In addition, the applicant indicated that busboys will be coming out of the restaurant once per hour in order to clean up any litter in front of the restaurant.

Conclusions

1. The Hearing Examiner is directed to accord substantial weight to the environmental determination of the Director. Section 23.76.32B(7) of the Seattle Municipal Code. The burden is upon appellants to prove clear error.

2. While appellants voiced valid concerns about traffic, noise and litter impact, the evidence introduced at the hearing showed that these were carefully considered by the Director and would not cause any significant adverse effect on the environment.

3. Appellants voiced concerns pertaining to "social" environmental impacts in regards to drug usage in the immediate vicinity and the congregation of "punks". The Director is limited to the environmental checklist as provided by the Seattle Municipal Code Section 25.04.200 and Washington Administrative Code 197-10-360, 365. The environmental checklist does not provide for the consideration of "social" impact upon the environment.

4. An environmental impact statement is required only if there is a reasonable probability that the environmental impact will cause more than a moderate impact. Norway Hill v. King County Council, 87 Wn.2d 267 (1976). A declaration of non-significance was appropriate for this proposal.

5. The decision of the Director on an administrative conditional use is entitled to no special deference. Section 23.76.32B(7) of the Seattle Municipal Code.

6. In addition to the general conditional use criteria, Section 24.44.080I requires the meeting of certain conditions for approval as follows:

I. Fast-food restaurant, subject to the following conditions:

1. A view obscuring fence or wall not less than five nor more than six feet in height shall be established and maintained between a fast-food restaurant and any abutting R-Zoned lot and any R-Zoned lot facing across an alley except for alley access openings.
2. Access to an abutting alley shall be limited to a maximum of two driveways, each not to exceed twenty-four feet in width.

3. As a minimum, exterior litter containers shall be provided at a ratio of one for every five off-street parking stalls.
4. Such uses shall be compatible with the character of existing structures in areas where a distinct and definite pattern or style has been established.

7. I.1 is not applicable since no R-Zoned lots abuts the fast-food restaurant. I.2 is not applicable. The proposed development and the Director's conditions satisfies I.3. Applicant's answer to Environmental Checklist Form I.f. indicates the exterior facade work will complement adjacent buildings by using similar facade treatment and materials, therefore, I.4 will be met.

8. The proposal satisfies the general criteria for conditional use criteria. It will not cause material harm and it is consistent with the spirit and purpose of the Ordinance as inferred from the special criteria for the proposed uses.

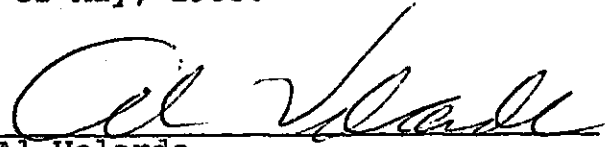
Decision

The declaration of nonsignificance is AFFIRMED.

The administrative conditional use is GRANTED subject to the following conditions:

1. Adequate refuse receptacles shall be placed prominently near the entrance/exit inside the restaurant.
2. At least three exterior litter containers shall be provided within the property line of the parking area.
3. Street trees, consistent with Landscaping Standards, Street Use Permit requirements and City Arborist recommendations shall be provided prior to issuance of Certificate of Occupancy. The parking area shall be landscaped as per planned.
4. The parking spaces shall be reserved exclusively for users of the proposed restaurant and retailed space. The spaces shall be clearly marked to insure such use.

Entered this 27th day of May, 1983.


Al Velarde
Hearing Examiner Pro Tempore

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.