

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

In the Matter of the Appeals of

BELVEDERE TERRACE COMMUNITY COUNCIL and
SAND POINT DAY CARE CORPORATION

FILE NO. MUP-84-013(CU)
FILE NO. MUP-84-018(CU)
APPLICATION NO. 83-483

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

Introduction

The Belvedere Terrace Community Council appeals the decision of the Director, Department of Construction and Land Use, to grant a conditional use with conditions for a day care center at 5837-56th Avenue N.E. Sand Point Day Care Corporation appeals the condition restricting the number of children who can be served.

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

These matters were consolidated for hearing and heard before the Hearing Examiner on March 15, 1984.

Parties to the proceedings were: appellant Belvedere Terrace Community Council represented by Keith Forest, president; appellant/applicant Sand Point Day Care Corporation represented by John R. Rizzardi, president; the Director represented by Hermia Ip, 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 these appeals.

Findings of Fact

1. Sand Point Day Care Corporation (hereafter, "center") applied for a master use permit to convert an existing single family house at 5837-56th Avenue N.E. to a day care center. An administrative conditional use is required to establish a day care center. The Director granted the conditional use limiting the maximum capacity to eight children and imposing other conditions. The instant appeals were filed.

2. The proposed site for the center is a lot with frontage on three streets -- Sand Point Way N.E., 56th Avenue N.E. and 55th Avenue N.E. The lot is zoned SF 5000 and is on the edge of the Belvedere Terrace neighborhood. Across Sand Point Way is a Lowrise 3 zone with a federal government building and a church.

3. The center is currently operating as a mini-center, licensed for 12 children. An inspection by DSHS showed that the property can meet the State's requirements for 21 children

without conversion or expansion. The Code, Section 23.44.22(L) requires a minimum of five parking stalls for the current staffing of the center.

4. The property has a garage but no other provision for on-site loading or parking. The plot plan initially submitted provided for a loading space at the rear which did not meet code standards and two parking spaces in the street right-of-way. A plot plan submitted at hearing shows an enlarged loading space and improvement of the street right-of-way to provide for on-street parking. A street use permit would be required for the improvement of the street right-of-way. The plan had not been reviewed by DCLU for compliance with code standards.

5. The applicant proposes to provide additional parking for staff by means of a lease agreement for parking at the church located across Sand Point Way. The document entitled "Covenant" in evidence (Exhibit 13) provides for a lease for one year, renewable annually, of space for required parking accessory to the building or use on the subject site.

6. Sand Point Way N.E. is designated as State Highway 523 and has six lanes (four of them marked). The right-of-way provides no shoulder, no curbs and no sidewalk. The speed limit is 40 m.p.h.

7. Users of the parking lot would have to walk in or along Sand Point to reach a marked cross walk near a bus stop and then cross the highway.

8. There are City-State plans to improve Sand Point Way by the installation of a planting strip/divider down the middle. When that is installed turns into the neighborhood by southbound vehicles would be restricted to the opening at N.E. 58th. Cars leaving the neighborhood would be restricted to right hand turns except at N.E. 58th. This should have the effect of reducing the use of 56th N.E. by center users. Pedestrians may find it easier and safer to cross with a waiting space halfway across.

9. The applicant wants to utilize the subject site for the day care center because it is at a convenient location on an arterial leading to the University of Washington and yet is in a neighborhood setting which contributes to the home-like atmosphere the center wishes to achieve for its children.

10. The center had been located in student housing a few blocks away and had served only University of Washington students. It is now open to any parent but has a lengthy waiting list.

11. Of the seven staff members one always drives her car to work, and the others drive only occasionally, not at all or are part-time.

12. Observations of the site by Ms. Ip and neighbors show that three to five cars are parked daily in the yard or streets adjacent to the subject site. The Director testified that two of the cars are unrelated to the center.

13. The center's witnesses testified that some children come on foot or on the bus.

14. Hours of the center are 7:15 a.m. to 5:45 p.m., according to the Director. The parents' arrivals are spread throughout the day because of the high proportion of students. It is noted that that pattern could change as a result of the change in the population served.

15. Some parent vehicles make a U-turn in 56th rather than driving around the block.

16. The main entrance is planned for the 55th Avenue side of the house. With parking and loading spaces on that side as well, parents should find it more convenient to use 55th.

17. The street on the westerly side of the subject lot, 55th Avenue N.E., has a 55 ft. right-of-way but a width of only approximately 18 ft. is paved with some fences to the edge of the pavement. No sidewalk is provided.

18. The main entrance to Belvedere Terrace is at N.E. 58th Street.

19. A fence has been constructed around the subject site which conforms to the Code but may violate restrictive covenants on the property. Neighbors object to the fence. Shrubs are to be planted along the fence to soften its appearance.

20. The center intends to avoid the use of signs because they would detract from its residential character.

21. The residence had been a rental property and is better maintained by the center than by previous users.

22. A real estate broker opined that the center would not negatively affect the marketability of other properties in the area because of the subject site's proximity to Sand Point Way.

23. The Belvedere Terrace Community Council opposes any use but single family residential at the site. It is concerned also with traffic, noise and structural modifications which could change the appearance or make the house unusable for residential purposes.

24. The applicant is willing to have the approval of the conditional use conditioned upon the continued availability of parking.

25. The proposed use meets the development standards for uses permitted outright in the zone and the dispersion criterion. Other criteria are not applicable, met or otherwise addressed in this decision.

Conclusions

1. A day care center may be authorized as a conditional use in a single family zone if it meets the criteria for institutions set out in Section 23.44.22 and would not be materially detrimental to the public welfare or injurious to property in its zone or vicinity Section 23.44.18.

2. The only criterion which is at issue is (L) Parking and Loading Berth requirements. At the time of the Director's decision the center did not meet the requirements and was requesting a waiver. The field observation by staff showed that a parking waiver was not appropriate. The new information provided at hearing shows that the requirements can be met. It appears, from a strict reading of the requirement, that the leased parking plus one loading stall is all that would be required. The center has attempted to answer the intent of the provision which seems to be to provide for both staff and parent parking by providing additional spaces by improvement of the right-of-way. Because the availability of the required

parking is only assured for one year, a condition must be imposed to ensure that the parking requirement continues to be met.

3. Assurance that the landscaping criterion will be satisfied also requires a condition.

4. The community's sentiment, expressed through the appeal and various witnesses, is that the center will cause material detriment. The use of the property cannot be converted, as feared by some residents, to uses not permitted in the zone. The testimony of the expert is persuasive that the properties' market value will not suffer because of the use of this site as a day care center

5. The possible detriment from the center is in the increase in traffic on neighborhood streets. Though the site is on Sand Point the current traffic patterns are such that the neighborhood streets are affected. Providing for entrance, loading and parking on the 55th N.E. side should reduce the incidence of U-turns on 56th N.E. and, most probably, traffic on 56th. With the planned improvements to Sand Point the traffic on 56th should be reduced markedly since southbound traffic could not turn onto that street. The main entrance at N.E. 58th would be used to gain admittance to 55th but it appears that is appropriate. The center should be required to promulgate rules for its users requiring use of 55th for parking and loading, prohibiting U-turns in 56th N.E. and prohibiting long term parking, e.g. for bus patrons. With the improvements proposed and certain conditions it is not reasonably foreseeable that the increase in traffic would cause material detriment.

Decision

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

1. The day care center operation shall be licensed in accordance with State law;
2. Within 30 days of the issuance of the master use permit the applicant shall submit a landscape plan for approval showing additional landscaping on the north yard and Sand Point Way frontage to enhance the subject site and such approved plan shall be implemented;
3. The center shall annually submit evidence of provision of parking required for the staffing/student level to the Director, Department of Construction and Land Use;
4. The center shall obtain the necessary permits for the improvement of 55th Avenue N.E. to provide for parking along the subject site's property line and carry out that improvement;
5. The center shall require all users to use the 55th Avenue N.E. loading zone and parking, shall prohibit long term parking and shall prohibit U-turns in 56th N.E.; and

6. A loading stall meeting code standards shall be installed.

Entered this 29th day of March, 1984.

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. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11). Should such 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.