

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

In the Matter of the Appeal of

CYREIS SCHMITT

FILE NO. MUP-85-023(CU)
APPLICATION NO. 8500827

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

Introduction

Appellant challenged the Department of Construction and Land Use (DCLU) approval of a day care use of property addressed as 13742 30th Avenue N.E.

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 June 5, 1985.

Parties to the proceedings were: appellant by attorney Frank DeMarco, Cameron Law Offices; project applicant Sandra Cram, pro se; and the DCLU Director by land use specialist Patrick Doherty.

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 proposes to use a single family structure addressed as 13742 30th Avenue N.E. to a day care center/Montesorri pre-school. The DCLU Director granted the required administrative conditional use on conditions that (a) approved fencing and landscaping be installed prior to issuance of the occupancy permit and (b) "hours of operation shall be limited to between 9:00 a.m. and 6:00 p.m." A neighboring property owner submitted this challenge to the DCLU approval.

2. The subject property is located in the Single Family (SF) 7200 zone in Seattle's Lake City area. A Lowrise 3 (L-3) zone is immediately east of the site and is developed primarily with multi-family dwellings. Properties to the immediate south, north and west are principally zoned and developed single family. The nearest institutional use is a church some 500-600 ft. northwest at the corner of 27th Avenue N.E. and N.E. 140th.

3. The site has 64 ft. of frontage on west adjacent 30th Avenue N.E., which is a 60 ft. right-of-way. However, the arterial is developed with just one lane each way. The present traffic volume is within design capacity.

4. The subject lot measures roughly 150 ft. east to west and between 61-64 ft. north to south. The 10,700 sq. ft. parcel is decorated with shrubs and some trees that rise more than 100 ft.

5. The subject lot is developed with a single family structure located within 6 ft. of the south property line in the southeast quadrant of the lot. Applicant proposes to remove all of the structure's south side windows and doors and install a one-hour safety wall along this south side.

6. Applicant wishes to use the site for a Montessori school for the "optimum number" of 25 children. Applicant chose the number 25 because, in her opinion, that number was desirable for sound operation of the business. Up to three staff persons would be on site, and they would be expected to arrive on site after 8:00 a.m. While the school's principal focus will be on a morning program (applicant estimates that half to two-thirds of the students would be morning students) an extended day program would also be offered, to terminate at 3:30 p.m. The DCLU condition, limiting the activity to 6:00 p.m., was given to provide additional time for parents to pick up children and to facilitate monitoring, according to the DCLU witness.

7. Three parking stalls and one loading space would be provided on site as well as a vehicle turnaround area. Access would be from 30th Avenue N.E. and new fencing would be placed on each side of the driveway. The less than 15 sq. ft. business sign would be located on the fence marking the southwest corner. Existing shrubs, fir trees and new ground cover would separate the westernmost parking space from the southwest property line. Applicant proposes to plant junipers along the slat fence line located along the south property line roughly 6 ft. from the edge of the parking area.

8. A 3,100 sq. ft. area northwest of the lot offers trees and other natural growth for Montessori student exploration. This area, to be enclosed on the north by a 6 ft. high solid fence, is proposed as the play area.

9. Appellant is the resident-owner of a structure located approximately 10 ft. south of applicant's structure. According to the letter of appeal, the DCLU decision failed to consider the traffic and other impacts of a proximate dental lab and a nearby lot approved for apartment construction. Appellant requested that the application be denied; or alternatively, that the DCLU decision be modified to limit the number of students "to 10 or the barest minimum necessary to operate the school", and that the hours of operation be limited to 9:00 a.m. to 3:30 p.m.

10. With regard to the State Environmental Policy Act of 1971 (SEPA) and Chapter 25.05, Seattle Municipal Code, the action proposed in this subject application has been determined by the responsible official to be categorically exempt pursuant to the provisions of Chapter 197-11, WAC.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.76, Seattle Municipal Code. Section 23.76.30(F) provides that discretionary decisions made on conditional uses are included among those subject to appeal to the Hearing Examiner.

2. The general provisions for administrative conditional uses, found at Section 23.44.18, reflect that the DCLU Director's decision shall be based on a determination that specific criteria, in this case for an institution, are met and on a determination "whether the use will be materially detrimental to the public welfare or injurious to property in the (subject) zone or vicinity".

3. Seattle Municipal Code Section 23.44.22(A) specifies that community centers, day care centers, public or private schools and "other similar institutions" may be permitted as conditional uses in Single Family zones.

4. As required by Section 23.44.22(C), the proposed operation appears to clearly satisfy the development standards for single family homes, Seattle Municipal Code Sections 23.44.08-23.44.16. For example, the structure and use will be "on a lot"; and the subject 10,700 sq. ft. area lot more than comports with the 7,200 sq. ft. minimum lot area for the zone.

5. Although less than 600 ft. from a church institutional use located to the northwest, the intervening arterial and topography provide sufficient separation such that the intent of the dispersion criteria is achieved. Section 23.44.22(D). No demolition is proposed; rather, applicant proposes to reuse the existing structure.

6. Concerning noise and landscaping, Sections 23.44.22(G)(H), applicant will take functional landscaping measures, in conjunction with DCLU suggested revisions to the plan, to minimize the day care center's noise and visual impact. The parking area will be separated on its south and west by fencing, ground cover, trees, existing shrubs and new junipers along a south fence. The play area, in the subject lot's northeast sector, is a maximum distance from the appellant's residence to the south, and the play area is to be bordered on its north by a solid wood fence. In addition, the DCLU decision specifically conditioned approval on fencing and landscaping, and on limits to hours of operation.

7. The less-than-15 sq. ft. area sign proposed is in compliance with Section 23.44.22(K), and parking and loading criteria are also met by the proposal. Section 23.44.22(L)(1)(b) requires that a day care center provide one parking space per ten children or one space per teacher, whichever is greater, and one loading space. Applicant is proposing three parking spaces and a loading berth. Other criteria are met or are inapplicable to the proposal.

8. The proposal therefore meets the basic criteria for an administrative conditional use.

9. As an alternative to denial, appellant requests that the DCLU decision be modified to limit the number of students. The only information of record relating to the number's genesis was given by applicant. She testified that 25 students would support a reasonable business operation. Most of the day care activity will occur in the morning. The school has frontage on the 30th Avenue arterial. Three off-street parking spaces and one loading berth are proposed; so that transportation of the 25 students will not unduly impact vicinity traffic or parking. The fenced play area is separated from the south adjacent lot and developed by landscaping, fencing and a residential structure, so that the number of children at play presents a minor noise or other concern. In view of the above, the record supports no conclusion that a reduction in the number of students is required in order to avoid material detriment to the public welfare.

10. The condition relating to operational hours is, however, modified to minimize potential conflict with rush hour traffic. Those hours shall extend to 5:00 p.m., inclusive of academic activity, student pick-ups and all other school activity.

Decision

As modified herein, the DCLU Director's decision is AFFIRMED.

Entered this 17th day of June, 1985.


Leroy McCullough
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 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.