

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

In the Matter of the Appeal of

SQUIRE PARK COMMUNITY COUNCIL

FILE NO. MUP-85-057(CU,V,W)
APPLICATION NO. 8500834

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

Introduction

The Department of Construction and Land Use (DCLU) granted variance, administrative conditional use and environmental approval for a nursing home proposed for 1601 East Yesler Way. Appellant submitted this appeal.

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 October 14, 1985.

Parties to the proceedings were: appellant by Howard McCay and Eric Gorbman, pro se; the applicant by Rodney Kawakami, attorney; and the DCLU Director by Clay Leming.

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 on this appeal.

Findings of Fact

1. Applicant proposes to construct a nursing home on property addressed as 1601 E. Yesler Way. The proposed nursing home will specialize in the care of Japanese elderly by offering particularized dietary, language and other support. Appellant, the Squire Park Community Council, submitted this appeal from DCLU variance, administrative conditional use and environmental approval.

2. The subject property is bounded on the north by E. Yesler Way and on the south by S. Washington Street. West adjacent is 16th Avenue. Across east adjacent 17th Avenue South is the Langston Hughes Cultural Arts Center.

3. The Arts Center is the site of many performing arts and other community programs. Although the Arts Center has a parking lot behind its building, Langston Hughes patrons currently park on the eastern edge of the subject site by informal arrangement. The DCLU report and Checklist annotations omitted reference to the Arts Center and its designated landmark status.

4. Vicinity development along Yesler Way includes small businesses, condominium and other residential uses. Other neighborhood uses include single family residences, duplexes, apartments and several community facilities such as the Japanese Baptist Church and a subsidized elderly housing project (Wisteria Manor). Sam Smith Townhomes are proposed for a site across 16th Avenue. There are at least four institutional uses within a halfmile radius of the proposed site.

5. Current on-site development includes an eight unit apartment, one duplex and one single family residence. These structures are located within the Lowrise 3 (L-3) zoned portion of the site. The Community Business (BC) zoned portion, the northeast quadrant, is vacant, and is located at the corner of E. Yesler Way and 17th Avenue S.

6. Applicant proposes to construct an L-shaped, 150 bed nursing home on-site with two floors of resident care units. A total of 55 parking spaces is proposed. Surface parking for 21 vehicles will be to the south, and 31 basement spaces will be provided along the north border. Plans call for an open garden area fronting on S. Washington Street. Perimeter landscaping is also proposed. For residents, views to Beacon Hill, West Seattle and to the Kingdome are proposed. To minimize conflicts with Langston Hughes activities, the principal entrance proposed is from the southeast. Since demolition or removal of present on-site housing is proposed, compliance with Housing Preservation legislation will be required. Proponent expects to relocate the apartment house. There is broad, but not unanimous community support for the project.

7. Applicant proposes a peak staffing of 69.5 persons, inclusive of 10 volunteers (days). Evening shift population will approximate 26 on weekdays and weekends. Staff, visitors, volunteer service and other deliveries will account for roughly 90-110 vehicle trips per day.

8. East Yesler Way is a major east-west arterial that provides Metro transit service. Although most traffic to and from the site is expected via E. Yesler Way, including that from I-5 southbound, other major access routes include Rainier Avenue, S. Jackson Street and I-90.

9. Many of the nearby institutions are northwest of the subject site. Traffic to and from them will be via different access-ways. These institutions include Providence Medical Center near 12th and Jefferson and Seattle University.

10. Some vicinity residents objected to the proposal, stating a general concern with anticipated exacerbation of present rush-hour traffic congestion. Opponents also cited the plethora of present institutions and objected to development of the site with anything other than "traditional", lower intensity residential development.

11. One Langston Hughes boardmember observed that development as proposed may mean additional soundproofing and other costs for the Arts Center so that the performances could be reconciled with the proposed residential use across 17th Avenue. She also commented that elderly Langston Hughes patrons have difficulty accessing the Center from the parking area behind the Langston Hughes building.

12. More particularized objections to the proposal are stated in the letter of appeal, e.g., to the proposed massing of this "institution-character" building and its negative impact on the viability of the area for residential use, and objections to the expected impact on parking and other functions related to Langston Hughes. Appellant requested reversal of the declaration of non-significance, denial of the variance and denial of the conditional use approval. In the alternative, appellant requests rehabilitation of existing on-site structures, centralized location of the proposed structure, limiting the building to L-3 bulk dimensions, construction of the building so that it would be subsequently convertible and requiring that it would be converted to private residential units when no longer needed as a nursing home. In addition, appellants seek protection of Langston Hughes from (a) noise or other claims by applicant; (b) reduced parking, and (c) the possibility of Langston Hughes conversion to some use other than public use.

13. No evidence was presented on the impact of the proposed traffic or parking pattern on the existing environment.

14. The Yesler-Atlantic Land Disposition proposal adopted May, 1984, defined nursing home as a residential use. Since the subject site was designated as appropriate for residential use, testified the Department of Community Development witness, the proposed use is not necessarily inconsistent with that Yesler-Atlantic plan.

15. As presently proposed the nursing home north facade would be set back some 14 ft. from Yesler Way. Modulation, bay windows, landscaping and other design features are proposed to soften the appearance of building mass. The setback in the BC zoned portion of lot is 10 ft.

16. Applicant requires a variance for lot coverage in the BC zoned portion of the subject lot. In the BC zone, residential uses may not exceed 40 percent of the lot although nonresidential uses may take 100 percent of the lot. Total lot coverage proposed for the BC zone, 11,925 sq. ft., is in excess of the 7,824 sq. ft. that would be allowed. Total lot coverage for the site, without variance relief and without 8,100 sq. ft. of allowable L-3 apartment clusters, would be approximately 24,000 sq. ft. Applicant proposes, inclusive of the variance portion, lot coverage of 22,291 sq. ft.

17. As noted above, the proposed L-shaped structure will open to the southwest where surface parking and a landscaped garden area will appear. The joint of the L-shape is at the northeast corner of the site. At the basement level this area will be developed with laundry, mechanical storage and other facilities. At the first and second floor levels, this section will be used for centralized nurse stations. One and two bedroom units will extend south and west of the nurse stations.

Conclusions

1. The Hearing Examiner has jurisdiction of this proceeding pursuant to Chapter 23.76, Seattle Municipal Code.

2. The Director's environmental determination at issue in this case, the DNS, is accorded substantial weight, Seattle Municipal Code 23.76.36(B)(7), and the burden of establishing the contrary is appellant's. Seattle Municipal Code Section 25.05.680(1)(c). Appellant must therefore show the DCLU determination here at issue to be "clearly erroneous".

3. If a proposal may have probable significant adverse environmental impacts, a declaration of significance is required. Seattle Municipal Code Section 25.05.360(1). If, on the other hand, no probable significant adverse environmental impact is determined, a declaration of nonsignificance (DNS) is appropriate. Seattle Municipal Code Section 25.05.340. Significant has been read to mean "of more than a moderate effect". Norway Hill Preservation and Protection Association v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976).

4. The expected impacts on the environment were not shown to be significantly adverse. Access to the site will be via one of several arterials or major highways. Fifty-five on-site parking spaces are proposed. No impact was shown on the existing parking patterns with the exception of current Langston Hughes parking on site. The theater parking has been "at sufferance". If the parking is lost, theater patrons will be required to utilize the less convenient but present theater lot behind the building, and/or street parking. The entrance to the proposed site is designed to minimize potential theater-nursing home pedestrian or other traffic conflicts. The evidence was not persuasive that the activity of the Arts Center would be significantly impacted by the proposal. Nor was it established that the location of the building in this area of arterial streets, institutions, multifamily and other residential

structures would constitute a significant adverse effect on the land use pattern. The proposal will increase human and vehicular activity in the area and will affect the present development pattern. However, the DCLU determination of nonsignificance was not "clearly erroneous" and is therefore affirmed.

5. As to imposition of conditions in response to impacts that were not shown to be significant, Seattle Municipal Code Section 25.05.660, requires that all mitigation measures or denials be based on specific policies or plans designated in Seattle Municipal Code Section 25.05.902. No policy therefrom was cited which would provide the Hearing Examiner with authority to relocate the proposed building, or to require applicant to waive parking, land acquisition or noise ordinance privileges under the local ordinance. To the extent that compatibility of development was cited as being in issue, the project will have frontage on a major arterial (north). East is the Langston Hughes theater. Condominiums and other multifamily developments are peppered throughout the area. Thus, Seattle 2000 goals and other items referenced by Seattle Municipal Code Section 25.05.902(2) offer no support for conditioning or denying the project pursuant to SEPA. No evidence was presented that the proposal, singly or in conjunction with other development, would tax the existing capabilities of public facilities or services, or the area's natural systems such that authority exists for conditioning under the cumulative impacts category, Seattle Municipal Code Section 25.05.902(3). The DNS is affirmed.

6. As to the variance, the split zoned designation, the surroundings and the size of the subject site (one "block") are unusual conditions which support the requested variance relief. Seattle Municipal Code Section 23.40.20. Without variance relief applicant would be deprived of the ability to comparably develop the site in a reasonable fashion. Applicant's design, which does not appear to be an unreasonable response to the existing development pattern, calls for the centralized nursing station and emanating residential units to be within the present BC zone. This portion fronts on Yesler, an arterial, and is across from an established performing arts institution. Thus, depriving applicant of the proposed variance from BC zoned residential restrictions would cause a potentially less reasoned response to the existing environment and an undue and unnecessary hardship. In that no similar site or proposal is presented, the requested variance is not an inconsistent grant of special privilege to applicant. The variance would serve only to allow the plans as presented to issue; while denial would only require redesign of the proposal. The variance criteria are satisfied.

7. Nursing homes are subject to the general development standards of halfway houses. Seattle Municipal Code Section 23.45.88(B). One of the development standards for halfway houses restricts the number of residents, including resident staff, to eight. Seattle Municipal Code Section 23.45.88(B). However, expanding or new nursing homes that do not meet all development standards "may be permitted as administrative conditional uses subject to the requirement of Section 23.45.120". Seattle Municipal Code Section 23.45.88(A). Although the variation from the number of residents, eight, is substantial, the conditional use criteria are met.

8. In the question of whether an administrative conditional use should issue, a determination shall be made as to whether the use will be "materially detrimental to the public welfare or injurious to the property in the zone or vicinity in which the property is located." Seattle Municipal Code Section 23.45.116(C). The proposal will not prove "materially detrimental" or injurious to the subject vicinity. As noted above, the proposed use fronts on a major arterial and is proposed for 150 residents; vicinity development already consists of institutions, small businesses, single and multifamily uses. Modulation, landscaping and sufficient parking are proposed. No material detriment or injury is presented.

9. Remaining considerations relate to categories of bulk and siting; dispersion; noise; and transportation. Seattle Municipal Code Section 23.45.122, cf. Section 23.45.118. Relative to bulk, the proposal adequately complies with maximum width standards for the L-3 zoned institutions. Extensive landscaping and modulation are proposed to mitigate the bulk of the principally two-story structure. It should also be noted that only 90 ft. of the north and east facades are L-3 zoned; and that the remaining portions are classified BC.

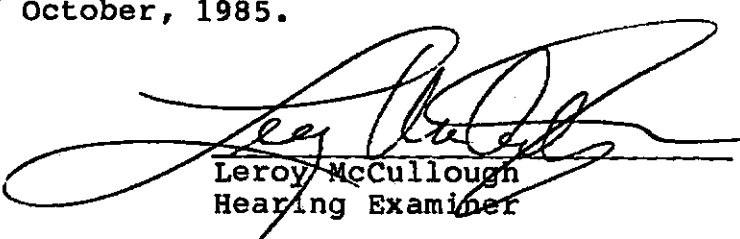
10. One of the halfway house criteria applicable to the subject proposal requires a 600 ft. distance between new and existing "institutional" development. Seattle Municipal Code Section 23.45.86(D). Further, the new development is not to increase to more than five the number of "institutions" within a one-half block radius. There are at least four other institutions within a half mile of the subject site. However, Seattle Municipal Code Section 23.45.122(B) provides that an institution may be permitted even if dispersion criteria are not met so long as there will be no aggravation of parking shortages, traffic congestion and noise, or where arterials or freeways provide substantial separation from nearby facilities. The majority of nearby institutions which would offer conflicts in traffic, parking and noise are beyond the Yesler arterials and are accessed by different traffic routes. Thus, no aggravation in traffic or circulation conditions would be presented. Further, the proposed use will create no significant issues of noise pollution.

11. Adequate off-street parking is proposed with a traffic pattern designed to minimize conflict with existing institutions. Additionally, Yesler Way offers Metro transit service.

Decision

The DCLU decision on the DNS, variance and conditional use is AFFIRMED.

Entered this 28th day of October, 1985.


Leroy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW

Pursuant to Section 25.05.680(2), Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fourteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center. The City Council's review on appeal shall be limited to the exercise of the City's substantive authority to condition or deny the proposal under SEPA as authorized by Section 25.05.660. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure.

If an appeal is taken pursuant to Section 25.05.680(2), the time for filing a request for judicial review of the underlying governmental action and/or other SEPA issues is stayed until the City Council renders a final decision on this Section 25.05.680(2) appeal.

If no appeal is taken pursuant to Section 25.05.680(2), the decision of the Hearing Examiner in this case is final 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 of the decision on the underlying governmental action must be filed in King County Superior Court within fourteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.36.(B)(11). Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review within 30 days after the date of this decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 400 Seattle Municipal Building, Seattle, Washington 98104, within fourteen days of the date of this decision. Section 25.05.680(3)(d).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost of preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, 5th Floor, Seattle, Washington 98104. As an alternative to the written transcript, RCW 43.21.075(6)(b) provides that a tape may be used for court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review.