

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

In the Matter of the Appeal of

EDUARDO AND NANCY PEREZ

FILE NO. MUP-85-080(CU)
APPLICATION NO. 8504848

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

Introduction

Appellants contest the DCLU denial of conditional use approval needed to allow a daycare center to be located at 12707 35th N.E.

The appellants 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 February 7, 1986. The record remained open to February 19, 1986, for DCLU comment and appellants' response regarding parking and access.

Parties to the proceedings were: appellants, by Ken McEwan of Betts, Patterson and Mines; and the Department of Construction and Land Use Director by Ed Somers, land use specialist. Bob Carter, representing a neighboring property owner, appeared pro se.

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. Applicants propose to change the use of a rented single family structure addressed as 12707 35th Avenue N.E. to a mini-daycare center. DCLU denied the conditional use approval required and applicants submitted this appeal.
2. The subject site is a Lowrise 2 (L-2) zoned site in Seattle's Lake City area. The lot has 50 ft. of frontage along 35th Avenue and is 96 ft. deep for a lot area of 4,800 sq. ft.
3. The site is developed with a structure that provides a front setback of 15 ft. and a rear setback of 44 ft. A 4 ft. chain fence marks the front yard area.
4. Applicants are using the residence as a daycare center for 1-12 infants from 1-16 months of age. At 16 months, the charges are moved to the main daycare center, also owned and operated by applicants, that is two houses north. Of the 12 infants presently at the mini-daycare, 6 have siblings at the more northerly center.
5. Applicants plan no changes to the daycare structure's exterior. For example, no exterior signs will be used to announce the business.
6. Other vicinity development includes an adjacent triplex, other multifamily residences and single family residences. At one point, daycare customers used the triplex' front yard parking area for loading/unloading. The activity has been disapproved by DCLU although the triplex-owner is willing to allow the use to continue. Across 35th and one property southeast is a church site where the three mini-daycare staff people currently park. A second church is also across the street. A total of three institutions lie within 600 ft. of the proposal site.

7. The vicinity zoning is a mixture of L-1, L-2 and General Commercial zoning. Although not "major", the adjacent portion of 35th N.E. is an arterial and has a 60 ft. right-of-way. Traffic flow is moderate. One lane of traffic flows each way and parking is allowed on both sides of the street. Typically, there is no shortage of on-street parking along this segment of 35th Avenue.

8. One mini-daycare staff person opens the facility at 6:30 a.m. A second employee comes on board at 7:30 a.m. and the third staff person at 9:00 a.m. The employees depart in similar staggered fashion at 3:00 p.m.; when there are six or less infants; and the third person at 6:30 p.m. for closing and cleaning.

9. Mini-daycare infants arrive on-site between 6:30-9:00 a.m. and exit between 3:30-6:00 p.m. Parents usually appear on-site singly. Their staggered visits usually are for five minutes or less. See Exhibit 6, Sign In/Out Sheet. Many of the parents park on-street for loading and unloading.

10. There are three parking spaces at the rear of the site with a turnaround. The spaces are accessed by a 12 ft. 6 in. wide curbcut to 35th Avenue N.E. The driveway has adequately accommodated a Volkswagen Jetta, a one ton van and a Ford Bronco.

11. There is a need in the area for infant daycare.

12. Opposition to the proposal came in writing for the owner of an adjacent property (12715 35th N.E.) who argued that the proposed change in use would be inconsistent with the single and multiple family neighborhood and would be noisy, disruptive and possibly restrictive to future plans for using the property. These concerns were expressed in the public hearing by the son of the property owner, who also added his opinion that when he lived there some seven years ago, 35th N.E. was busy, particularly during peak hours.

13. Other commenters praised the quality of appellants' daycare and asserted that traffic, noise and other problems would not be exacerbated by the limited additional child care service as proposed.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.76, Seattle Municipal Code. Seattle Municipal Code Section 23.76.22(C)(7) provides that the DCLU Director's decision on conditional uses "shall be given no deference".

2. Seattle Municipal Code Section 23.45.102 provides that the lot line of any new institution shall be at least 600 ft. from the lot line of any other institution in a residential zone. Two churches and a daycare center are within 600 ft. of the proposal site. The conditional use criteria must therefore be considered before the mini-daycare center may be sited as proposed since the dispersion criteria is not met.

3. A conditional use must not be "materially detrimental to the public welfare or injurious" to property in the subject zone or vicinity. Seattle Municipal Code Section 23.45.116. The general conditional use criteria are met by the proposal. Of the twelve infants, six have siblings enrolled in daycare two houses north. This suggests that the number of additional vehicular trips will be less than would otherwise be presented. Parents arrive at staggered hours and are on the premises briefly. Staff arrival and departure times are similarly staggered. Adequate parking exists along both sides of 35th Avenue. The record fails to support any conclusion that the added traffic will be of any significant detriment to the traffic environment. Thus, what detriment that could be argued would certainly not be "material". There is a need in the area for infant daycare.

4. The same analysis applies to the dispersion criteria of Seattle Municipal Code Section 23.45.122. There is no evidence that the proposed use would create or aggravate parking shortages or traffic congestion. Triplex parking-loading has already been disapproved. The moderate traffic flow and activities of the surrounding single, multifamily, and commercially zoned sites would probably absorb any additional noise that would result from the addition of an infant daycare to the environment.

5. Further, two of the other institutions within the proscribed 600 ft. radius are separated by the 35th N.E. arterial, a 60 ft. right-of-way. While no similar buffer separates the proposal site from the main daycare two houses north, the record reflects that in appearance the proposal site will blend in with the residential development.

6. The proposal appears to be one that fits squarely within conditional use exception to the dispersion criteria with one possible exception. Seattle Municipal Code Section 23.45.098(A)(3) spells out parking and access requirements for daycare centers. Since there are three staff persons, three parking spaces would be required. In addition, one off-street loading space is apparently required for every 1-20 children, appellants' creative argument to the contrary notwithstanding.

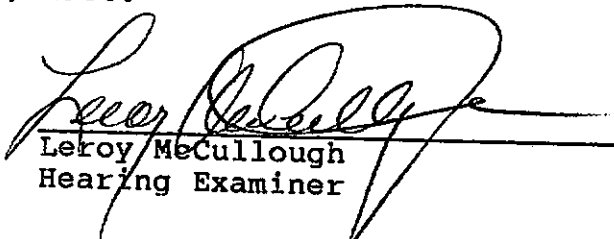
7. The conditional use should therefore be granted on the condition that appellants submit an approved parking arrangement for staff to park at the church across 35th, or at some other DCLU approved site, so that the present area designated for staff parking could be used for loading and unloading in accord with the requirements of Seattle Municipal Code Section 23.45.098(3). The form of the parking arrangement shall be as required by DCLU.

8. With the foregoing in view, the proposal should be approved. There is insufficient evidence that the concerns with jaywalking should preclude parking across 35th Avenue for one or several daycare employees.

Decision

The conditional use application is GRANTED, on the condition stated in Conclusion 7, above.

Entered this 5th day of March, 1986.


Leroy McCullough
Hearing Examiner

Concerning Further Review of Hearing Examiner Final Decisions on Master Use Permits

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 must be filed in King County Superior Court within fifteen days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

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 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, Seattle, Washington 98104.