

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JOHN HUMPHRIE

FILE NO. MUP-87-028(CU)

APPLICATION NO. 8701640

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

Introduction

John Humphrie appeals the decision of the Director, Department of Construction and Land Use, to conditionally grant a conditional use permit to Seattle Youth and Community Services to establish a halfway house for youth in a single family zone at 6201 46th Avenue S.

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 August 17, 1987.

Parties to the proceedings were: appellant, John Humphrie, pro se, and represented by Susan Taoka; attorney at law; the Director, Department of Construction and Land Use by Ed Somers, land use specialist; and the applicant, Seattle Youth and Community Services, by Robert McConnell, attorney at law and board member.

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. The applicant is a social service agency which has, as one of its programs, a short term residence for youth, The Shelter. The Shelter had operated from a house on Beacon Hill until funding changes required its closure last year. The program was moved to its present location, 6201 - 46th Avenue S., early this year and has operated with 6-7 youth. It seeks the conditional use as a halfway house to increase the number of residents to 12 with two full time staffpersons.

2. The site is a lot, at the end of a deadend street, developed with a large, single family house. The plans show a gravel driveway with parking spaces for five cars.

3. The site is zoned SF 5000 as is property to the south, east and northeast. To the west and northwest is an L-2 zone with apartment development.

4. The City's records show that there are three special residences in Rainier Valley. They are the Galland Home for the Aged, Hilltop Inn, a nursing home, and Thunderbird House which was formerly Pioneer Center South and which houses a residential program for alcohol and drug treatment for youth. None is within 600 ft. or one-half mile of the subject site.

5. Sharples High School, a Seattle School District alternative high school, is located at 3928 S. Graham. The school has some 400 students including those in an unwed mother program and those who have been expelled from other high schools.

6. The structure on the site meets bulk and setback requirements, according to the land use specialist.

7. The street has no room for a turnaround but a turnaround area can be retained on the subject site.

8. The subject lot is bordered by fence or brick walls.

9. The subject property has little landscaping.

10. Lighting of the site will be normal residential lighting.

11. The Director reviewed the application materials and public and agency input and granted the conditional use subject to a series of conditions. The conditions were that the use is approved for only two years so that the review of an application at the end of two years can consider any detrimental effect of the facility such as increased crime; the driveway and parking area is to be hard surfaced and the fifth parking space is to be signed as a turnaround area; trees and shrubs are to be planted; community members are to be allowed to comment on house rules for the facility; and a neighbor is to be invited to attend regular board of directors' meetings.

12. Southeast Seattle is identified in the City's Housing Assistance Plan (HAP) as an area which should not have any additional construction of publicly assisted low income family housing. This approach is an attempt to disperse publicly assisted low income family housing throughout the city: a "fair share" policy. A short term residence for troubled youth is not addressed by the HAP.

13. The occurrence of part one offenses, i.e., murder, rape, robbery, burglary, theft, arson, was significantly above the average for Seattle in most of southeast Seattle.

14. Prostitution is a problem along Rainier Avenue South from the 3800 to 9800 block.

15. The Shelter is recognized by the City funding department, counselors and other social service providers as a well-run program.

16. Youths generally stay in the facility for one to 14 days, though four beds will be established for residents needing shelter for two to four months.

17. Youths walk in to the Shelter, come in through the Orion service center program or are referred by other social service agencies, DSHS or the schools.

18. The Shelter's licensing requires adult supervision of the residents at all times. The level of staffing with 12 youths in residence would be 2-3 adults.

19. Columbia City experiences a high rate of crime toward businesses. According to Maurice Bell, the business watch coordinator for the Seattle Police Department, the majority of the crimes are committed by teenagers.

20. Because of the high incidence of crime and the fear of crime, businesses and home owners are installing anti-burglary equipment which increases the cost of doing business and home ownership.

21. Mr. Bell sees some of the signs of economic and social deterioration in Columbia City.

22. Many people in southeast Seattle believe that the Rainier Valley has a disproportionate share of "problem" housing and "at risk" youth services.

23. The most frequent criminal activity found by Sergeant Harry Bailey, watch supervisor in the Rainier Valley district, is drugs. The next most prevalent is prostitution. Both involve teenagers and young adults.

24. Some 200-300 youth would live at the Shelter during a one year period with 25-30 percent from southeast Seattle.

25. Youth who would use the facility may be first time runaways, may have been living on the street and are trying to leave it or are somewhere in between.

26. There has been one incident at the 46th Avenue S. facility which involved the police. Two of the residents went onto the roof and would not come down so the police were called. It is anticipated that police may have to be called to the facility in the future as a last resort should violent behavior occur.

27. There are several agencies providing services to youth "at risk" in southeast Seattle including a youth service bureau, a program for Samoan youth and a program for Filipino youth.

28. There has been, and continues to be, misinformation in the community about what population the Shelter serves and what its program is.

29. Fear of crime may have affected persons' decisions whether to live in southeast Seattle or leave the area, establish a business in the area, or to participate in activities outside the home at night.

Conclusions

1. A halfway house is a special residence which is a use permitted in a single family zone as conditional use subject to modified development standards. Section 23.44.020. Those standards are for dispersion, number of residents, off-street parking, noise and odors, landscaping, and light and glare. In addition to the development standards, the halfway house must also satisfy the general conditional use criterion: whether the use will be materially detrimental to the public welfare or injurious to property in the zone or vicinity. Section 23.44.018 C.

2. Since no deference is to be given the Director's decision on a conditional use, Section 23.76.022C.7, the burden remains with the applicant to show that the proposed use satisfies the development standards and the general conditional use criterion.

3. The use meets the dispersion development standard in that it is more than 600 ft. from any other special residence and there are none within one-half mile so it would not increase the number of special residences to more than five within a one-half mile radius.

4. The use would not exceed the standard for maximum number of residents which is 15.

5. All bulk and siting development standards would be met.

6. Required parking can be provided and would be appropriately designed.

7. Noise Ordinance standards would be met and no unusual odors are anticipated.

8. The landscaping standard is "compatible with neighboring residential properties." Since the site is almost devoid of landscaping a condition requiring the planting of trees or shrubbery would be required for the use to satisfy this standard.

9. No non-residential lighting is proposed so no special shielding would be necessary to meet the light and glare standard.

10. With the condition mentioned in Conclusion 8 the development standards for a special residence are met.

11. Appellant contends that he has shown that the proposed use would cause material detriment to the public welfare and injury to properties in the area due to the fear that the use will contribute to increased crime in the area and to over-concentration of youth services in southeast Seattle. The record provides no support for an increase in crime due to the use, i.e., there was no showing of increased crime on Beacon Hill where the facility was previously located and the residents would be supervised in the facility. Appellant attempted to show that the fear of crime itself is enough to cause material detriment in that money is spent by homeowners and businesses on protective devices and decisions are made based on fear which are detrimental to the area. Real but unfounded fears do not constitute legally cognizable detriment. The conditions imposed by the Director are designed to alleviate such fears and, thereby, reduce any effects of those fears. Granting the conditional use for a fixed term puts the applicant on notice that it must be a good neighbor. The future application and the attendance at board meetings gives the community a mechanism to deal with problems should they arise.

12. The proximity of the Sharples school with part of its student body which appellant would describe as youth "at risk" is the main basis of appellant's contention that there is an over-concentration of such youth programs in the area. The record showed an underrepresentation of special residences in southeast Seattle but no comparison for the number of youth programs. The only other residential facility shown was the substance abuse treatment facility. Without comparative data, the examiner cannot conclude that there is an over-concentration of programs for troubled or "at-risk" youth and cannot conclude that the addition of a maximum of 12 youth, assuming none is from southeast Seattle, would be materially detrimental to the public welfare or injure properties in the vicinity.

13. A further concern was voiced by appellant for the welfare of the youths in residence who would be placed in a high crime area and close to the prostitution on Rainier Avenue S. While a lower crime area would be more desirable, the examiner's role is not to determine whether there is a better location but if the criteria for conditional use are satisfied at the proposed site. It should be noted, however, that some proportion of the youth are from the area already, and the stay at the facility is for a very short period.

14. With the conditions imposed by the Director, and agreed to by the applicant, all criteria for conditional use are met.

Decision

The conditional use is granted for two years subject to the conditions listed below. A new application will be required at that time to allow full review of the effect of the halfway house on the surrounding area.

1. The driveway and parking area shall be surfaced with asphalt or other hard surface material to stop gravel from scattering to the surrounding area. The space between the brick wall and the south facade of the structure indicated as parking space #5 on the plans shall be surfaced and signed as a turnaround for the vehicles accessing the halfway house.
2. To provide screening from adjacent uses, two trees, a minimum of two inches in caliper, shall be planted in the rear yard of the site near the rear fence, and one tree and one shrub shall be planted in the front yard prior to occupancy.
3. The board of directors of the halfway house shall allow members of the surrounding residential community to be involved in establishing house rules for the proposed halfway house as follows: the rules shall be sent to community members who are parties of record to this application, and to the South East Seattle Community Organization (SESCO) for a 3 week comment period. The comments shall either be adopted into the rules, or the board shall respond in writing as to why the rule was not adopted.
4. The board of directors of the halfway house shall invite at least one of the adjacent neighbors in the surrounding residential community to attend regular board meetings to keep the board informed about problems that may arise from the halfway house in the residential neighborhood.

Entered this 2nd day of September, 1987.

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, 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 fifteen days of the date of this decision. Should such a 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.