

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MARY LYNNE MYER

FILE NO. MUP-87-044(CU,W)
APPLICATION NO. 8702510

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

Introduction

Appellant, Mary Lynne Myer, appeals the decisions of the Director, Department of Construction and Land Use, to issue a determination of nonsignificance and to grant administrative conditional use for the proposed expansion of the University Preparatory Academy at 8000 - 25th 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 January 15, 1988.

Parties to the proceedings were: appellant, Mary Lynne Myer, pro se; the Director, Department of Construction and Land Use, represented by Leslie Lloyd, senior land use specialist; and the applicant, University Preparatory Academy, by Irving Berteig, trustee.

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 University Preparatory Academy ("University Prep") filed a master use permit application to expand the school by constructing classrooms/office buildings and a parking lot at 8000 25th Avenue N.E. The Director issued a determination of nonsignificance ("DNS"), imposed conditions, and granted administrative conditional use for the expansion subject to a series of conditions. Mary Lynne Myer appealed those decisions.

2. University Prep is an independent school but has operated on Temple Beth Am ("Temple") property. The school owns property adjacent to Temple's property which will be used in the expansion. The vacant property which would be used for the proposal is referred to as Parcel A in the application and decision. The Temple-owned property, which includes the existing school buildings, is referred to as Parcel B.

3. The new classroom space is intended to accommodate the addition of a sixth grade with 18 students and house activities which had been in Temple facilities but are required to move.

4. The current proposal is to erect three, one-story, prefabricated buildings on Parcel A and to construct a 51 space parking lot at the northeast corner of 25th N.E. and N.E. 80th. The total area of the new buildings would be 2,600 sq. ft. They would be one story high and be architecturally similar to the existing classroom buildings.

5. The application covers expansion proposed in phases one and two of University Prep's development plan. The plan submitted outlines phase three development which is dependent on financing in the future. Phase three consists of an additional 19,500 sq. ft. of classroom buildings, a multi-purpose building and a gymnasium. That further expansion would allow enrollment of around 300 or 350 students.

6. The subject property is surrounded by the N.E. 80th Street right-of-way on its south with the Waldo Dahl field south of the right-of-way; 25th N.E. on the west; a P-Patch north of the westerly half of Parcel A, along 25th N.E. and Temple property north of the easterly half of Parcel A; 27th Avenue N.E. on the east with single family development on the east side of 27th N.E.

7. The subject site is zoned single-family as is the surrounding area except for a small Lowrise 1 zone lying west of 25th N.E. developed with duplexes and triplexes. With that exception, the area is developed with single-family residences and institutions.

8. There are two churches within 600 ft. of the subject site: one at the southeast corner of 24th N.E. and N.E. 80th Street across 25th Avenue N.E., a major arterial, and the other at 30th Avenue N.E. and N.E. 82nd Street, a site high above the subject site. Also in the area is another church north of N.E. 83rd, the Wedgwood Swim Pool facility east of Dahl field on 28th N.E. and south of N.E. 80th. A public elementary school is located at 27th and N.E. 85th. University Prep, along with the P-Patch, Temple and Dahl field, establishes the edge of the large residential zone to the east.

9. The school currently has 167 students and 39 faculty and staff. With the 18 sixth grade students would be added three faculty or staff members.

10. At this time, the school has use of the 33-stall parking lot owned by the Temple for faculty, staff and visitor parking. Another 35-stall lot is not available for school-related use. The present access to the school requires all cars to pass about 35 houses after they leave the arterial.

11. Northeast 80th between 25th N.E. and 27th N.E. is improved to the extent of some crushed rock but is blocked by a dirt mound just west of 27th N.E. As a part of the improvement of the street, driveway access would be created and a turnaround or cul-de-sac would be added to allow parents to drop off students. The school does not propose that N.E. 80th be opened for access to 27th N.E. A walkway would be provided directly between the turnaround and Parcels A and B to improve pedestrian access and encourage the turnaround's use. The proposed parking lot and turnaround would have the effect of removing student and parent trips from the residential streets so traffic on those streets would be lessened by the proposal.

12. Vehicles coming to the school now must use N.E. 82nd to get to 27th N.E. where they can enter the Temple property. A traffic study done for this application shows that the school generates an average of 280 trips each day with peak periods between 7:30 and 8:00 a.m. and 2:15 and 2:45 p.m.

13. The sixth graders and staff would be expected to add approximately 27 trips during the peak periods. Since sixth graders are too young to drive, there would be no increased demand for parking spaces except from additional staff.

14. Those neighbors testifying at the hearing and the Wedgwood Community Council support a permanent barrier in N.E. 80th on the west side of 27th N.E. to prevent traffic entering the area from that street. Since motorcycles and some cars can drive over the mound and children play around the mound it currently is a hazard and needs to be made impassable.

15. Twenty seventh Avenue N.E. is narrow and has no curbs or sidewalks.

16. Because of the street pattern in the area, traffic makes a loop down 27th across N.E. 80th and back up 28th to reach N.E. 82nd. That causes some of the school traffic to pass residences on 28th N.E. as well as 27th.

17. The land in the area slopes up from 25th Avenue N.E. to the east causing steep streets and creating views from houses on the hillside. Because of the steepness of N.E. 82nd, sight distance is not good for cars entering from 28th and 27th Avenues N.E.

18. Parcel A is elevated above the P-Patch. There is concern that drainage from the parking lot could affect the P-Patch. Use of herbicides on Parcel A could also be harmful.

19. A drainage system will be installed which will prevent runoff from the parking lot from entering the garden soil.

20. Dahl field is a regional facility and is in heavy use most of the year. Cars associated with playfield activities park in the N.E. 80th right-of-way as well as all over the vacant Parcel A.

21. P-Patch users have been allowed to park on Temple and school property and cross that property in the past. The rototiller for the P-Patch is taken through the school and Temple property. The school's representative indicated that the lots will be available to non-school use during off hours and pedestrians and the rototiller will be allowed access across school property.

22. The bank between the P-Patch and Parcel A will be retained, however, the school plans to add steps.

23. The blackberry bushes along the boundaries of Parcel A will remain, as desired by the neighbors.

24. The neighborhood suffers from litter which can be traced to the school.

25. The number of parking spaces proposed exceeds the number required by the code.

26. An environmental checklist ("checklist") was prepared by the applicant and reviewed by the land use specialist. The DNS was issued based on the checklist and other information provided by the applicant. The SEPA documents identified short term environmental impacts during construction. Long term impacts were found in the form of increased energy consumption, light and glare from windows and lights, decreased air quality from additional traffic and increased traffic. These impacts, individually or considered together, were determined not to be significant.

27. The Director found that the intent of the dispersion criterion of the conditional use standards is met because the other two institutions within 600 ft. are well separated, in one case by the arterial carrying several thousand vehicle trips per day, and in the other by the difference in elevation.

28. Appellant requests the following conditions: 1) that a 20 ft. landscape buffer be required on the west side of Parcel A along 25th Avenue N.E.; 2) that there be no grading or removal of blackberries between Parcel A and the P-Patch; 3) that a 50 ft. setback from 27th Avenue N.E. be provided; 4) that blackberries not be removed; 5) that N.E. 80th be permanently blocked and a portion of N.E. 80th be vacated to reinforce the closure; 6) that all circulation for Parcel A be on site or near N.E. 80th; 7) that the school enforce a rule that there be no school parking on 27th N.E.; 8) that the city install "no parking" signs on the west side of 27th, south of the Temple driveway; 9) that the

school submit to the Engineering Department and Wedgwood Community Council a traffic management program which would result in a 35 percent reduction of the trips generated; 10) that the school conduct a monthly cleanup of the 27th Avenue N.E. right-of-way and the school property along 27th N.E.; 11) that light standards on Parcel A be no higher than 15 ft. and be shielded and directed inward; 12) that long term plans for the school and Temple (to the year 2020) be reviewed with the neighbors; 13) that soils studies be done to determine the load capacity of Parcel A; and 14) that an agreement be entered into by the school and P-Patch that mechanical means, not herbicides, be used on Parcel A to control or remove vegetation.

29. University Prep assists families with transporting their children to school by providing zip code matching to encourage carpooling, working with Metro to establish school bus routes and providing covered bike parking.

30. The school has advised its faculty and students not to park on 27th N.E.

31. University Prep agrees to a condition prohibiting the use of herbicides on its property.

32. University Prep has no objection to the prohibition of all parking south of the entrance on 27th N.E.

33. The Engineering Department will supplement the barrier in N.E. 80th if the community makes a request. Major utility lines in the right-of-way makes vacation impractical.

34. With parking otherwise available in the neighborhood, restricting the number of parking spaces on site would have little effect on the number of trips generated by the school use.

35. Because of the expected heavy use of the parking lot with its multiple users and its design which provides some visibility, it should not become a spot for troublemakers to congregate.

36. The plans show future buildings set back 50 ft. from 27th Avenue N.E.

37. The plans show a 20 ft. landscaped strip on the west side of Parcel A next to 25th Avenue N.E.

38. The Director determined in a formal interpretation under Chapter 23.88, which was not appealed, that since University Prep has been established on the same site as the Temple the dispersion criterion is not applicable to the two institutions and that they are not a major institution.

Conclusions

1. If the Director determines there will be no probable significant adverse environmental impacts from a proposal she is to issue a DNS. Section 25.05.340A. A determination of significance is to be issued if the Director determines that the proposal may have a probable significant adverse environmental impact. Section 25.05.360. "Significant", as defined in the SEPA policies and procedures chapter, means "a reasonable likelihood of more than a moderate adverse impact on an environmental quality." Section 25.05.794A.

2. The Hearing Examiner is required to give substantial weight to the Director's SEPA determinations. Section 23.76.022C.7. To overcome that weight the appellant must prove that the decision is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. The proposed addition of three, one-story buildings and a parking lot which would reduce traffic on neighborhood streets was not shown to probably lead to a significant impact. The threshold determination of the Director should be affirmed.

4. The Director has authority to impose conditions pursuant to SEPA to mitigate impacts which have been clearly identified in an environmental document. Section 25.05.660. Those mitigating measures must be reasonable and must be based on policies formally designated in Section 25.05.902 as the basis for the exercise of substantive authority under SEPA. Further, the responsibility for implementation of those measures may be imposed on the applicant only to the extent that the impacts are attributable to the proposal.

5. An increase in traffic was identified. Since there would be no additional traffic on the residential streets and no negative impact from the increase was shown on 25th N.E., no conditions relating to traffic are warranted or may be imposed.

6. No increase in parking in the neighborhood would occur with the addition of the buildings because of the additional parking off of 25th N.E. and the proposed turnaround. Therefore, no conditions relating to parking may be imposed.

7. Since the school agrees to a condition that no herbicides be used on Parcel A, the decision will be modified to add that condition.

8. The Director did not err by failing to impose the other conditions requested as mitigation measures. The requested 20 ft. setback is proposed. The 50 ft. setback does not relate to this proposal. The school does not propose to grade the bank or remove the blackberries, however, no impacts were identified which conditions prohibiting removal would mitigate. The school does not propose to remove the barrier in N.E. 80th. The new turnaround would increase the traffic on N.E. 80th and, perhaps, attract further dangerous use of the "mound". It would not be reasonable to require the school to obtain a permit to supplement the barrier when a city department is willing to do that work. There is no policy basis for a condition requiring the school to conduct monthly cleanups even if the addition of 18 students contributes to the existing litter problem. The proposal and a condition regarding lighting imposed by the Director mitigate any impact from on-site lighting. No impact because of unstable soils was identified. With drainage controls there would be no impact in need of mitigation. No authority exists under SEPA to require a long range plan or, if one exists, that it be disclosed to neighbors.

9. While not directly argued by appellant, the Hearing Examiner infers that appellant contends that all phases of the school's expansion program should be considered together to determine its impact on the area. The Director had decided that it would be premature to analyze Phase three as, at this point, its implementation is not certain and the details are not known. Section 25.05.060 requires that proposals or parts of proposals related to each other closely enough to be a single course of action are to be evaluated together. However, phased review is permitted when the review would not be meaningful because of the lack of detail. The provision requires that the proposal be considered as one if the different parts cannot proceed unless the other proposals are implemented simultaneously with them or the other parts are interdependent and depend on larger proposals for justification. This is not the case with Phase 3. There was no error in considering Phases 1 and 2 independent from Phase 3.

10. Institutions are permitted in single-family zones as conditional uses. Section 23.44.022. Conditional use approval is also needed for the expansion of an institution. The applicable development standards for institutions in single-family zones are dispersion, noise and odors, landscaping, light and glare, bulk and siting, and parking and loading requirements. The lot line of an expanding institution is to be at least 600 ft. from the lot line of any other institution. This standard is not met because of the two churches within 600 ft. However, the intent of the criterion, which is to assure that the neighborhood is not overwhelmed by traffic and parking demands of institutions and the larger scale, is met because there is the topographical

difference which reduces the possibility of overwhelming the area with bulk and the arterial separates the traffic of the church on 24th from the traffic of the school.

11. No odor impact would be expected. The new parking lot and the turnaround for students dropoff would reduce noise in the residential area.

12. Landscaping is proposed for screening. The Director has imposed a condition to assure that exterior lighting will not affect adjacent residential uses. The proposal meets all bulk and siting standards. The one story buildings will be in character with the existing development on the school and Temple site and in the area.

13. The institution is required to encourage use of transportation modes other than single occupancy vehicles. University Prep is involved in an on-going effort to assist with the transportation of children in larger groups. No modification of the required parking is requested. The relocation of parking, the provision of a turnaround and the design all lead to the conclusion that an improvement in traffic circulation and a reduction in the amount of school-related traffic on 27th and 28th N.E. will occur.


14. The general standard for approving conditional use is that the proposed use will not be materially detrimental to the public welfare nor injurious to property in the zone or vicinity in which the institution would be expanded. The school has shown that the expansion in the current proposal would not cause detriment to the public welfare nor injure any property in the zone or vicinity. Therefore, administrative conditional use with the conditions imposed by the Director is appropriate.

Decision

The determination of nonsignificance is affirmed. The Director's decision as to the imposition of conditions pursuant to SEPA is affirmed with the addition of the following condition: Permanent for the Life of the Project No. 6. University Preparatory Academy shall control vegetation by the use of mechanical means and shall not utilize herbicides on the site.

The conditional use decision as conditioned by the Director is affirmed.

Entered this 1st day of February, 1988.


M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

Pursuant to Seattle Municipal Code Section 25.05.680(C), a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 25.05.680(C), 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(C) appeal.

If no appeal is taken pursuant to Section 25.05.680(C), 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 fifteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.22(C)(12)(c). 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 fifteen days of the date of this decision. Section 25.05.680(D)(4).

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 for the Office of Hearing Examiner, 400 Yesler Building, 5th Floor, Seattle, Washington 98104. As an alternative to the written transcript, RCW 43.21C.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.