

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

In the Matter of the Appeal of

KRISTI A. LOISEAU

FILE NO. MUP-87-076(CU,W,V)
APPLICATION NO. 8703783

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

Introduction

Kristi Loiseau and other neighbors object to the proposed use of property addressed as 9521 - 6th N.W. as a private school. Loiseau appealed the DCLU Director's variance, administrative conditional use and environmental approval for the project.

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 22, 1988 and the record closed on January 25, 1988.

Parties to the proceedings were: appellant, pro se; the Director, Department of Construction and Land Use Director by Jay Laughlin, senior land use specialist; and the applicant Waldorf School by Katarina Kleinmann and Charles Grimes.

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 subject property is located in a single family 5000 zone on the west side of 6th Avenue N.W. in the Greenwood Community. The street address is 9521 - 6th Avenue N.W. Applicant Waldorf School proposes to change the site use to a private school. Appellant challenges the environmental, conditional use and variance approval given by DCLU to the project.

2. The 30,319 sq. ft. area lot has 240 ft. of frontage on 6th N.W. and extends some 126 ft. to a rear (west) adjacent alley. The alley is presently unimproved. However, DCLU has required improvement of the alley as one of 17 conditions of approval.

3. The subject site is developed with a 10,500 sq. ft. 2 and 3 story 1949 structure that is set back some 30 ft. from the front lot line. An accessory, asbestos-sided caretaker structure proposed for demolition is located between the alley and the larger structure. Both buildings appear as dilapidated with broken, boarded up windows. A DCLU Director's housing code order to repair or demolish both buildings is "on hold" pending the outcome of the subject master use permit process.

4. Also within the site plan and directly south of the former convalescent center is a single family residence with accessory garage. This structure is currently in single family use. Applicant hopes to eventually convert it to pre-school and kindergarten use.

5. Applicant proposes to convert the larger structure to a

private Waldorf K-8 School facility. Current school enrollment is 75. Applicant proposes to increase the population in phases to attain the 120 student maximum imposed by a DCLU condition. Staffing consists of 10 full time teachers and 2 assistants.

6. Applicant proposes a 12-space parking lot to the rear of the single family structure and adjacent to the alley. The spaces satisfy the Land Use Code requirements for parking and access. Other land use development standards are also met. DCLU indicates that because of school size, no loading berth is required. Extensive perimeter landscaping and berming is proposed. Heating and ventilating equipment will be either enclosed or adjacent to the building.

7. Present plans call for a play area with equipment to be located between the school structure and the rear alley generally in the northwest quarter of the site. The record contains appellant's request that the locations for the play and parking areas be switched. Re-siting the play area as suggested would mean less wide open space for baseball or similar sports that require an expansive area. This is because of existing trees and proposed landscaping. Locating the parking lot to the north of the subject lot would require more grading because there a dip between that street edge and the school site would need to be accommodated. Appellant's proposed relocation would facilitate lot ingress and egress without alley use, per appellant's wish, and would also allow greater residential monitoring of parking (and hence school) activity.

8. Area storm water runoff finds its way to Puget Sound via Pipers Creek. The proposal would increase the amount of impervious surface on the lot and alley and would result in an absolute (though timed) increase in the amount of site water runoff. One of appellant's major concerns is therefore with the proposal's impact on Pipers Creek. This creek has been cleaned and is now visited by chum salmon.

9. Construction and grading activities are expected to temporarily impact air quality, the vegetative pattern, the ambient noise level and the vicinity traffic and parking pattern. Grading, landscaping and excavation necessary for the proposed parking lot, play area and mitigative berming will temporarily impact on-site soil erosion.

10. Per the proposal, the smaller building will be demolished. The larger building will house the school facilities. Grading will be done for a parking area presently proposed for the southwest portion of the lot, adjacent to the alley. The plan shows a one-way driveway from 6th N.W. to the parking lot and an exit to the alley.

11. DCLU represented that the city's grading and drainage ordinance requires sedimentation control, e.g. by straw bales. DCLU further indicated that for a project such as this one, applicant would be required to submit a drainage control plan showing permanent and temporary control measures, e.g. on-site detention, oil and water separators, filter fabric interceptors.

12. Alan Bennett of the Seattle Engineering Department testified credibly that SED requires that a sedimentation and erosion control plan be approved and in place before construction could begin. Bennett stated that the plan requirements include a detention facility and a catch basin with an oil separator. Another SED witness was of the opinion that SED does not require an oil-water separator, and that in any event, regular inspection was necessary or the controls are rendered meaningless.

13. The larger building has stone siding that is attached to sheathing. There is no evidence that there is asbestos beneath the siding or that the exterior siding will be disturbed to the degree that interior particles or substances will be of more than a minor threat to the atmosphere. Because they did not intend removal of the siding, the project architect decided against asbestos testing of the siding. In hearing, however, applicant

agreed to have the siding tested.

14. The Waldorf School schedule generally mirrors that of the Seattle Public School system. School hours are Monday through Friday, 8:30 a.m. to 3:00 p.m. except on Thursdays when the Waldorf children are out at 2:15 p.m. The after school program operates from 3:00 to 6:00 p.m. Summer school sites rotate.

15. The subject site is within a single family zoned area that is primarily developed with single family residences and a few duplexes. Holman Road, a major thoroughfare, is three blocks north of the site. Most of the street segments are without curbs and sidewalks. Yield signs are located on N.W. 95th at 6th N.W. Within 350 ft. south of the site is a church that was constructed in 1969. Typically there is little mid-week church activity.

16. The evidence of record shows that the daytime on-street parking demand is minimal and that of the 97 on-street parking spaces available within 800 ft. of the project site on 6th Avenue, 84 were available during the evening hours. Little spillover demand is expected to result from the proposal.

17. Applicant projects that 62 vehicles will enter the site during the morning peak hour, 10 of which would be operated by staff. Parents' 52 vehicles will, by the proposal before the Hearing Examiner, exit via the alley. The reverse peak phenomenon is expected for the afternoon-evening.

18. The increased traffic expected to result from the project will not alter the Level of Service (LOS) rating of A for the N.W. 95th - 6th N.W. intersection. The intersection would continue to see a "free flow of traffic."

19. By DCLU conditions attached to the approval, "the owner(s) and/or responsible party(s)" are to submit concept street improvement plans for alley improvements south to N.W. 95th Street and for a N.W. 95th Street - 6th N.W. traffic circle. DCLU conditions also require the named party to complete the alley development, traffic circle and other SED-required street improvements.

20. DCLU further conditioned the proposal to limit after school events to a maximum of 6 per year (to no more than 2 events per month), and to require a monitored car or van pooling plan to restrict the number of daily vehicle trips "associated with the school" to 180 or less.

21. In general, other conditions "limit enrollment to the current total of 120 students...(which) may increase by no more than 5 percent;" require maintenance of landscaping; require the building exterior and parking lighting be directed and shielded "so that all lighting is contained on the property and nearby properties or street traffic are not affected by light or glare;" and limit the use of outdoor play areas to between the hours of 7:30 a.m. and 6:00 p.m.

22. DCLU's seventh and final condition states as follows:

7. The owner(s) and/or responsible party(s), shall be required to invite a neighborhood representative to attend regular Board meetings to ensure communication between the Board and the neighborhood. The neighborhood representative shall be permitted to bring issues to the Board's attention, and the Board shall be required to provide a satisfactory remedy or give reasons in writing to the neighborhood representative why resolution cannot be achieved.

According to the DCLU representative, this condition could be enforced through Land Use Code enforcement mechanisms.

23. Subsequent to the DCLU decision the appellant and applicant agreed to oppose a traffic circle and recommended a time period to study alternatives, e.g. stop signs, for the N.W. 95th - 6th N.W. intersection. The two parties also agreed to a 150 student limit, and to maximize safe traffic flow. Applicant agreed "to have the asbestos-sided shed in the back removed professionally" and to have the old septic tank inspected for possible removal." See Exhibit 14.

24. Subsequent to hearing, per Hearing Examiner approval, DCLU provided a January 25, 1988 memorandum to the record which indicated that applicant's use of the alley would require an on-site turnaround, paving of the alley street-to-street or an exemption. The neighbors of the alley see the alley way in its present form as a special biological habitat that enhances the suburban flavor of the vicinity.

Conclusions

1. Three approvals are at issue. DCLU granted variance relief from the 600 ft. institutional distance and approved the administrative conditional use required to site a private school in a single family zone. Third, DCLU issued a determination of nonsignificance. In hearing, appellant deleted her request that applicant prepare an EIS, but pressed for further and more extensive conditioning on the project.

2. Variance relief in this case is appropriate. The 1949 siting of the large 10,500 sq. ft. structure, which predated the 1969 church building 350 ft. to the south, is an unusual condition not caused by this applicant. While there is some suggestion of demolition and site availability for single family housing, there is no evidence of record that the existing building is feasible for conversion to single family use. The strict application of the Land Use Code would deprive applicant of comparable rights to reasonably develop the property and would cause a hardship that is both unnecessary and undue. The relief requested is not unreasonable and does not exceed the minimum necessary. Nor, in light of the rare circumstances presented does the case show a special, prohibitive privilege to applicant.

3. The record reflects no material detriment to the vicinity. Adequate on-site parking is proposed. The vicinity traffic and parking patterns are not strained. The new use will present no material decline in those patterns. Church use is atypical for mid week times when the school would be generally functioning.

4. The proposed use would not, because of distance from the church, the traffic and parking pattern extant, and because of the operational and traffic activity schedule, exacerbate traffic congestion nor violate the spirit and purpose of the Land Use Code and policies. Seattle Municipal Code Section 23.44.022. The Hearing Examiner is aware of no Code provision which exempts the proposal from the ability to seek variance relief from the distance restriction. And as indicated above, the variance criteria are satisfied. Seattle Municipal Code Section 23.40.020(C).

5. As to the administrative conditional use, no challenge is raised to the conclusion that the use is a private school use that is not a "major institution." Nor does the record reflect any challenge to the DCLU conclusion, adopted hereby, that the newly constructed elements will comply with appropriate Land Use Code provisions, e.g. the number of parking spaces.

6. Regarding noise, the present plan calls for parking behind the principal building. Appellant requests re-siting to the north end of the lot. Such siting would leave vehicle entry, exit and parking noise closer to the single family homes to the north. These homes are not part of the site plan. Playground area noise will be limited by the restrictive hours. Construction noise impacts will be temporary.

7. Applicant proposes and DCLU requires perimeter landscaping which, along with berming, will mitigate the impact of the building structure and use. As to lighting DCLU has required that lighting be contained on site. The Hearing Examiner concludes that strict compliance with the provisions of the Grading and Drainage Control ordinance will provide protections from excessive temporary and permanent water runoff.

8. As to transportation, DCLU has limited daily trip generation to 180 trips. These and other trips can be reasonably absorbed by the existing traffic pattern. (DCLU has also required van or carpooling). No change is expected to the Level of Service (A) for the N.W. 95th 6th N.W. intersection as a result of the proposal. In sum, the criteria of Seattle Municipal Code Section 23.44.022 are amply met by the project as it is presently proposed and conditioned. The proposal will be of no material detriment to the public welfare or injurious to property in the vicinity. Seattle Municipal Code Section 23.44.018.

9. As the foregoing indicates, the Hearing Examiner declines to require that applicant relocate the parking. Further, there is insufficient evidence of record for the requirement of a traffic circle alternative. The paving and subsequent use of the alley will increase traffic hazards for 6th N.W. pedestrians and will adversely impact the nearby ecosystem. These factors are, however, insufficient to persuade the Hearing Examiner under SEPA or administrative conditional use guidelines that he should order the condition deleted or modified. The exception relates to the alley improvement. Applicant shall comply with SED requirements by paving the alley street-to-street or by other compliance measures as per the January 25, 1988 memorandum from DCLU, attached to and incorporated by reference in this decision. Applicant has agreed to test the septic tank, to test the exterior of the larger structure for asbestos and to have demolition of the smaller structure professionally done. Those issues addressed by the agreement between appellant and applicant provide no basis for additional conditioning by this Hearing Examiner.

Decision

As modified herein, the DCLU decision is AFFIRMED.

Entered this 9th day of February, 1988.


LeRoy McCullough
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.