

ADDITIONAL FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE
FOLLOWING REMAND

In the Matter of the Appeal of

RONALD MELNIKOFF, ET AL.,

FILE NO. MUP-88-081(CU)
APPLICATION NO. 8706889

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

This matter was remanded to the Department of Construction and Land Use to address the dispersion criterion for institutions and whether failure to meet that standard in this case requires denial of the conditional use. The Director filed his Response to the Hearing Examiner Remand on June 13, 1989. The parties were given until July 5, 1989, to file objections or response. Appellants and applicant submitted comments.

Based on the record and additional submittals, the Hearing Examiner enters the following:

Additional Findings of Fact

1. The Director found, and the Hearing Examiner concurs, that a substantial separation due to physical elements between the Queen City Yacht Club and the Portage Bayshore moorage does not exist.

2. The Queen City Yacht Club has approximately 230 moorage slips and 105 parking spaces. Using the Institute of Traffic Engineers' demand rate, the average demand would be for 60 spaces. The peak demand would be for 105 spaces.

3. The Director found that the proposed boat club moorage would not aggravate traffic congestion or parking shortages in the area based on the studies showing that parking is generally available within walking distance of the site; that significant spillover parking from the Queen City Yacht Club occurs on only a few occasions per year; and that the curb space under SR 520 is used well below capacity. These findings were not shown to be clearly erroneous.

4. Neighbors very close to the subject property report that they have been forced to park across the street from their homes and as far as a block away on several occasions this spring.

5. There is competition for street parking nearby the moorage but adequate parking for most occasions is available farther away. The condition imposed by the Director requires that the boat club parking occur where utilization is low.

Additional Conclusions

1. An institution which fails to meet the dispersion criterion may be permitted if it would not create or further aggravate a parking shortage. Section 23.34.122. Since the facts do not show that a shortage of parking is definitely present, the failure to meet the dispersion criterion does not bar approval. The condition requiring that the vehicles associated with the moorage be parked under the viaduct should reduce any inconvenience experienced by neighbors caused by the moorage users.

2. Approval should be further conditioned to require review if parking under the SR 520 viaduct becomes physically or legally unavailable to moorage users and to require registration of non-resident moorage lessees' vehicle license numbers with the

boat club or other manager, which list may be inspected at reasonable times by neighborhood residents.

Decision After Remand

The administrative conditional use is granted subject to the following conditions:

1. Non-resident moorage lessees or owners shall be required to register license numbers of their vehicles with the moorage management and be required to park under the SR-520 Portage Bay viaduct whenever possible when using the moorage site. Repeated violation of this provision shall constitute cause for rescission of the moorage agreement. The list of license numbers may be inspected by neighborhood residents at reasonable times.

The moorage condominium or club bylaws shall be amended to reflect the above requirement and a statement of this requirement shall be added to all moorage contracts. A sign stating non-resident lessees and their guests shall park only under the viaduct shall be posted at the Boyer Avenue entrance to the moorage.

2. The total number of slips used by non-residents is restricted to 28 or fewer.

3. This approval is subject to review and revocation, if appropriate, at such time as parking under the SR 520 viaduct becomes physically or legally unavailable to non-resident moorage lessees.

Entered this 24th day of July, 1989.


M. Margaret Llockars
Deputy 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 party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar 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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.

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Introduction

Appellants appeal the decision of the Director, Department of Construction and Land Use, on a master use application for an administrative conditional use to allow a boat club at 2524 Boyer Avenue East which will provide less than the required parking.

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 14, 1989. The record was reopened to allow consideration of a letter from the Seattle Engineering Department about street improvements.

Parties to the proceedings were: appellants Ron Melnikoff and twelve other persons, by Ron Melnikoff; the Director, Department of Construction and Land Use, by Jay Laughlin, land use specialist; and the applicant, Bayshore Associates, by its attorneys, John Bauer and Colleen Kinerk, Cable, Langenbach, Henry, Edmunds & Kinerk.

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. Bayshore Associates, developer of the property, applied for an administrative conditional use to allow an institution to be established which does not meet the development standards as to required parking for a boat club moorage at 2524 Boyer Avenue East. The application was made after the City rejected an attempt to "establish for the record" the use as an existing one permitted outright. The moorage has been in existence many years.

2. The boat club moorage is on Portage Bay on a site with the Bayshore condominiums. The site is located one block south of the SR 520 Portage Bay viaduct. It is within a Lowrise 3 zone on the water side of Boyer Avenue East and is developed with the 24-unit condominium apartment building, a 19-space parking area and a 31 slip moorage.

3. The subject moorage is to be operated as a private boat club for residents of the condominiums on-site and for nonresidents who rent or own slips. Currently, either 27 or 28 of the 30 slips are used by nonresidents.

4. The Director conditionally approved administrative conditional use for the boat club institution which included waiver of 14 parking spaces for the moorage use. Prior to the appeal hearing, the land use specialist found that the Land Use

Code actually requires only 10 spaces for the use which requirement is based on one space for each 75 ft. of slip.

5. The Director's decision found that the boat club institution would be located within 300 ft. of Seattle Preparatory School, closer than the 600 ft. allowed by the dispersion standard for institutions. Because the site of the school is elevated 150 ft. above the boat club site and is almost a half mile away by City streets, there is no effect of the immediate neighborhood from the school. The Director found that topography provided sufficient separation between those institutions.

6. The Queen City Yacht Club is located on Boyer Avenue East just north of the SR 520 viaduct and within 600 ft. of the boat club institution.

7. No study of the actual demand for parking from the boat club was conducted. The average rate for peak parking demand for a marina published by the Institute of Traffic Engineers (ITE) is .26 spaces per berth on weekdays and .46 spaces on Saturdays or, for the proposed use, 7 and 14 spaces. Those averages result from very small sample sizes but Carl Stixrud, one of the appellants, was able to compare those rates to those of a dry boat storage facility he studied at the north end of Lake Washington. The ITE ratio is similar to that for the dry boat storage facility where the greatest demand came from people working on their boats not actually boating so he believes it to be a fairly accurate predictor.

8. The Department of Construction and Land Use required a parking survey of the area because of statements by residents of the area about parking congestion. A parking study was conducted for the applicant following Seattle Engineering Department guidelines in late October and early November, 1987. The area surveyed was Boyer Avenue East between 14th Avenue East and East Edgar Streets, a distance of about 1,500 ft. Counts were made twice per day, midday and early evening, on Mondays, Wednesdays and Fridays for three weeks and once on a Saturday and a Sunday. A supply of 101 on-street parking spaces was found in the area with 85 of them between Everett and Edgar Streets where the subject site is located. The maximum utilization found between Edgar and Everett streets during the period was 54 percent and that peak occurred on the Saturday. In the short block between 14th Avenue East and East Everett which has 14 spaces, the average utilization was as high as 111 percent in the evening. The average of all the counts was 43 percent.

9. Because of letters and comments that the parking situation is severe and because the first parking study was done during the off-season for boating, the land use specialist asked for a projection of utilization during the warmer months. As there was no way to make that projection the process was delayed to allow for another parking study to be conducted in the summer of 1988. Counts were taken midday and early evenings on Mondays, Wednesdays and Fridays for one month in July and August and on one day each weekend in the afternoon. The average utilization of Boyer between Everett and Edgar Streets was 33 percent. During Seafair Sunday, the utilization went to 90 percent. At no time except for Seafair Sunday did the utilization exceed 48 percent.

10. In response to appellants' claim on appeal that parking is most heavily utilized after 9:00 p.m., the applicant conducted a third survey of the same area. Eight counts were made between February 2nd and 12th, 1989, around 9:00 p.m. The average utilization of the street spaces between Everett and Edgar Streets was 45 percent and on the short block between 14th Avenue East and Everett, 91 percent.

11. The moorage facility has been in operation during the surveys so the demand from nonresident users of that facility is included in the utilization counts.

12. The heaviest boating days of the year, and hence parking

demand from boaters in the area, occurs on the Sunday of Seafair, Labor Day and Opening Day of the Yachting Season.

13. The Queen City Yacht Club sponsors social events in addition to providing moorage, which generate parking demand. On-site parking cannot accommodate all the cars on many of these occasions. The facility is also used for weddings and other private social events which occur generally on weekends. Again, there is often overflow parking. Cars from the yacht club use the streets in both directions and the space under the viaduct.

14. A resident of a single family house near the Bayshore facility testified that he must park beyond Everett Avenue East and as far as 400 ft. from his home five or six times per year. Somewhere around 20 times per year he has to park on the opposite side of Boyer from his house which is not convenient because of the traffic on Boyer.

15. A resident of a single family home near the Queen City Yacht Club has his driveway obstructed during yacht club events and asks his guests to park under the viaduct when street parking is full.

16. The residents testifying were in general agreement that parking is the most difficult on summer weekday evenings after 4:00 or 6:00 p.m. and on summer weekends. At those times residents' and boaters' demands for parking coincide.

17. The Director imposed conditions on the approval of the administrative conditional use restricting the number of non-resident tenants to 28 or fewer and requiring the addition of a statement to the leases of the moorage to nonresidents, to the moorage condominium bylaws and to existing and future moorage contracts that provides that nonresident users are to park under the SR 520 Portage Bay viaduct whenever possible and that repeated violation will constitute cause for rescission of the moorage contract.

18. The area under the SR 520 viaduct is now used for overflow parking from the Queen City Yacht Club. A Seattle Times paper shack is located under the viaduct and trucks are observed going in and out. Dr. Frolund, a neighbor, attempts to keep the garbage dumped by others picked up. The area is not well-lighted and is the scene of vandalism, theft and other crimes.

19. The Seattle Engineering Department is responding to community concern about traffic safety on Boyer with a plan to slow traffic and improve access to the street. At this point in the preliminary planning stages, the project is proposed to have signing, striping, etc., and is estimated to eliminate two parking spaces within 800 ft. of the Queen City Yacht Club.

20. The SR 520 viaduct represents the boundary between the L-3 zone in which the subject property lies and the SF 5000 zone to the northwest. Some residents would like to see the area improved as a park or other use to provide a link between the neighborhoods on each side.

21. Residents of the area observe that some boaters park overnight or for several days while on a extended boating trips. The extent of the overnight parking by nonresidents has not been measured.

22. The parking situation in the area is a combination of a number of contributors including the 90-odd apartments and 15 or so single family houses on the northeasterly side of Boyer, many of which were built when parking requirements were less; single family residences on the other side which do not provide adequate parking; boaters; other people using the water; and the members and guests of the Queen City Yacht Club.

23. Appellants are concerned about enforcement of the parking condition imposed by the Director. They request that a list of nonresident moorage owners or tenants and their license

numbers be made available and that a system of fines be instituted.

24. The proposal does not include any modification of development standards for bulk or siting.

25. The Director did not require that a transportation plan be developed or implemented.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.76.022C.

2. The determination by the Director on a conditional use application is not to be given deference by the Hearing Examiner on appeal. Section 23.76.022C(7).

3. Institutions meeting the development standards of Section 23.45.092-102 are permitted outright in multi-family zones. Where the parking standards of Section 23.45.098 cannot be met by the proposal, Section 23.45.090 would permit an institution as an administrative conditional use subject to the requirements of Section 23.45.122. That section has a series of criteria for use in evaluating the proposed conditional use in addition to the general administrative conditional use criteria found at Section 23.45.116C.

4. Since the application proposes no modification of development standards for bulk or siting, the criterion in Section 23.45.122A is inapplicable.

5. Though the boat moorage would be closer than 600 ft. to another institution, the school, the topographical separation and street system is such that there is no overlapping of parking, traffic and noise generated by each so the failure to meet the dispersion criterion as to the school would not prevent conditional use from being granted.

6. The Director's decision did not address the evidence that the Queen City Yacht Club is within 600 ft. which condition does not satisfy the dispersion standard. The criterion in Section 23.45.122B allows approval of a institution which does not meet the dispersion standard if the Director finds that there is substantial separation due to physical elements or when the proposed institution would not aggravate parking or other situations in the area. The record does show that the cars from both institutions may be competing with residents and each other for parking in the area. The Director should gather any additional evidence needed to determine if failure to meet the dispersion criterion requires denial of the conditional use.

7. The parking study apparently convinced the Director that no transportation plan need be implemented for the institution but that conditions regarding location of parking and the number nonresident moorage users are needed.

8. The only aspect of the use which has the potential for material detriment to the public welfare, one of the general administrative conditional use criteria, is the proposal not to provide required parking. The effect of the moorage parking plus that of other uses with inadequate parking forces residents to park at less convenient places quite a few times per year and, on a small number of occasions each year, park well beyond a reasonable distance from their homes. The condition imposed by the Director which requires moorage users to park under the viaduct, if enforceable and enforced, would eliminate the nonresident moorage owners as a cause of the more frequent minor parking congestion which forces residents to park across the street or down the block from their homes. That condition may not eliminate the situation on the small number of days when the boating events draw so many participants that the viaduct area is filled. The latter occasions are viewed by the Hearing Examiner as one of the inconveniences incidental to living close to water

access and, at a few days per year, are not considered materially detrimental to the public welfare. The moorage's contribution to the more frequent congestion should be removed to avoid material detriment. The condition imposed by the Director would do that if modified to make enforcement more probable. The condition also should be modified to provide for review should the parking under the viaduct become physically or legally unavailable to the moorage users.

9. Since the Director has not addressed the dispersion criterion for institutions as it applies to the relationship of the Bayshore moorage to the Queen City Yacht Club, the matter should be remanded.

Decision

The Hearing Examiner retains jurisdiction over the matter to consider objections to any additional or revised conditions, which objections must be filed with the Hearing Examiner within 10 days of the mailing of notice to the parties of any additional or revised conditions. A final decision will be entered by the Hearing Examiner after considering any objections. If the Director determines that the application must be denied, a new, appealable decision shall be issued by the Director.

Entered this 1st day of March, 1989.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner