

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

In the Matter of the Appeal of

JAMES PEARSON, et al.

FILE NO. S-77-012

from a ruling of the Superintendent  
of Buildings

The appeal is GRANTED in part and DENIED in part.

Introduction

The appellant, James Pearson, et al., filed an appeal from a ruling of the Superintendent of Buildings which determined that a use permit would be issued for the construction of an apartment building on property located at 2846 14th Avenue W.

The appellant exercised his right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

This matter was heard before the Hearing Examiner on August 22, 1977.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. On July 18, 1977, the applicant, James Osnes, filed an application for a building and use permit for the construction of a 7 unit apartment building at 2846 14th Avenue N.W. The subject property is located in an RM 800 zone which permits the establishment of multiple-family residential units at a density of one unit per 800 square feet. The Superintendent of Buildings (hereinafter Superintendent) published on July 21, 1977, notice of intent to issue a use permit to the applicant. The appellant filed an appeal concerning this intent with the Hearing Examiner on August 3, 1977.

2. The subject property is a through lot extending between 14th Avenue W. and Prosch Avenue W. The applicant proposes to construct a 7 unit apartment building on this site and intends to provide a 15 foot setback from the 14th Avenue W. frontage and a 30 foot setback from the Prosch Avenue W. frontage. The applicant additionally proposes to provide four off-street parking spaces up to a point that is located 10 feet from the Prosch Avenue W. lot line.

3. The notice of intent to issue a use permit, which was published by the Superintendent, was a preliminary determination that the proposed use and the submitted plans were consistent with the zoning ordinance requirements for the particular property. This preliminary determination was made for the purpose of giving notice to the general public of the applicant's proposal and that the proposal is considered to be consistent with the zoning ordinance. This procedural step begins the appeal period in which the general public may contest this preliminary determination, pursuant to the

provisions of Ordinance 104795. The publication of the notice of intent does not commit the Superintendent to issue the use permit at a later time and is not therefore binding on the Superintendent.

4. The Superintendent had not yet reached a threshold determination nor had completed any significant environmental analysis concerning the proposal at the time the notice of intent was published. The applicant submitted an environmental checklist to the Superintendent on August 2, 1977 and the Superintendent is in the process of gathering additional information to enable a further review of environmental factors. The environmental review and the threshold determination will be completed prior to the issuance of any permits to the applicant.

5. A through lot such as the subject property is defined as a lot having frontage on two parallel or approximately parallel streets, pursuant to Section 3.13, Ordinance 86300, as amended. Since a through lot fronts upon two parallel streets the subject property has in fact two front yards so that the front yard setback provisions of the zoning ordinance apply to both the 14th Avenue W. and Prosch Avenue W. frontages. This interpretation regarding through lots and required front yard setbacks has been consistently applied by the Superintendent with regard to similar situations. A front yard setback of 15 feet is required for both street margins pursuant to Section 12.53 of the aforementioned ordinance. Parking in a required front yard which abuts upon a street is prohibited pursuant to Section 23.22(a) (5).

#### Conclusions

1. The Superintendent erroneously determined that the plans which accompanied the applicant's application for a building and use permit were consistent with the zoning ordinance requirements. The plans show that the applicant proposes to locate off-street parking in a required front yard area that abuts upon a street. Since this is prohibited by the zoning ordinance the notice of intent to issue a use permit for this proposal must be withdrawn by the Superintendent until such time as the applicant's plans are consistent with the zoning ordinance requirements concerning setbacks and location of off-street parking.

2. The Hearing Examiner has no jurisdiction to consider the adequacy of the environmental review of the applicant's proposal since the Superintendent has not yet reached a threshold determination. Appeals concerning the environmental review are permitted pursuant to Section 20, Ordinance 105735, as amended, subsequent to the issuance of a threshold determination. There is consequently no authority for the Hearing Examiner to supersede the Superintendent at a point when the environmental review process is ongoing and is not yet concluded. Issues relating to this review have been raised prematurely by the appellant.

3. The publication of the notice of intent to issue a use permit by the Superintendent in this case was not in conflict with the timing requirements for the environmental review process as described in Section 5, Ordinance 105735, as amended. The notice of intent is a minor procedural action which is necessary to begin the running of the appeal period for appeals concerning the compliance of a proposal with the zoning ordinance. In taking this minor action, the Superintendent has not made a commitment to the proposed action nor to the ruling concerning the compliance with the zoning ordinance requirements. Consequently, the Superintendent has not yet taken the first major action with regard to the applicant's proposal nor has he made a decision which would result in an irreversible commitment to that proposal. The

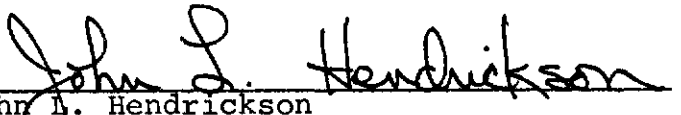
Superintendent is in the midst of the environmental review process on this proposal and a threshold determination will be duly prepared and issued prior to the taking of the first major action.

4. A meaningful review of the environmental consequences of a proposal is not always feasible at the early stage at which the notice of intent to issue a use permit is published. At this preliminary step all impacts of a proposal are not readily identifiable since changes in submitted plans are possible in light of the zoning conformance review. The appellant does not face any injury as a result of the Superintendent's environmental review timing and this procedure does not foreclose any of the appellants rights. Appeal opportunities regarding the threshold determination will be available once it is issued.

#### Decision

The appeal is GRANTED in part and DENIED in part and this matter is remanded to the Superintendent with directions to withdraw the original notice of intent to issue a use permit and to require a revised plan showing compliance with all zoning ordinance requirements.

Entered this 31<sup>st</sup> day of August, 1977.

  
John L. Hendrickson  
Deputy Hearing Examiner

#### Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination and any further appeal must be made to the courts.