

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

In the Matter of the Appeals of

JAYASRI GHOSH representing  
Seattle Country Day School

FILE NO. MUP-89-054(CU)  
APPLICATION NO. 8903066

and

JOHN DIEFFENBACH

FILE NO. MUP-89-055(CU)  
APPLICATION NO. 8903066

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

**Introduction**

Appellant, Jayasri Ghosh, representing the Seattle Country Day School, appeals four of the ten conditions set forth in the decision of the Director, Department of Construction and Land Use, to grant Seattle Country Day School the request to expand into a single family (SF 5000) zone by conditionally using a single family structure, located at 2626 Nob Hill North, for classrooms for the students of the school.

Appellant, John Dieffenbach, appeals the decision of the Director, Department of Construction and Land Use, to grant the request of the Seattle Country Day School to expand into a single family (SF 5000) zone by conditionally using a single family structure, located at 2626 Nob Hill North, as classrooms for the students of the school.

Appellants have exercised their rights to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on Wednesday, November 8, 1989.

Parties to the proceedings were: appellant, Jayasri Ghosh, represented by Sarah E. Mack, Esq.; appellant, John Dieffenbach, represented by Peter J. Eglick, Esq.; and the Director, Department of Construction and Land Use, by Jan Mulder, Land Use Specialist.

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 and consideration of the briefs and documents submitted following the hearing, the following shall constitute the findings of fact, conclusions of law and decision of the Hearing Examiner on this appeal.

**Findings of Fact**

1. Teresa Rodriguez, representing Seattle Country Day School, applied for the master use permit to expand into a single family (SF 5000) zone by conditionally changing the use of a single family structure, located at 2626 Nob Hill North, from single family residential use to classrooms for the Seattle Country Day School students. The Director, Department of Construction and Land Use, granted the permit setting forth ten specified condition precedents.

2. The subject lot is situated on the northeast corner of the Queen Anne Hill area of the city overlooking the Fremont Bridge. The subject lot is zoned SF 5000 and is a regularly shaped parcel of land with a frontage along Nob Hill North of approximately 40 ft. and a depth of approximately 89.5 ft. for a total square footage of

3,575 sq. ft. Seattle Country Day School is set on 2.322 acres, which includes the subject lot and a second single family residence, not in issue herein, and a main campus. The main campus of Seattle Country Day School is zoned Lowrise 1 and 2. Nob Hill North Street dead-ends at the Seattle Country Day School main campus. The north-west campus is adjacent to the southeast corner of the subject lot. The Dieffenbach house is located to the immediate north of the subject lot at 2632 Nob Hill North.

3. Ample testimony, as well as photographs, indicate that the northeast corner of the Queen Anne Hill area of the city has a steep topography with the downhill running to the north. The highest point in the subject lot is the southeast corner; the lowest point is along the northern portion of the subject lot. The subject lot slopes 8 ft. along Nob Hill North from the southern portion downhill to the northern portion of the hill.

4. The subject structure is currently developed as a single family residence consisting of main and basement floors. The subject structure has only been used as a single family residence. The subject structure is presently unoccupied. Ms. Ghosh stated that the school plans to rent the structure for the remainder of the 1989-1990 school year.

5. Ms. Carol Eychaner, a witness for Mr. Dieffenbach, testified that the Dieffenbach house, located immediately north of the subject lot, is approximately six feet lower than the subject structure. The testimony of Mr. Dieffenbach established that a six foot fence between his lot and the subject lot would block the sight from the walkway on the north side of the subject structure but would not block the sight line from the subject structure's north facing windows into Mr. Dieffenbach's den and living room windows.

6. The side yards of the subject lot are five feet on the north and seven feet on the south. The distance between the subject structure and Mr. Dieffenbach's house is approximately 12 feet. (Appellant Dieffenbach's Brief, p.13.)

7. Mr. Dieffenbach and his wife work from approximately 7:15-8:00 a.m. and return at 5:00-7:00 p.m.

8. The proposal is to convert the existing single family structure to temporary use as three additional middle school classrooms. The interior of the subject structure would be remodeled to provide two classrooms and storage in the basement and a third classroom and seminar area on the main floor. The proposal is to alter the exterior of the structure by adding two doors to the north side at the basement level and one on the east side of the structure. The proposal is that the pedestrian traffic, consisting of students and teachers, enter the subject lot on the southeastern portion of the lot from the northwestern corner of the main Seattle Country Day School campus. There is no proposed vehicle traffic. The proposal is to use the subject structure on school weekdays from 8:00 a.m. to 3:30 p.m. for 25 middle school students and two staff members. The proposal is to return the subject structure to use as a single family residence following a two-year period during which time an addition to the middle school on the main campus will be constructed.

9. Mr. Gerald Kumata, the architect for Seattle Country Day School, testified that the primary entrance for the basement level of the subject structure would be on the northern side of the structure. Mr. Kumata testified that the basement level entrance and the building code necessitated a 3-foot 8-inch walkway along that northern side as a pathway for the students from the main campus to the basement level classrooms. In cross-examination, Mr. Kumata stated that the primary entrance for the basement level could be placed on the eastern side of the house, in a portion of the structure that is currently a concrete wall. The additional cost of relocating the door would be approximately \$2,000-\$3,000.

10. Mr. Kumata testified that the School proposes to landscape the northern boundary of the subject lot with a 6-foot solid wood fence and a narrow hedge, except where mature trees or shrubs would render hedge plantings unnecessary. The School also proposes to fill gaps in the existing hedge on the southern boundary of the subject lot.

11. It is undisputed that mature plantings of 5 feet cannot be inserted in the north side yard and that most hedge plants will not attain a height of 6 feet during the period of the two-year conditional use.

12. There is no other institution located within 600 feet of Seattle Country Day School (Exhibit 1).

13. The contested conditions set forth in the decision of the Director, Department of Construction and Land Use, are as follows:

1. The owner(s) and/or responsible party(s) shall provide a landscape plan which shows a 6 ft. high solid wood fence and a 5 ft. wide landscape area of laurel (or comparable hedge) along the entire (approximately 210 ft. long) north property line, except where there are conflicts with access requirements or existing mature trees or shrubs.

The plans shall also indicate replacement for the gap in the cedar hedge, south of the residence at 2620 Nob Hill Avenue South.

4. The proposed private school expansion is approved for two years from final approval of this application. A new application shall be required, upon expiration of this permit, which comprehensively addresses the neighborhood impacts of the entire school facility. Traffic and parking impacts, material detriment, and the established conditional use criteria shall be evaluated again at that time.
5. The Board of Directors of the school shall invite at least one of the nearby neighbors (not otherwise affiliated with the school) to attend their regular Board meetings. This is intended to keep the neighbors informed about the school's plans and to keep the Board informed about problems that may arise from the school in the residential neighborhood.
6. The owner(s) and/or responsible party(s) shall ensure that no children or regular deliveries of supplies and equipment are transported to the school via Nob Hill Avenue North. The school shall continue to inform users that they are not to park on Nob Hill Avenue North.

14. Dr. Ghosh, the Seattle County Day School Director, testified that the school proposes in lieu of Conditions #5 to invite one of the neighbors, not affiliated with the School, to attend meetings of the School's building committee at least once per quarter.

15. Dr. Ghosh testified that the neighbors could be notified of and attend meetings containing issues that pertained to the neighborhood.

16. Dr. Ghosh testified that in seeking to comply with Condition #6 all deliveries, with the exception of the lunch delivery, have been shifted to the Fourth Avenue North entrance. Lunch deliveries were made at the Fourth Avenue North entrance of the School on the first day of school. On that day, all the lunches slid to the back of the truck due to the steep slope of the 4th Avenue North entrance. Following the first day, lunch deliveries have been made to the Nob Hill North entrance during mid-morning.

17. In seeking to comply with Condition #6, Dr. Ghosh sent out memos to the students and parents reviewing student carpool drop-offs and pick-ups at the Nob Hill North entrance. Dr. Ghosh observed carpools dropping off students, but has not taken a survey of the students and parents.

18. Dr. Ghosh testified that the students at Seattle Country Day School, a private school, represented the "gifted" portion of the student population (which she defined as the top 5%). The school draws 60-65% of its students, ages 5 to 14, from within the Seattle city limits. One fifth of all the school students are on scholarships.

19. Dr. Ghosh testified that during the 1989-90 school year, 247 students attended the school. The increase from the previous school year's enrollment figure of 224 was primarily at the middle school level from students deciding to continue their education at the school.

20. The issue raised in the Ghosh appeal were set forth in an appeal letter, dated October 10, 1989. The Ghosh appeal letter presented issues which are summarized as follows:

Waiver of Condition #1 which requires a 5 ft. wide hedge; postponement of the commencement of the conditional use period set forth in Condition #4 from the 1989-1990 school year to the 1990-1991 school year; changing the terms of Condition #5 from requiring at least one neighbor to attend school board meetings to allow neighbors to attend school building committee meetings; and changing the terms of Condition #6 to permit school lunch deliveries via Nob Hill North.

21. The issues raised in the Dieffenbach appeal were set forth in an appeal letter, dated October 10, 1989. The Dieffenbach appeal letter presents issues which are summarized as follows:

That development standards or requirements for expansion are unmet in that no expansion or transportation plan has been written; that improprieties occurred regarding previous expansion activities; that continuing expansion without addressing traffic, transportation and other impacts is materially detrimental to the public welfare; that the conditional use appears to be injurious to adjacent properties; that north and south property line yard setbacks are inadequate thereby precluding buffer landscaping; that a 6 ft. fence does not protect the property to the north due to the hillside location; that drainage while already inadequate would become more so because of additional runoff from added concrete as part of the expanded use; that the proposed expansion is not permitted outright in a SF 5000 zone; and that existing parking problems would be exacerbated.

22. The Dieffenbach appeal letter and issues contained therein were not amended by Mr. Dieffenbach or his attorney at the hearing.

23. The Director, Department of Construction and Land Use, issued an earlier decision on June 29, 1984, application number 8401725 (Exhibit 5). That decision granted Seattle Country Day School the approval to demolish existing classrooms and caretaker's quarters and to construct a two-story addition to the existing main campus of the school. The Director's decision to grant approval was premised on three conditions. The third condition concerned student enrollment, stating as follows:

3. The student enrollment shall be limited to 208 within five years from the date of the Certificate of Occupancy issuance. Any number exceeding this limit shall be re-evaluated by DCLU. The school is required to update DCLU on the enrollment figure on a yearly basis.

The Certificate of Occupancy (Exhibit 7) was dated December 18, 1985.

24. Jan Mulder, the DCLU representative, testified that she did not consider the prior DCLU decision (Exhibit 5) in her present decision on this matter. Ms. Mulder testified that if she had known of the prior DCLU decision, "...enrollment and numbers would have been a bigger issue (in the appealed decision)." During the hearing, Ms. Mulder stated that the terms of the condition were not clear to her, but that she understood the condition to mean that the 208 student limitation was not a strict one.

25. In her review of the DCLU files on Seattle Country Day School, Ms. Mulder found neither a request by the School to exceed the 208 enrollment figure nor any annual enrollment update.

26. Dr. Ghosh testified that she commenced her present School Director position in August 1986. She stated that she was not aware of the DCLU requirement of annual enrollment updates and had filed neither the yearly updates nor a request to increase enrollment above 208.

27. In her report, Ms. Mulder premised her decision on the 1988-89 enrollment of 224 students and an additional 25 students based upon the conditional use of the subject structure.

28. Ms. Mulder's post-hearing brief reaffirms the DCLU decision and addresses the third condition precedent set forth in Exhibits 5, 6 and 7 as follows:

...Knowledge of the condition limiting student enrollment during application review would certainly have focused more attention on the total number of students. However, the previous condition establishing an enrollment cap appeared to merely reflect the proposal at that time. There was no discussion of impacts associated with further expansion. Even if the enrollment cap had been disclosed, the issue of physical expansion of the institution remains a primary one. Physical expansion and increasing enrollment are both indicators of school growth and go hand in hand.

...(T)he Department's decision clearly addresses the issue of school expansion. The applicant, by virtue of a new application, is requesting that the school's situation be re-evaluated. DCLU's report has addressed both the request of the school to accommodate a

short-term need while ensuring disclosure of long-term expansion plans, especially as they may impact the neighborhood.

29. Fifteen letters and a petition with 27 signatures, received by the Department of Construction and Land Use, objected to the expansion of the school by conditional use of the single-family structure for classrooms. The letters and petition were based upon traffic and parking problems, general neighborhood impacts and previous actions and insensitivity by the school.

30. One post-hearing letter was received by this Hearing Examiner, requesting privacy and protection from the expansion by the Seattle Country Day School.

#### Conclusions of Law

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.76.022, Seattle Municipal Code.

2. In this appeal of the decision to grant the requested expansion of the conditional use, the Director, Department of Construction and Land Use, the appellant bears the burden of proof. Hearing Examiner Appeal Rules 1.26.(a) adopted pursuant to the Seattle Administrative Code, Chapter 3.02, Seattle Municipal Code.

3. The Director's decision on a Master Use Permit requesting the grant of a conditional use permit shall be given no deference on review. Seattle Municipal Code Section 23.74.022.C.7.

4. Condition #3 of the June 29, 1984, DCLU decision (Exhibit #5) concerned student enrollment, providing that from the Certificate of Occupancy date, December 18, 1985, and running for five years, the student enrollment shall be limited to 208, with any number exceeding that limit to be re-evaluated by DCLU. The increase in the number of students attending Seattle Country Day School from 208 in the 1984-1985 school year to 247 in the 1989-90 school year has been presented as an issue by Mr. Dieffenbach in his attorney's post-hearing brief which also requested that this matter be remanded for consideration by DCLU of the enrollment issue. However, this matter was neither raised as an issue in Mr. Dieffenbach's October 10, 1989 appeal letter nor did Mr. Dieffenbach or his attorney amend the issues contained in the appeal letter during the hearing. Only issues raised by the appeal or by clarification of the appeal are appropriately before the Hearing Examiner. Hearing Examiner Appeal Rules 1.2 and 1.3, adopted pursuant to the Seattle Administrative Code, Chapter 3.02, Seattle Municipal Code. Therefore, this issue is not before this Hearing Examiner because it was not properly raised pursuant to the Hearing Examiner Rules.

5. Assuming arguendo, that the student enrollment issue was appropriately before this Hearing Examiner, it would still fail on its merits. The Director, Department of Construction and Land Use, decision on Application No. 87401725 (Exhibit 5) and the Certificate of Occupancy (Exhibit 7) along with the permit (Exhibit 6), provides that any number of students "...exceeding this [208] limit shall be re-evaluated by DCLU." The language of the condition contained in Exhibits 5, 6 and 7 does not limit the number of students to 208 as counsel for Mr. Dieffenbach argues. The condition merely provides that if the maximum number of 208 students is exceeded, DCLU shall re-evaluate the enrollment. In reviewing the enrollment figures for the 1988-89 school year of 224 and allowing 25 additional students to conditionally use the single family structure, DCLU implicitly re-evaluated the enrollment figure. In light of the fact that consideration of Exhibit 5 would not have altered the decision and that the issue is not appropriately before this Hearing Examiner, this matter shall not be remanded pursuant to Seattle Municipal Code Section 23.76.022 C.10.

6. Although the decision of the Director, Department of Construction and Land Use, did not take the prior DCLU decision (Exhibit 5) into consideration, the post-hearing brief of DCLU as well as its testimony at the hearing further shows that had Exhibit 5 been considered, the decision of the Director, Department of Construction and Land Use, would not have changed. In its post-hearing brief, DCLU explicitly reviewed the enrollment figure of 247 for the 1989-90 school year and found that number acceptable. Therefore, the condition was complied with in all of its major provisions with the exception of the failure of the school to file annual enrollment updates. This lack should not, by itself, prevent the school from obtaining the requested conditional use permit.

7. Seattle Municipal Code Section 23.44.018C provides that a conditional use may be approved, conditioned or denied based on a determination of whether the proposed use meets the criteria for establishing a specific conditional use and whether the use will be materially detrimental to public welfare or injurious to property in the zone or vicinity in which the property is located. Seattle Municipal Code Section 23.44.022A provides that institutions, such as private schools, may be permitted as conditional uses in single family zones. Seattle Country Day School is a private school for gifted children, ages 5-14. Therefore, the school is an institution as defined by the Code and may be a permitted conditional use in a single-family zone.

8. Mr. Dieffenbach, as well as the other neighbors who testified, and the letters and petitions from yet other neighbors claim that the conditional use will be injurious to their property and be materially detrimental to the public welfare. The City, in its Land Use Code, recognizes the positive contributions institutions, such as Country Day School, have made to the neighborhoods in which they are located by providing appropriate services. Seattle Municipal Code Section 23.44.018C. The general public benefits by having a private school that caters to a special, gifted segment of the school population. In addition, the school draws a majority of its students from the Seattle City area and 20% of all students are on scholarship. The public benefit cannot be denied. The City in its Land Use Code has also recognized the potential negative impacts location, scale, access and development of facilities expanded through the conditional use process may cause to the neighborhoods in which they are located. As such, it has promulgated standards and requirements which must be met in order for a conditional use authorization to be granted. Seattle Municipal Code Section 23.16.002, Institutions and Facilities in Single Family Residential Areas. The Hearing Examiner concludes those standards and requirements have been met here.

9. As one specific, Mr. Dieffenbach points to the close proximity of the subject structure to his own home as being injurious to his property. Seattle Municipal Code Section 23.44.022F provides that existing structures that do not meet the yard setback standards may be required by the Director, Department of Construction and Land Use, to take additional mitigating measures to reduce the impacts of the proposed use on surrounding properties. The yard requirements set forth in Seattle Municipal Code Section 23.44.022J.2 provide yards of 10 feet, but not less than 5 feet. The yard on the north side of the subject structure is 5 feet. The yard on the south side is 7 feet. While these setbacks meet the applicable code provisions, the Hearing Examiner concludes that the topography of the land requires mitigating measures to reduce the impact of the proposed expanded use on surrounding properties.

10. Specifically, the Hearing Examiner concludes that while a six foot fence would block vision into Mr. Dieffenbach's lot from the walkway on the north side of the subject structure, it would not block the sightline from the structure's north facing window. Thus, the DCLU imposed condition of a 5 ft. high north hedge from the fence to the subject structure is appropriate and reasonable;

however, that hedge should be of a fast growing variety which can be expected to attain at least several feet in height. The hedge may be narrower in width along the 3 ft. 8 in. walkway from the secondary basement exit, located on the northwest corner of the subject structure.

11. To further mitigate the impacts of the proposed use it is concluded that the following additional measures are required. The south side yard has an existing hedge. The gaps in the south side fence shall be filled. The primary entrance to the basement level of the subject structure should be on the eastern side of the subject structure. The use of the north side of the main floor of the subject structure should be restricted from use as a classroom. Moving the entrance, limiting the walkway, planting the hedge to the north fence line and restricting the use of the north side main floor as a classroom will substantially reduce any potential noise and sightline intrusion from the subject structure into the Dieffenbach house as well as reduce any runoff from the concrete walkway. (Dieffenbach October 10, 1989 letter, Item 8).

12. Seattle Municipal Code Section 23.44.022G provides that noise impacts should be mitigated. The landscaping and arrangement of the primary entrance to the subject structure should minimize noise. The proposed hours of use should also minimize noise during the time when the immediate neighbors are in their homes.

13. The additional noise resulting from the pedestrian traffic between the subject structure and the main school campus is not injurious to Mr. Dieffenbach's home because of the designated hours of use and operation, the limited primary entrance and egress to the eastern side of the subject structure, and the landscaping and limited use of the north side of the interior main floor of the subject structure.

14. Seattle Municipal Code Section 23.44.022H provides that landscaping shall be required to integrate the institution with adjacent areas, reduce erosion or storm runoff and to reduce the coverage of the site by impervious surfaces. The hedges and additional plantings have been previously discussed. Limiting the concrete walkway to a small portion of the north side of the subject structure should limit any potential erosion and runoff problems. The downspouts from the subject structure shall not run to the walkway on the north side. The walkway shall have a gravel field along its length on the downhill side that percolates at an acceptable level, allowing dispersion of any runoff from the concrete walkway.

15. Seattle Municipal Code Section 23.44.022L provides for the use of transportation modes, such as carpools, van pools and public transportation to reduce single-occupancy vehicles. This section also provides for reducing traffic on residential streets, reducing traffic noise and loading and unloading. The testimony clearly indicates that no organized procedure has been adopted to ensure that a transportation and parking plan are in effect and operating efficiently. The requests that students be unloaded at the Nob Hill North entrance is inadequate to address traffic impacts. The school must survey the students, parents and staff. Following the survey, the school shall assign carpools and require loading to occur only at designated areas.

16. Deliveries to the school have shifted to the Fourth Avenue North entrance. The sole exception is the luncheon delivery. In light of the fact that lunch deliveries can be made at the Fourth Avenue North entrance only with great difficulty and possible loss of some lunches, lunch deliveries may be made at the Nob Hill North entrance during the mid-morning on school days.

17. As to the surrounding property, it is clear that the use is opposed by surrounding property owners. However, the injury claimed and the material detrimental effect must be over and above the



detriment provided for and mitigated by application of the Seattle Municipal Code. In this case, the possible negative effects of this conditional use have been mitigated.

18. It is the conclusions of the Hearing Examiner that each of the requirements for the conditional use, with the exception of Conditions #1, 4, 5 and 6, have been met with the DCLU required condition precedents set forth in the Director's Report as interpreted herein. Those four conditions shall be amended as follows:

1. The owner(s) and/or responsible party(s) shall provide a landscape plan which shows a 6 ft. high solid wood fence and a 5 ft. wide fast growing hedge along the north property line, except that the hedge may be narrower along the 3 ft. 8 in. walkway which runs from the secondary basement exit, located on the northwest corner of the structure to the front of the structure and existing mature trees or shrubs. Replacement planting for the gaps in the cedar hedge on the south property line shall also be made.
4. The proposed private school expansion is approved for the 1990-1991 and 1991-1992 school years. Any request to conditionally use the structure during the 1992-1993 school year shall be by a new master use permit application.
5. The Board of Directors of the school shall invite at least one of the nearby neighbors (not otherwise affiliated with the school) to attend their regular Board meetings containing agenda items that pertain to the neighborhood.
6. The owner(s) and/or responsible party(s) shall ensure that no children or regular deliveries of supplies and equipment are transported to the school via Nob Hill Avenue North except the school lunch delivery.

The following shall also be conditions to be met prior to the issuance of a Master Use Permit:

- A. The walkway on the northwest corner of the subject structure shall have a gravel field sufficient to allow percolation of any runoff and to avoid erosion.
- B. The north side of the interior main floor of the subject structure shall be limited to open space and not used as a classroom.
- C. The school shall survey its students, parents and staff to determine the current loading, carpool and parking situation. Following the survey the school shall assign children to carpools, require loading only at designated loading zones and provide adequate parking for each staff member or assign staff members to carpools. A full transportation plan is recommended.

- D. The primary entrance to the basement level shall be from the eastern side of the subject structure.

Decision

The decision of the Director, Department of Construction and Land Use, to grant the request for a conditional use is affirmed. This Hearing Examiner strongly recommends DCLU to develop an overall comprehensive plan for further school expansion.

Entered this 29th day of November, 1989.

  
Gail S. Fujita

Hearing Examiner Pro Tempore

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.