

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JANE T. CARLSON

FILE NO. MUP-82-005(V)  
APPLICATION NO. 81334-0466

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

#### Introduction

Project applicant proposes to establish a delicatessen which would serve beer and wine at 5000 University Way N.E. Appellant appealed the grant of the associated variance to allow alcohol to be served within 500 ft. of a school/playground.

The appellant exercised her right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: appellant, Jane T. Carlson, pro se; project applicants by Adib Haddad; the Director of the Department of Construction and Land Use (DCLU) by Mallie Anderson.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on February 23, 1982.

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 Community Business (BC) zone on the northeast corner of University Way N.E. and N.E. 50th Street in the University District at 5000 University Way N.E.

2. The subject lot is developed with an office building. Applicant proposes a delicatessen-cafe for the ground level corner shop which would serve beer and wine. The proposed delicatessen is located directly across University Way from the University Heights elementary school playground. A fence borders the east side of the playground. Approximately one half block north along University Way is the school building.

3. A Jack-in-the-Box restaurant is located at the southwest corner of University Way and N.E. 50th Street. One block west is Herfy's fast food restaurant at 1205 N.E. 50th Street, 200 ft. less than the minimum required 500 ft. distance from the school. Herfy's restaurant sells alcoholic beverages pursuant to a variance approved by the Board of Adjustment in File No. X-80-498. The record reflects no variances for four other restaurants within 500 ft. of the school noted by DCLU as serving alcoholic beverages: the Sahara at 4752 University Way N.E.; Shakey's Pizza at 4720 University Way N.E.; Avenue 52 at 5247 University Way N.E. and the New Century at 5258-5260 University Way; additionally a Latin delicatessen at 4751-12th Avenue N.E. sells beer and wine.

4. The project applicant testified that a letter of support had been received from the University Heights elementary school principal. Responding to the appellant's concern about litter, the applicant stated that take-out sales would amount to approximately seven percent of the total sale.

5. DCLU concluded that the location of the property in an area where a number of other restaurants are serving alcoholic beverages is a hardship condition which warrants some variance relief. DCLU further noted that the proposed delicatessen is located in an active, pedestrian-oriented shopping area; and that University Way was a busy street probably 60 ft. wide.

6. Appellant was of the view that the proposed delicatessen was too close to both the school and to residential areas; that several delicatessens managed to survive without serving alcohol; that the number of restaurants serving alcoholic beverages was excessive; and that the proposed location would be one of the first to serve alcoholic beverages that was located on the northeast quadrant of the intersection.

7. Comment letters from other than the project applicant and the appellant were evenly divided between those stating that the location was too close to the community grade school and another which felt that the availability of wine and beer at the subject location was of little detrimental consequence, comparatively speaking.

#### Conclusions

1. In X-80-498, the agent for Herfy's restaurant, located at 1205 N.E. 50th Street, applied for a variance to serve alcoholic beverages within less than the 500 ft. minimum distance from the University Heights elementary school. Proposed was a 300 ft. distance. The Hearing Examiner's denial of that variance was reversed by the Board of Adjustment. The Board decision was that

The appellant would be denied comparable development if the proposed variance is denied. Granting of the variance relief would not be detrimental to the public welfare.

2. The present DCLU decision noted in its background data that five restaurants within 500 ft. of the school grounds serve alcoholic beverages; however no variances were specifically cited.

3. Since other restaurants within 500 ft. of the school ground serve alcoholic beverages the requested variance would not constitute a grant of special, inconsistent privilege to the applicants. Section 24.74.030(A)(2).

4. However, variance relief requires a unique property condition which, without variance relief, would deprive the property of rights and privileges enjoyed by other properties in the zone or vicinity. Section 24.74.030(A)(1). The subject property's proximity to the school ground, i.e., approximately 60 ft., is not a condition unique to the subject property, but is one which would be experienced by all other properties within that distance.

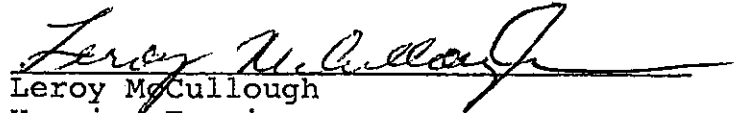
5. Further, the applicants propose a 60 ft. distance from the school yard; a 300 ft. distance was proposed in X-80-498. There has been an increase in the number of establishments located within the 500 ft. distance that serve alcoholic beverages. And, while X-80-498 is to be considered, the circumstances of this case do not dictate adherence to the conclusions of the prior case.

Finally, allowing the variance relief requested under these circumstances would operate precedentially to nullify the direct terms of the Ordinance, Section 24.44.050, and as such would be prohibitively detrimental to the public welfare embodied within that section.

Decision

The decision of the Director of the Department of Construction and Land Use is REVERSED.

Entered this 4th day of March, 1982.

  
Leroy McCullough  
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.