

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

GREGORY HILL

FILE NO. MUP-89-012(CU)

APPLICATION NO. 8605686

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

#### Introduction

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 April 26, 1989. The remained open until May 3, 1989 for supplemental traffic data.

Parties to the proceedings were: appellant, Gregory Hill, pro se; applicant by Joel Haggard, attorney at law; and the Director, Department of Construction and Land Use by John Doan, 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, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

#### Findings of Fact

1. Applicant is seeking to construct a Taco Time, fast food restaurant structure on property addressed as 2212 North 45th Street. DCLU granted the administrative conditional use application required to allow a fast food restaurant in a Neighborhood Commercial 2 (NC2) zone. Gregory Hill, a vicinity resident, appealed the adequacy of mitigation imposed specifically related to vehicle access and circulation.

2. The subject property is at the northwest corner of Corliss Avenue North and North 45th Street within a strip of NC2 - 40 ft. height limit properties that front to North 45th Street. The proposal site abuts a Single Family 5000 (SF 5000) zone to the north.

3. The proposal site is developed with a 1,300 sq. ft. Taco Time restaurant building. A second, 1,275 sq. ft. area building is located near the site's northwest corner and is currently used for storage accessory to the restaurant.

4. Present vehicular access is via two-way driveways to Corliss Avenue North, east of the site, and to North 45th Street, south of the site.

5. Applicant proposes to demolish the existing structures and consolidate the functions in a single, 2,650 sq. ft. building in the lot's southeast quadrant. The drive through pick up window would remain on the building's west side. Parking for 20 vehicles would be sited along the west and north lot lines.

6. By one of several DCLU - imposed conditions to the permit, applicant

...shall modify the project plans to show

(c) A relocation of the drive-up window call-box such that the first car in the typical queue is at the drive-up window and the second is at the call-box.

7. By the forestated condition, the call-box, to which orders are stated, is relocated from the north central facade of the new building to the northwest corner of the building. The total on-site space for queuing will accommodate approximately five automotive vehicles.

8. The proposal further calls for revised traffic circulation. Instead of maintaining the two 2-way driveways, applicant proposes site entry via a 15 ft. - wide driveway from Corliss. Exits would be restricted to a 15 ft. - wide driveway to North 45th Street.

9. DCLU concluded that the project was exempt from SEPA review. No challenge to that conclusion pursuant to an interpretation, Chapter 23.88, Seattle Municipal Code, is before the Hearing Examiner.

10. It was stipulated that no challenge was pursued regarding architectural compatibility or the adequacy of litter control proposed.

11. Appellant proposes that the Hearing Examiner "protect the significant pedestrian character of North 45th Street" by disallowing any traffic egress to North 45th. In the alternative, per appellant, the project should be conditioned to allow only drive-through traffic to exit to North 45th Street. The remainder of the exiting traffic would be routed to Corliss Avenue North.

12. The North 45th crosswalk adjacent to the site is used by pedestrians. However, the area is not within a formal "pedestrian-designated zone."

13. Corliss Avenue North is a residential access street. North 45th Street is a principal arterial that carried an average of 24,100 trips per day in 1987.

14. The most recent data, per DCLU's post-hearing submittal, shows the average weekday traffic (AWDT) for North 45th as 25,200 in the general vicinity of the project (1988 data). The AWDT for Corliss Avenue North is 608 vehicles.

15. Per applicant's post-hearing submittal (affidavit of C. Carlson), most customers presently enter from Corliss and exit to North 45th. For example, counts taken Thursday, April 27, 1989, 10:30 a.m. - 11:00 p.m. showed that 266 vehicles entered the site from Corliss Avenue and 62 from North 45th. A similar ratio was presented for the following Friday and Saturday.

16. The affidavit showed that of the 260 vehicles exiting the site on Thursday, April 27, 1989 176 chose the North 45th exit. A similar ratio was presented for the ensuing Friday and Saturday. (The entry pattern submitted by applicant is not inconsistent with the post-hearing data submitted by appellant, e.g., that two entered the site from North 45th and 26 from Corliss. Appellant's data, however, suggests a slightly higher percentage of exits to Corliss than to 45th.)

17. The Hearing Examiner finds that most vehicles enter the site from Corliss and exit to North 45th and that the present circulation proposal is consistent with that pattern.

18. The proposed access pattern is likely to reduce the number of vehicles exiting the site and proceeding northbound on Corliss through the single family neighborhood to the north. The proposed pattern, with one-way entry, will reduce the potential of auto-auto, and auto-pedestrian conflict along Corliss Avenue North.

19. The proposed pattern will increase the number of vehicles crossing the sidewalk en route to North 45th and will therefore increase the probability of auto-pedestrian conflicts along that frontage.

20. There is no indication of record that signalization, crosswalks or other improvements will be needed as a result of the proposal.

21. From January 1983 - August 1988, five accidents occurred at the intersection of Corliss Avenue North and North 45th Street, Exhibit 4. No accident was fatal. Two involved pedestrian-auto conflicts. This is considered a low frequency of accidents per Seattle Engineering Department ratings. Five accidents/year is considered high for an unsignalized intersection, 10-20 for a signalized intersection.

22. No accidents have been reported to have occurred at the North 45th Street Taco Time exit.

23. During weekday lunch peaks (12 noon - 1:00 p.m.) and evening peaks (5:30 - 6:30 p.m.) there was a maximum of four and five cars respectively in the queue to the present drive-up window. (Present orders are taken at the window.)

24. The siting of the call box per the DCLU condition will allow the usual number of waiting vehicles to be accommodated on site. It is unlikely that the line of waiting vehicles will extend across the Corliss Avenue sidewalk.

25. Although the vicinity is one of contiguous storefronts where pedestrians can walk from business to business, there is no indication of record that the area of the proposed egress has a high pedestrian count. The photos and testimony of record suggest the contrary.

26. A muffler and radiator shop with two 2-way driveways to North 45th is located across North 45th from the proposal site. West adjacent to the radiator shop is a Pay 'n Save store with a 2-way driveway to North 45th. Continuing along the south side of North 45th and east of Corliss are florist, bakery and other retail businesses without driveways.

27. The north side of North 45th has a similar development pattern of restaurant, office and moderate retail uses. West adjacent to the proposal site is a printing business. Continuing west to Bagley Avenue North, which is one block from Corliss, are two restaurant concerns. These three businesses are without driveways. East of Corliss along the north side of North 45th are three 2-way driveways to a gas station. East of the gas station to Sunnyside Avenue is property developed with a deli which has one 2-way driveway to North 45th. See photo Exhibit 7.

28. In general, a one-way driveway offers less of a safety hazard. A 2-way driveway offers the potential of a 2-vehicle conflict, pedestrian sighting to two directions and other problems.

29. Nevertheless, exits to North 45th would be constricted by the volume of traffic, autos parked along the north side and because of pedestrian safety concerns. Exhibits 13, 14. Applicant's proposal accords with Seattle Engineering Department site triangle (visibility) requirements.

30. There is no "high-occupancy" designated vehicles lane adjacent to the lot.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code as this is an administrative conditional use, no substantial weight or other deference is accorded the DCLU decision that is here appealed. Seattle Municipal Code Section 23.76.022(C)(7).

2. As it is for a fast food restaurant (Seattle Municipal Code Section 23.84.010) exceeding 750 in area proposed for the NC 2 zone, the proposal is subject to the administrative conditional use criteria of Chapter 23.47, Seattle Municipal Code, and the procedures of Chapter 23.76, Seattle Municipal Code.

3. Pursuant to Seattle Municipal Code Section 23.47.006A the proposed conditional use

... shall not be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.

Section 23.47.006A.1. Conditions may be imposed to protect the public interest and to protect other properties in the "zone or vicinity" (emphasis added). Seattle Municipal Code Section 23.47.006A.2.

4. Given the number of vehicles expected to exit the site to North 45th, one could argue that the potential for pedestrian and auto conflict would rise to the prohibitory level of "material detriment." However, the proposal will not be of "material" detriment.

5. The one-way exit lane of 15 feet width will serve to reduce the potential for incoming-outgoing vehicular conflict. Visibility will be enhanced for pedestrians and motorists. No left turn into the site from North 45th will be permitted. Thus, cars eastbound on North 45th will not be permitted to cross the westbound lane or the adjacent sidewalk to access the site. Nor will westbound vehicles be permitted to cross the adjacent sidewalk to enter the site. And, significantly, the irregular pedestrian character and traffic at this location are not such that vehicle exits from the site will be materially detrimental to pedestrian or other public safety.

6. Further, conditions may be imposed on the proposal to protect other properties in the vicinity, such as the single family development along Corliss. The circulation route proposed serves to minimize the number of new commercially attracted vehicles traversing Corliss Avenue which is a residential access street.

7. The more specific criteria of Seattle Municipal Code Section 23.74.006B.1 for fast food restaurants are also met by the proposal. The architectural and other compatibility of the development are not disputed. Section 23.47.006B.1.a. Nor is there any challenge to the adequacy of litter-control measures. Seattle Municipal Code Section 23.47.006B.1.b.

8. Per Seattle Municipal Code Section 23.47.006B.1.c.1., the touchstone is whether "significant additional traffic" will circulate through the adjacent residential neighborhood. Some additional traffic may be inclined to route through the neighborhood to access the site via Corliss Avenue; however, access to the Corliss entry is available from the corner of North 45th Street. Further, the majority of existing traffic enters the site from Corliss Avenue.

9. Further, the traffic counts are of record for the adjacent streets and for the restaurant. Given the low-moderate degree of traffic at issue, no formal traffic, parking and circulation study is required for this Hearing Examiner decision.

10. The proposal as conditioned will generally accommodate waiting vehicles on site. The queuing phenomenon should therefore be of minor concern regarding the potential for pedestrian-vehicle conflicts (on Corliss Avenue). Seattle Municipal Code Section 23.47.006B.1.c.5. The potential remains for pedestrians on North 45th or Corliss Avenue to be struck by vehicles exiting or entering the site. The design proposed, with one way driveways, reduces the probability of such mishaps. Further, the key is whether the proposal disrupts the pedestrian

character of an area "by significantly increasing the potential for pedestrian vehicle conflicts ..." emphasis added. Seattle Municipal Code Section 23.47.006B.1.c.2.

11. The proposal will primarily maintain the existing customer count. It will not "create" traffic or access problems which will require signalization, crosswalks or other expenditures to mitigate (emphasis added). Seattle Municipal Code Section 23.47.006B.1.c.3.

12. The proposal will not interfere with peak hour transit operation per Seattle Municipal Code Section 23.47.006B.1.c.4. No high-occupancy vehicle lane is adjacent to the lot.

13. The adjacent and nearby segments of North 45th sport a mixture of retail businesses, some contiguous without driveways, and others that are individual buildings with one or several driveways for access. East of the proposal site are two uses that have a total of four two-way driveways for North 45th. Across 45th from the site are the radiator and Pay 'n Save stores which together have three two-way driveways to North 45th. West adjacent to the site are three contiguous businesses without driveways. Pedestrian activity is present.

14. In this setting, the proposal complements the existing environment. It will not "interrupt" established pedestrian retail or service frontage. Section 23.47.006B.1.c.6.

15. As this is not a "pedestrian-designated" zone, Seattle Municipal Code Section 23.47.006B.1.d is not applicable.

16. The Hearing Examiner acknowledges appellant's legitimate concerns with the quality of life for pedestrian interests. However, the Hearing Examiner is persuaded by the weight of the evidence and the law that the proposal was properly conditioned as approved by DCLU. The proposal will acknowledge the existing traffic flow through the residential neighborhood while minimizing increases through that neighborhood. Although the number of exits to North 45th will increase, the street frontage pattern will not be interrupted and no significant decline in safety or welfare will be presented.

17. Regarding the admissibility of Exhibit 15, the Wallingford Neighborhood Plan, Norco v. King County, 97 Wn. 2d 680, 649 p. 2d 103 (1982), held that


...a county's discretion in ruling on a preliminary plat proposal is limited to consideration of land use restrictions that existed during the statutory period for the county to approve or disapprove that plat application.

per Buchsieb/Danard, Inc. v. Skagit County, 99 Wn. 2d 577, 663 P. 2d 487 (1983), 99 Wn. 2d at p. 580. The Hearing Examiner considers the unadopted but published Wallingford Neighborhood Plan (Exhibit 15) as background information representing a localized view of the public welfare. Norco does not preclude such consideration of the exhibit in this administrative conditional use hearing.

#### Decision

The DCLU decision is Affirmed.

Entered this 18th day of May, 1989.

  
LeRoy McCullough  
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 320, Arctic Building, 700 Third Avenue, Seattle, Washington 98104, (206) 684-0521.