

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

In the Matter of the Appeals of
MICHAEL J. SHEA,
MAPLE LEAF COMMUNITY COUNCIL and
ROBERT EKINS

MUP-90-074(CU)
90-076(CU)
90-077(CU)
APPLICATION NO. 9002829

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

Introduction

The appellant exercised their right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the undersigned Deputy Hearing Examiner on November 19, 1990. The record was held open until November 30, 1990 to allow time for a site visit by the Examiner.

Parties to the proceeding were: appellant Robert Ekins, pro se; appellant Maple Leaf Community Club by Sherry Harris; the Department of Construction and Land Use (Director) by Christina Van Valkenburgh, land use specialist; and the project applicants, Teresa Wilson and Elizabeth Holland, pro se. Appellant Michael J. Shea did not attend the hearing, but had a statement read on his behalf by Albert Albright.

After due consideration of the evidence elicited during the public hearing and as a result of the personal inspection of the subject property and surrounding area by the Hearing Examiner, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on appeal.

Findings of Fact

1. The subject property is located at 214 N.E. 91st Street. The property is located within Lot 22, Block 2, J.W. Denny's Fifth Avenue Addition and is zoned Single Family 5000(SF 5000).

2. The property consists of a single rectangularly shaped lot of approximately 5712 square feet. The property

measures 136 feet from north to south and 42 feet from east to west.

3. The property is located approximately five blocks south of Northgate Shopping Center and a little more than 500 feet east of the Interstate 5 right-of-way. Development in the immediate vicinity of the site consists primarily of single family residences. However, along N.E. 91st between Second Avenue N.E. and Fifth Avenue N.E., there are also a dance studio and a mini-child care center (12 or fewer children).

4. Applicants propose to establish a child care center for 24 children. The existing house on the site would be used exclusively for child care and would no longer be used as a residence. The hours of operation would be from 7:00 a.m. to 6:00 p.m., Monday through Thursday, and 7:00 a.m. to 5:30 p.m. on Friday. The applicants testified at the hearing that the number 24 applied to the total enrollment of full-day and half-day children, and not merely to the number of children on-site at any one time.

5. Child care centers are institutions permitted as conditional uses in single family zones if the criteria of section 23.44.022 are satisfied.

6. Section 23.44.018.C and D read as follows:

C. 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 the public welfare or injurious to property in the zone or vicinity in which the property is located.

D. In authorizing a conditional use, the Director or Council may mitigate adverse negative impacts by imposing requirements or conditions deemed necessary for the protection of other properties in the zone or vicinity in which the property is located.

7. Institutions in single family zones are generally required to be at least 600 feet from any other institution. However, subsection E.2 of 23.44.022 provides as follows:

A proposed child-care center serving not more than twenty-five (25) children which does not meet the criteria of subsection D1 of this section may be permitted to locate less than six hundred feet (600') from a lot line of another institution if the Director determines that, together with the nearby institution(s), the proposed child care center would not:

- a. Create physical scale and bulk incompatible with the surrounding neighborhood;
- b. Create traffic safety hazards;
- c. Create or significantly increase identified parking shortages; or
- d. Significantly increase noise levels to the detriment of surrounding residents.

8. The proposed child care center would generate between 24 and 28 peak level trips.

9. The existing house on the site has a two-car garage that is served by a double wide driveway. The proposal envisions that the garage would be used for staff parking and that the driveway would be used for loading and unloading of children.

10. The 24 children attending the daycare would require two full-time teachers (presumably the two applicants) and one part-time aide to be on-site at any given time during the hours of operation. A transportation plan with three options is included in the DCLU decision. Under the first option, the two permanent, full-time employees would carpool and the third, part-time employee, would use the bus. Under the second option, one staff member would drive and the other two would take the bus. The third option, which provides for only two employees, would have one staff member drive and the other take the bus. The common thread among the three options is that each involves only one employee automobile.

11. Due to the configuration and placement of curbcuts along this portion of N.E. 91st, the Seattle Engineering Department will not approve a loading zone located in the street right-of-way adjacent to the subject site.

12. There is a dip in N.E. 91st between Latona and Second Avenue N.E. in the location of the subject site. The dip has some effect on the visibility of the driveway for persons driving either direction on N.E. 91st.

13. There was testimony at the hearing that on-street parking utilization in the neighborhood is high and that there is little capacity for additional cars. However, no parking study was prepared by the appellants or by DCLU to document the parking utilization.

14. Institutions in single family zones are generally required to have no structure closer than 10 feet to any property line. However, the Director may permit setbacks of as little as five feet (23.44.022.K.2).

15. The existing house on the property was built with 5-foot side yards.

16. An outdoor play area is proposed in the backyard. Outdoor play areas are mandated by the standards of the state Department of Social and Health Services (DSHS).

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.76, Seattle Municipal Code.

2. The principal concerns expressed by the appellants in this case involve traffic and noise.

3. The traffic concerns break down into two parts: concern about the amount of on-street parking and the traffic conflicts that may be generated by cars pulling in and out of the driveway loading zone.

4. Dealing first with the concern about parking, the Examiner does not believe that this facility will noticeably aggravate the parking situation in this neighborhood. For one thing, it is not clear to the Examiner that this facility will generate much demand for on-street parking. While parents will regularly use the loading zone to deliver and pick up their children, the need to park and visit the facility should be unusual. Along these lines, it needs to be remembered that even if this property were to be used as a single family house it could generate some on-street parking demand. Another reason that the impact on the parking situation should be manageable is that to the extent the center creates a parking demand, the period during that demand will be generated will be between 7 a.m. and 6 p.m. That is not the period of peak demand for on-street parking in residential neighborhoods.

5. The concern about conflicts between street traffic and cars pulling in and out of the driveway is more substantial. However, after reviewing all of the evidence presented and after taking several visits to the site, both by car and on-foot, the Examiner is not convinced that the conflicts are in any way extraordinary or unusual. N.E. 91st is not noticeably more narrow than a good many streets in the Maple Leaf area and Seattle generally, and the dip in the street is sufficiently gradual as to have minor effects on visibility. A loading zone located on N.E. 91st alongside the property immediately to the west would represent a better solution than having the loading zone in the driveway, but in the absence of Engineering Department approval of such a plan, use of the driveway does not represent an unacceptable hazard.

6. The concerns about noise are partially addressed by the DCLU condition requiring construction of a six foot high view obscuring fence around the rear yard. In addition, it was discussed at the hearing that no portion of the property between the existing house and the side property lines should be used as play area. An additional condition proposed by DCLU at the hearing would prohibit having any of the play area in back be located within 10 feet of a property line. This exceeds what is necessary, as the west and north property lines both abut the rear yards of the adjoining parcels. A 10-foot setback along the eastern property line, however, would offer some needed protection to the house to the east.

7. As no exterior alterations to the existing house are proposed, this application generates no issue of incompatible bulk and scale.

Decision

The decision of the Director is AFFIRMED with one modification. A condition number 4 is added and will read as follows:

4. No portion of the side yard area between the existing structure and the side property lines may be used as play area. In addition, no portion of the play area may be located within 10 feet of the east property line.

Entered this 12th day of December, 1990.



Guy E. Fletcher
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 (15) 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, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.