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FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE
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In the Matter of the Appeal of

NORTHGATE PLAZA HOMEOWNERS ASSOCIATION et al. MUP-84-036 (CU,W)
APPLICATION NO. 8400805

from a decision of the Director
of the Department of Construction
and Land Use on a Master Use
Permit application

Introduction

The appellants exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code and Section 25.04.200, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on June 14, 1984. The record remained open until June 19, 1984, in order to allow the parties to prepare and serve closing memoranda.

Parties to the proceedings were: Martin Snodgrass, Esq., for project applicant, Mental Health North; Rosemary Horwood for the Seattle Department of Construction and Land Use; and Thomas Goeltz, Esq., for appellants Northgate Plaza Homeowners Association et al.

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. With regard to the action proposed in this application, a declaration of non-significance (DNS) has been prepared by the responsible official pursuant to the State Environmental Policy Act of 1971 (SEPA) and Chapter 25.04, Seattle Municipal Code, and is part of the record.

2. The subject property is located at 204 N.E. 94th Street, approximately one half block to the east of 1st Avenue N.E. and Interstate 5. The property is zoned L-2. To the north is Northgate Plaza Condominiums in an L-3 zone. To the east, the immediately adjacent property is zoned SF 7200. To the south, property is located in an SF 7200 zone.

3. N.E. 94th Street is not a through street. The street intersects 1st Avenue N.E. and ends approximately 300 ft. to the east, abutting a portion of the subject property located to the north of the street. N.E. 94th Street then begins again about one half block further east. The portion of the street from 1st Avenue N.E. to the subject property is only 30 ft. wide. First Avenue N.E. is a heavily travelled arterial; Interstate 5 is the major north south highway in western Washington.

4. The subject property contains 31,487 sq. ft. and measures 229 ft. by 137 ft. deep.

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5. The applicant proposes to construct a "halfway house" for persons in need of certain types of psychiatric care. The facility will be licensed by the State of Washington, Department of Social and Health Services, for up to 60 beds. There will be 66 beds in the facility; the additional six beds will allow flexibility in meeting the needs of different numbers of men and women at different times.
6. The building will be in a "T-shape" and it will measure 148 ft. wide by 95 ft. deep. As planned, the building will cover 24% of the lot. Twenty three spaces for cars will be provided.
7. Patients at the proposed facility will not be allowed to have their own cars. This is due to a rule of applicant.
8. The proposed facility will treat, on a residential treatment and/or boarding home basis, mentally ill people who have previously resided in the area of King County north of the Ship Canal and west of Lake Washington. This area is the only part of King County without a residential mental health facility.
9. Applicant operates a boarding home type facility in north Seattle. That facility's license excludes persons who are "assaultive, suicidal or otherwise destructive in nature." WAC 248-16-213(5). The proposed facility will permit residential treatment. Under DSHS regulations, a license for such a facility may include people with problems of self-destructiveness, suicidal or "grossly maladaptive behavior." WAC 248-25-002(30). The entire facility proposed by applicant will be constructed and licensed according to DSHS standards for residential treatment facilities. WAC Chapters 248-23 (Juveniles); 248-25 (adults). However, about two thirds of the facility will actually be used for congregate care i.e., boarding house type care.
10. By separate rule the proposed facility will exclude persons who have a history of alcoholism, drug abuse, violence or criminal behavior. This will be due to applicant's admission standards. Regulations of DSHS allow an operator of a residential care facility great latitude in types of patients to be treated at such a facility. WAC 248-25-030. Persons needing only domiciliary care and board may be admitted into a residential care facility. WAC 248-25-030(3). A residential treatment facility such as here proposed may not admit persons who represent an imminent danger to others. WAC 248-25-030(2)(c).
11. The Director of Mental Health North, Albert Casale, testified that it was impractical, from a financial point of view, to operate a new mental health facility with less than 60 beds. This was substantiated by the testimony of past and present board members of Mental Health North. There was no evidence presented that a smaller unit, of new construction, could or would be economically feasible at the subject property or at any other location.
12. Applicant has operated boarding house type facilities throughout the north end of Seattle without any problems being reported to law enforcement officers and without complaints from neighbors. There is no direct or indirect evidence that applicant operates its facilities in anything less than a highly professional manner.
13. The testimony presented by appellant was cogent and centered on two points: expected loss of value of investment in individual condominium units and personal safety. I do not doubt the sincerity of any of the perceptions held by witnesses for the appellant; each of those witnesses was forthright and generally created a favorable impression. However, no direct or circumstantial evidence was presented which tended to prove that the proposed project would adversely affect personal safety

or impair property value. The project applicant on the other hand, presented convincing evidence, through the testimony of the Reverend Christina Morton, that its existing boarding house type facility, Cascade Hall at 130th North, is a desirable and inoffensive neighbor with no effect on property values or sense of security. Evidence, including the County Assessor's statements, was also presented by applicant, showing that property values in the area of Cascade Hall have not declined in the three and one half years it has been in operation. Further, counsel for appellant stated in the hearing that the quality of applicant's care was not an issue in this case, nor was the concept of halfway houses. As defined by counsel for appellant, the issues centered around size of the facility.

14. Mr. Casale testified that the societal image of mentally ill people is largely negative. This is due to a perception of such persons as destructive or as being sociopathic. Mr. Casale testified that most mentally ill people suffer from varying degrees of depression. Counsel for appellant alluded to the general view by society of mentally ill people when he candidly stated that the proposed facility is needed in the community at large. No evidence was presented on behalf of appellant as to untoward conduct, if any, which might reasonably be expected from severely depressed people based upon experience at like facilities.

15. Appellant disputes conclusions reached by DCLU as to the likely volume of traffic which will be generated by the proposed facility. Applicant conducted a traffic survey over a period of a few weeks at its existing facility at Cascade Hall in order to determine likely traffic flow at the proposed facility. This study took into account the projected number of staff; projected number of consultants; food service; garbage disposal; laundry and likely family and other visitation. A conclusion of the study was that clients and visits by family at the facility would generate little if any traffic. Clients of the applicant at its existing facilities are ambulatory and use public transportation most of the time. According to Mr. Casale, most patients prefer to visit family rather than have family come to the facility. This evidence was not controverted at the hearing.

16. DCLU in its analysis and decision dated April 27, 1984, concludes that there will be no trips attributable to client visitation. The Examiner disagrees with that; however, the Examiner finds that the number of such trips will be minimal and of no likely adverse affect on the surrounding community.

17. Appellant is a condominium owners association. The condominium project is adjacent to the subject property to the north. Applicant's Exhibit 6, a photograph of a portion of the subject property, also shows a portion of the condominium project. One can see that it is at least three stories in height. George Kaminsky, a witness for appellant, testified that he lived on the fourth floor of the south side of one of the units. Exhibit 6 also depicts at least 20 units on the south side of the building shown. Apparently, a like number of units face to the north.

18. Applicant's Exhibit 5 is a set of blue prints pertaining to the design and siting of the proposed facility. The Exhibit shows a two story building. To the northeast is a rise and elevation of about 25 ft. which will, in effect, act as a berm and set the proposed facility apart from some adjoining properties. In terms of scale and type of design, the proposed facility does not appear materially to differ from the condominium project to the north. DCLU, in its approval of the master use permit, required certain conditions to be met. Those conditions are: Creation of a view obscuring hedge along the north and west boundaries of the property and pavement of N.E. 94th Street along with creation of a cul de sac at the western terminus of the street.

19. The person who lives adjacent to the subject property on the east side, William Dorland, testified against the appeal and in favor of the proposed facility. Although he lives in an SF 7200 zone, he is not concerned about his property value. Mr. Dorland testified he went to the neighborhood where applicant operates other facilities and did not learn of any problems in the neighborhood with respect to the facilities or in the manner in which applicant operates its facilities.

20. There do not appear to be any new "halfway houses" or group homes established in L-2 zones of a size similar to the proposed facility since adoption of the new zoning code. Exhibit 4 is a partial inventory of "special residences in Seattle." The Exhibit does show what appears to be pre-existing uses in various zones. One can see that there are quite a few facilities in L-1, L-2 and L-3 zones which have capacities in excess of 100 beds. See *id.* at map location numbers 5, 9, 17, 20, 59, 54, 55, 72, 79, 96 and 97. Large facilities exist in SF zones. See, e.g., *id.* at map location number 12 (145 beds in an SF 9600 zone); 42 (42 beds in an SF 5000 zone); 62 (40 beds in an SF 5000 zone); 70 (61 beds in an SF 7200 zone).

21. Numerous letters were received in support of and in opposition to the proposed project. Many of the letters appeared to be form letters. In addition, it is clear that some of the letter writers who opposed the project were misinformed as to the nature of the proposed project. For instance, one letter objected to location of a jail work release facility in the neighborhood. This misapprehension apparently came from the MUP sign erected at the subject property. Apparently, it was unclear from that sign what type of halfway house was to be created on the subject property.

Conclusions

1. With respect to review of a DNS, the burden of proof is upon the appellant to overcome the substantial weight accorded the Director's decision. Hearing Examiner Appeal Rule 1.26(a); Seattle Municipal Code Section 23.76.36.B.7. The decision of the Director with respect to approval of a Master Use Permit administrative conditional use is given no deference. Section 23.76.36.B.7.

2. Appellant has not presented proof that the proposed facility will have a significant detrimental environmental impact. Appellant argues that a DNS was improper because of possible higher levels of treatment at the proposed facility as opposed to applicant's existing facility and because of flaws in DCLU's parking/traffic analysis.

3. Appellant did not present any evidence to demonstrate the likely level of parking demand at the proposed facility nor has it demonstrated how the applicant's analyses are materially flawed. Merely to state that a traffic planner or consultant has not made a traffic analysis does not mean that the applicant's own study is not valid. While it may be true that some traffic will be generated by patients' families, the overall effect will be negligible in view of the heavy traffic already extant on 1st Avenue N.E. and I-5. Those major roads are less than a block away from the proposed facility. In addition, it is uncontroverted that most patients tend to use public transportation whenever possible and that they prefer to visit their families away from a treatment or boarding house facility.

4. The type of person who will be treated at the proposed facility will not be of the assaultive criminal or drug abuser type. The fact that mentally ill people will be treated at the proposed facility ought not to imply that they are sociopathic. The evidence developed at the hearing is clear that most forms of mental illness represent manifestations of varying degrees of depression. Because of applicant's admission standards and its past record of community acceptability and responsibility, it cannot be said that the presence of these people will materially alter the character of the neighborhood.

5. Seattle Municipal Code Section 23.45.86.B. limits L-2 zone outright permitted halfway homes to eight beds (in an L-2 zone). Seattle Municipal Code Section 23.45.118 sets out criteria for administrative conditional use approval of halfway and nursing homes, to be applied when the criteria of Section 23.45.86 are not met. Appellant argues that there is no criterion in Seattle Municipal Code Section 23.45.118 with respect to the number of beds which may otherwise exist in a given zone. Therefore, it is argued that only building size and shape may be allowed to deviate from Section 23.45.86 (L-2) requirements, and not the number of beds. Alternatively, appellant argues that the approval of the 66 bed facility is an abuse of discretion by the Director.

6. The criteria for an administrative conditional use found at Seattle Municipal Code Section 23.45.118 envision a facility with a greater number of beds than is otherwise permitted under Seattle Municipal Code Section 23.45.86.B. The criteria set forth at Seattle Municipal Code Section 23.45.118-bulk, siting, dispersion, noise, traffic and parking- clearly relate to the number of beds to be provided at a facility and provide guidance for the Director or this Examiner to determine whether a number of beds greater than that otherwise permitted outright in an L-2 zone should be permitted by way of an administrative conditional use. This interpretation of Seattle Municipal Code Sections 23.45.86 and 23.45.118 is, then, consistent with the multi-family policies adopted June 6, 1981, by the Seattle City Council.

7. It cannot be said that approval of a facility with 60 licensed beds is arbitrary and capricious if the criteria set forth at Seattle Municipal Code Section 23.45.118 are observed and applied in a reasonable fashion. Those criteria set out design factors which, in turn, provide guidance for determining the capacity of the facility. The ordinance, therefore, dictates that design factors are to control patient capacity of the facility and not vice versa. In view of the criteria set out Seattle Municipal Code Section 23.45.118 and in further view of the fact that a facility of this sort is not economically feasible for less than 60 beds, I find that the proposed project satisfies the requirements for an administrative conditional use.

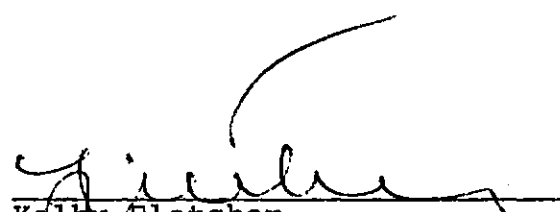
8. The type of psychiatric care to be given to clients of applicant does not seem an appropriate issue to consider in this appeal. This is because of the statement made by counsel for appellant during the hearing that the issues in the appeal concern the size of the project, not the quality or type of care.

9. However, as will be seen in the conclusion number 4, the type of patient to be treated at the facility and the applicant's past record leads me to believe that the proposed project will be a "good neighbor".

10. Based on the evidence presented to me at the hearing and after review of that evidence without any deference to the decision of the Director of the Department of Construction and Land Use, I am satisfied that I would reach the same result with respect to the administrative conditional use, including imposition of the same conditions. In addition, the Examiner is convinced that two additional specific conditions be imposed upon applicant's administrative conditional use. First, that patients not be allowed to possess or maintain vehicles at or near the proposed facility; second, that applicant shall not admit persons who have a history of either alcoholism, drug abuse, violence or criminal behavior.

11. The decision of the Director with respect to the DNS is affirmed. I further conclude that an administrative conditional use should be made in favor of applicant subject, however, to the same conditions imposed upon applicant by the Director, Seattle Department of Construction and Land Use, and the conditions set forth in Conclusion 10.

Entered this 29th day of June, 1984.


Kelly Fletcher
Hearing Examiner Pro Tempore

APPEAL NOTICE FOR 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. 2 Am.Jur. 2d., Admin. Law 2d § 524. Any request for judicial review of the decision must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36 B. 11; Akada vs. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73.

Judicial review under SEPA shall without exception be of the decision on the Master Use Permit together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review within thirty days after the date of this decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 400 Seattle Municipal Building, Seattle, Washington 98104 within fourteen days of the date of this decision. WAC 197-11-680(4)(d).

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 typewritten transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available in the Office of the Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.

Notice of Right to Appeal

Pursuant to Section 25.04.210, Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the 14th day after the date the decision appealed from is filed with the SEPA Public Information Center. The appeal must be filed with the City Clerk on the 1st floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure.