

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JOHN KOCH, et al.,

FILE NO. MUP-86-005(CU)
APPLICATION NO. 8504348

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

Introduction

John Koch, et al., appeal the decision of the Director, Department of Construction and Land Use (DCLU), to conditionally grant an administrative conditional use for the expansion of a halfway house at 1103 16th Avenue.

The appellants exercised their 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 February 18, 1986.

Parties to the proceedings were: John Koch, appellant, the Director by Lesley Lloyd, land use specialist, and Andrew Branch, applicant.

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. The applicant requests a master use permit to expand an existing halfway house at 1103 16th Avenue. The Director determined that an administrative conditional use would be required and conditionally granted the conditional use. Appellants appealed that decision.

2. The halfway house is Branch Manor, a residential facility for mentally ill persons. It currently has 34 beds and with the proposed addition would accommodate 53 residents.

3. The addition, consisting of some 3,800 square feet, would be made up of the second story on the south side of the structure which is now one story and a new two story and basement addition on the west side of the structure.

4. The subject site is part of a Lowrise 3 zone and is located at the northwest corner of the intersection of 16th Avenue and East Spring Street. The zone boundary separating the L-3 zone and the adjacent Lowrise 1 zone runs along the property's west lot line and turns east south of Spring Street. An unimproved alley and a small city park lie to the west of the subject site.

5. The L-3 zone is developed with a mixture of multi-family, single family, special residence and institutional uses. Development in the L-1 zone to south is largely single family and lower intensity multi-family residential. The Providence Medical Center campus is located about 3 blocks south of the site.

6. Other halfway houses are located across Spring Street from the subject site and a half block to the north. Four others are located on the same Kroll map.

7. The area is well served by transit with routes on Madison, Union and Jefferson.

8. The subject property now has parking for four vehicles which is fewer than the Land Use Code would require for the current numbers of residence and staff. The Director has determined that the use is legally non-conforming as to parking so only the number of parking spaces related to the expansion would be required to be added to the existing parking.
9. The Director has determined that the Land Use Code requires four new parking spaces for the additional nineteen residents and one space for additional staff.
10. The applicant proposes to add four new spaces for a total of eight. The initial proposal was to add three spaces but in designing the area it was found that one more space could be created. The applicant requests a waiver from the required ninth space based on an absence of need.
11. Residents of the facility are not permitted to use their cars and very few own cars. Those who do are not permitted to bring their cars to the facility.
12. The Director waived two of the required parking spaces, as initially requested, but imposed a condition on the granting of the conditional use that an agreement with the City is to be executed providing, inter alia, that residents will not be permitted to operate vehicles.
13. The applicant accepts the condition but asks that it be modified to allow one of the eight spaces to be used by residents if the need arises.
14. Residents of the facility receive few visitors, most choosing to visit family and friends away from the facility.
15. Mature trees and vegetation obscure the view of the structure from the street and separate it from the property immediately adjacent to the north. The trees and shrubs separating the parking area on the north side from the adjoining lot are proposed to be removed.
16. A condition of approval imposed by the Director requires retention of existing trees and landscaping along the north margin of the lot and provision of other landscaping.
17. The Director has determined that the bulk and siting requirements of the zone are met by the proposed expanded facility.
18. Letters received in opposition to the expansion from residents of the area expressed concern about the concentration of special residences on 16th and in the area, the incidence of criminal and other anti-social behavior attributed to residents of the halfway houses, the added demand for parking and generation of traffic by the halfway houses.
19. Letters were received supporting the application and the Director's decision from residents and property owners in the vicinity, residents of the facility and their families, mental health professionals and friends of the owner.

Conclusions

1. Existing halfway houses in multi-family zones which do not meet the development standards of Section 23.45.86 may be permitted to expand as administrative conditional uses. Because Section 23.45.86 limits the number of residents to eight, the existing halfway house does not meet the development standard and therefore may expand only by conditional use. The facility also fails to meet the standard titled "Dispersion Criteria" in that the lot line of the halfway house is within 600 feet of the lot line of another halfway house. Because the halfway house does not meet the development

standards, the criteria set forth in Section 23.45.118 are to be used in evaluating the proposed expansion for conditional use and may be used for imposing conditions.

2. The first criterion for consideration is A. Bulk and Siting. The record shows that the proposed expansion meets the open space, structure width and depth and set back requirements for the zone so no modification of the standard for bulk and siting is requested and no balancing of the needs of the facility against compatibility of the facility with residential scale is required.

3. The second standard is B. Dispersion Criteria. The Director has concluded that the dispersion criteria "do not apply to expansion within an existing site." Appellants disagree with this reading of the Code. Section 23.45.118, for halfway houses not meeting development standards, provides the following dispersion criteria:

1. A facility which does not meet the dispersion criteria of Section 23.45.086D may be permitted, upon determination by the Director that the intent of the dispersion requirements is satisfied. For example, physical elements (such as water bodies, large open spaces, or topographical features) or manmade elements (such as arterials, concentrations of non-residential uses, or freeways) may provide substantial separation from existing halfway houses and nursing homes.

2. If the intent of the dispersion criteria is met, an existing facility not in conformance with a dispersion standard may be permitted to expand. The existing facility shall not be permitted to expand beyond the requirements of the other development standards for the zone in which it is located.

The dispersion criterion of Section 23.45.086, which the parties agree is not met, provides:

1. The lot line of any new or expanding halfway house shall be located six hundred feet (600') or more from any lot line of any other halfway house or nursing home in a residential zone.

The use of the term "lot line" in that criterion is apparently the basis of the Director's conclusion that expansion without change of the lot line does not require consideration of the dispersion criterion. The term "lot line" is used as a point of measurement to other halfway houses in the area to ascertain if any is located within six hundred feet. It is clear from the definition of halfway house at Section 23.84.016 and other references throughout the provision for halfway houses that it is the expansion of the facility itself that is of concern, not the boundary alone. Policy 16 of the Multi-family Land Use Policies addresses special residences and contains a statement of policy to encourage continued use of nonconforming special residences. It provides specifically, however, at page 16.02.68 that:

special residences which have been determined to be non-conforming as to locational criteria shall be allowed to expand so long as the expansion does not create or expand non-conformity as to bulk, is within the development standards of the area, and does not increase the number of beds in the facility. If an expansion of the number of beds is sought, it shall be reviewed by the same administrative procedure as is used in Guideline 3 of this Policy.

The administrative procedure referred to is the administrative conditional use review of facilities housing more than eight people. This policy statement shows that the dispersion criteria are to be applied as locational criteria to the expansion of the structure and that the expansion is permitted outright only if the number of beds is not increased. The appellants are correct that the Director's conclusion, that the dispersion criteria do not apply when the expansion does not affect existing lot boundaries, is not supported by the Code.

4. The noise that may be generated by the expanded facility is to be considered as a criterion. In this case, between the separation provided and the landscaping requirements imposed by the condition, there should be no effect on surrounding uses from noise from the facility.

5. The Director is to consider traffic generation and in this case, the additional beds will create very little additional traffic generation because of the policy of denying residents the use of their cars.

6. The final criterion for consideration is that of parking. Section 23.45.118(E) provides that if the applicant can show that less than the normally required amount of parking is necessary because of specific features of a program, the parking may be reduced. In this case the program asks for waiver of one parking space. With the condition set out in the Director's decision calling for an agreement that residents will not operate or have vehicles present at the facility, the waiver is appropriate. The request that the additional parking space that was created be allowed to be used for residents should be denied since the agreement requires that the policy be continued that residents not be allowed to have vehicles. Further, other considerations such as traffic generation were based on no resident vehicles.

7. Since the Director's analysis did not include a consideration of dispersion criteria and how that would effect the granting of the conditional use, it is appropriate to remand the matter for consideration of those criteria.

Decision

The matter is REMANDED to the Director for consideration and evaluation of the dispersion criteria and modification of the Director's decision, if appropriate. The Hearing Examiner retains jurisdiction of this matter. The director shall notify the parties to this proceeding by mail of her decision after the required evaluation. Any party objecting to that decision may file written objections with the Office of Hearing Examiner within ten days of the mailing of the decision. If any objection is filed, the Office of Hearing Examiner will schedule further review proceedings. If no objection is filed within ten days that decision will be adopted as the Hearing Examiner's final decision and the opportunity for review will be as described in Section 23.76.22.C.12.c.

Entered this 4th day of March, 1986.


M. Margaret Klockars
Deputy Hearing Examiner