

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

TEXACO, INC.

FILE NO. MUP-84-042(V)
APPLICATION NO. 8400181

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

Introduction

Appellant, Texaco, Inc., appeals the decision of the Director, Department of Construction and Land Use (DCLU), imposing two conditions on the grant of an administrative conditional use for property located at 4503 Thackeray Place N.E. In total, the Director's decision:

1. denied a variance to allow an automobile laundry closer than 100 ft. to a residential zone. (Ref. Section 24.44.030.D, Seattle Municipal Code (SMC));
2. conditionally granted the administrative conditional use to allow an automobile service station (Ref. Section 24.40.040.B and 24.48.060.E, Seattle Municipal Code); and
3. declared that, subject to three conditions, no environmental impact statement was required because the proposal was found to have no significant adverse impact on the environment. (Ref. Section 25.04.200, Seattle Municipal Code, implementing the State Environmental Policy Act (SEPA)).

Texaco, Inc. exercised its right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code. Specifically appealed were the Director's condition (1) permitting only two curb cuts of 30 ft. each, along N.E. 45th Street; and (2) requiring a landscaped walkway from the sidewalk to the convenience store entrance to provide a safe passageway for pedestrians.

This matter was heard before the Hearing Examiner on July 12, 1984.

Parties to the proceedings were: Harry Schmidt and Larry Hanson, representing Texaco, Inc.; and Diane Althaus, representing the DCLU Director.

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, and subsequent to a site inspection the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Texaco, Inc., through Harry Schmidt, applied for a master use permit to allow it to demolish an existing service station, to remove existing underground tanks, and to allow for the future construction of a convenience food store, service station and automobile laundry, and to install one 12,000 gallon and three 10,000 gallon underground storage tanks.

2. The proposed action required the following approvals:

- (1) an administrative conditional use - to allow the automobile service station;
- (2) SEPA (environmental determination); and
- (3) a variance - to allow the proposed automobile laundry to be located closer than 100 ft. to a residential zone.

3. The address of the proposed action is 4503 Thackeray Place, N.E., in the Wallingford Community of Seattle, Washington. The street address shown on the plot plan is 210 N.E. 45th Street, Seattle, Washington. The lot is located in a General Commercial (CG) zone and measures approximately 100 ft. deep by 204 ft. long (approximately 20,394 sq. ft.). The lot spans the block face between Thackeray Place N.E. (east boundary) and 2nd Avenue N.E. (west boundary); and is adjacent to a fully developed single family (SF) 7200 zone (north) and a CG zone used primarily for commercial purposes (south, east and west).

4. The site of the proposed action is currently used as an automobile service station. Auto ingress and egress at the site presently consists of two curb cuts on N.E. 45th Street, one curb cut on Thackeray Place N.E. and one curb cut on 2nd Avenue N.E.

5. The Director denied the variance application to allow the location of an automobile laundry approximately 38 ft. from a SF 7200 zone.

6. The Final Declaration of Non-Significance was conditioned upon:

- a. limitation of construction to the hours between 8:00 a.m. and 5:00 p.m., Mondays through Fridays;
- b. submission of a "landscaping plan with at least 3 ft. of material (sic) on all lot lines except the three driveways/access ways, prior to issuance of a building permit;" and,
- c. completion of landscaping, per the approved plan, prior to final occupancy.

7. The administrative conditional use application was granted upon satisfaction of the following statutory and non-statutory conditions:

a. STATUTORY CONDITIONS:

1. Landscaping at least six percent (6%) of the lot area including all lot lines, except for necessary walkways and driveways;
2. No driveway can exceed 30 ft. in width;
3. Establishment and maintenance of a view obscuring fence or wall, not less than five nor more than six ft. in height, between the automobile service station and any abutting lot in R zone, except adjacent to the front or street yard of the abutting lot where the fence or wall must be three ft. in height;

b. DCLU IMPOSED (NONSTATUTORY) CONDITIONS

1. only two curb cuts of 30 ft. each are permitted along N.E. 45th Street, and the curb cut on Thackeray Place N.E. shall be reduced to no more than 20 ft. to reduce pedestrian/vehicle conflicts;
2. a landscaped walkway shall be provided from the sidewalk shall be provided from the sidewalk to the convenience store entrance to provide a safe passageway for pedestrians; and
3. Satisfaction of the three conditions for granting the SEPA Final Declaration of Non-significance. (See Finding 6, above.)

8. Texaco, Inc. appealed two of the conditions imposed by the Director upon approval of the administrative conditional use application, to wit:

- a. allowing two rather than the three curb cuts along N.E. 45th Street; and,
- b. requiring a landscaped walkway from the sidewalk to the convenience store entrance.

In all other respects, Texaco, Inc. accepted the Director's decisions.

9. The proposed service station and convenience store are expected to attract approximately 700 cars making 1400 crossings of curb cuts each 24 hour day. The existing service station is open for 16 hours daily and attracts approximately 350 cars making about 700 daily curb cut crossings.

10. Community residents expressed great concern about the proposed plan through letters, petitions and testimony at the public hearing. A major concern of the residents was decreased safety conditions that will result from increased pedestrian/vehicular conflict at the proposed site.

11. A third curb cut on N.E. 45th Street will increase the difficulty and hazard to the elderly, children and disabled pedestrians that cross the driveways at the site.

12. Pedestrian safety would be enhanced by a clearly designated walkway from the sidewalk to the convenience store. Such a walkway would minimize the risk of injuries caused by increased vehicular movement to, from and through the site.

13. A landscaped walkway on the south side of the proposed building would eliminate easterly and/or westerly vehicular movement at the site. The negative impacts of requiring a landscaped walkway include: increased pedestrian/vehicular conflict at the curb cuts on N.E. 45th Street; longer lines at gas pumps; and, interference with normal traffic flow on N.E. 45th Street by cars waiting in line to either purchase gas or enter the site to shop.

14. The new underground gasoline storage tanks are located on the west side of the site. The four fill boxes into which the fuel is pumped from the transport trucks to the storage tanks are on the east side of the storage tanks. The fuel is pumped from the right side of the trucks into the storage tanks.

15. Texaco, Inc. requires a curb cut on N.E. 45th Street at the west end of the block to: (1) allow the transport trucks to enter the site, and make deliveries as described in finding number 14, above; and (2) facilitate vehicular exits from the site. The transport trucks must enter the site at the westerly

curb cut on N.E. 45th Street and exit at the Thackeray Place N.E. curb cut because of their turning radius requirements.

16. Texaco, Inc. desires curb cuts on N.E. 45th Street near the center of the block and at the east end of the block to facilitate vehicular entries to the site.

Conclusions

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

2. Subject to the conditions required by the Director for approval of the conditional use permit, including SEPA conditions, as modified herein, the proposed action will not be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which it is located; and is consistent with the spirit and purpose of the zoning code.

3. The conditions imposed by the Director, including SEPA conditions, as modified herein, are necessary for the protection of other properties in the zone or vicinity and the public interest.

4. The Director's limitations of the number of curb cuts along N.E. 45th Street to two of 30 ft. each, will reduce the potential pedestrian/vehicular hazards and serves the public interest, so it is upheld.

5. The Director's requirement that a landscaped walkway be provided from the sidewalk to the convenience store entrance to provide a safe passageway for pedestrians is modified. A landscaped walkway will contribute to congestion on the subject site, delay vehicular ingress and egress at curb cuts along N.E. 45th Street and will interfere with traffic flow on N.E. 45th Street. Instead of a landscaped walkway, Texaco Inc. shall designate by solid or striped paint and/or textured surface a walkway from the sidewalk to the entrance of the convenience store. Speed bumps of sufficient size and shape to promote pedestrian safety shall be placed at a distance from the boundaries of the walkway that will further encourage safe pedestrian passage. A design plan for the walkway shall be approved by the Director and the walkway shall be provided, per approved plan, prior to final occupancy permit.

Decision

As modified herein, the Director's decision is affirmed.

Entered this 26~~th~~ day of July, 1984.

C. E. Mathews by J. R.
Christopher E. Mathews
Hearing Examiner Pro-Tempore

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. 2 Am. Jur. 2d., Admin. Law Section 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 v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73.

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, 400 Yesler Building, Seattle, Washington 98104.