

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CONCERNED PEOPLE OF RAVENNA NEIGHBORHOOD

FILE NO. MUP-82-024 (CU,V,W)
APPLICATION NO. X-80-289

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

Introduction

Project applicant, Puget Consumer's Co-op, Inc. (PCC) seeks to legalize use of an existing parking lot accessory to a grocery store at 6512-20 20th Avenue N.E. Appellant appeals the issuance of a declaration of non-significance (DNS) by the Director; the Director's grant of the conditional use; and the Director's approval of the variance requests.

The appellant exercised its right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: appellant by Robert W. McKisson, McKisson and Sargent, Inc., P.S.; project applicant by Diane Dray Kenny, Roberts and Shefelman; the Director of the Department of Construction and Land Use (DCLU) by P. Stephen DiJulio, Assistant City Attorney.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on May 6, 1982, following an agreed continuance from May 5, 1982. The record was left open to May 14, 1982, for submittal of written closing arguments.

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 subject property is located on the west side of 20th Avenue N.E., just north of N.E. 65th Street. The site is developed with a retail store north adjacent to which is an area once legalized as a parking lot, the subject of this appeal.

2. From 1949 to present, the subject site has been occupied by retail grocery store use. The subject "parking lot" has been in continuous use as accessory parking since 1949, when a permit was issued. The use continued without permit after 1954 expiration of the permit. It was ruled in X-80-016 that

as the parking lot did not lawfully exist on the
1957 effective date of Ordinance 86300, it does
not qualify as a nonconforming use....

For ease of reference, however, the area used for parking will be referred to as the "parking lot".

3. Puget Consumers Cooperative, Inc. (PCC) seeks conditional use authorization and variance relief to legally establish the use of the parking lot.

4. The parking lot, zoned Single Family Residence High Density (RS 5000), consists of a part of Lot 10 and all of Lots 11 and 12 of Block 2 of Dingley's Addition. It is bordered on the west by 20th Avenue N.E.; on the south by the PCC store; on the north by a large hedge, then a house owned and leased out by PCC; and on the east by a retaining wall, then an alley and alley entrance which is seldom used. The lot is currently striped to accommodate 30 vehicles and is also used as loading and access for store deliveries.

5. The northern portion of the PCC building is also zoned RS 5000. However, the remaining area of the building and the land south to N.E. 65th Street is zoned Neighborhood Business (BN). The RS 5000 zone generally extends north of the subject site and is predominantly developed with single family residences.

6. The PCC store building floor area is 9,300 sq. ft., 1,800 in excess of the BN zone limit of 7,500 sq. ft.

7. Twentieth Northeast is a two lane local street with parking on both sides, resulting in a narrow driving area. Access to the parking lot is from a driveway on 20th Avenue N.E. As noted in the unrefuted TDA transportation study of record, the level of service for this unsignalized "intersection" is at highest level A.

8. Northeast 65th is a designated east-west arterial. The signalized intersection at 20th N.E. is also at level of service A.

9. The present membership of the Ravenna Neighborhood PCC of approximately 18,000 persons extends widely through the Seattle area as there are currently no boundary restrictions on membership. The customer's selection of a particular cooperative store is based on preference; or on the site of the person's affiliation with the store.

10. PCC proposes to legalize the use of the parking lot and to restripe the same to accommodate 42 vehicles. As 65 percent of the vehicles using the lot were determined to be compact vehicles, the proposal is that 33 percent of the 42 spaces be designed for compact use. The lot is currently paved to the 20th Avenue N.E. pavement. Applicant proposes to use what would be the front yard (20th Avenue) setback for parking; and accordingly applies for the subject front yard variances - to allow parking in the required front yard and to provide less than the minimum required front yard setback for parking screening.

11. According to the TDA report, with which this finding is in accord, the PCC's peak period was identified through store receipts and was correlated with traffic generated by the store: for a typical week, the peak period was on weekends between 2:00 and 5:00 p.m.; during the year on weekends 2:00-5:00 p.m. from mid-October through mid-November.

12. An October 31, 1981, survey showed that 29 of the 35 lot spaces (91 percent) was filled at 3:00 p.m. At 5:00 p.m., the use was 38 cars or 108 percent. There is some parking in lot areas not designated for parking.

13. PCC generated traffic "frequently blocks through traffic as a result of vehicles waiting to enter the lot or to get an on-street parking space". TDA study, page 2. PCC patron overflow parking on 20th N.E. reduces on street parking availability for vicinity residents.

14. Letters and testimony in opposition to the subject application related to the negative impact of the PCC automobile and truck traffic on the residential quality of the neighborhood. One letter complained of huge truck trailers, trash trucks, and armored cars. Another cited an example of congestion at the 20th Avenue and 65th Street intersection resulting from an "18-wheeler".

15. Further points of opposition included the view that use of the lot was a standing code violation. Appellant was of the further view that

the proper question...was...should PCC application to convert a single-family lot in an R 5000 Zone into a 42 space, paved accessory parking lot be approved?

Not whether the redesign of a "pre-existing" lot was appropriate.

16. Appellant called no witnesses on the DNS element of the appeal and the same was dismissed in hearing.

17. The TDA report concluded that while denial of the authorization may slightly decrease PCC business, and lessen PCC generated traffic, the percentage of Co-op related traffic would "significantly increase" beyond the block bounded by N.E. 65th and N.E. 68th Streets. The report continued that "as a result of looking for parking, the percentage of Co-op generated traffic on N.E. 65th and 20th N.E. (for one block south of N.E. 65th Street) will increase." The conclusion was that patrons would be forced to use available parking on neighboring streets. Proponent's witness testified that if parking lot use were denied, the lot would nevertheless be used for delivery, and people would continue to shop at the store.

18. The TDA report also assessed that the higher percentage of Co-op parking on 20th N.E. would result in increased accident potential along that strip.

19. A Seattle Engineering Department memorandum, which noted the peak demand of 43 spaces, echoed the general sentiments of the TDA study:

...it can...be assumed that the new parking lot supply with 42 stalls can accommodate the peak parking demand for the site with negligible parking impacts on the neighborhood streets. If use of the parking lot, as such, is not approved, all site-associated vehicles would have to park on-street. This would result in greater problems for both traffic and on-street parking in the vicinity. Traffic impacts to the surrounding streets would be greater due to the resulting increase in traffic circulation searching for an on-street parking space...

20. The proponents witness agreed that without use of the subject parking lot it was a "reasonable speculation" that the volume of the store would be reduced.

21. The proposed parking plan conforms to City standards generally for stall, aisle size and in the percentage of compact spaces. There is an area where the aisle is 1½ ft. too narrow for a 1-2 ft. distance. The PCC store is not required to provide parking.

22. The DCLU decision here appealed concluded that approval of the conditional use for the parking lot would be of benefit to the neighboring property owners by reducing the pressure for PCC members to park on the street; and that the conditional use would merely recognize a long term use in the neighborhood. The DCLU analysis conjectured that unless a parking lot is approved the land could go unused or the store would close. However, evidence of record supports neither of these conjectures.

23. Appellant's witness testified that non-use of the subject area for a parking lot would inure to the benefit of the vicinity property values. However, the evidence of record was insufficient to support this as a finding.

24. DCLU approved the requested conditional use on conditions that PCC inform its members of increased parking lot capacity and discourage on-street parking; that the membership permitted at the store at 6504-20th Avenue N.E. shall not be increased without a further traffic and patronage study; and that the proposed parking plan be amended. The conditions prohibiting traffic exiting the parking lot from turning right was withdrawn.

25. DCLU approved the requested variances on the condition of screening, site plan and fencing.

26. A declaration of significance (DS) was issued on April 24, 1981, based on an original request and checklist. As described by the analysis by DCLU, subsequent to a redesign of the project and a traffic study, the DS was withdrawn on February 8, 1982, and a DNS was issued concurrent with the subject decision.

Conclusions

1. On matters of environmental determinations, the Director's decision is accorded substantial weight. Section 24.74.170. Accordingly, the burden of establishing error in the environmental determination rests with the appellant.

2. Appellant presented no witnesses controverting the facts as outlined by the Director's report or disputing the conclusions in the TDA report of record. Rather, the appellant merely urged that the withdrawal of the DS was improper and in violation of WAC 197-10-370 which allows the declaration of significance to be withdrawn

if at any time after the issuance of a declaration of significance, the proponent modifies the proposal so that, in the judgment of the lead agency, all significant adverse environmental impacts which might result are eliminated...

3. While restriping of the lot to accommodate more vehicles appears less dramatic of a change as might be anticipated by WAC 197-10-370, substantial weight must nevertheless be given to the decision of the "lead agency", and the mere assertion that the WAC was not followed is insufficient to overcome the substantial weight given the Director's decision. We would note that if the significant adverse environmental impacts identified related to traffic it is conceivable that the results would be eliminated by the reconfiguration of the lot. The hearing action dismissing this portion of the appeal is ratified.

4. A conditional use may be authorized if it is not proved

materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located, and that the authorization of such conditional use will be consistent with the spirit and purpose of (the zoning ordinance)...

Consideration shall be given to all adjacent uses and structures. Section 24.74.010.

5. It is clear from the correspondence and testimony that opposition to the PCC effects on the neighborhood has been standing since the store's location in the Ravenna neighborhood in 1976. And there is some justification for the concern raised by the neighbors. The store enjoys a city-wide membership of some 18,000 persons. PCC generated traffic results in overflow parking on residential streets. Truck traffic is also an element of consternation.

6. On the other hand, denial of the subject parking lot would not mean closure of the store. The unrefuted TDA study concluded that while some customers would be lost by non-use of the area of the parking lot, a substantial number would most likely remain and the result would be an increase in the percentage of Co-op related traffic on 20th N.E. along with an increase in accident potential. Additional vehicle trips in search of on-street parking would also result. The same conclusions were reached by the Department of Engineering. The peak demand of 43 spaces would be principally accommodated on the proposed parking lot. An additional condition is added, however, that PCC is required to indicate by signing whether the lot is available or full.

7. The Co-op is considered a nonconforming use and parking for the store is not required. The proposed parking area is adjacent and generally complies with City standards. The proposed parking lot would operate to concentrate the PCC traffic and to reduce the traffic hazards in the vicinity. Therefore, while some negative impact is acknowledged it does not rise to the level of "material" detriment to the public welfare.

8. The authorization should also be consistent with the spirit and purpose of the zoning ordinance. Section 24.74.010. The general purpose of that ordinance is to protect and promote the public health, safety, morals and general welfare. The Zoning Code provisions are "designed to provide adequate light, air and access...and to avoid excessive concentration of population in order to lessen traffic congestion...." Section 24.06.020.

9. In residential zones protection is to be provided against hazards, traffic, and building congestion. Section 24.06.030.

10. The Single Family Policies, adopted by Resolution 25968, are to be the

basis for all land use decisions not controlled by the Zoning Ordinance, including rezones, the granting or denial of conditional use permits, and variances....

In the event of a conflict between the Single Family Residential Areas Policies and the existing Comprehensive Plan the "Single Family Policies shall be the City policy."

11. The Single Family Policies provide at Implementation guideline 2, Edges, that

Parking lots or other uses accessory to permitted uses in abutting higher intensity zones shall not be permitted to expand into single family residential areas. At page 3.

12. The paved area north adjacent to the PCC building has been in continuous parking use since 1949, only 5 years with permit. The only evidence of record is that the store will remain in present operation with or without the parking lot. Under the circumstances, the general safety and welfare of the public would be promoted by the approval of the conditional use. It would serve to concentrate traffic in one area and reduce the circulation pattern in the subject vicinity. Traffic congestion, accidents and circulation would be diminished.

13. The Single Family Policies are applicable to the instant project. The spirit and purpose of the Policies by the proposal are not frustrated in that no "expansion" into single family residential areas is proposed. The amount of impervious surface used for parking will not be increased. The use has existed since 1949 and the PCC store was established in the subject location only since 1976. As added conditions, however, the conditional use should expire upon any change of tenancy from PCC. Further, truck delivery is permitted only during store and neighborhood non-peak hours. Neighborhood traffic peak hours shall be determined by DCLU.

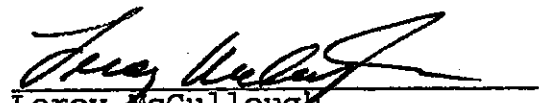
14. The front yard variances are also granted. The location of the site adjacent to a BN zone and the nonconforming use constitute unique property conditions not created by applicant which without variance relief would deprive the applicant of the privilege of adequate parking. Without variance relief only 35 spaces would be provided, less than the peak demand. With the screening and other conditions imposed by DCLU, the variance relief will not exceed the minimum necessary for relief nor prove materially detrimental to the public welfare. Section 24.74.030.

15. Suggestions have been made that parking lot approval notwithstanding, the area would be used for truck delivery. In view of the above decision, that matter does not require resolution by this Examiner and would in any event, be deferred as one for Director's interpretation pursuant to Section 24.10.030.

Decision

The decision of the Director is AFFIRMED as modified herein by Conclusions 6 and 13.

Entered this 28th day of May, 1982.


Leroy McCullough
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.