

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MARIAN CORLISS-RADOVICH, ET AL.

FILE NO. MUP-82-056 (CU)
APPLICATION NO. 82-0010

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

Introduction

Appellants contest the Department of Construction and Land Use conditional use approval permitting a daycare center in a portion of a single family residence located at 5244 S. Morgan Street.

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

Parties to the proceedings were: appellants, pro se; project applicant by Aviva Rostov, pro se; the Director of the Department of Construction and Land Use (DCLU) by Rosemary Horwood.

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

This matter was heard before the Hearing Examiner on September 21, 1982.

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 this appeal.

Findings of Fact

1. Project applicant Aviva Rostov is owner of the subject property located in the Single Family Residence Medium Density, RS 7200 zone at 5244 S. Morgan Street.

2. Topographically, the applicant's lot slopes east towards Seward Park Avenue South and towards the body of Lake Washington.

3. The applicant's lot measures 102 ft. in width and 206 ft. deep for a total lot area of 21,012 sq. ft. The lot is developed with a single family residence, a portion of which is in use as Pooh's Corner, a weekday daycare center. A driveway approximately 12 ft. wide is west adjacent to the subject dwelling. The driveway leads to a basically level, nearly 100 ft. deep, rear yard. The driveway opens near a Morgan Street crest. The rear yard is used for driver turn-around.

4. A front yard play area with permanently installed equipment such as a sliding board is enclosed by a wire fence. This play area fronts on S. Morgan Street and rests on a relatively level area or bluff above the street. It is more than 15 ft. from any other lot in the residential zone. Beyond the fence is a stretch of earth, a rockery, then the sidewalk. Generally, the applicant's property is 4-8 ft. above the street.

5. Single family residences are across S. Morgan from the subject property and, as well, on the north side of S. Morgan Street where the applicant's property is located. The residences east and west adjacent to the applicant's property are at least 30 ft. away.

6. The vicinity consists primarily of single family development on large lots and large platted blocks. Many of the residents consider the neighborhood as a "First Class Residential District". Two synagogues are located across S. Morgan Street and west of the subject property. These institutions are in primary use on weekends. Graham Hill Elementary School is located in the block west of the subject property.

7. The day care center has an enrollment of 24 children between the ages of 1 and 5. There are three staff members. A maximum of 8 children use the outside play area at one time. Other activities include fair weather field trips. Following investigation and approvals by the Fire Department, the Health Department and the Washington State Department of Social and Health Services (DSHS). DSHS issued a provisional license to applicant for operation of the daycare center.

8. Through letters and, to a lesser extent, testimony of record, opponents voiced strident disapproval of the daycare facility as proposed. Generally, some perceived the outdoor play area as a visual defacement of a "First Class Neighborhood"; others considered that noise, i.e., from children's playing, automobile traffic (and attendant decreased safety for residents), congestion and parking would be unduly exacerbated; that the daycare operation violated the zoning code provisions limiting home occupations and prohibiting visual evidence thereof; that neighborhood driveways were blocked by parents bringing their children to the daycare center; and that considering the crest of the hill the safety would be diminished for all concerned.

9. Applicant agreed that at one time parents blocked neighborhood driveways. Since then, parents have been notified by letter and by meeting that unless proper parking procedures are followed the violator's children will be dismissed from the center. One letter stated that as a result of this effort of applicant's the problem with wayward parking has subsided.

10. On-street parking is allowed on the south and north sides of S. Morgan Street. When vehicles are parked on both sides, the street takes on the appearance of a one lane traffic street.

11. Parents of youngsters using the center signed a pledge of cooperation to assist in alleviating traffic congestion in the 5200 block of S. Morgan Street. The documents of 19 signatories showed transportation methods in the following categories:

Car only	8
Walk only	5
Walk/car	3
Carpool	2
Car/bus	1

More specifically, per the report to DCLU, seven of the daycare children walk to the center, 15 arrive by carpool, two are brought by a staff member, and two walk in good weather.

13. One opponent found that the noise of the children in transit and at play disturbed the well deserved peace and quiet of retirement. On the other hand, a letter of support of record from a local home for the aged noted that the daycare children had participated in providing meaningful programs for the elderly at that home.

13. DCLU approved the administrative conditional use application to operate the daycare center on the condition that applicant provide view obscuring slats in the south side of the play area fence and on the added condition that parking per covenant be provided at the nearby Bikur Holim Synagogue for staff and parents. Pursuant to a subsequent DSHS response, DCLU has reconsidered the first condition and suggested consideration of heavy vegetation as substitution for the screening. Applicant has secured the parking by covenant as required by DCLU.

14. Many witnesses and letters praised the quality of child-care provided by the subject daycare center, and described the facility as a much needed and welcome addition to the neighborhood scenario of working parents of young children, a nearby elementary school, and certain religious institutions. Favorable comments continued that applicant's development has significantly improved the lot. Other comments denied any disturbing increase in noise, traffic or parking congestion.

15. With regard to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, Chapter 25.04, Seattle Municipal Code, the action proposed in this subject application has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC 197-10-170.

Conclusions

1. The applicable section of the Seattle Municipal Code provides in relevant part as follows:

...the Director may authorize a conditional use if it is found that the authorizing of such conditional use will not be 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 this subtitle. In considering application (sic) for conditional uses, the Director shall consider the nature and condition of all adjacent uses and structures...Section 24.74.010.

2. The daycare center is in an area developed with single family homes and religious and educational institutions. There is much neighborhood sentiment that the type of facility proposed by the applicant will complement the needs of the local populace. The proposal comports with the requirements of Section 24.74.010. Accordingly, the conditional use should be conditionally granted.

3. As conditioned the daycare center will not be "materially detrimental" to the public welfare. The fenced play area does not constitute a visual defacement of the neighborhood; however, some visual and sound buffering will be afforded by compliance with the condition here imposed that evergreen vegetation screening be located along the south side of the fenced area as approved by DCLU. On the subject of the play area, it is noted that while the applicant's property is 4-8 ft. above street level, the play area is on a level area and is fenced, adequately addressing that concern for children's safety.

4. The noise emanated by a maximum of 8 children per recess will not constitute a "material" detriment.

5. The applicant's rear yard is currently in practical use for a vehicle turnaround. Applicant has executed a covenant in order that parking for staff and parents may be provided away from the site at the lot of a nearby synagogue. The daycare center will be in operation during weekdays; the synagogue will be in most active use on weekends. Applicant states that 15 children arrive by carpool

and that 7 walk. On record is a parent pledge of cooperation to assist in alleviating the parking-traffic congestion. Accordingly, the traffic and related activity generated by the project does not arise to the level of "material" detriment. However, based on the north and south side on-street parking on S. Morgan Street and resulting traffic flow restriction, children drop-off and pick-up should be specifically prohibited on S. Morgan Street. This is an additional condition.

6. Daycare centers are specifically permitted in single family zones when authorized by the Hearing Examiner subject to the following conditions:

1. Such use shall be instituted and operated under standards established in accordance with state laws governing child welfare,
2. No lot so used shall be less than five thousand square feet in area plus two hundred square feet per child over ten in number,
3. A fenced outdoor play area shall be provided on the lot. When more than ten children are accommodated, such play area shall be located no closer than fifteen feet from any other lot in an R Zone...Section 24.16.040.

7. The project here at issue has been reviewed and approved by the Fire and Health Departments and as well by the State Department of Social and Health Services. The project complies in lot area and fenced outdoor play area requirements. As the referenced section specifically allows daycare centers and specifically requires that outdoor play areas be provided, the citation to home occupation restrictions is inapposite.

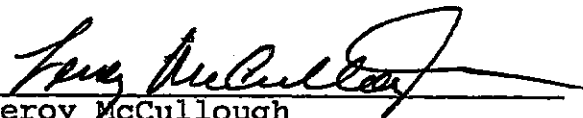
8. The proposal will be consistent with the spirit and purpose of the zoning code as it will not prove incompatible with the development of the neighborhood.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED as modified herein by the following conditions:

1. Applicant shall provide evergreen vegetation screening in fencing around the play area on the south side of the fence, plan to be approved by DCLU.
2. Applicant shall provide and maintain parking for staff and parents at the Bikur Holim Synagogue per parking covenant.
3. No children drop-off or pick-up vehicle parking is allowed on S. Morgan Street.

Entered this 5th day of October, 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, instruction 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 of the appellant is successful in court.