

FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JAMES PIRIE

FILE NO. MUP-82-077(V)
APPLICATION NO. 82-0355

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

Introduction

The Department of Construction and Land Use approved with conditions the application for construction of a retail/grocery store and gasoline service pump at 13255-15th Avenue N.E. Appellant, opponent of the project, filed this appeal.

The appellant exercised his 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 November 23, 1982. The record of the hearing was left open to 5:00 p.m., November 23, 1982, for communication from appellant. The Affidavit of Service by Mailing shows notice of the hearing to have been sent to appellant on November 2, 1982.

Parties to the proceedings were: project applicant by Bob Ringland; and the Director of the Department of Construction and Land Use (DCLU) by Elsie Hulsizer, substituting for Ed Somers. Appellant entered no representation at the hearing nor by 5:00 p.m. of the date of the hearing.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23 (Ordinance 86300, as amended) 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 subject property is located in the General Commercial (CG) zone at the southwest corner of N.E. 125th Street and 15th Avenue N.E. Both N.E. 125th Street and 15th Avenue N.E. are arterials.
2. The 15,351 sq. ft. lot area has approximately 129 ft. of frontage on N.E. 125th and a 119 ft. depth along 15th Avenue N.E.
3. The site is developed with a vacant automobile service station building. It has been approximately two years since the service station was in operation.
4. Applicant proposes to remove the service station and construct a new, 24 hour 7-Eleven Food Store. Proposed are nine parking spaces and maintenance of one of the existing pump islands to 15th Avenue N.E.
5. The subject property is in an immediate area of food stores, some taverns and local businesses. The appellant, per the letter of appeal, was of the view that the area was "saturated with existing businesses of that type".

6. The letter of appeal stated a general opposition to the project but specified no environmental impacts expected to result from the project. Opponent did express concern that the proposal would generate more trash, attract unsupervised youngsters and would stand in direct, unnecessary competition with the Safeway store across the street which is open until 11:00 p.m. Further, appellant and others projected increased human and automobile traffic to the vicinity, with attendant negative consequences.

7. In some response to these concerns, the DCLU witness and the project applicant noted that the feature of gasoline pumps subjected the total proposal to review; that due to the limited square footage of area the store could operate 24-hours without a gasoline pump; and that therefore comments should have been more focused on the feature of the gasoline pump.

Conclusions

1. Section 23.76.36(7) provides that in appeals from DCLU master use permit decisions such as environmental challenges, the Director's decision is to be given substantial weight, except that variance, special exception and conditional use decisions are to be given no deference. In each case, the appellant has the burden of proof. Hearing Examiner Appeal Rule 1.26(a).

2. Neither the letter of appeal nor the testimony of record took any specific exception to the Director's environmental determination that the proposal will not have a significant adverse impact upon the environment. In view of the appellant's burden of proof, the Director's determination is affirmed.

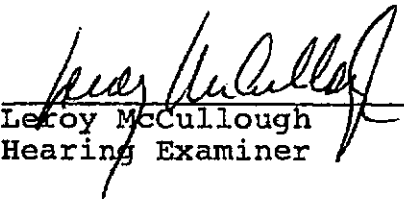
3. As to the administrative conditional use the Director's decision is given no deference. However, that decision is also affirmed. The proposed convenience store/gasoline pump island will not prove incompatible with the existing zoning or development in the specific vicinity. The site has frontage on two arterials and was in previous use as a service station. Based on the proximity to arterials we agree with the proponent's and Director's conclusion that any additional traffic drawn as a result of the 24-hour operation of the gasoline pump island would be neither significant nor materially detrimental.

4. The Director's decision notes that conditions, e.g., a minimum six percent lot area landscaping; pertaining to maximum width of driveway access lanes; and the maintenance of a view obscuring fence, separating the subject use from any abutting (R) residential lot, must be complied with. The Director also imposed the condition that the landscape plan be implemented prior to occupancy of the store. In view of all of the foregoing any detriment or injury from the proposal will not prove to be "material".

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 3rd day of December, 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.