

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

In the Matter of the Appeals of

WALLINGFORD COMMUNITY COUNCIL AND
RICHARD GRAVES

FILE NO. MUP-83-021
APPLICATION NO. 83-017

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

Introduction

Appellants, Wallingford Community Council and Richard E. Graves, appeal from a declaration of non-significance and a decision to conditionally grant an administrative conditional use by the Director of the Department of Construction and Land Use (Director) for a fast-food restaurant with drive through window at 1220 North 45th Street.

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 May 9, 1983.

Parties to the proceedings were: appellants, represented by Richard E. Graves and Greg Hill, the Director represented by Ed Somers, and McDonald's Corporation represented by Stephanie McKee.

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. McDonald's Corporation, hereinafter McDonald's, applied for a master use permit to demolish various buildings, including one residence, and construct a fast food restaurant with drive through window on property at the northwest corner of the intersection of North 45th Street with Stoneway North.

2. The Director issued a declaration of nonsignificance pursuant to Section 25.04, the State Environmental Policy Act (SEPA). Appellants appeal that determination alleging significant adverse impacts on the environment in increased traffic and congestion and litter.

3. An administrative conditional use is required by Section 24.44.080 for the establishment of a fast food restaurant and for a drive-through window. The Director initially conditionally approved a conditional use for the fast food restaurant but denied the drive-through window. McDonald's submitted revised plans based upon which the Director amended his decision and approved the drive through window. Appellants also appeal that decision.

4. The application will be deemed amended to request approval of development per the revised plan.

5. The site fronts on N. 45th, N. 46th and Stoneway N. Existing structures, a commercial building, two houses converted to commercial use and a single family residence, were proposed for demolition. McDonald's has agreed to the Director's condition that the residence and accompanying trees be preserved and incorporated that into the revised plans.

6. The area north of N. 46th Street is zoned SF 5000 and development is residential. To the east, across Stoneway, development consists of a State Liquor Store on the corner and an apartment building with restaurant and tavern at the street level. South, across N. 45th, is a parking lot for an auto repair shop on Stoneway. Commercial uses extend east along both sides of N. 45th. To the northwest is an RD 5000 zone with residential uses.
7. McDonald's proposes, after the revisions, to locate a one-story building with mansard roof near the southeast corner of the site. Driveway access for two-way traffic would be from Stoneway near the northeast corner of the site and from N. 45th near the southwest corner of the site. Parking for 30 cars would be provided on site. A landscaping plan has been submitted. The structure would be finished with popcorn-colored brick.
8. A pole sign is proposed for the southeast corner. The revised plan provides for 30 ft. height.
9. McDonald's projects that the new facility will generate 2,100 vehicle per day. The restaurant's peak hour is 12 to 1 p.m. with an estimated 280 trips (inbound and outbound) on weekdays and 320 on Saturdays during that hour.
10. The noon hour traffic on N. 45th averages 810 vehicles per hour and on Stoneway, 630 vehicles per hour.
11. CH₂M Hill was commissioned by McDonald's to do a traffic analysis of the site. Analysis of impacts of McDonald's traffic was done for the Saturday noon hour which is also the peak hour for traffic on Saturday. The traffic engineer assumed that 25 percent of the trips on McDonald's site would be diverted from existing traffic, based on earlier McDonald's showing of 35-55 percent diversion.
12. CH₂M Hill's analysis showed that McDonald's traffic is estimated to increase the degree of saturation at the intersection by less than one percent during peak hours. The level of service would be unchanged. The most heavily travelled legs of the intersection are the east and south. McDonald's driveway access points are on the north and west legs which further reduces the likelihood of impact.
13. The traffic engineer assessed impacts from queuing of vehicles. Neither driveway is likely to be blocked, at least 95 percent of the time, by queues of vehicles waiting at red lights. Northbound left turning vehicles on Stoneway to the site and east-bound vehicles on 45th turning left should not be hampered because southbound volume is light.
14. The drive-through lane is long enough to store up to seven vehicle. Two parking spaces are reserved for those who must wait for orders. Based on projected service rates this space would be adequate and should not significantly interfere with circulation on the site or on the street.
15. One witness testified to his experience with a McDonald's drive-through window where service took considerably longer than the average used for the analysis.
16. Appellants' witness expressed concern about amplification used in placing and accepting orders and exhaust from cars waiting for the drive-through window.
17. The environmental analyst for the Director, Ed Somers, submitted McDonald's plans to the Seattle Engineering Department for analysis. That department recommended provision for ingress to the site from N. 45th, which recommendation was adopted by McDonald's.

18. Mr. Somers reviewed and amended the environmental checklist submitted by McDonald's. He concluded that while none of the impacts or their combination would be significant, there would be some degree of impact on the environment. Some additional soil would be covered; concentration of auto activity would contribute to "low grade and transitory deterioration of ambient air quality"; there will be restaurant odors; water absorption rates will be modified by overcovering of soil; landscaping will add new plants; insects and small animals may be displaced; increased traffic may increase ambient noise levels; light and glare may be produced; construction will use natural resources; additional vehicular movement and parking demand may be generated; traffic circulation patterns may be altered and traffic hazard may be increased; public service, energy and utility demands will be increased.

19. Pedestrian volume in the area is low.

20. Most commercial structures in the area are one or two stories in height and flat roofed.

21. McDonald's uses the mansard roof to conceal rooftop mechanical equipment. A parapet wall could be used to serve that purpose.

21. A survey of signage in the area shows a diversity of types. The type of signs attached to buildings is likely to be found in the majority. Pole signs are found at "Mr. Auto", approximately 30 ft. tall, immediately south on Stoneway, 7-11 two blocks north on Stoneway and on 45th further to the east are pole signs for A&W, approximately 30 ft. tall, Chevron, Delta Drive-In, approximately 20-24 ft. tall, and Sun Cleaners, approximately 20-24 ft. tall. There are also several large billboards in the area.

22. Appellants provided a survey of buildings utilizing red and brown brick in the area. Of the 21 structures sketched on the exhibit seven are shown to be dark brick.

23. Ms. McKee testified that McDonald's prefers the light colored brick for this site because of the increased visibility it provides and the perception of airiness.

24. The liquor store across Stoneway, Mr. Auto across 45th, and the structure housing a drugstore and other business on the southeast corner of the intersection are light in color.

25. McDonald's employees in company owned facilities are directed to pick-up all litter in a one block radius daily and two to three times per hour to pick up litter on the lot and sidewalk around the building.

26. McDonald's agrees to provide the required number of litter cans.

Conclusions Regarding SEPA Appeal

1. The Hearing Examiner is directed to accord substantial weight to the determination of the Director. Section 23.76.32B(7). The burden is upon appellants to prove clear error.

2. While appellants voiced valid concerns about traffic, pollution, noise and litter impacts, the evidence introduced at hearing showed that these were carefully considered by the decision-maker and would not cause any significant adverse effect on the environment.

3. An environmental impact statement is required only if there is a reasonable probability that the environmental impacts will cause more than a moderate impact. Norway Hill v. King County Council, 87 Wn.2d 267 (1976). A declaration of non-significance was appropriate for this proposal.

Conclusions Regarding Administrative Conditional Use

4. The decision of the Director on an administrative conditional use is entitled to no special deference. Section 23.76.32B(7). The burden is, therefore, on the applicant to prove conformance with the code criteria for approval.

5. In addition to the general conditional use criteria, Section 24.44.080 H and I require the meeting of certain conditions for approval, as follows:

H. Drive-in restaurants, subject to the following conditions:

1. Site shall be located in an auto-oriented portion or on the fringe of a business zone.
2. Vehicular access to the premises shall not conflict with high-volume pedestrian walkways nor interrupt established retail or service frontages designed to serve pedestrians.
3. Adequate refuse receptacles shall be provided on site.
4. Design of the use, including architectural treatment, signing, landscaping, illumination and site integration shall be compatible with other uses and structures in the vicinity.

I. Fast-food restaurant, subject to the following conditions:

1. A view-obscuring fence or wall not less than five nor more than six feet in height shall be established and maintained between a fast-food restaurant and any abutting R-Zoned lot and any R-Zoned lot facing across an alley except for alley access openings.
2. Access to an abutting alley shall be limited to a maximum of two driveways, each not to exceed twenty-four feet in width.
3. As a minimum, exterior litter containers shall be provided at a ratio of one for every five off-street parking stalls.
4. Such uses shall be compatible with the character of existing structures in areas where a distinct and definite pattern or style has been established.

6. The proposed development satisfies H1 and 2 above. With an additional trash container H3 and I3 will be met. I2 is not applicable. I1 is to be provided but a condition should be imposed for clarity.

7. H4 and I4, regarding compatibility of design and architectural treatment with other structures in the vicinity and character if there is a distinct and definite pattern or style, must also be satisfied. As to the brick color, there is a sufficient number of light-colored structures in the immediate area that a distinct pattern of dark colored structures cannot be found. Further, it cannot be concluded that the proposed color is incompatible with the existing colors, though the examiner shares appellants' lack of enthusiasm for the color.

8. As to signs in the area, again no distinct and definite pattern has been established. The diversity is such that the sign as proposed will be compatible. In clarity, a condition should be imposed as to height and size.

9. The burden is on McDonald's to prove either absence of, or compatibility with, a distinct and definite pattern or style of architecture. Appellants have shown a definite pattern of flat roofs on commercial buildings in the area which evidence has gone un rebutted by McDonald's. The proposed roof is not compatible, therefore, the conditional use approval should be conditioned on building design with a flat roof.

10. With conditions to reduce potential impacts the proposal satisfies the general criteria for conditional use criteria. It will not cause material harm and it is consistent with the spirit and purpose of the ordinance as inferred from the special criteria for the proposed uses.

Decisions

The declaration of non-significance is AFFIRMED.

The administrative conditional use is GRANTED subject to the following conditions:

1. A landscape plan be approved by the Department of Construction and Land Use prior to issuance of the master use permit.


2. The pole sign be restricted in height to no greater than 30 ft. and in area to 144 sq. ft. Other signs shall be as approved by the Department of Construction and Land Use.

3. The restaurant structure be redesigned to provide a flat roof, with parapet wall if desired.

4. A 6 ft. high view obscuring fence must separate the residential property from the restaurant property.

5. Lighting of the site shall be oriented away from adjacent properties.

Entered this 20th day of May, 1983.


M. Margaret Klockars
Deputy 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.