

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

In the Matter of the Appeal of

ROBERT SIMEONE

FILE NO. MUP-84-024(CU)  
APPLICATION NO. 83-01920

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

Introduction

The Director of the Department of Construction and Land Use (DCLU) granted administrative conditional use approval for a day care center to be located in the basement of an existing apartment building at 426 11th Avenue E. Robert Simeone, a neighbor to the site of the proposed development, submitted 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 April 10, 1984.

Parties to the proceedings were all pro se: appellant Robert Simeone; the project applicant, Daniel Boyd; and the DCLU Director by Cliff Portman.

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, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Daniel Boyd proposes to convert the basement unit of an apartment addressed as 426 11th Avenue E. to day care use.

2. The subject site is in an area zoned Lowrise 3 and developed with duplexes, apartment buildings and single family homes. Near the Broadway business district, the site is also 545 ft. from the Lowell Elementary School lot.

3. The area is well served with several Metro transit routes such as those serving the University District and Capitol Hill.

4. On-street parking is at or near capacity. Parking along the subject property's west abutting segment of 11th Avenue is restricted to the west side. Some illegal parking occurs in the vicinity.

5. Proceeding easterly from the subject site's street edge is an apron, estimated as either seven or twelve ft. wide, then the apartment building's seven parking spaces that are perpendicular to 11th Avenue. Boyd proposes that one of the seven parking spaces be used for either staff parking or child dropoff/pickup and that the apron be used for vehicle loading and unloading. Two staff persons are planned to handle the day care's eighteen youngsters who will range in age from one month to two years. A fenced play area would be located to the rear (east) of the building. The outdoor play equipment would be portable.

6. Boyd reasonably expects that the great majority of his day care children will be from the Capitol Hill area.

7. Arlene Brex is operator of Broadway Babies, a business which has several day care locations in the Capitol Hill area: 222 10th Avenue East; 200 10th Avenue East; and 112 10th Avenue East. Brex has a waiting list of approximately 30. The Broadway Babies' waiting period ranges from three months to two years.

8. The average time period involved in passenger loading/unloading at Brex' day care is approximately two minutes.

9. There is a need for additional day care facilities in the Capitol Hill area. Brex, for example, wishes to sell one of her facilities.

10. Applicant testified credibly that the City Fire and "Ordinance" Departments have approved the proposal. The DCLU representative concurred by noting that the "plans routing" unit had received no adverse response to the proposal from the various City agencies. The DCLU representative continued that since less than 20 children were discussed no loading zone was required.

11. Because the proposal does not meet specific L-3 development standards, relating to dispersion (the lot is closer than 600 ft. to the lot of another institution); relating to parking (two spaces are required, only one is proposed); and setback (outdoor play equipment is to be no less than twenty ft. from residentially zoned properties), administrative conditional use approval is required.

12. DCLU granted the conditional use but in doing so prohibited outdoor play activities before 9:00 a.m.; and required applicant to provide a monthly subsidy for the cost of at least one employee's Metro bus pass.

13. Robert Simeone, a neighbor, submitted this appeal from the DCLU Director's decision. The appeal primarily addressed parking and traffic concerns although the issues of fire and garbage access were also raised. To the extent that a day care center is to be approved, appellant stated at hearing, the day care center should be limited to ten or less children.

14. 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 of Law

1. One of the multi-family development standards for institutions, Section 23.45.92.D.1.C, provides that "outdoor play equipment and game courts" shall be at least 20 ft. from any abutting residentially zoned lot. Section 23.45.98, regarding parking, requires a day care center to provide one space for each ten children or one space for each staff member, "whichever is greater," and one space for passenger loading and unloading for every 20 children. Section 23.45.102 requires a 600 ft. minimum distance between the lot lines of the new or expanded institution and the lot line of "any other institution in a residential zone."

2. A new institution, such as a day care center, which meets the specified development standards of its zone, is permitted outright in the multi-family zone. An institution not meeting all of the development standards may be permitted in the multi-family zone, but only as an administrative conditional use "subject to the

requirements of Section 23.45.122." Section 23.45.90.

3. The general administrative conditional use provisions require a determination as to whether the proposed use will be "materially detrimental to the public welfare" or injurious to property in the subject zone or vicinity. Section 23.45.116.C. The DCLU Director may mitigate adverse negative impacts by imposing conditions and requirements "deemed necessary" for the protection of properties in the same zone or vicinity of the subject proposal. Section 23.45.116.D.

4. Section 23.45.122 lists the criteria to be used "to evaluate and/or condition" proposals for institutions that do not meet development standards. Subsection B, dispersion, allows an institution in multi-family zones to be located less than 600 ft. from the lot of another institution "if it would not create or further aggravate parking shortages, traffic congestion, and noise in the surrounding residential area..." Noise, transportation, and bulk and siting are other areas for consideration.

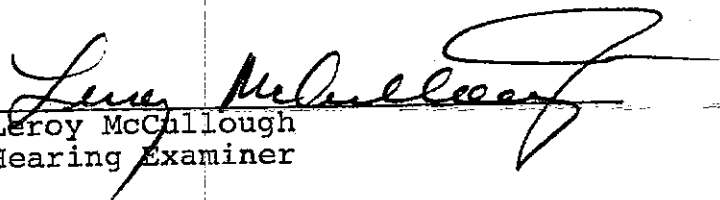
5. Although the appeal did not raise the specific issues of noise or bulk and siting the Examiner would note that the criteria are sufficiently addressed in the Director's analysis. Limiting the hours of the childrens' outdoor activity affords vicinity residents some protection from noise. Further, Boyd's present plans are to accommodate children from one month to two years of age. Their noise levels would be different from those of older groups.

6. The gist of the appeal related to appellant's parking and traffic concern. While vicinity parking is at or near capacity the Examiner notes that the area is well served by several Metro transit routes. One of the DCLU conditions requires applicant to provide a Metro pass for one of the two employees anticipated. The expected length of time involved in loading or unloading children is approximately two minutes. There is no evidence of record that the apron planned to be used for loading and unloading is unsafe or inadequate for that purpose. The day care children will primarily be from the Capitol Hill area. Thus, the proposal will not "create or aggravate" parking shortages, nor prohibitively impact the subject residential area.

#### Decision

The decision of the DCLU Director is Affirmed.

Entered this 23rd day of April, 1984.

  
Leroy McCullough  
Hearing Examiner

#### Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14th days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11). Should such request 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.