

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of the

UNIVERSITY DISTRICT COMMUNITY  
COUNCIL

FILE NO. MUP-87-024(W)  
APPLICATION NO. 8603690

from an environmental determination  
and a decision on a master use  
permit by the Director of the  
Department of Construction and Land  
Use (DCLU)

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#### Introduction

Appellant challenges a DCLU determination of non-significance (DNS) and master use permit conditions for a proposal to construct a three-story classroom, office and gymnasium addition to the University Presbyterian Church, 4540 15th Avenue N.E.

Appellant exercised the 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 June 18, 1987.

Parties to the proceedings were: appellant, by Orabelle Conally, Ph.D. pro se; the DCLU Director, by Patrick Doherty; and the applicant church by Lawrence B. Bailey, attorney at law.

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. Applicant, University Presbyterian Church, proposes to demolish certain of its buildings and construct a three-story classroom, office and gymnasium addition to the church located at 4540 15th Avenue N.E. Applicant proposes 40 parking spaces.

2. DCLU approved the administrative conditional use required in order to expand "an institution not meeting development standards," and imposed several conditions on the approval. DCLU also issued a determination of non-significance (DNS) on the project. Appellant challenges the DNS as well as the adequacy of conditions imposed on the conditional use approval of the project.

3. Much of the background data is undisputed. The subject site is in the University District immediately south of N.E. 47th between 15th and 16th Avenue N.E. The church principal structure, zoned Neighborhood Commercial 2, 40 ft. height limit, occupies the western half of the site and faces 15th N.E.

4. Across 15th N.E., west, is a 3.5 story apartment building, a 50-space parking lot a four-story, approximately 234 space parking garage, and a four-story 80,420 sq. ft. bank building. The parking lot is proposed to be replaced by a five-story commercial building that would have 83,000 sq. ft. of office space, a 45-space parking garage, and 34,700 sq. ft. of underground storage and computer space. The existing parking garage would be capped by a 23,366 sq. ft. office floor. The development proposal, application number 8606630, would not alter the existing bank building.

5. The property to the west is zoned Neighborhood Commercial three and has a 65 ft. height limit (NC3/65'). Continuing westerly is the University Way shopping area.

6. Across 16th N.E., east, is Lowrise 3 (L-3) zoned property that is developed with among other uses student housing structures, one of applicant's accessory parking lots, and three rooming houses proposed for demolition to allow construction of a 45-unit apartment building (#8607021). Continuing easterly are fraternity and sorority houses and apartments.

7. Fifteenth N.E. is a lane 2-way arterial. Sixteenth Avenue is one-way north.

8. Across 47th N.E., north of the site, is a University Presbyterian Church parking lot of 45 spaces. This lot fronts on 15th N.E. and 47th N.E. East of this lot is a residential structure that has been converted to office use. A 45-unit apartment is proposed for the northeast corner of N.E. 45th and 16th N.E.

9. The northwest sector of the University of Washington campus is located immediately south of N.E. 45th at 15th N.E. Uses on this portion of the campus include the Burke Museum and University of Washington parking lots N-1, N-2, N-4 and N-5. These lots are generally available for public parking during evening hours.

10. The "block" containing the applicant's development site extends south to N.E. 45th and extends from 15th N.E. to 16th N.E. frontage. The "block" is bisected by a 14 ft. wide alley that extends from 47th to 45th.

11. The applicant's principal church structure extends south from 47th for roughly 1/2 the "block" and extends east to the intervening alley.

12. The eastern half of the subject site, oriented to 16th N.E., contains the Ellsworth Storey Inn, a historic landmark. Also on this eastern portion, continuing to the south, is a second annex building, a 27-space parking lot and two residential buildings that the applicant has been using for accessory classroom and program spaces. There is no DCLU record of change of these buildings from residential to institutional uses.

13. The University Congregational Church building and accessory parking oriented to 16th N.E. occupy the remaining southeast portion of the block. The southwest portion of the block is developed with a University Congregational accessory parking lot, oriented to 15th. Commercial buildings are located between the University Presbyterian's southern lot line and this University Congregational accessory lot.

14. Vicinity apartment buildings and other structures vary in height and scale. Some apartments are four-stories high.

15. Applicant proposes to construct and functionally integrate a contiguous addition to the existing building. This would eliminate the need for parishioners to cross the alley for access. Applicant has sought Board of Public Works approval to vacate the northern portion of the alley and to redirect it as a new 22 ft. wide alley to 16th N.E. at approximately mid-block. Applicant's counsel indicates that BPW has responded positively to the requested alley vacation.

16. The proposal is to further demolish the applicant's building annex as well as the two residential buildings used for accessory classroom space. The intervening 27-space parking lot will also be eliminated. The new construction would consist of a three-story, 22,920 sq. ft. contiguous addition to the church. Included in this area is 7950 sq. ft. of classroom space and a 6390 sq. ft. gymnasium. There would be 40 first-level parking spaces accessible from the alley.

17. It is undisputed that the net increase in floor area approximates 3000 sq. ft. There is a 13-space net increase in parking.

18. The expansion would begin some 52 ft. south of N.E. 47th. Within this intervening lot area would be landscaping, the Ellsworth Storey Inn Chapel and the existing landscaped courtyard.

19. The proposed building's width to its north would be 208 ft. while 150 ft. is the maximum allowed absent exception. The 16th N.E. facade would be 150 ft. and would be separated from 16th by a landscaped setback of 14 ft.

20. Because the width of the building along N.E. 47th exceeds the L-3 development standard of 150 ft., and because the addition is proposed for siting beyond existing institutional boundaries, i.e. an expansion of the boundary within 600 ft. of other institutions, administrative conditional use approval was required.

21. Among the conditions attached by DCLU to the conditional use approval are requirements that

1. The Ellsworth Storey Inn and courtyard shall be retained and preserved.
2. The UPC shall schedule events so as to avoid the concurrence of large events.
3. All literature distributed to potential attendants of large events shall include information regarding available parking and incentives/encouragement for car-pooling.
4. The owner...shall provide landscaping according to the plan approved by the Land Use Specialist...
5. In order to keep weekday parking impacts at a minimum, the UPC shall not lease out any of its parking facilities to other parties.

22. Appellant and others challenged the DCLU decision by raising several issues. The contentions are reduced to concern with traffic, parking, cumulative effects and air quality. Strenuous objections were raised with respect to the alley vacation and the impact of same on pedestrian and vehicular circulation.

23. Appellant submitted a copy of a letter from the Puget Sound Air Pollution Central Agency which indicated that carbon monoxide standards were not being met in the University District. According to appellant, the project area is a non-attainment area which will be adversely impacted by any increase in vehicular pollution, such as appellant expects to result from the proposal.

24. Appellant also urged that applicant be requested to show 1986/87 attendance records to establish peak periods and "worst case" frequencies. In fact the transportation consultant reviewed the 1986 church schedule, attendance, and operation at peak and non peak times.

25. According to applicant's credible testimony, the proposal is not designed to increase the congregation membership.

26. Full occupancy of all new proposed floor area, such as by conferences or other special events, would mean an attendance of 1185. Applicant indicated to DCLU that any such large events would occur only one - two times per year, if at all. No evidence of record refutes this projection. In addition, the sanctuary is large enough to accomodate a conference or workshop of 430 people.

27. Although questioned, it was not controverted that a worst case event would yield a parking demand of 516 vehicles which could be accommodated by parking spaces in the applicant's, University of Washington and west adjoining neighbor's parking garage or vicinity pay lots. These pay lots are at 70 - 75% capacity.

28. Although variations would be affected, nearby levels of service would not be reduced by the proposal singly or in conjunction with anticipated p.m. peak hour trips from the proposed office building, apartment, or the applicant's proposal. If applicant's maximum 1185 attendees arrived between 6:30 - 7:30 p.m., via 516 vehicle trips, these trips would reduce the levels of service at N.E. 45th - 15th N.E. from C to D and N.E. 47th - 15th N.E. from B to C. LOS D is considered as stable, and acceptable. (Testimony of J. Rosenstock, SED).

29. There is a distinction between the character of the peak vehicular activity anticipated. For example, applicant's attendees are more likely to require intermittent evening parking. The west adjoining development would likely generate day-time vehicular use. Residents in the vicinity would more likely need longer term e.g. overnight parking.

30. DCLU indicated that as the proposed development was less than 4000 sq. ft., no transportation plan was required.

31. Applicant's proposal meets the requirement for on-site accessory parking. It is also noted that the church has access to evening parking in the 234-space west adjacent parking garage and on the University Washington campus. The evening parking at the bank garage is by informal agreement. There is no indication that the developer of that site will constrict the arrangement.

32. Per witness Rosenstock, the Seattle Engineering Department generally considers parking utilization to be 85 - 115% from 8:00 a.m. - 10:00 p.m. 6 days per week in the University District. "Off-peak" parking is 75 - 80%. According to another appellant - witness, one University District Transportation Project proposal is to move bus traffic from University Way to 15th, with a bus - only lane on the west side of 15th. This would mean, continued the witness, more traffic and less parking along 15th N.E.

33. Applicant's unrefuted study of alley usage and access was submitted into record. The alley is used for parking and pedestrian access, garbage collection (once weekly) and through traffic. The report indicated that 21 vehicles used the alley for access to and from parking during the weekday p.m. peak hour, and 30 during the Sunday peak. Exhibit 24B. Of the 5 vehicles observed using the alley for through access during the weekday p.m. peak hour, four "used the alley illegally" to access either 47th from 45th or to access sorority/fraternity parking.

34. It is expected that the 45-unit apartment building planned for the northeast corner of N.E. 45th and 16th N.E. will generate, by conditions to that proposal, no overflow parking demand.

#### Conclusion

1. The Hearing Examiner has jurisdiction of this matter pursuant to the procedures of Chapter 23.76, Seattle Municipal Code.

2. Seattle Municipal Code Section 23.76.22(B)(7) provides that while the DCLU Director's environmental determination shall be given "substantial weight" no deference need be given the DCLU's determination on an administrative conditional use.

3. With regard to the environmental determination, it is appellant's burden to show DCLU's decision to be clearly erroneous. The burden was not met in this case.

4. While it is true that applicant proposes to add gymnasium and classroom space to its campus, it is also true that demolition of three of its structures is proposed to make way for the new construction. A 27-space parking lot will be eliminated; however, a 40 space garage will be built. The net increase of 13 vehicle spaces was not shown to significantly impact the environment in an adverse manner. Nor does the record support any conclusion that added vehicular traffic will significantly impact the air quality of the vicinity.

5. Similarly, the alley vacation represents a modification to the circulation pattern. Its proposed configuration could cause rerouting and some inconvenience to pedestrians and motorists, particularly to those accustomed to traversing the alley between 45th and 47th N.E. However, the record fails to show that the rerouting or delays occasioned would be of "more than a moderate effect." In point of fact, some benefits to safety could be realized by requiring pedestrians and motorists to utilize the existing, routine street and crosswalk system.

6. Applicant made sufficient showing of available parking for its overflow on the university campus, on applicant's lots and within the west adjoining garage. Appellant failed to show that the frequency or amount of this project's overflow parking, singly or conjunction with other vicinity proposals, would produce a significant adverse impact.

7. The possibility of the shift of bus traffic to 15th was considered in this analysis. However, to require an EIS, the adverse impacts must be shown to be "significant" and "probable." Probable is defined as "likely or reasonably likely to occur," as opposed to remote or speculative. Seattle Municipal Code Section 25.05.782. "Significant" means "a reasonable likelihood of more than a moderate adverse impact..." Seattle Municipal Code Section 25.05.794. The 15th Avenue N.E. bus proposal, and its impacts on on-street parking availability, were shown to be only speculative in nature. Further, no "reasonable likelihood" of capacity use of the campus was demonstrated.

8. Seattle Municipal Code Section 23.45.122(A) provides that the DCLU Director may modify applicable development standards for "...provision of open space, and structure width, depth and setbacks." The proposal building at 208 ft. of width will be set back 52 ft. from N.E. 47th street. Between N.E. 47th and the facade will be landscaping and the Ellsworth Storey Inn and courtyard. The proposal will allow the applicant to retain the Inn while at the same time provide a more efficient building operation at no substantial loss of compatibility with the "residential scale and character of the surrounding area."

9. No transportation plan is required since the proposed expansion is less than 4000 sq. ft. Seattle Municipal Code Section 23.45.122(C).

10. The record shows some potential aggravation of parking shortage in the immediate area that will be reasonably accommodated by institutional and commercially zoned lots. There is sufficient evidence from which to conclude that a use of the new facility to capacity would reduce the level of service at two intersections that control residential and institutional traffic, and that such a phenomenon would aggravate surrounding traffic congestion. For this reason, the conditional use should be further conditioned to prohibit conference or other activities which would result in full occupancy of classroom and gymnasium space.

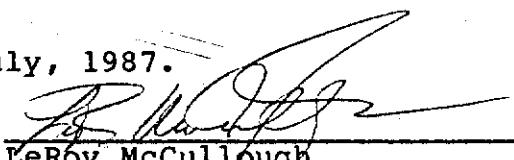
DCLU is authorized to monitor compliance with this and the previously established conditions to the permit. Appellant's other issues have been considered and the Hearing Examiner determines that no further action is presented as appropriate on this project.

Decision

The DNS is AFFIRMED.

As MODIFIED above, the DCLU decision on the administrative conditional use is AFFIRMED.

Entered this 6th day of July, 1987.

  
LeRoy McCullough  
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake or irregularity in vital matters. Any request for judicial review of the decision must be by application for writ of review filed in King County Superior Court within fifteen days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review within 30 days after the date of the decision on the underlying governmental action if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 400 Seattle Municipal Building, Seattle Washington 98104, within fifteen days of the date of this decision. Seattle Municipal Code Section 25.05.680(D)(4).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost for preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available in the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104. In the alternative, RCW 43.21C.075(6)(b) provides that a tape may be used for the court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of taped transcript relating to issues on review.