

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of Appeal of

JULIA M. LANTER ET AL.

FILE NO. MUP-87-032(CU)

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

APPLICATION NO. 8702885

Introduction

The Hope Lutheran Church proposes to use an existing church education building to house a new day care facility at 538 N.E. 127th St. The Department of Construction and Land Use (DCLU) granted the administrative conditional use approval required and several neighbors appealed.

The appellants 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 September 9, 1987.

Parties to the proceedings were: appellants by Julia Lester, pro se; project applicant by Pastor Ron Blake, Hope Lutheran Church; and the Department of Construction and Land Use by Ed Somers, land use specialist.

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. Hope Lutheran Church, applicant, proposes to establish a day care center in the Church Educational Building at 538 N.E. 127th St. The Department of Construction and Land Use granted the administrative conditional use approval required to allow a day care center in a single family zone and neighbors of the property submitted this appeal.

2. The proposal site is zoned Single Family 7200 and is located directly west of a portion of Roosevelt Way N.E. that intersects with segments of N.E. 127th St. and 8th Avenue N.E. The Interstate 5 freeway is two blocks west. The Hearing Examiner finds in accord with applicant testimony that the freeway and Roosevelt Way traffic patterns provide an undertone of vicinity noise.

3. The irregularly-shaped lot has approximately 335 feet of frontage on south adjacent N.E. 127th. The north lot line extends easterly some 226 feet to Roosevelt Way N.E. The lot line then angles southeasterly for its 148 feet of frontage along Roosevelt Way. It then drops south for approximately 21 feet to the N.E. 127th St. frontage. The west lot line is roughly 120 ft.

4. Topographically, the lot slopes down from west to east.

5. The site is presently developed with a church building and a separate, more easterly education building. Between the two buildings, generally to the Roosevelt Way frontage, is a fenced play area. This portion of the lot is landscaped. A parking lot for 32 cars is located on the western portion of the lot and is not landscaped.

6. Applicant proposes to use the church education building to have a 34-children, 6-member staff day care center. Because the school year has already commenced and many parents have already located day care for their children, the proponent is uncertain of the geographic origin of the infants - 6 year olds that will be using the day care. No new construction is proposed, and the applicant expects that drop-off and pick-up times for the children will vary.

7. DCLU indicates that in addition to a minimum of three loading spaces, a minimum of 6 parking spaces (one per staff member) is required.

8. Approximately 10 angled parking spaces are located on N.E. 127th adjacent to the site. At least one neighbor cautioned that the topography made it "very dangerous" to back out of these spaces.

9. Across N.E. 127th, described as a "neighborhood collector street", are single family dwellings. Single family residences also surround the project site to the north, east and west.

10. The N.E. 127th right-of-way is 60 feet, but is developed only as a two-lane roadway (approximately 30 ft. curb to curb). Roosevelt Way is also a 60 feet right-of-way, but is an arterial (major traffic volume roadway).

11. One area resident described the Roosevelt - 8th Avenue - N.E. 127th intersection as "terrible". Among other things, he complained, some people simply fail to stop at the 127th street stop sign. According to this witness, any added traffic such as would be expected from a day care operation will exacerbate an already unsafe situation.

12. The applicant's principal witness agreed that turns from Roosevelt to N.E. 127th can be problematic, but disagreed with the suggestion that the day care traffic would aggravate the traffic or safety pattern. Applicant submitted and DCLU accepted a transportation plan that complies, per DCLU, with the requirements of Seattle Municipal Code Section 23.44.022(M). No challenge was made to the plan.

13. The Department of Construction and Land Use reported that the Seattle Engineering Department, privy to peak hours and other traffic counts, reviewed the proposal and expressed no concerns with the proposal.

14. In addition to 8 letters opposing the project, the Department of Construction and Land Use received a petition of 15 voluntary signatures. The petition expressed grave concern with traffic access and noise problems expected to be generated by the day care proposal. Opponents also spoke out against (new) non single-family use of property located within the subject SF 7200 zone, and with the potentially negative precedent.

Conclusions

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

2. Seattle Municipal Code Section 23.44.022 permits day care centers as conditional uses in single-family zones. According to Seattle Municipal Code Section 23.44.018(C), a conditional use

...may be approved, conditioned or denied based on a determination of whether the proposed use meets the criteria for establishing a specific conditional use and whether the use

will be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.

3. There is no challenge to DCLU's conclusion that the proposal meets development standards. The essential controversy concerns the noise, traffic and land use impacts that the proposed day care center is expected to have on the surrounding residential community.

4. Neither DCLU nor applicant disputes the claim that the day care operation will increase the level of vicinity noise. The application clearly reflects, however, that the proposal is for 34 children. Some of these children will be infants. The fenced play area is most proximate to the Roosevelt Way vehicular traffic noise and is farthest removed from N.E. 127th Street residences. Assuming that each child is driven to and picked up from the day care center, singly, there would be a total of 68 new vehicle trips to and from the vicinity. Ten parking spaces are available on N.E. 127th and another 32 spaces in the parking lot. Given the background noise of the I-5 freeway and the Roosevelt Way arterial, the 68 day care vehicle trips, spread over the course of the day, would not be "materially detrimental...or injurious."

5. Concerning the traffic impact, the proposal site is adjacent to and directly accessible from Roosevelt Way N.E., a major arterial. The site is also accessible via 8th Avenue N.E. and N.E. 127th Street. Therefore, there should be limited penetration into the adjoining residential neighborhood. While the increased activity will be of more effect on the N.E. 127th Street - fronting residences, the vehicular activity will not be "materially detrimental" to the immediate or the more extended residential community. Further, DCLU has received, and approved, applicant's transportation plan, and the Seattle Engineering Department has indicated no specific concern with the day care operation's impact on present traffic patterns and safety.

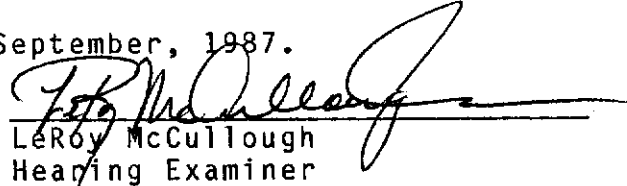
6. As noted in Conclusion 2 above, there is legislated permission for day care centers to be located in single family zones. The legislation does not indicate that decisions on these applications should be based solely upon majority, community sentiment although the community sentiment can be a vital consideration in the "public welfare" analysis.

7. The test for day care approval is whether the proposal meets the criteria of Seattle Municipal Code Section 23.44.022 and Section 23.44.018. The requisite criteria are satisfied in this case. For example, the church is an existing institution which would house the day care operation. Development standards would be met. No demolition or use of any residential structure is proposed. Seattle Municipal Code Section 23.44.022(C)(D)(E)-(F). There is no evidence that additional landscaping should be required and no change in exterior bulk or siting is proposed. Seattle Municipal Code Section 23.44.022(H)(J). Parking and loading area requirements would be met. Seattle Municipal Code Section 23.44.022(L). The DCLU decision should therefore be affirmed.

Decision

The DCLU decision to issue the master use permit is AFFIRMED.

Entered this 17th day of September, 1987.


Leroy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW OF
HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

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 party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104, (206) 684-0521.