

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

JEANNE AND EDWARD HANSEN

FILE NO. MUP-88-074(W)  
APPLICATION NO. 8802992

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

#### Introduction

Applicant proposes to construct a four-story, 14 unit retail/apartment mixed use building on property addressed as 9212 - 45th S.W. Appellants challenge the adequacy of conditions imposed on the project.

The 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 December 19, 1988 and remanded to DCLU on December 20, 1988 for a report by January 10, 1989. Responses thereto were due by January 17, 1989; however, the Hearing Examiner extended appellants' time to February 3, 1989.

Parties to the proceedings were: appellants, pro se; applicant by Jerome Cohen, Esq.; and the DCLU Director by Faith Lumsden, 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, and subsequent to a visit to the site and environs, 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 consists of a 9632 sq. ft. area site that is located at the northeast corner of S.W. Wildwood Place and 45th Avenue S.W. The site has approximately 144.5 ft. of frontage along west adjacent 45th. It has nearly 60 ft. of frontage along south adjacent Wildwood Place. The street address is 9212 - 45th S.W.

2. The site is presently developed with an abandoned service station structure that has been in more recent use for auto repair. Generally, the entire site is covered by structure or asphalt.

3. Applicant proposes to demolish the present structure and construct a four-story mixed use building. Fourteen apartment units are proposed as are covered and surface parking for 21 vehicles. The parking area would be located north of the new building and over a water line easement that bifurcates the site. Access would be via a platted but unopened portion of S.W. Barton Street that abuts the property's north property line.

4. The portion of S.W. Barton would be paved to a 16 ft. width. Also, curbs, gutters and a sidewalk would be constructed. The standards for these improvements are included in a Seattle Engineering Department letter of record to project architect. SED will require applicant to provide drainage control for new street improvements and applicant will be required, per the architect, to use piles to elevate the street above the ravine. This will facilitate stability of the bank. Street trees along

45th S. W. and S. W. Wildwood Place adjacent to the development will also be required. Exhibit 10.

5. The proposed use will intensify site and vicinity development. Private views will also be diminished, including the view from east adjacent site. No public or historic view points will be impacted.

6. Applicant is proposing 3200 sq. ft. of commercial space expected to generate 78-130 trips spread throughout the day. Approximately 10 percent of the trips will occur during peak periods. The 14 apartments are expected to generate approximately 6.1 trips per unit or 85 daily trips. The nighttime parking demand will approximate 1.5 spaces per unit, or 21 spaces.

7. "Based on several night-time visits," DCLU reports that evening parking is "well below on-street capacity." at p.2, DCLU Decision. According to appellant, however, parking remains an issue. Her check within a 1-2 block radius Monday - Thursday revealed no legal parking. Applicant also noted that parking was available within the vicinity, and the architect testified that the vicinity could handle any increased demand. No parking utilization study was submitted. Applicant is proposing two commercial parking spaces, the minimum required per code. (There is a 2500 sq. ft. exemption for commercial parking requirements. The minimum parking is that required for the remaining 700 sq. ft.)

8. The subject area is included within a Residential Parking Zone (RPZ). On-street parking is limited to residents from 2:00 a.m. - 5:00 p.m.

9. The subject site is included within an irregularly-shaped Neighborhood Commercial zone that has a 30 ft. height limit (NC1/30'). Included within this zone is an office building directly south, across Wildwood Place, of the site. With S. W. Brace Point Drive as its southern boundary, this neighboring site is bordered on its three sides by Wildwood Place, Brace Point, and by 45th. A portion of this NC1/30' node extends west along Wildwood to 46th S.W.

10. East adjacent to the subject site is a single family residence within the NC1/30' zone. Generally, applicant proposes no building setbacks. The exception is for the southeast corner of the lot in recognition of this east neighbor's easement over this (triangular) portion of the lot.

11. The subject property is separated from Single Family 5000 zoning by this one lot to the east, but single family zoning is also present to the south and west of the NC1 node. North and west of the site itself are apartments within the L-3 zone.

12. The Brace Point - Wildwood route is a direct, popular access to the Vashon - Southwest ferry. Appellants and others expressed grave concern that the safety of the 45th - Wildwood intersection would be decreased by the bulk (and population) of the proposal, especially when the ferry is loading or unloading. Presently, there are stop signs on 45th only. One of appellants' demands was for a four-way stop and for increased building setback at this intersection.

13. After the hearing of December 19, 1988, the Hearing Examiner remanded the application for DCLU's further review and analysis of the sight-line, pedestrian and vehicular safety issues relating to the 45th - Wildwood intersection. DCLU responded with added requirements for applicant "to improve vehicle sight distance and enhance pedestrian safety:"

(1) Construct a curb bulb at the northeast corner of 45th Avenue S. W. and S.W. Wildwood Place (to match the existing curb bulb on the northeast corner).

(2) Construct new handicap ramps on both

sides of 45th Avenue S.W. to allow for relocation of the painted crosswalk, thereby providing adequate sight distance for southbound traffic on 45th S.W....

See illustration Exhibit A, p.3, of DCLU Memorandum.

14. In their reply, appellants indicated that, subsequent to meeting with them, SED "agreed to put in four-way-stops, traffic warnings, crosswalks and speed buttons." While recognizing these as improvements appellants maintained that the proposed building should be set back 10 ft. or more for the visibility and safety of pedestrians and vehicles.

15. Attached to the DCLU supplemental memorandum are SED illustrations, notes and computations. Exhibit A, p.2 of the Memorandum shows that at 35 mph and friction factor of 0.345 the "stopping distance" along S.W. Wildwood Place between 45th and 44th S.W. is 218.1 ft. At 30 mph, the stopping distance is 159.5 ft. With the curb bulb, Finding 12, the sight distance at 30 mph is 225 ft.

16. Adjacent residences and nearby buildings, including the Seattle Housing Authority building, tend to provide setbacks. The Joslyn building, directly across Wildwood, has a setback from the curb of approximately 19 ft. The Wildwood Glen Building at the northwest corner of 45th and Wildwood has a setback of some 27 ft. See Exhibit 3.

17. Appellants also were concerned that building activity could cause debris to block the creek below the Barton right-of-way and lead to erosion and other adverse consequences.

18. The Grading and Drainage Ordinance is expected to address excavation, erosion and drainage issued related to construction. Other construction-related impacts will be temporary, such as decreased air quality, mud tracking and increased parking. These will also be subject to noise ordinance, street use and other codes and regulations.

19. The site's rain and stormwater will be collected and held in underground storage and discharged at the existing storm sewer system at the normal site discharge rate.

20. The northeast corner of the site is fill. When the building permit is reviewed, a soils survey and report will be included within that review. Building foundation and lot stability issues will be covered at this stage. Testimony of DCLU.

21. The site is relatively flat and within two blocks of a transit stop. The topography increases in elevation as one proceeds to the east.

22. Anticipated long-term impacts include increased traffic, airborne emissions, vehicular and human activity, noise levels, density and increased parking demand.

### Conclusions

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

2. The DCLU decision here appealed shall be given "substantial weight," Seattle Municipal Code Section 23.76.022(C)(7). It is therefore appellants' burden to show the decision to be "clearly erroneous." It is not enough to show that a different decision could have been made. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. The principal challenge is to DCLU's failure to require that the proposed building offer a (10 ft. or more) setback from Wildwood. DCLU's decision on this point, as supplemented, is affirmed.

4. While there appears to be an ample policy basis to make the development more responsive to the environment, e.g. Seattle Municipal Code Section 25.05.075(R)(1)(c), (R)(2), mitigation measures must be reasonable in relation to the impact. Seattle Municipal Code Section 25.05.660(A), In Re the Appeals of the Queen Anne Community Council et al. (Victoria Apartments), C.F. No. 293623 (1985). Further, implementation requirements may be imposed on the applicant "only to the extent attributable to the identified adverse impacts of its proposal." Seattle Municipal Code Section 25.05.660(A)(4).

5. The issue of traffic and pedestrian safety at Wildwood and 45th predates the proposal. The project, however, will add pedestrian and vehicular traffic to the present environment. Some balance must therefore be reached in order to determine what "reasonable" mitigation measure should be imposed.

6. The supplemented DCLU decision accords with the principals and dictates of Chapter 25.05, Seattle Municipal Code. Applicant will be required to construct a curb bulb and relocate the crosswalk so that vehicles exiting 45th to Wildwood will have improved visibility. The SED information of record shows that with the curb bulb, the sight distance at 30 mph is 225 ft. At 30 mph the stopping distance is 159.5 ft. along Wildwood between 44th and 45th S.W. Although existing vicinity buildings offer setbacks, appellants have failed to show that the DCLU decision, which declines to order a building setback, is "clearly erroneous." Voluntary additional mitigation is permitted, however. Seattle Municipal Code Section 25.05.660(A)(4).

7. The Hearing Examiner also notes the appellants' representation that SED has "agreed to install four-way stops, traffic warnings, crosswalks and speed buttons." This clearly supports the DCLU decision here at issue.

8. Appellant has raised questions about the safety and viability of the stream, ravine, bank and soil. Drainage, soils, foundation and similar issues are addressed by existing codes and processes, including the building permit process. No direct evidence was submitted showing that the proposal should be further conditioned.

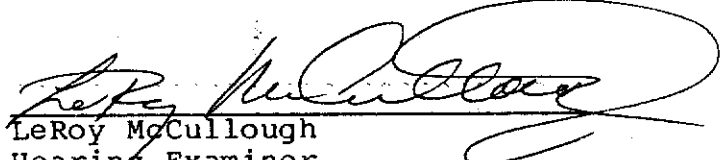
9. Similarly, no information is presented which would sustain modification, pursuant to SEPA, of the parking. No parking study was submitted which would show the parking utilization within the defined vicinity. Code requirements (minimum) for commercial parking have been met. The weight of the evidence supports a conclusion that the vicinity can reasonably absorb the need generated by additional commercial and residential traffic and parking. Given the burden of persuasion, Seattle Municipal Code Section 23.76.022(C)(7), the Hearing Examiner affirms the decision here at issue.

10. Buildings to the east tend to have an elevated topography. Private views are not protected pursuant to SEPA. Therefore, the Hearing Examiner cannot order modification to the building for view protection. Cf. Seattle Municipal Code Section 25.05.675(P).

#### Decision

The DCLU decision is affirmed.

Entered this 21st day of February, 1989.

  
LeRoy McCullough  
Hearing Examiner

CONCERNING FURTHER REVIEW

Pursuant to Seattle Municipal Code Section 25.05.680(C), a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center. The decision is filed with the SEPA Public Information Center the same day that the decision is signed by the Examiner. The SEPA Public Information Center telephone number is 684-8322. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 25.05.680(C), the time for filing a request for judicial review of the underlying governmental action and/or other SEPA issues is stayed until the City Council renders a final decision on this Section 25.05.680(C) appeal.

If no appeal is taken pursuant to Section 25.05.680(C), 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 on the underlying governmental action must be filed in King County Superior Court within fifteen days of the date of this Hearing Examiner 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 this decision 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. 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 of preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available for the Office of Hearing Examiner, 400 Yesler Building, 5th Floor, Seattle, Washington 98104. As an alternative to the written transcript, RCW 43.21C.075(6)(b) provides that a tape may be used for 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 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 the taped transcript relating to issues raised on review.