

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

In the Matter of the Appeal of

MCDONALD'S CORPORATION

FILE NO. MUP-89-008(CU)
APPLICATION NO. 8805591

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

Introduction

Applicant proposes to increase a drive-in window area and resite parking on restaurant property addressed as 8533 Greenwood Avenue North. DCLU denied the administrative conditional use required for the proposal.

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 April 4, 1989.

Parties to the proceedings were: appellant by Jerry Kesselring, pro se, and the DCLU Director by Susan Kanimatsu, 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. Applicant wishes to add approximately 168 sq. ft. for office space and fast-food pick-up to an existing restaurant addressed as 8533 Greenwood Avenue North. DCLU denied the administrative conditional use application for the project and applicant submitted this appeal.

2. The basic facts are undisputed. The proposal site is a lot that extends east from Palatine Avenue North to east parallel Greenwood Avenue North. This L-shaped, through lot has 118 ft. of frontage to Greenwood Avenue, 198 ft. of frontage to Palatine and has a lot area of approximately 41,200 sq. ft.

3. As of 1986, the eastern portion of the site was included within the pedestrian street (P-2) overlay of the Neighborhood Commercial zone. Also, this east portion is developed with the existing 3700 sq. ft. restaurant proposed for modification.

4. The block front to Palatine (west) is zoned Neighborhood Commercial 2 with a 65 ft. height limit (NC2/65'). This portion of the site is developed with a 49-space accessory parking lot. One two-way driveway to Palatine is at the northwest corner of the lot; a second is at the southwest corner.

5. The more northerly ingress from Palatine leads to a one-way drive past an existing drive-in window located on the buildings's south side. This 12 ft.-wide drive winds its way past the parking area to return to Palatine via a southerly exit.

6. Incoming traffic from Greenwood Avenue North uses a curb cut located at the lot's southeast corner. This traffic blends with the pattern of exit from the drive-through window. No exit

is permitted to Greenwood.

7. The remainder of the lot is developed with shrubs, ground cover and other landscaping. A former children's play area has been converted to six standby parking spaces for drive-in customers.

8. The restaurant was developed under a 1979 administrative conditional use (X-79-250). The drive-in window was added by a separate, 1983 conditional use action.

9. Adjacent to the subject property are other commercial zones. To the west is a Commercial 1 zone with a 40 ft. height limit. Residential commercial is adjacent to the northwest. East, across Greenwood, are other NC2/65'-zoned properties.

10. Applicant proposes to extend the existing drive-in window eastward, toward Greenwood, by a 28 ft. long, 6 ft. deep addition. This addition will allow the restaurant to add a small office and to have separate cashier and food distribution windows.

11. Although there would still be two employees at the window service (one per station) the service time would be reduced by implementation of the proposal. Since more aggressive marketing is envisioned, applicant is apprehensive that denial of this application will mean that more customers would be backed into the street awaiting service.

12. The plan also calls for the conversion of five parking lot spaces to an area for outdoor dining.

13. Greenwood and Palatine Avenues are paved and developed with sidewalks and curbs. Greenwood Avenue, a minor arterial, carries approximately 14,700 vehicle trips per day.

14. The vicinity Greenwood Avenue frontage is dominated with storefronts built to the front lot lines. The proposal, inclusive of the several litter cans for the site, will affect the subject building and the vicinity aesthetics to an insubstantial degree.

15. Applicant applied for this conditional use after consulting with DCLU personnel regarding the ultimate proposal.

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code. After a review of this appeal and the applicable codes, the Hearing Examiner here affirms the DCLU decision.

2. Fast food restaurants which exceed 750 sq. ft. in gross floor area (and which are identified as heavy traffic generators) are permitted as conditional uses in commercial zones so long as the provisions of Seattle Municipal Code Section 23.47.006A and B are met. Seattle Municipal Code Section 23.47.006B.

3. There is no contest regarding the compatibility of the structure, as proposed, with vicinity structures. The 168 sq. ft. addition and parking configuration are minor changes with little visible impact on vicinity character. Section 23.47.006B.1.a. Adequate litter control measures are in place. Seattle Municipal Code Section 23.47.006B.1.b. Based on the proposal site's adjacency to other commercial zones, and based on the access to and from the subject site, no "significant additional traffic" will circulate through "adjacent residential neighborhoods." Section 23.47.006B.1c(1).

4. The proposal will tend to detract from queuing across either sidewalk, and will not adversely impact the pedestrian retail frontage. No prohibitive traffic or peak hour transit problems will be presented. Section 23.47.006B.1.c(2)-(6).

5. However, the proposed addition is within the pedestrian zone. This zoning was implemented subsequent to the initial conditional use (1979) and after the separate action to approve the drive-in window (1983).

6. Property within the pedestrian zones are subject to Section 23.47.006B.1.d. That subsection provides that a conditional use within the pedestrian zone "shall not:"

- (1) Include a drive-in facility; or
- (2) Provide any accessory parking...

7. Seattle Municipal Code Section 23.47.042C provides that drive-in businesses are prohibited in pedestrian-designated zones.

8. Further, the proposal falls within no exception to the rule against the "expanding or extending of a structure containing a nonconforming use." Section 23.47.036B. The new window and other proposal elements will be convenient for the restaurant, but do not constitute the replacement of a structure destroyed by fire or similar catastrophe; will not provide legally required access for the elderly or disabled; and are not "structural alterations", defined at Seattle Municipal Code Section 23.84.036"S" as

...any change in the supporting members of a building, such as foundations, bearing walls..., columns, beams or girders...

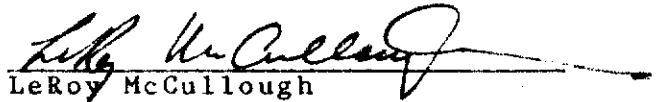
9. Finally, approval of this conditional use in contravention of the above-cited provisions would suggest material detriment to the public welfare. Seattle Municipal Code Section 23.47.006A.1.

10. The question of whether variance or other relief is needed to address the specific proposal is not before the Hearing Examiner.

Decision

The conditional use is denied.

Entered this 19th day of April, 1989.


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 23.76.22C.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, Room 230, Arctic Building, 700 Third Avenue, Seattle, Washington 98104, (206) 684-0521.