

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

In the Matter of the Appeal of

**DOUGLAS F. DU MAS and
SAMUEL and MARTHA JACOBS**

from a decision of the
Director of the Department of
Construction and Land Use

Hearing Examiner Files:

MUP-90-066(W)

MUP-90-067(W)

DCLU Application:

8804986

Introduction

On July 30, 1990, the Department of Construction and Land Use (DCLU) entered a Determination of Non-Significance (DNS) with conditions in relation to the subject application. The appellants filed this appeal pursuant to Seattle Municipal Code Chapter 23.76, the City's Master Use Permit Ordinance.

After numerous continuances, the hearing on this matter was held before the undersigned Deputy Hearing Examiner (Examiner) on March 31, 1993. The parties to the proceedings were represented as follows: appellant Douglas DuMas, pro se; appellants Samuel and Martha Jacobs by Samuel Jacobs, pro se; the applicant, Quality Food Centers (QFC), by Alison Moss, attorney-at-law; and the Department of Construction and Land Use by Patrick Doherty, Senior Land Use Specialist. The Gables Cooperative, which was granted intervener status by order dated March 19, 1993, was represented by J. Anthony Hoare.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code (SMC or Code), as amended, unless otherwise indicated.

After due consideration of the information presented at the hearing and provided by the DCLU report, 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 is located on 15th Avenue E. between E. Republic and E. Harrison in the Capitol Hill neighborhood of Seattle. The property, which measures 37,240 square feet, is bordered on the west by 15th Avenue and on the east by an alley. The property is addressed as 416 15th Avenue E.

2. The site is currently developed with the following:

- an 11,070 square foot QFC grocery store;
- a 36-space parking lot accessory to the store with ingress and egress from both 15th Avenue and the alley;
- a 12-space pay parking lot north of the store, also with ingress and egress from both 15th Avenue and the alley; and
- a 4500 square foot automobile garage with access from and facing E. Republican Street.

3. The property is zoned Neighborhood Commercial 2 with a 40-foot height limit (NC2/40), and is included within a Pedestrian 2 overlay.

4. The QFC is part of a commercial strip that stretches along 15th from approximately E. Denny to the south to E. Roy Street to the north. However, across the alley to the east of the store, the zoning changes to Single Family. The residential neighborhood east of the alley includes a number of older apartment buildings as well as single family homes.

5. 15th Avenue E. serves as a neighborhood collector arterial, with one lane of traffic in each direction, and parking on both sides of the street.

6. The alley east of the store is heavily used, but is very poorly maintained. While the condition of the alley is of considerable concern to the appellants, all parties agreed that the question of the alley's maintenance was outside the scope of this proceeding.

7. The initial proposal by QFC was to demolish the existing auto garage and construct an 8095 square foot addition to the store, filling in the northern parking lot site and the garage site. That addition would have accommodated a bakery and espresso service, a deli and salad bar, a wine shop, a larger meat area, a fish department, an additional merchandise aisle, a grocery store area, an outdoor compactor, and a 60' by 15' truck loading/unloading dock accessible from the alley and E. Republican. In conjunction with this expansion, QFC foresaw a 20% increase in weekend customers, and a 30% increase in weekday customers.

8. In its review of the proposal, DCLU was particularly concerned about the additional parking demand that would be generated by the increased number of customers, and about possible traffic problems that would be created by customers backing up onto 15th as they attempted to enter a fully utilized parking lot. As a result of these concerns, the Department, while entering a Determination of Nonsignificance (DNS), conditioned that decision with a requirement that a parking garage be constructed on the site of the existing accessory parking lot. This garage was to accommodate 50 to 60 parking spaces.

9. Since the time of the DCLU decision at the end of July in 1990, the appellants and the applicant have engaged in lengthy discussions. As a result of those discussions, the applicant has revised the proposal to include an expansion of only 3034 square feet. The revised proposal would include a deli, salad bar, plant department, and some upgrading of some of the existing departments, but would delete a number of the other features originally planned. The new proposal includes a new loading dock in the area of the existing auto garage that would be accessible both from the alley and from E. Republican.

10. As a result of the proposed expansion, QFC envisions a sales increase of 20.4%. However, it believes that this increase would be the result of increased sales per customer, not of an increased number of customers. This belief is based in part on the fact that the smaller addition will not allow the addition of as many features. The belief is also based on the fact that the trade area from which QFC draws its customers is already well saturated, and the fact that the store's competitors are also remodeling and improving.
11. Ninety percent (90%) of the store's customers come from within a one-mile radius of the store.
12. The revised proposal includes a new checkout counter, giving the store a total of seven. This increase in checkout capacity is expected to balance the increase in sales to each customer, so that the amount of time a customer stays within the store will not increase.
13. The proposal also includes revisions to the existing parking lot, giving the lot a capacity of 39 cars. In its review of the project, the applicant's traffic consultant estimated that parking demand during the peak weekday periods was for 37 or 38 spaces, and that weekend peak demand would average 32 to 34 spaces.
14. DCLU reviewed and analyzed the proposed revision, and prepared a memorandum summarizing its findings (Exhibit 2). DCLU concluded that its original Determination of Nonsignificance was still appropriate for the project. However, the Department also concluded that the new, smaller addition no longer required the construction of a parking garage. It did, however, recommend that five conditions be attached to the project. One of those proposed conditions would require that the parking lot be reconfigured to reverse the current ingress and egress pattern. With the reconfiguration, a car turning into the parking lot from 15th would enter the southern lane of the parking lot, and would depart via the northern lane. Another condition would eliminate what would have been a 40th parking space located at the southwest corner of the parking lot. DCLU was concerned that a vehicle backing out of that space would have to back across the sidewalk along 15th Avenue. [The first of these described conditions is reflected on the plans dated March 12, 1991 (Exhibit 4); the second is not.]
15. Two of the other conditions proposed by DCLU would limit the construction hours for the project and require steps to ensure that the mechanical equipment met applicable noise standards. QFC agreed to these conditions, as well as the two referred to above. However, QFC skeptical of a final DCLU condition requiring a parking lot attendant during peak hours to facilitate use of the lot. QFC indicated that if an attendant was required, it would hire one independent of any permit condition, as it would be in the store's best interest to help its customers use the lot. As a compromise, it was proposed at the hearing that a study could be conducted 90 days after the opening of the expansion to determine if the attendant was necessary.
16. The appellants support the revisions proposed by QFC and the new conditions proposed by DCLU.

17. SMC 25.05.675.R states the City's SEPA traffic policy, and provides that "It is the City's policy to minimize or prevent adverse traffic impacts which would undermine the stability, safety, and/or character of a neighborhood or surrounding areas." The section goes on to provide that mitigating measures which may be applied include changes in access, changes in the location, number and size of curb cuts and driveways, and improvements to vehicular traffic operations.

18. SMC 25.05.675.M.2 sets forth the City's SEPA Parking policy. That policy reads, in part, as follows:

a. It is the City's policy to minimize or prevent adverse parking impacts associated with development projects

b. Subject to the overview and cumulative effects policies set forth in SMC 25.05.665 and SMC 25.05.670, the decisionmaker may condition a project to mitigate the effects of development in an area on parking . . .

c. Parking impact mitigation for projects outside of downtown zones may include but is not limited to:

- i. Transportation management programs;
- ii. Parking management and allocation plans;
- iii. Incentives for the use of alternatives to single occupancy vehicles, such as transit pass subsidies, parking fees, and provision of bicycle parking space;
- iv. Increased parking ratios; and
- v. Reduced development densities to the extent that it can be shown that reduced parking spillover is likely to result; provided, that parking impact mitigation for multifamily development may not include reduction in development density.

Conclusions

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

2. The Hearing Examiner must give "substantial weight" to the DCLU Director's decision. SMC 23.76.022 The burden is on an appellant to overcome this weight by proving that the decision is "clearly erroneous." Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. Under the applicable standard of review, the decision of the Director can be reversed only if the Hearing Examiner is left with the definite and firm conviction that a

mistake has been made. Cougar Mt. Assoc. v. King County, 111 Wn. 2d 742, 747, 765 P.2d 264 (1988).

4. The revisions proposed by QFC to its original proposal substantially reduce both the scale and the potential impacts of the store expansion. As opposed to the original proposal which would have almost doubled the size of the store, the revised project increases its size by approximately 30 percent. It is reasonable to conclude that this would substantially reduce the amount of vehicular traffic expected to be associated with the expansion. As such, the deletion of the parking garage requirement from DCLU's original list of conditions is reasonable and is supported by the testimony received at the hearing.

5. As noted above, QFC did not object to any of the conditions proposed by DCLU for the revised project except the one requiring a parking attendant. While the Examiner finds credible the QFC testimony that the attendant will be provided, if needed, independent of any SEPA conditioning, the level of parking and traffic congestion on 15th merit the DCLU concern about cars backing onto the street and the imposition of a SEPA condition. However, it is reasonable to make the provision of an attendant contingent on the results of a study conducted 90 days after the opening of the addition to determine the actual level of utilization of the lot at peak hours.

Decision

The Director's Determination of Nonsignificance is AFFIRMED, as modified below:

In light of the revisions to the project that reduce the size of the proposed grocer store addition to 3034 square feet, the conditions attached to the July 30, 1990 determination are replaced with the following:

1. In order to reduce potential traffic congestion, prior to issuance of the Master Use Permit, the applicant shall revise all plans to indicate that ingress to the parking lot will be directed through the southern lane, and that egress out will be through the northern lane.

2. In order to reduce potential conflicts with pedestrians on the adjacent sidewalk, prior to issuance of the Master use Permit, the applicant shall revise all plans to eliminate the first parking space on the right-hand side, as one enters the lot, while converting the first space on the lefty hand side to a compact car space only. The eliminated parking space shall be replaced with landscaping, including tress, shrubs, and groundcover.

3. In compliance with Section 23.47.108, SMC, prior to issuance of the Master use Permit, the applicant shall submit a report from an acoustical consultant to describe any specific measures necessary to met the Seattle-King County Health Department noise standards for this location with regard to the placement and/or treatment of mechanical equipment.

4. To minimize adverse noise impacts, demolition and construction activities shall be limited to non-holiday weekdays between the hours of 7:30 AM and 6:00 PM.

5. Ninety days after the opening the new addition to the store, a study shall be conducted to determine the rate of utilization of the parking lot at peak hours on week-days and weekends. That study shall also analyze whether a parking attendant would assist in the use of the parking lot. This study shall be submitted to DCLU within 30 days after the traffic counts are taken. If, in DCLU's judgment, an attendant is required, DCLU may require an attendant be employed during the hours of peak usage.

Entered this 13th day of April, 1993.



Guy E. Fletcher
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult appropriate Code sections to determine applicable rights and responsibilities.

Pursuant to SMC Section 23.76.024, a party to the hearing before the Hearing Examiner may file an appeal regarding the adequacy of SEPA conditioning 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 in the Department of Construction and Land Use, 710 Second Avenue (684-8322).

The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. Review on appeal is limited to the issue of compliance with SMC 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

Generally, if no appeal is made to the City Council pursuant to SMC 23.76.024, a party seeking to appeal the Examiner's decision on the SEPA threshold decision must make application to King County Superior Court for a writ of review within 15 calendar days from the date of decision. SMC 23.76.022.

For further information, see RCW Chapter 43.21C, and SMC Chapter 25.05, especially SMC Section 25.05.680.