

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

KURT MANAHAN, ET AL.

FILE NO. MUP-90-069(V)  
APPLICATION NO. 8906669

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

#### Introduction

The appellants exercised their right to appeal pursuant to the master use permit ordinance, Chapter 2376, Seattle Municipal Code.

This matter was heard before the undersigned Deputy Hearing Examiner on November 26, 1990. The record was held open until December 3, 1990, to allow time for a site visit by the Examiner.

Parties to the proceeding were: the appellants by Kurt Manahan; the project applicants by Jeffrey Jarvis, and the Director, Department of Construction and Land Use by Cheryl Waldman, land use specialist.

After due consideration of the evidence elicited during the public hearing and is a result of the personal inspection of the subject property and surrounding area by the Hearing Examiner. 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 at 4614 Aurora Avenue North, at the southeast corner of Aurora Avenue and North 47th Street. The site measures 32 ft. east-west by 100 ft. north-south.

2. The property is zoned Commercial 1 with a 40 ft. height limit (C1/40'). Approximately 45 ft. to the east of the subject site, the zoning changes to Single Family 5000.

3. Land uses in the vicinity are a mixture of commercial and residential developments. Woodland Park is located approximately four blocks north of the site and Greenlake is less than one mile to the north. Properties immediately adjacent to Aurora Avenue between North 45th and North 50th are zoned C1/40, while properties to the east and west of this commercial strip bear various residential zoning designations.

4. The applicants originally applied for three variances for this site.

One of those variances, a variance to allow a reduction in the required amount of landscaping, is no longer sought by the applicants. The two remaining variances are: (1) to allow vehicles to back onto a street and (2) to allow a reduction in curb cut width for two way traffic. The code sections to which those requests apply are 23.54.030.D4, and 23.54.030.E.

5. Section 23.54.030.D.4.c provides as follows:

Turning and maneuvering areas shall be located on private property, except that alleys may be credited as aisle space.

6. 23.54.030.E4.b2 provides as follows:

For two way traffic, the minimum width of curb cuts shall be 22 ft., and the maximum width shall be 25 ft., except that the maximum width may be increased at 30 ft. when truck and auto access are combined.

7. The applicants proposed to develop the subject site with a commercial or mixed use structure as allowed by the C-1 zoning. The details of this future development has not been determined except that, in order to provide on site parking, the requested variances may be required. The site plan submitted with this application indicates three large parking spaces at the northern portion of the site, with on site and off site landscaping along Aurora Avenue and some along North 47th. As proposed, the three parking spaces are situated 12 ft. from the northern property line, resulting in inadequate on site aisle width, which will cause vehicles exiting the site to back onto North 47th Street. DCLU, while approving the variance to allow backing onto the street, conditioned it to require 24 ft. of aisle space for the handicapped space, and 22 ft. for the two large spaces.

8. The proposed driveway, located approximately 13 ft. east of the North 47th Street/Aurora Avenue North intersection, would be 15 ft. wide.

9. Section 23.76.006.B reads in part:

The following decisions are type one decisions which are nonappealable:

...

2. The following street use approvals associated with a development proposal:

- a. Curb cut for access to parking,
- b. Concept approval of street improvements, such as additional on-street parking, street landscaping, curbs and gutters, street drainage, sidewalks, and paving;

10. Before submitting this application for variance, the applicant met with Neil Watts of the Seattle Engineering Department regarding development on

the site. Mr. Watts indicated that access off of Aurora would not be allowed and that access to the property should come off of North 47th Street.

11. Following the hearing, at the request of the Examiner, the DCLU representative spoke to Mr. Watts regarding his advise to the applicant. Mr. Watts indicated that from an operational and safety stand point, access from a lesser street is preferred over that off an arterial.

12. It is the position of the Department of Construction and Land Use, as reflected in their memo to the Examiner of December 3, 1990, that where the Seattle Engineering Department indicates its disapproval of a proposed curb cut location, DCLU will give weight to that denial, as the Engineering Department would, presumably, not sign off on plans that reflected the curb cut.

13. Section 23.40.020.C and D provide as follows:

C. Variances from the provisions or requirements of this Land Use Code or Title 24 shall be authorized only when all the following facts and conditions are bound to exist:

1. Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of the Land Use Code or Title 24 would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity; and

2. The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located; and

3. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located; and

4. The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code or Title 24 would cause undue and unnecessary hardship; and

5. The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan component, as applicable.

D. When a variance is authorized, conditions may be attached regarding the location, character and other features of a proposed structure or use as may be deemed necessary to carry out the spirit and purpose of this Land Use Code.

14. North 47th Street descends from west to east between Aurora and Whitman.

15. Traffic northbound on Aurora often exceeds the 40 MPH posted speed limit. One result is that cars turning onto North 47th Street can be going comparatively fast as they begin the turn.

#### Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.76, SMC.

2. The overriding contention of the appellants in this case was that access to parking on the site should be from Aurora and not off of N. 47th Street. However, the crux of the testimony from both the applicant and the Department was that the Seattle Engineering Department will not allow access off of Aurora. Thus, the variances applications are properly reviewed on the basis that access to the site is required to be off of N. 47th Street.

3. The small size and shallowness of this parcel, in conjunction with the requirement that it take access off of N. 47th Street, combine to create property related hardships in conjunction with the application of the access provisions of the Land Use Code.

4. The variance to allow a reduction in curb cut width also meets all the remaining variance criteria. The alternative to allowing the narrower curb cut is to have a curb cut that would extend even closer to the intersection of N. 47th Street and Aurora. This would exacerbate the potential for conflicts between vehicles entering and leaving the site, and vehicles turning from Aurora onto N. 47th. Thus, the granting of the variance not only represents no detriment, it actually represents a safer solution. The requested variance does not exceed the minimum necessary to provide relief, and is consistent with the spirit of the Land Use Code.

5. In terms of the variance to allow vehicles to back onto the street, the property related hardship criterion is plainly present in that the narrowness of the lot necessarily restricts vehicle maneuvering space. As conditioned by the Department, the variance also does not exceed the minimum necessary to provide relief.

6. The important issue, however is one of public detriment. As alluded to above, the driveway's proximity to the intersection of 47th and Aurora creates the danger of vehicle conflicts. Having cars backing onto 47th enhances that danger. At the same time, traffic on N. 47th Street itself is not heavy and a parking lot for only three cars should not create a large amount of vehicular entrances and exits. Moreover, the additional setbacks required by the Department will provide greater visibility and thus assist in allowing a safe visibility and thus assist in allowing a safe traffic situation.

7. One gap in the overall picture here is caused by the fact that the use to occupy the site has not yet been determined. Yet, just as different uses generate different parking demands, they also generate different rates of vehicular trip generation. This would not necessarily be of concern of future development on the site would be subject to environmental review. However, as the SEPA threshold in a C-1 zone is 12,000 sq. ft., it is unlikely that future development will go through any further review. While the Examiner believes that a use that generates a limited number of vehicle trips should prove acceptable on the site, a use that generates a high level of trips may not. For that reason, this matter should be remanded to DCLU for consideration of what level of peak hour vehicle trips generated by development on this site can be safely accommodated by North 47th Street. If the Department concludes that there are limits on the number of vehicle trips that can be safely accommodated, the granting of this variance should be further conditioned to include limitations either on the uses to be allowed or the maximum square footage to be allowed on the site, so as to achieve the desired limitation.

8. In furtherance of the above, the Examiner shall retain jurisdiction over this application. On or prior to January 25, 1991, the Department shall submit to the Examiner its findings and conclusions as to permitted trip generation on the site and any proposed condition(s). The report shall also be mailed to all parties of record, who will have until February 4, 1991 to submit written comments on the Department report. Unless the comments reflect a need to re-open the hearing, the Examiner's final decision on this matter will then be prepared within 15 days.

#### Decision

In accord with Conclusions 7 and 8, the matter is REMANDED to the Director for further consideration.

Entered this 17<sup>th</sup> day of December, 1990.

Guy E. Fletcher  
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Deputy Hearing Examiner