

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

In the Matter of the Appeal of

THE RAVENNA-BRYANT COMMUNITY ASSOCIATION

FILE NO. S-76-021

from a ruling of the Superintendent  
of Buildings

The appeal is DENIED and the Findings and  
Decision of the Superintendent of Buildings  
is affirmed.

Introduction

The appellant, Ravenna-Bryant Community Association, filed an appeal from an interpretation of the Superintendent of Buildings concerning property located at 5111-5115 25th Avenue N.E. The appellant exercised its right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

This matter was heard before the Hearing Examiner on August 30, 1976.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Pizza Pete Restaurants (hereinafter permittee) filed an application for a use permit for the development of a restaurant on the subject property with the Superintendent of Buildings (hereinafter Superintendent). On July 26, 1976, the Superintendent issued a Findings and Decision of No Significant Impact with regard to the proposed demolition of an existing frame building and the construction of a proposed restaurant. On the same date the Superintendent issued an advance ruling which determined that a use permit would be issued for the restaurant provided that all applicable codes, regulations, and laws were complied with by the permittee. The appellant filed an appeal on August 10, 1976, alleging that the Declaration of No Significant Impact (DNSI) was inadequate and that an environmental impact statement (EIS) should be prepared by the Superintendent with regard to the proposed development.

2. The subject property is located at 5111-15 25th Avenue N.E. in a General Commercial (CG) Zone. The proposed restaurant is a outright permitted use in the CG zone. The property is developed with an antique store, which would be removed, and is otherwise vacant.

3. The subject property is located on the west side of 25th Avenue N.E., which is CG zoned on both sides of the street from N.E. 54th Street towards the south. Uses which

are located on either side of 25th Avenue N.E., in the block between N.E. Blakely and N.E. 54th Street are, for example, a pet store, a day nursery, a McDonald's Restaurant, a service station, and a Levicchio's grocery store which abuts the south margin of the subject property.

4. The area to the west of the subject property is zoned RM 800 and is generally developed with apartment buildings. To the east is property which is developed RS 5000 and developed with single-family residences. To the south is a large area of CG zoned property which is developed most prominently with the University Village shopping center. The area to the north beyond N.E. 55th Street is single-family residential zoning and development.

5. The Seattle Comprehensive Plan designates the subject property for use either as transportation or as housing. The plan includes the R. H. Thompson Expressway, which had been formerly planned for this area but is no longer a feasibility for construction. Consequently, the transportation designation for the property is not realistic. The Superintendent erroneously concluded that the Comprehensive Plan designated the subject property for commercial use.

6. The proposed project is not categorically exempted from the EIS requirements of the State Environmental Policy Act of 1971 (RCW 43.21(C) (SEPA), pursuant to the SEPA Guidelines (WAC 197-10-170 (j) and (l) since the project will include the removal of 1,000 cubic yards of material and the filling of 1,900 cubic yards.

7. With the exception of the excavation and fill procedures which are involved in the project, the proposed development would otherwise be categorically exempted from the SEPA requirements, since it would be considered minor new construction pursuant to WAC 197-10-170 (1)(c).

8. In January of 1976, a similar type pizza restaurant applied for a permit for the development of a restaurant on the subject property. With regard to this application, the Superintendent required that permittee to prepare an EIS. This determination was made prior to the promulgation of the SEPA guidelines. The plans for this restaurant were never specific and were ultimately dropped.

9. Within the immediate vicinity of the subject property are located other uses which are automobile oriented, such as a 7-11 grocery store, McDonald's restaurant, Deluxe II restaurant, a Levicchio's grocery store, and a Kentucky Fried Chicken restaurant. Most of these uses have been developed in this area in the past several years.

### Conclusions

1. The appellant has not met the burden of proof of overcoming the prima facie correctness which is attributed to the Superintendent's decision and additionally the appellant has not established that the Findings and Decision of the Superintendent are clearly erroneous. The Superintendent has properly concluded that the proposed project is not a major action and will not have a significant affect on the quality of the environment in this area.

2. An application of the SEPA guidelines to the instant case indicates clearly that the proposed project is of a minor nature and cannot in the terms of SEPA be concluded to be a major action. The proposed use is one that is permitted outright on the subject property and all nearby

properties on either side of 25th Avenue N.E. are developed with commercial uses. Consequently, the introduction of a restaurant, which is of a relatively small scale, to the property is not out of character with other uses in the surrounding CG zone.

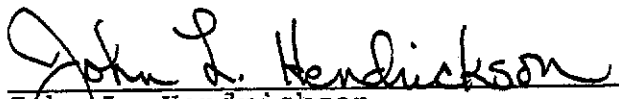
3. It does not appear from the record that the proposed development has a reasonable probability of having more than a moderate affect on the quality of the environment in the vicinity. Although additional traffic and noise has resulted from the relatively recent development of automobile-oriented uses in this CG zone, the proposed restaurant will not make any significant contribution to these factors. The instant case is distinguishable from Norway Hill v. King County Council et al., 87 Wa 2d 267 (1976), in which the Court determined that a DNSI, as prepared by King County, was clearly erroneous and that an EIS was required. Whereas the present case involves minor commercial construction in a CG zone, the Norway Hill case involved a short plat for a 52 acre site for future development. There, the court held that there was a reasonable probability that more than a moderate affect on the quality of the environment would result. Additionally, in the Norway Hill case there was involved a major alteration of the property from a heavily wooded and undeveloped state to 198 lots for future development. The instant case, however, involves merely the removal of one commercial structure and the construction of another on the same property.

4. The development of automobile-oriented uses in the past several years in this area has adversely affected the residential character of the general area. However, this has been a result of the zoning for the property fronting on 25th Avenue N.E., which reflects the intent of a previous City Council to allow uses such as that proposed here in this area. The proposed restaurant cannot be fairly termed a fast-food use, but is clearly an automobile-oriented use which will draw persons from the surrounding area who will more than likely drive to the site. A congregation of similar type uses in one area can adversely affect a neighborhood. However, there is no zoning code provision which restricts the location of such uses and the Superintendent, therefore, has no discretion in determining whether such a use, as is proposed here, can be developed on this property. Only through legislative relief can the appellant restrict the kind of uses which will be permitted in the CG zone or in this particular area. Consequently, either a rezoning of the property or a text amendment to the zoning code, which restricts automobile-oriented uses in this area, would be feasible in achieving the goal of the appellant.

#### Decision

The appeal is DENIED and the Findings and Decision of the Superintendent of Buildings is affirmed.

Entered this 8<sup>th</sup> day of September, 1976.

  
John L. Hendrickson  
 Deputy Hearing Examiner