

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

UNIVERSITY PARK PRESERVATION COMMITTEE

FILE NO. MUP-82-063(V,CU)  
APPLICATION NO. 82-0341

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

#### Introduction

Appellant contests the conditional approval by the Director of the Department of Construction and Land Use of a variance and a conditional use for location of a battered women's project.

The appellant exercised its right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: J. Richard Aramburu, counsel for appellant; Janis Bianchi, Bianchi and Zosel, counsel for applicant; and the Director of the Department of Land Use (DCLU), by James Fearn, assistant city attorney.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on September 30, 1982, October 6, 11, 14, 15 and 21, and November 1, and 5, 1982. Per stipulated request of the parties, the decision date was extended to November 23, 1982.

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. The subject property is located in the University District of Seattle, south of Ravenna Park. The 5,400 sq. ft. area lot is developed with a large structure constructed c. 1920 that has been used as a rooming house. The front yard provided is 22 ft. 11 in.; The rear yard, adjacent to an alley and a steep drop is 27 ft. 5 in. deep. Side yards of 5 ft. and 8 ft. are also provided. Trees are located near the side and rear property lines and in front of the structure.

2. The site is near public transit access, schools, shopping facilities, restaurants and other public businesses. It is also near the Children's Orthopedic Hospital.

3. On July 20, 1982, project applicant, New Beginnings, applied for a conditional use permit to locate a battered women's and children's facility at the subject property. The application was for 20 residents. DCLU entered the conditional approval August 20, 1982. The property address is 5214-17th Avenue N.E.

4. Four below grade parking spaces are provided off the alley. There is direct access to the structure from the parking area. Existing dumpsters, occasionally found in the stalls, can be relocated to allow maximum use of the spaces for parking. The University Christian Church, 4731-15th Avenue N.E., has reserved a spot in their parking lot at N.E. 50th Street and 15th Avenue N.E. for the staff of New Beginnings. The University Congregational Church, 4515-16th Avenue N.E., has also made available one parking space to be used as needed

by New Beginnings. The Third Church of Christ, Scientist, 1701 N.E. 50th Street, has granted permission for weekday use of one space for New Beginnings. Similar consideration is underway by the University Lutheran Church, 1604 N.E. 50th Street. The churches range in distance from  $\frac{1}{2}$ - $2\frac{1}{2}$  blocks from the subject site.

5. In 1922, a permit was issued to alter the subject structure, then noted to have three stories and occupancy as a rooming house. At various times between April 11, 1962, and October 12, 1981, permits were issued to excavate for storage rooms; add to existing bedrooms; install sprinkler systems; and, most recently, to alter interior of an existing rooming house building. The permit record shows no building permit entry allowing increase of the number of bedrooms to the structure. Appellant Exhibit 1. However, an April, 1981, rent statement for the subject property, Appellant Exhibit 2, shows 21 tenant line entries with monthly rents ranging from \$0 (vacant or manager) to \$158 per month.

6. A 1937 Assessor's record shows the subject structure to have 16 rooms: three in the basement, four on the first floor, four on the second floor and five in the attic. The date of construction by that record is 1910. A more recent assessment, Applicant's Exhibit 5, shows 20 bedrooms, 2.5 stories, and a total floor area of 4,890 sq. ft. We find in accord with the floor area as stated in Applicant Exhibit 5.

7. A witness, formerly a resident of the subject structure, credibly testified that during his tenure, 1954-1974, there were 14 rooms-sleeping units. The witness' testimony continued that after a new owner purchased the premises in 1962, at least three new rooms were added for rental, excluding a second floor closet also made into a small sleeping room. The DCLU decision notes as a finding of fact that the structure had 21 bedrooms. We find the size of the structure, i.e., floor area, number of rooms, unusual for the subject area.

8. New Beginnings purchased the subject property in approximately March, 1981. The real estate purchase and sale agreement included a statement that the property was "zoned single family dwelling with a grandfather clause permitting use for 21 units". Applicant Exhibit 2. In January, 1981, New Beginnings was considering purchase of the north adjacent dwelling. The Department of Community Development wrote the then-Director that the proposed facility was available for purchase and that current zoning was compatible with the proposed use. Applicant Exhibit 4.

9. Project applicant began some renovation work on the subject structure prior to the July 20, 1982, application for the subject Master Use Permit. One neighborhood witness recalled that New Beginnings began renovation work approximately June 1. This witness also recalled that the structure was boarded up approximately October, 1981, and has remained vacant since that time.

10. The subject block and block front are principally single family developed. Some of the dwelling structures are large, turn-of-the-century residences. Consistent with the general area, the block and blockfront also have a scattering of rooming houses, duplexes and other multifamily structures.

11. In 1923, the subject area was zoned First Residence, i.e., single family. In 1957, the area of the University District north of 50th was zoned for duplex use. In 1977, after zoning studies and petitions to the Seattle City Council, the area inclusive of the subject property was down-zoned to single family, contrary to recommendation of the Department of Community Development. One proponent of the rezone was the University District Community Council. They envisioned the down-zone as a means to offset the continued deterioration of the then-existing, absentee landlord housing stock. Since the rezone the area has experienced a trend of improvements to public and private property.

12. The subject property's Single Family 5000 zoning area is surrounded by L-3, Multifamily zoning to the east, west and south.

13. Based in part on the history of the zoning, an appellant expert witness consultant classified the subject neighborhood as a "fragile single family neighborhood". The witness continued that as such the neighborhood would be harmed by the presence of the New Beginnings project. Concerns included the anticipated negative impacts from the (24 hour) operation and with the transient nature of the New Beginnings residents. Appellant's witness also opined that a fragile neighborhood could "fall off the edge if pressured or affected by undue influences". The witness, however, has no professional background in appraisals and declined to state that investors would not purchase following the location of the New Beginnings proposal in the subject neighborhood; nor that witnesses for the proposal would discontinue maintaining their homes if the reviewing body approved the application.

14. Several current neighborhood residents chose to live in the subject area because of its population mixture and because of its relatively easy access to the cultural and academic programs offered by the nearby University of Washington.

15. The dwelling south adjacent to the subject property is estimated by that owner as approximately 11 ft. from the common property line and approximately 18 ft. from principal wall of New Beginnings. A wood fence separates the two properties. Overhangs are rather extensive. Because of the scale of size (the New Beginnings house is at least one story larger) the New Beginning structure appears to that neighbor to tower over his structure. This neighbor, an opponent of the application, moved to his present dwelling in April of 1981, after an approximate \$15,000 investment in roof, floor, chimney and other realty improvements. When he moved in, the witness recalled, 16 people lived in the subject property, then a rooming house.

16. New Beginnings is a social service agency which operates a shelter and service for battered women and their children. The staff of New Beginnings consists of the Director, an Administrative Assistant, five counselors, an unpaid childcare worker, a house manager and a volunteer coordinator. The childcare worker is expected to work a total of 30 hours per week, arrived at by varying shifts and days. Counselors work 35 hours per week, seven days a week such that a counselor is on duty 24 hours per day.

17. The cadre of 20 volunteer workers arrive and serve singly to assume their duties of answering phones and providing childcare. The counselor has the responsibility of answering crisis calls, enforcing house rules, screening would-be residents and maintaining the safety and security of the shelter. A maximum of four to five full time staff will be on premises at any one time, including the Director, a counselor, administrative assistant and house manager.

18. A public health nurse visits the present facility approximately weekly for medical screening, if needed. A DSHS financial worker also makes a weekly visit.

19. The Director drives an automobile, as do most of the volunteers and part of the full-time staff. One counselor has no car. The Administrative Assistant drives a moped.

20. New Beginnings screens out drug or alcohol problem persons such that if a counselor determines that the prospective resident's primary problem is alcohol related the person would not be admitted to the facility. Prospective residents are asked to sign an agreement not to drink alcohol or take drugs while at the shelter and as well to obey house rules. Violation of curfews and the confidentiality of the site are not allowed.

21. The present facility has 16 beds, which number includes two cribs. The maximum number of residents on-site depends on the configuration of the family. For example, a mother and young child might be offered a single bed. The figure 16 predated the current Director's involvement in the agency, but was arrived at by the number of beds initially available for service.

22. Project applicant estimates, and we find, that approximately 25 trips per month would be made by staff bringing residents to the facility. Typically, the staff person will meet the prospective resident at a neutral site, such as a restaurant. Few of the would-be residents arrive via or drive personal cars. They are usually brought to the central meeting site by friends, relatives or a community service officer.

23. Children constitute between 65-70 percent of the New Beginning service population. Of this number more than half are under five years of age. According to the house rules, children must be supervised at all times by the mother or by a childcare worker.

24. The agreement between DSHS and New Beginnings, Applicant Exhibit 3, provides the reimbursement schedule for New Beginnings and notes the requirement that the contractor, New Beginnings, provide "shelter, advocacy and counseling to victims of domestic violence". The agreement executed November 14, 1980, also provided that

within 90-120 days of the start of this contract, the Contractor shall move to another location which has either a transient license or a boarding house license.

25. A neighbor of the current facility testified to the purchase of her house in September, 1979, and to her eventual awareness, December, 1980, that New Beginnings was a neighbor. Near the time of that discovery, the witness began her \$30,000-\$35,000 investment in home improvements. The witness testified credibly and we find that the hours of New Beginnings operation presented no problems, that no instances of violence were reported and that there were few, if any, external indicators of the "low profile" New Beginnings operations. The New Beginnings director testified to the relative lack of neighborhood complaints about the facility. We find that exterior indicators of New Beginnings use at their current site are minor and that the project has had no significant impact on the existing neighborhood.

26. We find in accord with the testimony of Dr. Gandly, Director of the program for men who direct violence against their families, American Lake Veterans Hospital, that it is unlikely that neighbors would be involved in any violence by these assailants. Rather, the violence is typically directed and focused on family members and counselors although it is admitted that some men go to extreme lengths to find their wives.

27. One neighborhood resident opposing the application, however, opined that battered women themselves may be dangerous.

28. Applicant proposes a monitored security system for the shelter and as well an increased liaison with the Seattle Police Department for security.

29. There is no special residence, i.e., group home, nursing home or half-way house, within a 600 ft. radius of the subject property. Exclusive of the New Beginnings proposed site, there is one special residence in a half-mile radius at 4508-16th Avenue N.E.

30. Applicant proposes improvement to but no outward expansion of the existing structure.

31. DCLU determined that based on the proposed number of 20 residents and five full-time staff, six parking spaces were required pursuant to Section 23.44.14 (recodified as 23.44.20). Based on the mechanics of residents' arrival and on the age composition of the population, the DCLU Director waived the requirement of two on-site spaces. This is distinguished from a grant of a variance.

32. Some noise of children playing or crying is expected to be generated from the New Beginnings operation. The rear yard is proposed for outdoor recreational use. As a condition of the special residence, DCLU required solid fencing for noise, view mitigation and as well for safety of the children. DCLU also conditioned the approval of the conditional use on submittal by the applicant of a landscape plan which design is to be focused on noise softening and buffering.

33. Appellant contests the Director's approval because it fears a significant detrimental effect on the neighborhood, its trend of development, and on neighborhood safety. One witness, however, residing north and across the street from the subject property, perceived no detrimental impacts from the project and indicated no intent to move following approval of the application. Concerning "transients" and their inability to be integrated into the neighborhood fabric on a long-term basis, the witness felt that there was only limited neighborhood socializing at present. This view was echoed by another resident of the area.

34. In 1981, New Beginnings did not meet its goal of 16 bednights, i.e., service units. A service unit does not necessarily equal 24 hours.

35. We find in accord with the testimony of the Executive Director, a member of the Steering Committee of the Washington State Shelter Network, that in 1981, New Beginnings accepted 3,300 calls and that to date of the hearing in 1982, they had accepted 3,300 calls. Through September, 1982, the witness continued, New Beginnings turned away 202 otherwise eligible women from service.

36. DCLU granted the administrative conditional use on the following conditions:

1. A continuous six foot high solid fence shall be placed on or near the side and rear property lines.
2. A more detailed landscaped plan shall be submitted to this Department prior to issuance of the Certificate of Occupancy; the approved landscaping shall be installed within 6 months of DCLU approval. Design shall concentrate on noise softening and visual buffering.
3. Staff seeking parking space shall be required by New Beginnings Board of Director to first use the garage, and only when the garage is filled to use on-street parking.
4. The monthly Board meetings shall not take place on this site unless car-or van pooling is arranged from another site.
5. Outside lighting shall be directed away and shielded from neighboring lots.
6. Outdoor play by children shall be continuously and closely supervised to assure that unnecessary noise will not unduly impact the neighboring residents.
7. 18 residents is the maximum permitted.

37. The grant of the variance from 15 to the permitted 18 was conditioned as applicable only to the use of the property while occupied by New Beginnings as a women's shelter.

38. With regard to the action proposed in this application, a declaration of non-significance (DNS) has been prepared by the responsible official pursuant to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, Chapter 25.04, Seattle Municipal Code, and is part of the record.

#### Conclusions

1. The Land Use Code allows special uses in single family zones subject to specific criteria, so long as the special residences will not prove materially detrimental to the public welfare nor injurious to the subject zone or vicinity. Section 23.44.14(A)(3), (currently 23.44.20).

2. The specific criteria include a requirement that a minimum distance of 600 ft. exist between any other special residence; and further that within a half mile distance from the proposed site that there be no more than five such residences. This criteria is met by the project proposed. Section 23.44.14(B)(1). While exterior improvements to the building are proposed no exterior expansion is proposed. Section 23.44.14(B)(3).

3. Based on the age of many of the residents (primarily children) and on arrival patterns of New Beginnings residents, (primarily non-drivers) the Director conditionally waived two of the six required on-site parking spaces. The waiver appears appropriate. Section 23.44.14(B)(4). Also, concerning landscaping and light and glare, the Director has appropriately conditioned the approval. Section 23.44.14(B)(6)(7).

4. The noise expected to be generated by the proposal, i.e., children playing, is not unique to New Beginnings, but is expected in any residential neighborhood. Adequate conditions have been imposed to monitor the children's outdoor play, and to implement sound buffering, e.g., by a solid fence and landscape. Section 23.44.14(B)(5).

5. Applicant requests variance relief from the Section 23.44.14(B)(2) criterion limiting the number of residents to 15. Appellant urges this relief as inappropriate since various code sections specifically allow waivers in some circumstances, e.g., parking, and no such authority is present in the section of the Land Use Code limiting the number of residents. Appellant's position is similar to that taken by the unsuccessful appellant in Coughlin v. Seattle, 18 Wn.App. 285 (1977). There the court held that since no specific exception from the general variance relief provisions was stated in the zoning ordinance, no prohibition against variance relief could be read into the ordinance. at p. 289.

6. In the instant case, Land Use Code Section 23.40.20(A) provides that variances may be sought from provisions of the Land Use Code. Absent a specific prohibition, we cannot say that stated numbers of persons, such as 15, in the Land Use Code are not subject to application for variance relief. Coughlin v. Seattle, supra. Petition for Review denied, 89 Wn.2d 1015 (1978).

7. Without question, the public welfare will be aided by the existence of shelters for abused women and their children. At specific issue is whether the use proposed for the subject site will prove materially detrimental or injurious. Section 23.44.14(A)(3).

8. Appellant suggests that the nature of the resident population - "transient" - is a prohibitive factor and is contrary to the neighborhood community integration pattern. The record reflects that the subject neighborhood's limited social integration will not be affected by the proposed location of the New Beginnings project. Constant supervision of the children is required. By screening procedures, drug or alcohol problem persons will not be admitted to the shelter residency. Consistent with the assailant's pattern, the projection for violence against neighbors or against project residents is slight, due in part to the confidentiality of the site, 24 hour staff supervision, and security system-liasion with the Seattle Police Department. In this connection New Beginnings precautionary efforts do not equate to projections.

9. The Director has adequately conditioned approval to address noise as it pertains to material detriment or injury. While the number of children on premises may, on occasion exceed the number typically associated with a single family residence, the sound generated by temporary, monitored activity does not, alone or in combination with the other concerns, constitute material detriment or injury.

10. Similarly, the alleged minimum distance to the south adjacent dwelling is not a prohibitive consideration. On-site activity will be principally limited to approximately five full-time staff; occasional visits by a financial worker; or public health nurse; and to residents, who, consistent with the request for maximum confidentiality, will arrive as inobtrusively as possible via few, if any, privately owned vehicles.

11. Four on-site parking spaces are provided. Additionally, a total of three spaces have been made available to New Beginnings by three local churches and similar consideration is under way by a fourth.

There is direct access from the parking area to the principal structure. On-street parking by staff is restricted. Accordingly, the traffic and parking activity to be generated will not present material detriment or injury to the subject vicinity or zone, notwithstanding the premium of University-session on-street parking.

12. Approval of the subject application for 15 (per Section 23.44.14(B)(2)), or 18 (as approved by DCLU) residents will not tip the balance against continuing single family development in this neighborhood of rooming houses, multifamily dwellings and established single family homes. The weight of the evidence shows that existence of the New Beginnings facility has no material impact on neighboring properties' improvements or investments. Much testimony contra was speculative. Appellant's expert witness, who classified the subject neighborhood as "fragile", declined to state that neighborhood purchases or improvements would categorically cease or be adversely affected following establishment of New Beginnings at the proposed site. Neither the zoning history nor the current development trend support a conclusion that the New Beginnings project would cause this neighborhood to "fall off the edge" and revert to a multifamily, absentee landlord, deteriorating housing stock pattern.

13. Further, the majority of the concerns cited by appellant, e.g., noise, traffic, are concerns that could be raised in any single family neighborhood. Under the circumstances, denial of the application could signal a sub silentio repeal of the Land Use Code provisions which specifically allow special residences in single family zones. The Director's decision conditionally approving the conditional use is affirmed.

14. The variance relief should also be granted. Development of the subject lot by this large, c. 1920's structure, combined with its location in a single family zone constitutes a sufficient real property condition to sustain variance relief. The structure has hosted a number of sleeping rooms or units, from 14 to 21, since the 1920's. Indeed, on-site development may, in certain circumstances constitute the requisite unique property circumstances, 3 American Law of Zoning, Section 18.35, such as when the owner of a lot improved by a larger and ancient house in a residential district may be unable to use or sell it for residential purposes because of size, age and condition. loc. cit. See also Sheedy v. Zoning Board of Adjustment, 409 Pa. 655, 187 A.2nd 907 (1963). In the instant case, the size and number of sleeping units available make the property unsuitable for single family use. As such, absent variance relief, the property would be deprived of comparable development privileges as that term is meant by the Code.

15. Mere purchase of the property does not necessarily constitute a self-created hardship, prohibiting variance relief. 3 American Law of Zoning, Section 18.42. The rule against self-created hardships is applied most frequently to persons who acquired land for a purpose outlawed by the zoning regulations. Op. cit., Section 18.43. In the instant case, applicant was advised by real estate agreement that use for 21 persons was grandfathered and by a Department of Community Development letter that zoning was compatible with the proposed use.

16. Due to the nature of this variance relief, no special, inconsistent privilege to the applicant is conferred. Nor, in light of the conditional use analysis above, will it prove materially detrimental or injurious to the public welfare.

17. Strict adherence to the stated limit of 15 residents, particularly in view of the residents' age characteristics, and in view of the increasing need for the services offered, would cause an undue and unnecessary hardship, and would frustrate the spirit and purpose of the Land Use Code.


18. Although no deference is afforded the Director's decision in variance matters, the appellant has the burden of proof. We conclude that the variance for three additional residents does not exceed the minimum necessary for relief.



Decision

The decision of the Director of the Department of Construction and Land Use conditionally approving the conditional use and the variance is AFFIRMED.

Entered this 23<sup>rd</sup> day of November, 1982.

  
Leroy McCullough  
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App 418 (1977); JCR 73 (1981). Should an appeal be filed, instruction for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.