

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

In the Matter of the Appeal of

WALTER ASHFORD, ET AL.

FILE NO. MUP-83-020(CU)  
APPLICATION NO. 82-0527

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

Introduction

Appellants contest the conditional approval by the Department of Construction and Land Use Director (Director) of a fast food restaurant to be located at 1430-23rd Avenue.

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

Parties to the proceedings were pro se: appellants by Walter Ashford; project applicant by Vern Jacobson; the Director by Nanette Mozeika.

For purposes of this decision, all section numbers refer to Title 24, Seattle Municipal Code, unless otherwise indicated.

This matter was heard before the Hearing Examiner on May 2, 1983.

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 proposes to construct a one-story Kentucky Fried Chicken restaurant at 1430-23rd Avenue, at the southeast corner of 23rd Avenue and E. Pike Street. A pole sign roughly 24 ft. high and 93 sq. ft. in area would be placed near the corner.

2. Consistent with conditions imposed with the Director's approval, the applicant will maintain a view-obscuring 5-6 ft. fence along the eastern and southern property lines. The northern property line will be marked by a row of 3-6 ft. hedges. Additional landscaping is proposed as is compliance with the Director's requirement that no less than six garbage receptacles be provided and maintained outside the building. Outdoor lighting will be directed away from surrounding properties.

3. Applicant proposes to use the two existing curb cuts to E. Pike Street for drive through access. Persons westbound on Pike Street could turn left (south) into the driveway, proceed west along the north side of the building for pickup, and exit via the westernmost curb cut, which begins roughly 10 ft. from 23rd Avenue. Applicant's Exhibit 2. A third existing driveway is near the south portion of the site by which automobiles could enter from and exit to 23rd Avenue. Applicant's Exhibit 1. The parking spaces north of this exit will be adjacent to the south face of the building in accord with the Director's conditions of approval. The two stalls for handicap and the seven other spaces are proposed for the eastern border of the lot. The Director's witness testified that the Department of Engineering had reviewed and approved the revised plan.

4. Applicant projects that the facility, with its occupancy load of 50, would be a neighborhood store, generating 92 percent of its traffic (mostly walk-ins or bus patrons) from within 1½ miles of the store; and that 17-22 employees would be hired from the immediate area.

5. The applicant's lot, roughly 118.3 ft. deep and 120 ft. wide, has a lot area of roughly 14,160 sq. ft. Formerly occupied by a now demolished single family residence, the lot has been in use for parking and some dumping, much to the chagrin of vicinity residents. One long-term resident testified and the Hearing Examiner finds that the intersection currently experiences traffic congestion and tie-ups.

6. The lot in question is zoned Commercial Business (BC), as are the sites east, south and west. Across E. Pike Street, to the north, the three residences are in the single family (SF 5000) zone.

7. South of the subject site, toward Union Street, is a church. Continuing south, a Church's Fried Chicken franchise is found at the 23rd Avenue - East Union intersection. Other intersection businesses include a drug store and a gasoline service facility.

8. Across 23rd Avenue from the applicant's site is a second church building. North adjacent to this is a notary, income tax and real estate facility. Per applicant's Exhibit 1, the building was in former use as a single family residence. Continuing north is an electrical substation of moderate appearance.

9. In addition to the residences directly north of the Kentucky Fried Chicken site, residences are located east of the site as well, beyond an adjacent alley. Photographs show the vicinity churches and business structures as generally having flat, rather inobtrusive roofs and profiles.

10. Twenty-third Avenue is a four lane, north-south arterial. Pike Street is a smaller, east-west, two-lane street which completes the "T" intersection.

11. There is strident neighborhood opposition to applicant's proposal. Vicinity residents currently experience the problems of litter and garbage from an existing fast food restaurant. Depending on personal circumstances, the residents will pay someone to clean up the litter or do it themselves. Particularly since this applicant cannot guarantee consumption on the premises the residents see a second fast food restaurant as an additional burden. Residents also complained of lax City efforts at maintaining clean neighborhood streets. A more formal dining establishment would meet with less opposition.

12. Applicant responded that each franchise is inspected three times per day for unit and parking lot cleanliness. In store dining with upholstered seating is proposed.

13. With regard to the State Environmental Policy Act of 1971 (SEPA) and Chapter 25.04, Seattle Municipal Code, the action proposed in this subject application has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC 197-10-170.

#### Conclusions

1. An administrative conditional use may be authorized if it will be consistent with the spirit and purpose of the Zoning provisions and will not be "materially detrimental to the public welfare" nor injurious to vicinity properties. Section 24.74.010, Seattle Municipal Code, as amended. Sections 24.44.080H and I, respectively, impose additional conditions for drive-in and fast food restaurants. Section 24.44.080.H.4 specifically provides that architectural, landscape and site integration treatment shall be compatible with existing vicinity uses and structures.

2. The concern with saturation of fast food establishments in the vicinity is not one which would, in this case, support denial of the application for this administrative conditional use. City Council action might be sought to address this subject. Nor would it be appropriate to deny the application based on the applicant's inability to control the refuse habits of its customers.

3. The subject site is commercial business zoned and located along an arterial. Nearby development includes religious, service station, restaurant and other business development. The proposed restaurant use is not incompatible with the zoning and development pattern. The subject lot would be cleaned, landscaped and developed with a business promising to draw on local resources for its employ. Authorization of the conditional use is appropriate.

4. It is apparent, however, that residential properties east and north of the site have borne the inordinate burden of attending to fast food restaurant litter. It is also apparent that the north and east vicinity development pattern is comparatively more residential than nearby south and west development. Further conditions should therefore be added to those already imposed by the Director to protect the residential properties from traffic and litter attributable to the restaurant, and from architectural incompatibility.

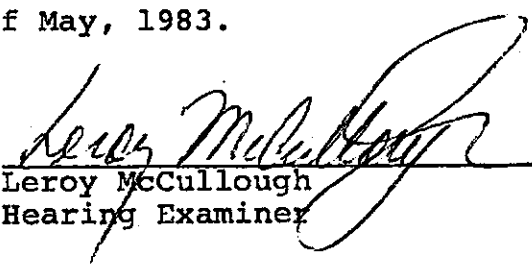
5. The Hearing Examiner therefore affirms the Director's decision as here modified:

- a. No automobile traffic may exit the site to E. Pike Street. Further, automobile entry to the site from the northwesterly (23rd Avenue and Pike Street) curb cut is prohibited.
- b. The proposed vertical business sign shall be eliminated or located closer to the southwest corner of the site, i.e. a greater distance from the residentially (SF 5000) zoned and developed properties.
- c. In matters of roof style and other architectural features, applicant shall consider existing neighborhood development and seek to maximize compatibility therewith.
- d. Revised traffic circulation plans shall be approved by the Department of Engineering.
- e. Revised architectural and landscaping plans shall be approved by the Director.

#### Decision

The Director's decision is affirmed as modified by Conclusion 5, above.

Entered this 12th day of May, 1983.

  
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, instructions 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.