

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

BECK'S SUPERMARKET, INC.

FILE NO. MUP-83-064
APPLICATION NO. 83-379

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

File

Introduction

Project applicant proposes to alter an existing service station and establish a convenience food store/service station at 7200 Aurora Avenue North. Appellant contests the administrative conditional use approval given by the Department of Construction and Land Use.

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

This matter was heard before the Hearing Examiner on October 20, 1983.

Parties to the proceedings were, pro se; appellant, Beck's Supermarket, Inc., by Gary Beck; project applicant, Texaco, Inc. by Larry Hanson and John Worsham; the Director of the Department of Construction and Land Use by Jim Barnes.

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

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 site is located at 7200 Aurora Avenue North and consists of three platted lots containing approximately 11,500 sq. ft. The two westerly lots are CG zoned and the third lot, approximately the easterly 47.41 ft. of the site, is SF 5000 zoned. The site has approximately 90 feet frontage on Aurora Avenue North between; south, abutting West Green Lake Drive North and a north abutting alley. The site has been utilized as a Texaco Service Station since 1962. The existing service station building is located on the SF 5000 zoned portion of the site and the existing gas pumps and signs are located in the CG zoned portion of the site. South of the site is Green Lake Park; zoned SF 5000; to the north is mixed commercial development; and to the west are the north and southbound lanes of Aurora Avenue, separated by a concrete divider. A wood fence supplemented with a high evergreen hedge separates the east property line from the adjacent single family residence lot. Continuing easterly are other single family residences in the SF 5000 zone.

2. The project applicant proposes to convert the service station building into a service station and convenience food store building by renovating the exterior; providing four parking

stalls in front of the former three service bays; and replacing a new compressor and air, water and light service at the northwest corner of the building. The existing gas pump island will be retained with a new canopy and signs; and new landscaping is proposed along West Green Lake Drive North and Aurora Avenue North street frontage.

3. The existing service station building on the SF 5000 zone is a nonconforming building containing a nonconforming use.

4. Testimony by the Director and applicant found credible by the Hearing Examiner indicated that the proposed use is less intensive and would be permitted in the BN zone while the existing use would require conditional use authorization; that although the hours of operation would be longer, the number of employees would remain the same and that the increased traffic usage would increase by only 130 vehicles a day based on a February 1983 traffic count of approximately 16,000 vehicles northbound per day; that although no parking is required, four stalls will be provided; that noise and odor may decrease in that the change is from a full service gas station to a gas and convenience store; that design modification, moving air/water service to a new location, reduces impacts to the single family zone; that landscaping along West Green Lake Drive and Aurora Avenue North in connection with the existing fence and hedge will both enhance and screen the single family zone.

5. The Hearing Examiner is in receipt of approximately 30 letters from residents who oppose the project proposed by applicant on the basis of saturation of stores, noise, traffic, litter and concerns of alcohol availability. Appellant presented to the Hearing Examiner a petition signed by approximately 300 persons opposed to the project. Appellant states an additional 200 signatures could have been presented. Recognizing that many residents have signed this petition, the literal contents of the petition are reproduced below:

We, the undersigneds strongly disapprove the said alterations because of the following valid reasons:

1. almost on the same block of the existing service station in question, we have a "7-11" convenient store, "Shop & Save" food store and "Green Lake Vegetable and Fruit Store." Our neighborhood is already congested. We do not want more congestion, trash and litter.
2. We do not want more beer and wine sales in one neighborhood, which is highly residential and quiet. We want to keep it as it is.
3. Albertsons, QFC a few AM PM's and many other convenient stores are located in a radius of almost one mile of the stores mentioned.

The appellant also indicated a negative impact to the zone due to the increase of delivery trucks to the site.

6. Appellant cites the Hearing Examiner's previous reasoning and decision denying the application by the 7-11 stores to develop the site of 7314 Aurora Avenue North, File No. MUP-83-075, application number 81191-0193. However, the Examiner notes that that situation differs from the present case in that the proposed use there was expected to increase traffic to the single family area and in that screening and landscaping was concluded to be insufficient for the single family area.

7. 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. A legally established nonconforming use may be changed by an administrative conditional use authorization to other uses otherwise not permitted in the zone when it is no more detrimental to property in the zone and vicinity than the present existing use. As stated by the Director's decision, this determination is based on the following factors:

- a. The zones in which both the existing use and new use are allowed;
- b. The number of employees and/or clients associated with the new use;
- c. Off-street parking requirements for the new use;
- d. The relative parking, traffic, light, glare, noise, odor and similar impacts of the two uses;
- e. Design or other measures used to mitigate identified impacts of the new use, including but not limited to landscaping; sound barriers or fences; mounding or berming; adjustments to yards, setbacks or parking standards; design modifications; or setting of hours.

Seattle Municipal Code, Section 23.44.80 (H); Seattle Municipal Code, Section 23.44.18.

2. The Hearing Examiner concludes that the Director's decision is properly based on the criteria for conditional use in that the impacts of new employees and increased traffic, including deliveries, are slight; and in that required modifications and landscaping will mitigate adverse impacts to the zone and to the public interest. The Hearing Examiner notes the considerable public reaction to this project. However, the greatest opposition can be characterized as economic in nature. There has been an insufficient showing of material detriment to the property in the zone or vicinity or to the public welfare.

Decision

The determination of the Director of the Department of Construction and Land Use is Affirmed.

Entered this 3rd day of November, 1983.

Rozu Shimizu
Roger Shimizu
Hearing Examiner Pro Tempore

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should such request 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.