

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

TYRELL'S, INC.

FILE NO. MUP-83-086(W)
APPLICATION NO. 83-0493

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

Introduction

The Department of Construction and Land Use (DCLU) Director issued a declaration of nonsignificance (DNS) and conditionally approved the required special exception for the development of three artists studio-dwellings at 154 N. 35th Street. Tyrell's Inc., neighboring property owner, appealed.

The appellant 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 January 5, 1984.

Parties to the proceedings were: appellant by J. Vernon Williams of Riddell, Williams, Bullitt and Walkinshaw; project applicant Peter Bevis by Patrick McGreevy of Stafne, McGreevy and Taylor, P.S.; and the DCLU Director by Leslie Durkee.

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 essential facts are undisputed. The subject property is located in the lower Fremont area of Seattle at 154 N. 35th Street. The General Industrial (IG) zoned lot is presently developed with a single family residence, and is in a vicinity of manufacturing, artist, retail, multi and single family and other uses.

2. The site fronts on N. 35th Street and abuts a 16 ft. wide alley to the rear. The project applicant is Peter Bevis for the Fremont Fine Arts Foundry.

3. By decision dated October 19, 1982, on master use permit application No. 82-0427, the DCLU Director approved a special exception to establish nine artist studio dwelling units on site. The proposal also called for the newly constructed building to contain the foundry, 740 sq. ft. of retail space, common studio and storage space and nine off-street parking spaces and be equipped with a smelter, kiln, darkroom and an overhead crane. Plans call for the crane to access the proposal interior via an approximately 24 ft. wide door from the alley. Construction has not begun on the 82-0427 project.

4. By the present application, No. 83-493, Bevis proposes to add to the former proposal three studio dwelling units, three parking spaces located to the rear and accessed by the alley, and a 15 ft. wide loading ramp accessed from N. 35th Street. Bevis expects the ramp to accommodate his flatbed truck in the unloading of supplies roughly two times per month.

5. The first and second set of plans show a four story construction height. Proponent theorizes that the 9 ft. elevation difference between the alley and 35th Street may account for an apparent discrepancy between the 42 ft. height proposed in "Phase I" and a 51 ft. figure quoted subsequently.

6. After acknowledging "typical" construction impacts, such as increased noise and dust emission, and more long range impacts such as increased parking demand and increased surface water runoff DCLU issued a Declaration of nonsignificance (DNS) on the condition that

a landscaping plan, meeting City standards...
be submitted for approval prior to the issuance
of a building permit.

The analysis concluded that increased runoff would be addressed by existing storm water controls, and that given conditions in the area the remaining impacts were not considered significant. The DCLU analyst annotated the environmental checklist submitted to the department by the proponent. DCLU commented that the "malodorous" foundry smoke would not, in light of the proximity of appellant's dog food processing plant, prove significant.

7. As to the special exception, required for approval of working studio and living quarters in "any 'M' or 'I' zone", DCLU concluded that the spirit and letter of the zoning ordinance were satisfied by the proposal. DCLU did impose conditions on this approval as follows:

1. Applicant shall notify all prospective tenants that this property is located in an industrial zone; he shall advise them that although other uses may be incompatible with this use, they are in fact the preferred uses for the zone.
2. Tenants shall also be advised that their residence in the facility shall be incidental to the production of their art.
3. A landscaping plan, meeting City standards, shall be submitted for approval prior to the issuance of a building permit.
4. Two years from the date of issuance of the Master Use Permit, the applicant shall submit an affidavit to the Director of the Department of Construction and Land Use certifying that the building continues to be used as a foundry in combination with bona fide working artists' studios.

8. Tyrell's, Inc., owner and operator of a pet food manufacturing plant located directly across N. 35th from the proponent's site, submitted this appeal. Some of Tyrell's trailers and trucks are loaded along N. 35th Street. Appellant requests that the application be denied, remanded to the DCLU Director, (or) that approval be more specifically conditioned as detailed in the letter of appeal. It was not specified whether appellant would have the conditions imposed on the special exception only, the DNS only or on both.

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code. The DCLU Director's environmental determinations shall be accorded substantial weight in Hearing Examiner appeal hearings; however, no deference is given to that Director's decisions on special exceptions. Section 23.76.36.B.7.

2. No evidence was presented showing that the impacts expected from the proposal would be other than as described in the Director's decision, temporary or insignificant given the location of the subject site. The traffic pattern will be altered to the extent that a small ramp will supplement the larger entryway from the alley. Bevis plans to use the ramp for occasional delivery by a flatbed truck. No conflict with appellant's vehicles is reasonably anticipated. The Director's DNS is affirmed.

3. Seattle Municipal Code Chapter 24.74, as amended, provides that an artist's studio-residence facility may be authorized in the industrial zone by the DCLU Director by revocable two year permit, renewable upon a satisfactory showing to the Director that the artist continues as a bona fide working artist. Further,

1. The nature of the artist's work shall be such that there is a genuine need for the space involved.
2. The nature of the artist's work shall be similar to the types of uses permitted in the zone

and the criteria for approval of conditional uses must be met. Section 24.74.027 (formerly 24.74.020(G)).

4. Authorization of the special exception will not prove materially detrimental to the public welfare. The basic authorization has already been given for the proposal. It will be consistent with the spirit and purpose of the zoning code in that the proposed sculptural, pottery and other uses, though artistic in objective, will be compatible with the industrial activity of the subject zone and vicinity. Approval of three additional units for artists will in no way detract from the compatibility, nor require the Director to further consider traffic or building scale impacts.

5. The Hearing Examiner has not been persuaded that the specific tenants will be "painters or photographers" as appellant apprehensively conjectures. Even if the three additional artist were painters or photographers, there is no evidence that their work would be restricted to one artistic medium. It is not reasonable to require that all artists use the foundry itself, since foundry availability is not required for production of all larger works of art. No party objected to appellant's practical suggestion that notice to prospective tenants of the zone's preferred industrial use be provided in writing. The idea is accordingly adopted and shall modify the Director's Condition 1, special exception.

Decision

The Director's decision as to the DNS is AFFIRMED. The Director's conditional authorization of the special exception application is AFFIRMED as modified herein.

Entered this 17th day of January, 1984.


Leroy McCullough
Hearing Examiner

Concerning Further Review of the Special Exception and DNS

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.

Any decision of the Hearing Examiner which reviews compliance with Section 25.04.190, Substantive Authority to Condition or Deny, is subject to appeal to the City Council pursuant to Section 25.04.210.