

FINDINGS AND DECISION

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JAN 17 1985

In the Matter of the Appeal of

MARLENE MENDENHALL

FILE NO. MUP-84-087(CU,W)  
APPLICATION NO. 8402073

S. E. P. A.  
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from a decision of the Director  
of the Department of Construction  
and Land Use on a master use  
permit application

Introduction

Appellant challenges the approval given by the Director of the Department of Construction and Land Use for establishment of a self service gas facility with underground tanks at 4201 Gilman Avenue West.

The appellant exercised her 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 11, 1985.

Parties to the proceedings were: appellant Marlene Mendenhall; and the project applicant Miklos Lakatos, both pro se. The DCLU Director was represented by Clayton Leming.

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 property is located at 4201 Gilman Avenue West. The site is part of a triangular shaped block that is generally bordered on the northeast by Gilman Avenue West, a major arterial; on the south by West Elmore Street; and on the west by 26th Avenue West. See Exhibit 3. Topographically, 26th West and West Elmore slope upward away from the site.

2. The site is in a Gilman Avenue strip of Neighborhood Business (BN) zoned properties. The site's proposed Neighborhood Commercial designation is NC1/40.

3. The site is currently developed with a building that houses several small businesses, including a deli and a 24-hour convenience (grocery) store. In the subject application, the property owner proposes to add a self service gas facility as accessory to the grocery store use. A pre-pay window is planned so that a direct view from the store would be retained of the proposed pump island.

4. Presently, parking for the existing grocery store is essentially perpendicular to the northwest side of the building. Beyond these parking spaces is another triangular shaped area that is used by various patrons for scattered or random parking. Vehicles typically exit and enter via the Gilman side of the property where an extensive apron and curb cut connect to the street.

5. Applicant proposes to construct four underground fuel tanks near the northwest side of the existing building. The

concrete pump island, to which the tanks would be connected, would be located a short distance farther from the building. Concrete guard posts are proposed for the gasoline dispensers. Access to and from the pump island would be directly from Gilman Avenue. According to the DCLU representative the access plan has been reviewed and approved by the Seattle Engineering Department.

6. Between the Gilman Avenue side of the pump island and the street right-of-way end is an area proposed for a 6 ft. x 30 ft. planter. Applicant plans to restore sidewalk and curbs in the area immediately streetward of the planter, but to continue the cuts on both sides of that restored area as approaches to the pumps.

7. The island itself would be covered by a steel canopy that would extend to within 10 ft. of the existing building's north face. Because of the subject area's declining topography the top of the canopy will rest above the wooden fence that runs along 26th Avenue.

8. The proposal would impact the present on-site parking scheme. Applicant estimates the loss of one parking space, i.e. the area to be taken up by the island itself. However, the testimony and other evidence of record show that estimate to be an incomplete assessment. With the pump island and adjacent planter in place, and with the restored curb and sidewalks near the planter, the previous parking and exits will be restricted not only by the new pump island but also by cars stationed alongside the pump island to get gasoline.

9. The plan for the gasoline facility has been approved by the Seattle Fire Department, Exhibit 8. One of the conditions required the controlling attendant's unobstructed view of the fueling area. The dispenser itself is required to comply with specific fire code provisions, such as a switch that can automatically discontinue the flow of gasoline to an errant hose. Another feature proposed by the applicant is "stage 1" vapor recovery. By this process fueling trucks will draw gasoline fumes back into the truck while simultaneously filling the underground tanks.

10. The subject lot is also developed with a four unit apartment building that is located toward the intersection of West Elmore Street and 26th Avenue West. It is at a higher elevation than the store building.

11. Properties to the south and west of the subject block, i.e., across West Elmore and 26th Avenue West, are also at a higher elevation than the applicant's property and are zoned Single Family 5000. Predominant development is single family residential. Lawton Elementary School, with its attendant pedestrian and vehicular traffic, is also approximately one block west.

12. DCLU approved the master use permit application for the proposed facility on conditions relating to landscaping, downward-directed lighting and construction activity. DCLU also issued a declaration of non-significance which decision noted a possible increase in vehicular traffic, noise, and odor, but which also considered the impacts insignificant due to their temporary nature and to the scale of the project. The DCLU representative elaborated that (a) no parking is required for the service station use and (b) a "full-blown" service station will be a permitted use in the NC-40 classification which will be effective for the area "sometime in 1985".

13. One of the residences along 26th West and located across from the project site is that of appellant who expressed considerable apprehension about increased noise, traffic and the potential of fuel explosion or similar mishaps. Appellant's next

door neighbor also testified against the proposal. In addition to sharing an opinion that the area does not need another gas facility, the witness underscored appellant's concern with existing 26th Avenue truck and other vehicular traffic; and with the increased danger of fire and explosions since the gas facility will be near community residences and their connecting natural gas lines. One witness for appellant specifically recalled first hand impacts of a 1959 storage tank explosion which took place near Burton Place West.

### Conclusions

1. In her challenge to the DCLU Director's declaration of non-significance (DNS) appellant asserts that an environmental impact statement (EIS) is necessary and that the project should be denied, principally on the basis of projected environmental impacts. Most succinctly stated, appellant simply does not like the idea of a gas station in such a "small area" so close to her home. Her particular concerns, echoed by neighbors, include a suspected increase in vehicular traffic; decreased pedestrian and other safety; and the increased risk of explosions.

2. An EIS is required when more than a moderate effect on the quality of the environment is a reasonable probability. Norway Hill Preservation and Protection Association v. King County Council, 87 Wn. 2d 267, 552 P. 2d 674 (1976). And in Brown v. Tacoma, 30 Wn. App 762, 637 P. 2d 1005 (1981), it was held that a DNS will be sustained on review unless it is proved to be clearly erroneous.

3. Seattle Municipal Code Section 23.76.36(B)(7) provides that regarding master use permit decisions the DCLU Director's environmental determinations are to be given substantial weight and that the burden of proving a contrary position is that of the appellant. See also Seattle Municipal Code Section 25.05.680(1)(c).

4. The record shows that the present grocery store parking scheme will be altered by the proposed gasoline island. At least one automobile parking space will be removed and the random exit pattern will be hampered by users of the fuel tank or by the installed curb. However, no evidence was adduced to support the appellant's general assertion that new traffic will be drawn to the area as a result of the self service facility. The weight of the evidence tends to support the contrary since the proposed facility will be accessory to an already existing food mart. The Seattle Fire Department has approved the plan and in so doing has imposed specific conditions relating to safety. No objection of record has been submitted from the Seattle Engineering Department. Thus, while the pump will undoubtedly cause some changes to the vicinity the evidence of record does not overcome the substantial weight given the Director's decision. Section 23.76.36(B)(7). No more than a moderate impact on the environment is projected so that no EIS is required. Similarly, appellant's presentation did not show that the proposal should have been denied pursuant to the DCLU Director's substantive authority to deny the proposal based on environmental grounds. Seattle Municipal Code Section 25.05.660(f) states that to deny a proposal an agency must find that:

the proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental environmental impact statement prepared under this chapter...

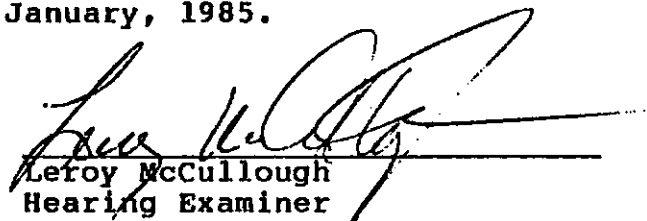
As noted above the impacts were not shown to be significantly adverse, and no environmental impact statement is required for the proposal.

5. Although no deference is given the Director's decision on the administrative conditional use approval, Section 23.76.36(B)(7), the Director's grant of the administrative conditional use is also affirmed. The proposed use will not prove to be "materially" detrimental. The proposed use is in an area zoned BN and proposed for NCI classification. The proposed use will also front on a major arterial. It will be accessory to an existing use. Therefore, the conditional use will be adequately consistent with the spirit and purpose of the zoning code. The conditions imposed, requiring downward directed lighting, landscaping and restricting construction activity, all appear as reasonable items designed to enhance and protect the public interest.

#### Decision

The Director's decision is affirmed.

Entered this 17th day of January, 1985.

  
Leroy McCullough  
Hearing Examiner

#### CONCERNING FURTHER REVIEW

Pursuant to Section 25.05.680(2), Seattle Municipal Code, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fourteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.05.660. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council should be consulted regarding their appeal procedure.

If an appeal is taken pursuant to Section 25.05.680(2), the time for filing a request for judicial review of the underlying governmental action and/or other SEPA issues is stayed until the City Council renders a final decision on this Section 25.05.680(2) appeal.

If no appeal is taken pursuant to Section 25.05.680(2), the decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review of the decision on the underlying governmental action must be filed in King County Superior Court within fourteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.36.(B)(11); Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73. Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. RCW 43.21C.075(6)(c). SEPA issues may be added to the request for review within 30 days after the date of this decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 400 Seattle Municipal Building, Seattle, Washington, 98104, within fourteen days of the date of this decision. Section 25.05.680(3)(d).

If the Superior Court orders a review of the decision, the person seeking review must arrange for and bear the cost of preparing a verbatim written transcript of the hearing but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, 5th Floor, Seattle, Washington 98104. As an alternative to the written transcript,

RCW 43.21C.075(6)(b) provides that a tape may be used for court review. If a taped transcript is to be reviewed by the court the record shall identify the location on taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review.