

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

Pay 'n Save Corporation

FILE NO. MUP-84-092(W)  
APPLICATION NO. 8405378

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

#### Introduction

Appellant, Pay 'n Save Corporation, appeals the decision of the Director, Department of Construction and Land Use, to issue a declaration of non-significance with conditions for a proposal by Northwest General Contractors, Inc., for property at 2724 N.E. 45th Street.

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 30, 1985.

Parties to the proceedings were: appellant represented by Merle Cox, real estate coordinator; the Director represented by Patrick Doherty, land use specialist, and the applicant by Robert P. Tjossem, attorney at law.

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. Northwest General Contractors, Inc., applied for a master use permit to establish use for future construction of a building for a medical clinic and an auto repair shop for property at 2724 N.E. 45th Street. The Director issued a final declaration of non-significance and imposed a landscaping condition. Pay 'n Save Corporation, with adjacent businesses, filed an appeal of the decisions involved.

2. The site of the proposed development is a lot with 149 ft. of frontage on N.E. 45th Street and a depth of 100 ft. It is Parcel A of a recent subdivision. Parcel B is a 149 by 75 ft. lot to the rear of Parcel A and is developed with a retail store, Schuck's Auto Supply. Parcel B has a non-exclusive easement for access over Parcel A and an area of non-exclusive easement for access and parking.

3. The applicant proposes to build a structure covering some 5,000 sq. ft. which would house a CHEC Medical Center and a 60 Minute Tune operation.

4. The site is adjacent to the University Village Shopping Center and is separated by a roadway from the parking area for the University Village.

5. N.E. 45th Street is a busy arterial street and no parking is permitted on either side of the street in this area. There are no side streets within 800 ft.

6. An environmental checklist, Director's Exhibit 2, was prepared for the proposal by the applicant and approved by the Director's land use specialist, Nanette Mozeika. The checklist

shows that the completed project would have 32 parking spaces and would not eliminate any existing spaces.

7. The analysis and decision of the Director, Director's Exhibit 3, states in the background data that fifteen parking spaces are required for the two operations, six new parking stalls will be provided and the remaining will be accommodated in parking for the University Village. These facts are in error.

8. A corrections sheet dated December 4, 1984, which date is prior to the issuance of the DNS decision, states that the parking requirement for the two operations would be nine stalls. That is based upon 6.2 stalls for a clinic with two or fewer doctors where the requirement would be one space per 400 sq. ft. and 2.5 stalls for the repair shop where the requirement is one space per 1,000 sq. ft.

9. The plans submitted with the application showed parking in the access easement area and were required to be revised.

10. The revised plans show eleven parking stalls, four adjacent to the building on the east side, six available in the easement area along the east side and one at the northwest corner of the structure which appears to be intended for loading purposes. The business may also have the right to use the parking in the non-exclusive easement area where six stalls are to be located, now used by Schuck's.

11. There was no direct evidence of the actual number of persons to be employed by the two businesses. The two other 60 Minute Lubes contacted by appellant's witness had between five and eight employees and the CHEC Medical Centers had four employees. There is likely to be, therefore, a minimum of nine employees on the site.

12. Both businesses attempt to attract a high volume of customers or patients.

13. Transit service is not very good in the area.

14. It is probable that the demand for parking from the two businesses will exceed the parking provided on site.

15. The University Village Shopping Center has 1,400 parking spaces which is under what the current code requires. The University Village will not provide parking for any other use and the president has indicated that their parking use will be strictly enforced, that is customers of the businesses which are not in the University Village Shopping Center will have their cars towed if they park in the University Village.

16. Carnation Company is located on the east and north sides of the subject site. That property is fenced and parking is strictly restricted to that associated with that business.

17. While the Director recognized that there would be parking overflow from the site he assumed a "traditional reciprocity of uses" would handle that demand. While there may be such reciprocity in some locations, it has been clearly shown it does not apply in this case.

#### Conclusions

1. The Director issued a DNS finding that there would not be significant adverse impacts on the environment from the proposal. Section 25.05.340(1). That decision is to be given substantial weight by the Hearing Examiner on review. Section 23.76.36B.7.

2. Evidence adduced at the hearing shows that the decision, even as corrected, was based on a faulty premise, i.e., patrons of the businesses could park in the University Village parking lot. The evidence showed that not to be true. The issue then is whether appellant proved that the environmental impact from that

unsatisfied parking demand would be more than a moderate adverse impact on the environment, which is the measure of significance according to Norway Hill v. King County Council, 87 Wn.2d 267 (1976). There was no evidence as to what will happen to those cars. One can speculate that they either will find parking despite the precautions taken by surrounding businesses or that they will not patronize the operations on the site because of lack of parking. In any case, because of the relatively small numbers involved it has not been proven that the impact on the environment would be more than moderate.

3. Even adverse impacts which are not significant may be mitigated by imposition of conditions pursuant to Section 25.05.660. The authority to mitigate is limited, however, by the requirement that the measures be based on policies designated in Section 25.05.902 as a basis for exercise of substantive authority. Section 25.05.902(4) indicates that it is the policy intent for parking and traffic that the City modify off-street parking requirements to mitigate adverse impacts. The policy provides that the Director in determining the necessary off-street parking, is to consider factors such as:

- a. Availability of on-street parking and public transit;
- b. Existing traffic conditions;
- c. Trend in local area development;
- d. Peaking characteristics of the proposed building and the immediate area;
- e. Availability of goods, services, and recreation within reasonable pedestrian distance.

Section 25.05.902(4)(B)(ii). Further, the section states that the Director may require measures to mitigate adverse parking impacts and gives two examples. Neither would be appropriate measures for this case.

3. This situation is unusual in that there is no opportunity for accommodation of the excess parking demand. As this was not recognized by the Director in the analysis and decision the matter should be remanded for the Director to determine what conditions, if any, are appropriate to mitigate that impact. The Director should not be limited to those proposed by appellant.

#### Decision

The matter is hereby remanded to the Director for an opportunity to exercise his substantive authority to impose reasonable conditions to mitigate the parking impact. The Hearing Examiner will retain jurisdiction for a period of fourteen days following the Director's determination for any further challenge by the parties. If no challenge is filed, on the fourteenth day the decision becomes final. If further challenge is filed there will be further proceedings.

Entered this 13<sup>th</sup> day of February, 1985.

*M. Margaret Klockars*  
M. Margaret Klockars  
Deputy Hearing Examiner