

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

In the Matter of the Appeal of

MARION FUKUMA and ROBERT MIKKOLA, et al.

FILE NO. MUP-85-038(CU)
APPLICATION NO. 8502092

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

Introduction

Appellants appealed the decision of the Director, Department of Construction and Land Use (DCLU), to conditionally approve an administrative conditional use for a service station in a BC zone at 4800 Beacon Avenue South.

The appellants exercised their 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 August 15, 1985.

Parties to the proceedings were: appellants represented by Marion Fukuma and Robert Mikkola; the Director represented by Malli Anderson, land use specialist; and the applicant, Plaid Pantry, represented by Richard Piacentini.

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 applicant has applied for master use permit to change the use of an existing tavern to a convenience food store and service station for the property at 4800 Beacon Avenue South. An administrative conditional use is required to establish a service station in the zone. The Director granted the conditional use subject to three conditions including landscaping, a fence along the east property line and a trash receptacle. Appellants appeal the administrative conditional use.

2. The subject site is a corner lot bounded by Beacon Avenue on the west, South Angeline on the north and South Columbian Way on the south. The existing structures have been removed and the new convenience store structure erected.

3. The site is within a BC zone which extends north and south of the intersection of Beacon and Columbia. The property abutting the east side of the subject site is a single family home within an SF 5000 zone. Across the street to the north in the BC zone is an apartment building and east of that building are single family homes.

4. The gas pump island with a canopy would be located on the southern portion of the site nearest South Columbian Way. The convenience store structure would be located at the northeastern corner abutting the northerly property line and set back 5 ft. from the easterly property line.

5. Extensive landscaping is proposed, some 3,385 sq. ft. or 24 percent of the lot. The landscaping is to be located along the street on the south and west sides, in the southwest corner screening the gas pump island, in the middle portion on the street side of the parking and in the northwestern quarter of the site extending 10 ft. into the street right-of-way on the west side of the building. The landscaping will include a mixture of species including vine maple, dwarf laurel, pine, azaelas, junipers, cotoneaster and ivy. No landscaping was shown on the landscaping plan in the right-of-way immediately north of the store structure or along the east property line.

6. A trash receptacle is proposed to be located at the northwestern corner of the store structure and will be surrounded by a wood slatted fence.

7. A cement block wall is proposed for the easterly property line to shield the single family residence on that side from lights and glare and to mitigate any noise impacts.

8. There is a small grocery store, Les-T, at the southwest corner of the intersection of Columbian and Beacon across from the subject site. Another convenience store, a 7-11, is located in the block south of the subject block on the same side of the street. Service stations serving the area, one immediately south of the subject site and one immediately west, have closed as well as one at 15th and Columbian Way.

9. Appellants presented their concerns with the lack of landscaping on the north side of the building, potential for litter, the noise from cars and car doors and the ability of this area to support an additional convenience store.

10. After hearing the neighbors concern about the area north of the store structure, the applicant offered to extend the landscaping into that area, provided a street use permit is available and provided the occupancy permit is not held up because of delay due to changes necessary for provision of water and time involved in getting the street use permit.

Conclusion

1. The code has specific requirments for an administrative conditional use for service stations in addition to the general conditional use requirements which are that the use not be materially detrimental to the public welfare or injurious to other property and that the authorization be consistent with the spirit and purpose of the Land Use Code. The specific conditions of Section 24.40.040(B) for service stations in a BC zone are that at least 6 percent of the lot be landscaped including all lot lines except for necessary walkways and driveways, that driveway access lanes to abutting property in the C, M or I zones shall not exceed 30 ft. in width and that a view obscuring wall not less than 5 ft. in height be established between the automobile service station and any abutting lot in an R zone.

2. The driveway condition does not apply in this case because the driveways do not abut C, M or I zones. The proposed wall will satisfy the third condition.

3. The landscaping plan, as noted in the Director's decision, does not provide for landscaping along the east property line and the condition included by the Director adds that landscaping. The plot plan, Director's Exhibit No. 1, shows landscaping on the north

side of the Plaid Pantry building which does not appear in the actual landscaping plan. The offer made by the applicant at hearing would be consistent with the plot plan submitted and will provide the satisfaction of the first specific requirement of the conditions for administrative conditional use that all lot lines be landscaped. It will be necessary to have a break in the landscaping to allow access to the trash area.

4. The other concerns of the neighborhood appellants addressed the material detriment to the public welfare issue. Potential detriment from noise caused by cars at the gas pumps would be reduced to an acceptable level by the building's location and the wall which both separate the pumps from the residential zones and uses. Any litter problem would be related to a convenience store which is not a subject of the conditional use, however, the Director's condition requiring a trash receptacle and its maintenance for customer use is designed to mitigate that problem. The other concern about potential competition cannot be considered by the Examiner. Courts have generally held that land use regulations cannot be used to control or restrict competition and that effect on other businesses would not constitute a legal basis on which to make a land use decision. See Anderson, American Law of Zoning; Fowler v. City of Hattiesburg, 196 So.2d 358 (Miss. 1967); Wyatt v. City of Pensicola, 196 So.2d 777 (Fla. 1967); Charnofree v. City of Miami Beach, 76 So.2d 665 (Fla. 1954); Lieb v. Boyle, 116 A.2d 860 (1955); Spohrer v. Oyster Bay, 219 N.Y.S.2d 376 (1961); Cosmopolitan Bank v. Niles, 454 N.E.2d 703 (Ill. App. 1983) and Mobil Oil v. Board of Adjustment, 283 A.2d 837 (Del. 1971). It appears that as conditioned and with the additional landscaping proposed, the gas station should not be materially detrimental to the public welfare or injure any property in the area.

5. The spirit and purpose of Title 24 of the Land Use Code is generally to protect and promote the public health, safety, morals and general welfare. This proposal meets the technical requirements of the Code and shows an attempt to live up to the spirit of those requirements as well.

Decision

The administrative conditional use is granted subject to the following conditions:

1. Provide and maintain a 5 to 6 ft. high fence or wall along the east property line except for 3 ft. high at the northerly 20 ft. This fence or wall is to provide sound attenuation equivalent to a wood fence of a minimum density of four pounds per sq. ft. with no openings.
2. One 30 gallon trash receptacle shall be provided and maintained and conveniently located on the site for the customers use.
3. Prior to establishment of the gas pumps, landscaping shall be provided per plans approved by DCLU including landscaping along the easterly wall which may be ivy.
4. Landscaping shall be provided in the area north of the store structure along the northerly property line if a street use permit can be obtained provided a good faith attempt is made to obtain the street use permit and to alter the plans as necessary for provision of water. The occupancy permit may be issued prior to completion of this portion of the landscaping.

Entered this 21st of August, 1985.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City, 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 must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. 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. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, 5th Floor, Seattle, Washington 98104.