

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CURTIS J. COYNE

FILE NO. MUP-87-014(CU)
APPLICATION NO. 8604106

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

Introduction

Curtis J. Coyne, appellant, appeals the decision of the Director, Department of Construction and Land Use, to grant administrative conditional use to expand an existing fast food restaurant at 5146 - 25th Avenue N.E.

The appellant exercised the 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 April 16, 1987. The record was closed April 28, 1987, after submission of additional traffic information.

Parties to the proceedings were: appellant, pro se, the Director by Clay Leming, land use specialist, and the applicant, McDonald's Corporation by Franklin Tseng and Leonard Giannola.

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. McDonald's Corporation (McDonald's) filed a master use permit application for administrative conditional use to allow the expansion of the University Village McDonald's, an existing fast food restaurant at 5146 25th Avenue N.E. The Director granted the conditional use subject to conditions. A timely appeal of this decision was filed by Curtis Coyne.

2. McDonald's proposes to add approximately 565 sq. ft. of floor space in the form of "drive-thru" booths, additional kitchen space for a cooler on the south side and an enclosed lobby area around the restrooms on the west side. The "drive-thru" booths would be located on the east side of the existing building and would require restriping of the lot for parking and for driving lanes.

3. The subject site is zoned NC 2-40 ft. The zone extends north and south along 25th N.E. On the north side of N.E. 54th Street, which borders the subject property on its north side, is a discontinued service station and the Deluxe 2, a restaurant. The commercial area has a mix of commercial uses, generally one story high.

4. Property adjoining the subject site to the east is zoned SF 5000 and is developed with single family residences. Appellant's home is at the corner of N.E. 54th and 26th N.E. and shares a common lot line with the subject property.

5. The McDonald's property now has two entrances or exits from and to 25th N.E. and an exit onto N.E. 54th which is used by some motorists as an entrance. The proposed drive-thru access

plan would have customers entering the lot at only one point near the southwest corner of the lot where they would choose to park in the small lot to the left of the entrance and exit onto 25th N.E., to park on the south or east sides of the lot and exit onto N.E. 54th Street or to use the "drive-thru" lane and exit onto N.E. 54th Street.

6. A "left turn only" sign is proposed for the exit onto N.E. 54th Street to reduce the amount of traffic going into the residential neighborhood to the right. Not all drivers can be expected to obey that direction. The sign would also say "do not enter" and McDonald's expects fewer drivers to attempt to enter from N.E. 54th Street than now because of the greater percentage of the traffic being funneled out at that point.

7. The "drive-thru" lane would provide space for at least seven cars to queue while waiting for service.

8. The proposed traffic design would eliminate some turning movements to and from the site thus reducing potential pedestrian and vehicular conflicts and hazards.

9. McDonald's engaged Entranco Engineers, Inc., as traffic consultant to study the traffic and parking situation and to project the effect of the addition of the "drive-thru" on that situation. For comparison, the traffic engineer used a McDonald's on Stoneway and North 45th which has a "drive-thru." The traffic engineer also considered Institute of Traffic Engineers (ITE) trip generation rates for fast food restaurants, a Wisconsin ITE study, a Chicago study, Barton-Achman, and an Everett study.

10. The North 45th Street McDonald's has greater floor area than the subject facility, less parking than the subject facility and less queuing space.

11. North 45th Street and 25th N.E. each carry about 20,000 vehicles per day near the sites. Stoneway carries about 14,000 vehicles per day.

12. The traffic consultant observed both sites on a Saturday and a Tuesday to make its comparison.

13. The Saturday in April on which the traffic consultant surveyed parking and traffic was sunny and the first this year with noon temperature above 60 degrees. It also fell during McDonald's Monopoly game promotion which resulted in transaction volume almost 10 percent over that of April, 1986. Transactions in the highest summer month exceed those in a normal April by seven or eight percent so the volume observed by the traffic consultant is comparable to the normal heaviest month.

14. The peak period for the week at the existing facility is Saturday from 11:30 a.m. to 1:30 p.m. The total volume in the noon peak hour observed by the traffic consultant was 274 vehicles. The p.m. peak traffic averages 65 percent of the noon peak.

15. Based on ITE trip generation figures, during the Saturday noon peak hour, the expanded facility would generate 114.2 trip ends per 1,000 sq. ft. or 339 trip ends, an increase of 24 percent over the number observed by the traffic consultant. The Barton-Achman study in Chicago would add 5 percent to that because part of the space is a "drive-thru" so the total would be 356 trip ends in the peak hour.

16. The history of transaction totals at the facility for a week in March shows that the Saturday noon peak hour was 45 percent greater than the highest p.m. peak which occurred on a Thursday evening. On Friday there were 689 transactions between 5:00 and 7:00 p.m. compared to 866 during the same period on Thursday.

17. The experience of a McDonald's in California which added a "drive-thru" was that vehicular volume was increased by 10 to 15 percent.

18. The intersection of N.E. 54th with 25th N.E. is controlled by a stop sign on N.E. 54th. The traffic consultant found that determining the existing level of service (LOS) for the controlled approaches by formula and by actual count produces different results. Using the formula, the LOS would be "D" which represents a 30 to 40 second delay. The actual experience of motorists at that intersection, at the times observed, averaged 22 seconds or LOS "C".

19. The traffic consultant projects that 80 percent of vehicles parking would use the larger rear lot and 20 percent the front lot. With "drive-thru traffic", the total exiting onto N.E. 54th in the Saturday noon peak hour would be 162 vehicles.

20. The effect of the traffic from the expanded McDonald's on the N.E. 54th approach to 25th N.E., using the formula, would be to decrease the LOS to "E" but projecting from actual experience the LOS would remain at "C".

21. The "drive-thru" operation would meter exiting traffic using that lane possibly reducing the queuing at the 25th N.E. intersection.

22. There are traffic lights at N.E. 55th, a block north of the site, and at Blakely, a block south of the site, which provide gaps in the traffic on 25th N.E. which can be used by drivers to join that traffic. A turn lane in the street assists vehicles waiting to turn into the McDonald's lot and vehicles leaving the lot.

23. Currently, 36 to 50 percent of the traffic exiting onto N.E. 54th Street turns right.

24. At the North 45th Street McDonald's an average of 55 percent of the traffic used the "drive-thru" window and 45 percent parked and went into the restaurant.

25. The traffic consultant observed that some McDonald's customers now park on 25th N.E. and N.E. 54th to pick up food to take away. Neighbors report that customers also park on 26th N.E.

26. The "drive-thru" should reduce the parking demand during the Saturday peak by 30 percent. The number of parking stalls would be reduced from 41 to 31 plus the queuing spaces. The traffic consultant finds a seven percent reduction in parkers per stall.

27. Studies of Everett fast food restaurants and the observation at the North 45th Street McDonald's shows that when the "drive-thru" lane has from three to eight vehicles waiting, drivers will park and walk in. In no case did vehicles obstruct the sidewalk, obstruct the regular lane or wait in the street for access. If the line exceeded what appeared to the driver to be reasonable, the driver would even either pull out of the "drive-thru" lane and park or continue on through the lot.

28. There is no designated high occupancy lane on 25th N.E.

29. Twenty fifth Northeast appears to be a auto-oriented rather than pedestrian-oriented street.

30. Residents on 26th N.E. find fast food litter on their property. McDonald's has a policy of picking up litter in the area surrounding the facility at least once per day. The Director found that appropriate litter control measures are provided.

31. Additional vehicles using the site will add to the vehicular noise. The Director has required replacement of the existing fence, cyclone with wood slat inserts, with a solid fence to reduce the noise and headlights on neighboring properties.

32. One owner of adjacent property objects to a solid fence because she does not want to feel closed in.

33. The "drive-thru" would be equipped with an intercom with a menu-board speaker. The volume of sound at 4 ft. from the speaker and the menu-board would be approximately 73 dBA. According to the plans, the speaker would be over 45 ft. from the nearest property line so the sound at the property line would have diminished to about 52 dBA which is quieter than conversational speech at a distance of 3 ft. A solid wood fence would substantially reduce the remaining sound.

Conclusions

1. A fast food restaurant with floor area larger than 750 sq. ft. and identified as a heavy traffic generator may be permitted in a commercial zone as an administrative conditional use if certain criteria are met. Section 23.47.006. The criteria consist of the general requirement that the use not be materially detrimental to the public welfare or injurious to property in the zone or vicinity and criteria relating specifically to fast food restaurants.

2. The first specific criterion is that the design of the structure is compatible with other structures in the vicinity. Here, the structure already exists and the proposal involves a minor structural addition. The structure with its addition would still be compatible with its surroundings.

3. The second criterion is provision of appropriate litter control. The Director has found that requirements are met for litter control. While the neighbors have to contend with litter, the "drive-thru" booth is not likely to add to that since it is probable that fewer vehicles will drive through the residential streets and fewer will park on those streets.

4. The third criterion requires a traffic analysis showing that the restaurant would not have certain effects. First, it must not cause significant additional traffic to circulate through adjacent residential neighborhoods. With the entrance only on 25th N.E. and the "left turn only" sign at the exit to N.E. 54th, the effect should be to reduce traffic circulation in the residential neighborhood substantially. The sign should be required as a condition of the conditional use to assure that the proposal have this effect.

5. The addition may not disrupt the pedestrian character of an area by increasing the potential for pedestrian-vehicle conflicts. The area is more auto-oriented than pedestrian. Further, the addition would reduce the potential for conflicts.

6. The addition may not create traffic or access problems which would require expenditure of City funds to mitigate. The only potential for expenditure of funds would be improvement of the N.E. 54th Street intersection, however, the volume of traffic would not warrant installation of traffic lights and the nearby traffic lights providing gaps in the traffic and the turning lane will assure that the intersection can continue to function.

7. The additional traffic must not interfere with peak hour transit operation by causing auto traffic to cross a designated high occupancy lane. There is no high occupancy lane in this location.

8. The use must not cause cars to queue across the sidewalk or onto the street. The studies show that this would not occur.

9. The last traffic requirement is that the use may not interrupt established retail or service frontage designed to serve pedestrians. The McDonald's facility already exists and would not change the frontage except to reduce the amount of traffic exiting across the sidewalk to the benefit of pedestrians. The frontage to the north and south is not particularly designed to serve pedestrians.

10. The final criterion is not applicable as it applies to proposals in pedestrian designated zones.

11. Appellant has urged that traffic, parking, litter and noise resulting from the addition would be detrimental to the public welfare and would injure residential properties. The record shows that the traffic and parking in the residential zone will be reduced and that litter should not be increased. The additional volume projected does mean additional vehicular noise however this should be offset in part by solid fencing which does not now exist and from the rerouting of traffic to the west. With conditions requiring fencing, the sign and control of lighting there should be no injury to nearby properties nor material detriment to the public welfare.

Decision

The Director's decision to approve the administrative conditional use is affirmed with the following additional or modified conditions:

The proposed "do not enter, left turn only" sign shall be installed and permanently maintained;

The existing fence shall be replaced with a solid fence as high as the existing fence, the design to be approved by DCLU. With the approval of DCLU, the design may be modified to meet the needs of the property owner at 5145 26th N.E.

Entered this 1st day of May, 1987.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner

NOTICE OF RIGHT TO PETITION FOR FURTHER CONSIDERATION

Pursuant to Seattle Municipal Code Section 23.76.054, as amended, any person substantially affected by a recommendation of the Hearing Examiner may submit a petition in writing to the City Council requesting further consideration. The petition must be submitted within fifteen days after the date of mailing the recommendation of the Hearing Examiner and addressed to: City Council, Urban Redevelopment Committee, Municipal Building, Seattle, Washington 98104. The request for further consideration shall clearly identify specific objections to the Hearing Examiner's recommendation, facts missing from the record, and the relief sought.

Pursuant to Seattle Municipal Code Section 23.76.054(D), if there is no request for further consideration Council action shall be based on the record established by the Hearing Examiner.

The City Council Urban Redevelopment Committee should be consulted for further information on the Council review process.

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

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from a decision of the
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A clerical error was made in the decision in this matter issued May 1, 1987, in that the wrong information regarding further review was appended. The correct statement regarding further review follows and is hereby substituted:

CONCERNING FURTHER REVIEW OF
HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

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 party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

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 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, (206) 625-4197.

Entered this 4th day of May, 1987.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner