

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

In the matter of the Appeal of

ROSLYN C. BURROUGHS, ET AL.

FILE NO. MUP-89-035(W)  
APPLICATION NO. 8807272

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

Introduction

Appellants, Roslyn C. Burroughs, et al., appeal the decision of the Director to issue a determination of non-significance with conditions for a proposal for property at 5404 Meridian Avenue North, claiming the Director inadequately conditioned the project and did not mitigate certain significant adverse environmental impacts.

The appellants exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the undersigned Hearing Examiner Pro Tempore on August 15, 1989 and September 22, 1989; thereafter, the record was kept open through October 4, 1989, to provide for submission of further evidence, authority and argument by the parties. During this time a site inspection was made by the undersigned.

Parties to the proceedings were: Appellants, represented by Stephanie Warren; the Director DCLU, represented by Jay Laughlin, Land Use Specialist; and the applicant, Habib Medawar, represented by his attorney, Linda Mason.

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 hearings and during the period of continuance, the following shall constitute the findings of fact, conclusions, and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The applicant applied for a master use permit to demolish two residences and to establish use for future construction of a mixed-use building at 5404 Meridian Avenue North to contain apartment units, commercial space, and underground parking. The Director of the Department of Construction and Land Use (Director) issued a determination of non-significance (DNS) for the proposal and imposed four conditions on the permit. In addition, he authorized a structural building overhang into the street right of way.

2. Appellants, who are neighborhood residents, appealed the DNS, claiming the conditions imposed by the Director were not sufficient to mitigate environmental impacts in these areas: (a) increased crime, (b) bulk and scale, (c) parking, (d) traffic, (e) loss of moderate cost family housing, (f) edge effects on the single family neighborhood, (g) light and glare, and (h) cumulative impacts of development.

3. The subject site is zoned Neighborhood Commercial 1 with a 30' height limit (NC1-30). It is located midblock on the east side of Meridian Avenue North at the southwest end of a small NC1-30 area situated between the upper Wallingford and lower Green Lake neighborhoods. The entire block in which the site is located is zoned NC1-30. Single family 5000 zoning surrounds the

NC1 zone.

4. The neighborhood commercial zone in which this project is located is an irregularly-shaped zone which extends easterly along North 55th Street at its northern edge from a few lots west of Meridian Avenue North to Keystone Place North; then north-easterly along North 56th Street to about mid-block beyond Kirkwood Place North, a total distance of about two and one-half blocks. From Keystone Place North to its easterly boundary, the zone is from two to three lots deep along both sides of North 56th. The deepest part of the zone extends westerly from Keystone Place North through several lots west of Meridian Avenue North; it extends southerly in this area from three or four lots north of North 55th Street to North 54th Street. The total distance in depth and width of this part of the zone is about one and one-fourth blocks, either way. The block in which the project site exists is in this part of the zone, near its southwestern end.

5. The commercial zone is developed with a mix of commercial and residential structures. The residential buildings in the commercial zone consist of apartment buildings and single family residences. Within slightly more than a one-block radius from the project site there are six two or three-story apartment buildings and one four-story mixed use apartment building, including those mentioned in paragraph 7 of these findings. Commercial development in the zone is of small scale, consisting primarily of one or two-story buildings containing storefronts with small retail sales and services businesses. Included among these businesses are a pharmacy, laundromat, tavern, produce market, specialty food store, bakery and restaurant, clothing design store, TV repair shop, frame shop and professional offices. The heart of the commercial development presently is along North 55th and North 56th Streets.

6. Most of the businesses in the NC1 zone serve the local residents, primarily. However, at least one attracts a regional clientele, namely, the Honey Bear Bakery in the next block north at the intersection of North 55th Street and Kenwood Place North. This business is of somewhat recent origin to the neighborhood. Some other businesses have recently turned over and may also attract a more regional clientele, however, the extent of that business is at this time unknown.

7. The property immediately surrounding the project is developed with a mix of multi-family residences and commercial buildings. A two and one-half story apartment house is located immediately to the south of the proposed site on the corner of the same block. Immediately adjacent to the north is a one-story car repair and service facility with a paved backyard parking area closest to the project site. Next door to it is a one and one-half story retail building. A three story apartment house sits on the property uphill and immediately adjacent to the east. Across the street on the west side of Meridian there are a two-story apartment building, two commercial buildings of one and two stories, and a two-story mixed retail/apartment building.

8. One to one-and-a-half story single family residences predominate in the residential zone surrounding the NC1-30 zone, although in the immediate vicinity of the project to the south and east there are a number of two-story homes, as well as other smaller homes sitting on higher elevations, thereby appearing taller. The lots generally are substandard size for the zone. The prevalent platting pattern in the surrounding residential area is of lots 30' wide by 100' to 125' deep. This smaller lot size increases the density of the residential area beyond that anticipated in the zone.

9. The site has 6,120 square feet with 68 feet of frontage on Meridian Avenue North and 90 feet of depth extending eastward. The property is elevated approximately five feet above Meridian and slopes moderately upward from west to east, rising approximately 11 feet over the 90 feet of lot depth. Two single family residences and a garage are located on the site. These will be

demolished and the property excavated and graded for construction of the mixed use building. Existing vegetation consists of two large trees, shrubs and grass. These will be removed.

10. The project will contain an underground garage for off-street vehicular parking of the building's residential tenants. Vehicular access into the garage is from Meridian near the northwest corner of the building, with one curb cut. The project will rise four floors above finished grade from the front although the top three of those floors will be stepped back. It will rise three stories from ground level in the back. The first floor will contain two apartment units and 2,451 square feet of retail sales space with 36 linear feet of storefront facing Meridian. The next three floors will contain apartments only. In all, there will be a total of 13 apartments, most if not all of which will be one-bedroom units averaging 589 square feet each, according to the building plans (Exhibit 23). Originally there were 14 one-bedroom units planned. However, following review of a more detailed parking plan submitted by the applicants at the hearing September 22nd (Exhibit 28), and further revisions to it (Revised Parking Plan which is noted by the Hearing Examiner herein), DCLU reduced the number of permissible dwelling units to 13. The main pedestrian access to the apartments will be on the north side of the building. Access to the commercial space will be from the west side.

11. According to the revised parking plan, there will be four single parking stalls and 10 tandem parking stalls in the underground garage. Under the Land Use Code (Section 23.54.020B), a tandem stall qualifies as 1.5 parking spaces. Accordingly, the parking plan for the project, as revised, qualifies as 19 parking spaces. Thirteen of these spaces have unblocked access. Included within these is a handicap stall which will be assigned to a handicapped tenant when the need arises. Sixty percent of the spaces will accommodate medium vehicles; 40 percent will accommodate small vehicles. Each of the residential units will be assigned an unblocked parking space. All of the parking spaces in the garage will be assigned to residential tenants and furnished as part of the rent. The tandem stalls will be assigned to units with two cars, again without extra charge. If none of the tenants has a second car, then the blocked spaces in the tandem stalls will not be used. Each of the spaces will be signed to reflect the stall assignment. If the residential tenancy is not at 100 percent occupancy, the applicant would like to use available parking stalls for tenants of the commercial space; however, the project designer is not sure that this could be done without a variance on the driveway requirement in the Code relating to parking for commercial use.

12. According to DCLU, the parking plan meets the Land Use Code requirements as well as the Building Code requirements as to access. The project otherwise also meets code requirements, to the knowledge of the Director's representative.

13. The property will be developed, essentially, to the maximum allowed under the Land Use Code in width and depth at ground and underground levels. Bulk of the building will be modulated, however, by setbacks in the stories above ground level, by projecting balconies and decks on the west, north and east sides, by differing heights of the stories, and by landscaping. A parapet will project about two feet over the sidewalk the full length of the commercial frontage to provide for further building interest and to be compatible with the types of street overhangs on other buildings in the commercial zone.

14. Height at the front of the first story of the building (facing Meridian) will be 13 feet. The second story will step back 12 feet from that front. The third story rises directly above and is identical in space and use to the second story. These stories each contain 3,901 square feet, or 64 percent each of lot coverage in bulk, exclusive of balconies and decks. Height of the building at this point is 26 feet above finished grade to the eaves. The fourth story is on the south half of the

building only and is 1,879 square feet, or 30 percent of lot coverage in bulk, again excluding decks and balconies. Building height at this point will be 34 feet above finished grade to the eaves.

15. The project will be landscaped with three street trees and a number of evergreen shrubs next to the front of the building on the west side. On the north side and on a portion of the east side, there will be deciduous trees and evergreen shrubs to provide landscaping in the setback areas. There will also be landscaping on the roof-top patio over the ground floor level in the front.

16. The building is designed with gable roofs of different pitches and in different directions. Horizontal vinyl siding with four inch trim around the windows is planned for the exterior. These shapes and materials were chosen to be compatible with the single family residences in the neighborhood.

17. The project will increase the residential density of the neighborhood.

18. Fifty neighbors signed a petition opposing the project. They would like a denial of the project or a reduction in size. Their concerns related primarily to increased traffic and parking problems, bulk and scale and retail use. A few neighbors wrote expressing their approval of the project.

19. Appellants submitted a letter from the Wallingford Community Council opposing the project. (That letter is noted by the Examiner, as is the other evidence received from all parties before the close of the record October 4, 1989.) The Community Council opposed the project because of its bulk, the structural overhang, lack of off-street commercial parking, potential increased traffic problems, reduced air quality, and unsightliness related to the trash collection site.

20. Neighbors indicate that in the last five years there has been a noticeable increase in parking congestion and traffic due to the Honey Bear Bakery which draws a regional clientele. At present, little off-street parking is available for commercial needs in the commercial zone. They are fearful that the project, because of its increased residential density and commercial use, will further increase traffic and parking problems in the neighborhood.

21. Two parking studies were done relating to this project: one by the applicant's representative and one by the appellants. Both were done according to Engineering guidelines. The applicant's study used an 800 foot area; the appellants' study used a 400 foot area. The appellants' study area is the most reasonable for this particular site, however, due to the irregular shape of the zone, the configuration of the arterial intersections, and the topography of the area. It would be unlikely that customers or visitors to the project would park on the narrow streets with more steeply inclined slopes to the west or cross the busy intersections to look for parking beyond to the north or northeast. They would be more inclined to look for parking closer to the site and on less steep terrain.

22. Regardless of the area used, both parking studies revealed that parking is a serious problem in the neighborhood, particularly in the evenings, and that it is mostly at or above capacity in the blocks around the site. Applicant's study (Exhibit 13) indicates that of the 332 parking spaces identified within 800 feet, 74 percent of these were occupied during the peak parking period after 9 p.m. The overall average of the three periods observed was 66 percent for the larger area. However, examination of the data in that study relating to block faces immediately around the project and most likely to be used for parking spillover illustrates 89 percent overall average utilization:

Block Face	Capacity	Avg. 10 am	Avg. 2 pm	Avg. 9 pm	(9 pm %) (Util.)	Overall Avg.	(% Overall) (Util.)
9	5	3	4	6	(120%)	4	( 80%)
10	4	1	2	4	(100%)	2	( 50%)
16	2	3	4	2	(100%)	3	(150%)
22	11	9	7	7	( 64%)	8	( 73%)
29	1	1	1	0	( 0%)	1	(100%)
30	3	4	3	3	(100%)	3	(100%)
31*	5	8	5	5	(100%)	6	(120%)
32**	5	7	3	5	(100%)	5	(100%)
	<u>36</u>					<u>32</u>	<u>( 89%)</u>

\* = Across the street from site  
\*\* = In front of the site

23. Appellants' study (Exhibit 2) indicates a parking capacity of 174 spaces in the 400 foot area. Using data from the applicant's study for the same block faces but within the smaller study area, average overall utilization for the three periods observed by appellants was 97 percent. Appellants' own study used different times of the day than applicants'. Their study observed parking at 8 a.m., 1 p.m. and 7 p.m. on weekdays and 10 a.m. and 7 p.m. on weekends. The overall average utilization on weekdays in this smaller area was 84 percent. However, utilization averaged 98 percent at 8 a.m. and 90 percent at 7 p.m. on weekdays. On weekdays, the 8 a.m. average utilization was 98 percent; at 7 p.m. it was 90 percent. On the weekends, it was 91 percent at 10 a.m. and 74 percent at 7 p.m. An examination of the same block faces most immediately around the site revealed even greater utilization:

Block Face	Capacity	Avg. 8 am	Avg. 1 pm	Avg. 7 pm	(7 pm %) (Util.)	Overall Avg.	(% Overall) (Util.)
9	5	7	4	7	(140%)	6	(120%)
10	4	4	2	4	(100%)	3	( 83%)
16	2	3	2	3	(150%)	3	(150%)
22	11	12	5	10	( 91%)	9	( 82%)
29	1	2	0	2	(200%)	1	(100%)
30	3	4	4	3	(100%)	4	(133%)
31*	5	6	3	5	(100%)	5	(100%)
32**	5	7	4	6	(120%)	6	(120%)
	<u>36</u>					<u>37</u>	<u>(103%)</u>

\* Across the street from site  
\*\* In front of the site

24. Two hour and one hour time limited parking zones restricted from 7 a.m. to 6 p.m. are located on Meridian between North 54th and North 55th and on Keystone Pl. North between North 54th and North 55th, respectively.

25. Assuming a ratio of 1.5 parking spaces needed per residential unit for future parking demand, as discussed by applicant's parking study, evening peak demand for 13 units would be 20 spaces. Under Section 23.54.015 of the Code, 16 spaces would be needed for the residential use of apartments averaging 589 sq. ft. There would be a residential spillover of one on-street space under the first formula and no spillover under the second.

26. No commercial parking is to be provided in the underground garage. although DCLU considered this as a possibility under SEPA to mitigate the parking problem in the area, it was not deemed feasible or reasonable mitigation because the Code would require a two-way driveway which would eliminate some of the existing spaces and reduce the number of residential units to eight.

27. The projected parking demand for the commercial space in the proposal would be seven to eight spaces, according to DCLU, citing the Institute for Transportation Engineer's Trip and

provided within the building, this need results in a spillover of seven to eight onto the street.

28. The Director determined that the impact of the project on parking was sufficiently adverse to require some mitigation. After considering three alternatives, he imposed a condition on the project prohibiting these uses which produce high parking demand: multi-purpose convenience store, restaurants, taverns, brew pubs, customer service offices and recycling stations.

29. No traffic studies were done for the project due to a determination following earlier review by Seattle Engineering Department staff that none was warranted. The Director's report (Exhibit 14), however, indicates that the proposed project is expected to generate a total of 85 daily trips associated with the apartment use and 97 trips associated with the commercial use, or a total of 182 trips daily. Of these, 18 are expected to occur during the p.m. peak period. That report indicates that the existing volume of traffic on nearby streets is typical of areas of moderate density. These volumes were estimated to be acceptable by the Seattle Engineering Department. The projected additional traffic generated by the project was determined to represent only a nominal increase on key streets, such as Meridian Avenue North and North 55th, both of which are arterials.

30. At the hearing, a Plans Review Specialist of the Seattle Engineering Department testified that the proposed project was of sufficiently small size as to have no measurable impact on service to the area and no measurable impact on traffic. He indicated that the accessing arterials in the area had sufficient capacity to handle the traffic expected to be generated by the project. A different result would obtain, in his judgment, if there were 300-400 trips generated by the project.

31. Evidence of accident data for the area for the five previous years (Exhibit 12) establishes that the accident rate is low for the vicinity around the site; that few injuries have occurred in whatever accidents there have been; and that no fatalities have occurred.

32. Meridian Avenue North, North 55th and North 56th Street are designated as collector arterials by the Seattle Engineering Department's street classification system. At least two other major arterials are located within six blocks of the commercial zone: North 50th Street to the south and Green Lake Way North to the west.

33. The site is served by public transit along Meridian and North 55th.

34. Although the proposed project does not abut a single family residential zone, it is near the edge of such zone to the south of North 54th and east of Keystone. It is separated from that zone by the lots to the south and east on which apartment houses sit.

35. The proposal will be folded back into a bank which rises 14 percent above finished grade at the eastern property line. This topographical change will reduce the apparent height and bulk of the project from the east.

36. The apartment houses to the south and to the east in the block of the proposed site will shield most of the proposed structure from the single family residences to the south, southwest and east.

37. The single family zone to the west slopes down from Meridian. The project from these homes would be separated from and shielded by the apartment houses and commercial buildings on the west side of Meridian. Also, Meridian Avenue North would, itself, provide a physical edge to provide further separation and transition between zones.

38. Rendered photographs showing the project from two locations in the single family zone and east-west and north-south transects (Exhibit 15) show the height and scale of the project compared to surrounding structures. These show that the height of the proposal would be lower than the apartment house to the east in the same NC1 block, but also lower than a single family residence directly to the east of the NC1 zone. The north-south transect shows that the project height would be equivalent to that of the single family residence to the south across North 54th Street. Other evidence indicates it would also be equivalent to other single family residences on the south side of North 54th across from the project.

39. At ground level, the bulk of the project appears comparable to that of many other developments in the NC1 zone.

40. An architect with a business in the commercial zone testified that the NC1 zone was being upgraded. Although there have been no new buildings in the last 15 years, buildings have been improved by remodels and facelifts, including a third story addition to an office building in the last few years. He indicated that there were two other sites which could be developed in the commercial zone, but that they were in the eastern part of the zone, not near the project. One of these may be under active development contemplation. He and a number of other business owners in the area approved of the project.

41. The applicant owns three other properties in the area, two of which are the apartment buildings to the south and across the street from the site. He stated at the hearing and on the environmental checklist that he had no plans to develop any of these properties further. He knows of no other development planned for the area.

42. No evidence was presented at the hearing of any increased crime or any adverse impact of light and glare due to the project. As to loss of moderate income housing, no evidence was presented as to the rental values or the income levels of persons using the housing existing on the site. Nor was any evidence presented of the projected rent ranges or class of income level of tenants of the proposed residential units.

#### Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.76.022C.

2. The Hearing Examiner is required to give substantial weight to the determinations of the Director of the Department of Construction and Land Use. Section 23.76.022C7. The burden of proof is on appellants to show these determinations are clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

3. The Director is to issue a DNS if he determines there will be no probable significant adverse environmental impacts from the proposal. Section 25.05.340. "Significant," in this context, means a "reasonable likelihood of more than a moderate adverse impact on environmental quality." Section 25.05.794. Appellants have not shown that the Director's determinations on the significance of the identified impacts was clearly erroneous.

4. The Director may also impose conditions pursuant to SEPA to mitigate adverse impacts where those impacts have been identified in the environmental documents, are based on policies adopted for that purpose, and which conditions are reasonable and proportional to the impact. Section 25.05.660A.

5. Under the "Cumulative Effects Policy" of SEPA, a project which alone does not create undue impacts on the environment may create such impacts when combined with prior developments or where it directly induces other development by a casual relationship which will adversely affect the environment. Section 25.05.670A1. There may also be cumulative adverse impact

when the project is considered with "probable development of subsequent projects with similar impacts." Section 25.05.670A2.

6. In this case, appellants assert, specifically, that the proposal will induce other development and that other development is probable; therefore, that the project will create undue impacts which require mitigation. Except for the parking problem related to the prior development of the Honey Bear Bakery and other commercial entities in the zone, appellants have not carried their burden of proof on this issue. Only hypotheticals or possibilities were presented and these will not suffice as evidence to establish "probability" or the "casual relationship directly inducing development" needed to apply the cumulative effects policy.

7. SEPA policy requires that the height, bulk and scale of projects be:

reasonably compatible with the general character of development anticipated by the adopted Land Use Policies... for the area in which they are located and... provide for a reasonable transition between areas of less intensive zoning and more intensive zoning.

Section 25.05.675G2a. Under this policy, projects may be conditioned to mitigate "substantially incompatible height, bulk and scale." Section 25.05.675G2b.

8. One of the City's Land Use policies is to preserve and protect areas which are currently in predominantly single family residential use, and to protect the edges of such areas from intrusion of nearby non-single family residential use. Section 23.16.002A.

9. Another policy is to maintain neighborhood commercial districts which conform in size and scale to the communities they serve while preserving a healthy business climate and providing for smooth transitions between commercial and residential areas. Sections 23.16.0201A and B. Also, it is the City's policy to preserve and improve existing commercial areas in preference to creating new districts, encourage residential development in business structures within such districts, and to promote the efficient use of the commercially zoned land. Section 23.16.0201A7 and 8; Section 23.16.0201B.

10. NC1 policies envision neighborhood-serving businesses in continuous storefronts built to the property line in a commercial area which is pedestrian friendly and encourages shoppers to walk from store to store. Section 23.16.020VB.1.

11. The policies underlying the height limits applied to zones reaffirm the general goals of the particular commercial district and, additionally, indicate that the height limits assigned should provide for development potential for commercial activity compatible with the zone, reinforce the natural topography of the area and its surroundings, and be compatible with the predominant height and scale of existing development in the zone as well as the surrounding area. Section 23.16.020VIB.1, B.4, B.5 and B.6.

12. While the Director found that the height, bulk and scale of the project would have an adverse impact, he did not conclude that the impact was so adverse or substantial as to require mitigation. The Hearing Examiner agrees. The mixed use structure proposed is reasonably compatible in height, bulk and scale with the general character of development anticipated by the land use policies preceding. Although the project is higher than most of the commercial buildings in the NC1 zone, it is still sufficiently in scale with existing and contemplated development in the zone. Other development, particularly the mixed-use four story Briggs Pharmacy building, the three-story apartment house to the east, the two and one-half story apartment house to the south, and the two and three story buildings across



Meridian and north on North 55th are comparable in height. There are also a number of single family residences nearby of comparable height. Reasonable transition to the residential zone and zone edge mitigation is accomplished by the topography and the existing apartment houses which shield most of the project from adjacent residential properties to the south and east, as well as to the west. Although the project's southeast corner is somewhat imposing when viewed from the residential community to the southeast, it is not so imposing as to be intrusive or substantially incompatible. The apparent bulk and scale of the project is reduced by the landscaping, the 13 foot high ground level first story, stepped-back upper stories, and the lower north group overall height. The stepped-back design reinforces the natural topography of the area. Further, the project, as a mix of commercial and residential, should contribute to the commercial health of the district while adding to its residential character, both of which are also important goals of the land use policies. Inasmuch as the project is not substantially incompatible in height, bulk and scale, no mitigation is authorized under SEPA. Section 25.05.675G2b.

13. Loss of moderate cost family housing, increased crime, and light and glare impacts were alleged by appellants in their appeal. However, there was insufficient evidence presented on these issues at the hearing to conclude the project would have such impacts. Appellants have not carried their burden of proof on these issues.

14. The projected additional traffic volume generated by the proposal represents only a nominal impact on street use and services. The Director's decision not to impose mitigating conditions due to traffic was not shown by appellants to be clearly erroneous.

15. In their appeal, appellants objected to the use of tandem stalls for permitted off-street parking in the structure. They claimed such stalls would cause residents to park on the street instead of being boxed in. They requested that all units be provided with non-tandem spaces or that the number of units permitted in the project be reduced. While the Examiner agrees that tandem stalls are less than desirable parking spaces unless both ends have unblocked access, nevertheless, the Code authorizes use of such stalls in multi-family residences to meet off-street parking requirements. Section 23.54.020B. The reduced efficiency of such stalls is also recognized by the Code by the reduced-spaces formula applied to such stalls (i.e., tandem parking stalls equal only 1.5 parking spaces, not two, under Section 23.54.020B). Other concerns relating to tandem stalls have been addressed by the applicant by his voluntary agreement to assign each residential unit an unblocked stall, to assign the tandem stalls to residential units with two vehicles, and to include such spaces within the rental agreement for the apartments so that no extra fees are charged tenants for use of such spaces. Further mitigation beyond that agreed would not be warranted or authorized in this case as to such stalls. Reduced density is not authorized for parking impact mitigation in multi-family development. Section 25.05.675M.2.c.v.

16. In other respects, appellants have met their burden of showing that the DNS did not adequately mitigate the project's adverse parking impacts. Residential spillover of the project is one or none, depending on the formula used. However, commercial use of the project will result in a spillover of seven to eight parking spaces onto surrounding streets. The commercial zone in which this project is located already has inadequate off-street parking for existing commercial development. On-street parking mostly exceeds capacity there and in the surrounding residential community. Such streets cannot absorb the parking spillover projected by this project, especially when combined with the increased parking needs generated by prior development in the area. Some relief for the project's commercial parking needs may be gained by the restricted time parking on Meridian; however, that restriction aggravates residential parking needs. The Director's determination to prohibit commercial uses which

generate high parking demand is appropriate. Nevertheless, further conditions are necessary to mitigate adverse parking impacts on the neighborhood. Such mitigation is authorized under Sections 25.05.670A1 and 25.05.675M.

17. The Hearing Examiner is mindful of Section 25.05.665D which addresses the presumption of sufficiency of mitigation where City regulations have been adopted to address specific environmental impacts. That section, however, permits further mitigation of a project whose site presents unusual circumstances, or which is located near an edge of a zone with resultant problems of scale or use, or which creates undue impacts based on cumulative effects. Section 25.05.665D.3, D.5, and D.7. Such circumstances, results, and effects are presented here. The project's commercial use would have greater adverse parking impact on the area than normally expected due to the project's location near the edge of a commercial zone with existing inadequate off-street parking; due to the infrastructure and topography of the area with converging arterials, multiple narrow intersecting side streets, and fairly steeply sloping terrain immediately to the west of Meridian, all of which would impede project parking; and due to the cumulative impacts of prior development in the area from the Honey Bear Bakery and other commercial improvements drawing more cars to the area, and from residential development on substandard lot sizes, resulting in higher density and more parking problems on surrounding streets. Therefore, further mitigation of the project's adverse parking impacts is authorized under Section 25.05.665D.

18. In the DNS appealed here, the Director determined that no off-street parking was required for commercial space under 2,500 sq. ft. Because this was a structure containing residential and commercial uses, during the appeal the parties were requested to provide authority as to whether such waiver was subject to proration under Section 23.54.015D. After considering the authority submitted by the parties and hearing argument thereon, the Hearing Examiner is taking no position on the interpretation of this section or its applicability to this case, inasmuch as appellants did not raise this issue in their notice of appeal or request an interpretive ruling as contemplated by Section 23.88.020. Absent such action by appellants, the Hearing Examiner has no authority to decide this issue in this case. Section 23.76.022.

19. The DNS also included permission for a structural overhang. No conditions were imposed on this. Although evidence was received from appellants during the period of continuance objecting to this overhang, such objection was not part of appellants' notice of appeal in this case. Accordingly, the Hearing Examiner has no authority to consider this issue on appeal (Section 23.76.022) and the Director's determination will be affirmed.

#### Decision

The Director's decision in this matter is Affirmed in part and Modified in part as follows:

A. Affirmed as to the Determination of Non-Significance with conditions imposed during construction, prior to occupancy, and for the permanent life of the project; and affirmed as to granting the structural overhang with no conditions attached.

B. Modified to further condition the project to incorporate<sup>o</sup> additional parking impact mitigation, to-wit:

1. Prior to issuance of a permit for this project:

a. Applicant shall develop a written parking management and allocation plan which reflects the policies of assignment, signage, lack of extra charge, and use of the underground parking stalls presented in evidence by the applicant during the proceedings of this

appeal and which reflects the findings and conclusions on this matter in this case. The plan shall be sufficiently flexible to provide for reassignment of stalls as necessary with changes in residential tenancy. The plan must be approved by DCLU, placed on file with said department, and provided all tenants of the building prior to such tenants' occupancy.

b. Applicant shall make good faith efforts to secure at least four (4) off-street parking spaces off-site within the commercial zone or within 400 feet of the site for use by commercial tenants and commercial customers without extra charges. Such parking spaces may be shared spaces pursuant to Section 23.54.020G1 and G2 of the Code under the conditions required for such shared spaces by that section; or they may be independently located and reserved exclusively for project commercial use. Evidence of such efforts and results shall be submitted by applicant to DCLU. DCLU shall determine the adequacy of such efforts and may adjust or waive this requirement if it determines that such additional parking is not available or feasible for the project.

2. During the life of the project, the following conditions will also apply:

a. A provision shall be included within all rental agreements with residential tenants of the project that at least one unblocked parking stall will be provided for each residential unit as part of the rent for such unit; further, that where such unit has two vehicles, tandem stalls will be assigned such units where possible, depending on the space available and considering the vehicular needs of other existing residential tenants. Such additional spaces shall also be provided as part of the rent.

b. Unused and unassigned residential parking spaces in the underground garage may be used by tenants of the commercial space in the structure when residential tenancy is less than 100 percent occupancy; provided, that any residential vehicular need is first accommodated; provided, further, that no extra fees are charged for such use of the commercial tenants.

c. Free public transit passes shall be provided to commercial tenants in lieu of parking spaces. These passes will not reduce the number of spaces required in B.1.b. above.

Entered this 19<sup>th</sup> day of October, 1989.

  
Dona Cloud  
Hearing Examiner Pro Tempore

#### CONCERNING FURTHER REVIEW

Pursuant to Seattle Municipal Code Section 23.76.024, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center, 5th Floor Municipal Building, 684-8322. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 23.76.024, 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 City Council appeal.

If no appeal is taken to the City Council, 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 fifteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.22.(C)(12)(c). Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. 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 fifteen days of the date of this decision. See Chapter 43.21C, RCW and Chapter 25.05, Seattle Municipal Code.

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, Room 1320 Alaska Building, 618 Second Avenue, 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 the taped transcript of testimony and evidence to be reviewed. Parties are encouraged 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.