

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

In the Matter of the Appeal of

JOHN AND NANCY TULARE

FILE NO. MUP-90-035(CU)  
APPLICATION NO. 9000512

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

Introduction

This matter concerns property at 5203 Meridian Avenue North.

Appellants, John and Nancy Tulare, appeal the decision of the Director, Department of Construction and Land Use, to deny a master use permit to establish an institutional use in a single family residential zone.

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 Hearing Examiner on August 16, 1990, and the record was held open until September 18, 1990, pursuant to an Order of the Hearing Examiner directing the Director to provide information regarding other institutions legally established in the vicinity.

Parties to the proceedings were: appellants, John and Nancy Tulare and the Director, Department of Construction and Land Use (DCLU), represented by Corbitt Loch, associate land use specialist.

For the purpose of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

With regard to the Environmental Policy Act of 1971 (SEPA) and Chapter 25.05, Seattle Municipal Code, the action proposed in this subject application has been determined to be categorically exempt pursuant to the provisions of Chapter 197-11.

After due consideration of the evidence presented and as a result of the personal inspection of the subject property and the surrounding area by the Hearing Examiner, the following shall constitute the findings of fact, conclusions, and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The appellant, Nancy Tulare, applied for a master use permit to convert and use one residential unit within an existing triplex at 5203 Meridian Avenue North, as a school where teachers would be trained to teach English as a second language.

2. The existing triplex is a legally nonconforming multi-family use in

this single family (SF 5000) zone. A nonconforming multi-family residential use may not be converted to any nonresidential use which is not otherwise permitted in the zone. Conversion to a permitted use shall conform to the standards for the new use. Section 23.44.080.F.

3. An institution may be established in a single family zone as a conditional use if it meets the development standards for uses permitted outright as modified by Section 23.44.022.

4. The appellant/applicant wants to convert the kitchen in the south apartment of the triplex for use as a classroom and to modify the existing livingroom and bedroom of the unit to serve as an audio-visual room and teacher's office, respectively.

5. The proposed facility would provide classroom space to instruct 8-10 teachers how to teach English as a second language. The courses would be taught in 8 four week sessions held on weekdays from 9:00 a.m. to 2:30 p.m. during the months of February, March, April, June, July, August, October and December. There would also be the possibility of some evenings classes or other activities.

6. Section 23.84.018 includes the following definitions:

"Institution" means structure(s) and related grounds used by organizations providing educational, medical, social and recreational services to the community..."

"Institute for advanced study" means an institution operated by a non-profit organization for the advancement of knowledge through research, including the offering of seminars and courses, and technological and/or scientific laboratory research.

7. The Director has considered this proposal an institution in the form of an "institute for advanced studies" for the purposes of reviewing the master use permit application.

8. Section 23.44.022A provides that:

The following institutions may be permitted as conditional uses in single family zones:

- Community centers
- Child care centers
- Private schools
- Religious facilities
- Public or private libraries
- Other similar institutions

9. Only those conditional uses identified in the Subchapter II of Chapter 23.44 (see Finding No. 8, above) may be authorized and approval must be based upon a determination that the use meets the criteria for the specific conditional use and on a determination that the use would not be materially

detrimental to the public welfare or injurious to property in the vicinity.

10. The conditions that the specified uses must meet in order to be authorized include: be located at least 600 ft. away from any other legally established institution; involve no demolition of residential structures to provide parking; meet the yard requirements for institutions (i.e., 10 ft. side yard is required, except that a 5 ft. yard may be permitted with a finding that there would not be a significant increase in impacts and there would be a demonstrable public benefit); reduce noise and odor impacts; landscape to integrate the institution with adjacent areas and reduce its impacts; minimize light and glare impacts; provide parking as required by Section 23.54.015 (8 spaces required here), unless modification of the requirements would produce a public benefit and not cause undue traffic or serious safety hazard; provide a transportation plan with a level of detail appropriate to the probable impacts and/or the scale of the proposed institution. Section 23.44.022.

11. The Director reviewed the proposal in light of the code requirements of Section 23.44.022 and concluded that the permit should not be granted as the proposal did not meet conditions specified for allowing the establishment of an administrative conditional use.

12. In the Director's decision (Exhibit No. 6), the proposal was found to be in compliance with the 600 ft. dispersion requirement and the requirement that no structure be demolished to provide for parking. However, the institution yard standards would not be met and the site configuration would leave no opportunity to minimize the institution's impacts using yards, landscaping, or screening. The decision also noted adverse noise impacts would be created by traffic associated with persons driving to and from the site to attend classes, by group recitation, and by the use of audio-visual equipment. Additionally, only one parking space would be provided where 8 are required by the code, and 14 is the estimate for actual parking demand. The information regarding the Transportation Plan indicated the increased traffic would not be significant.

13. The Director concluded that the proposed use would substantially intensify the use of the site and would have impacts markedly greater than the existing nonconforming multi-family use.

14. The appellant/applicant prepared a study which showed utilization of on-street parking on Meridian Avenue North, between 50th North and 54th North, to be generally in the range of 30-40 percent.

15. Credible testimony at hearing indicated that the side streets that cross Meridian Avenue North in this area generally have a greater rate of on-street parking utilization than does Meridian Avenue North.

16. The appellant/applicant described the program of study as teacher training that includes information on teaching theory, teaching methods, and materials selection. Recitation is not anticipated. In addition to the typical, teacher-lecture, student-listen format, there would be an emphasis on small group discussion, augmented by field observation.

17. Appellant's testimony that there is a growing need for teachers to be

trained to be effective in teaching those who have English as a second language, was undisputed. The proposal itself can be seen as evidence of the growing need, as use of the subject site is viewed by the appellant/applicant as "overflow" classroom space for her main facility which is located in the Northgate area.

18. A number of neighbors testified at hearing that they objected to the establishment of a commercial use in their residential neighborhood. The neighbors expressed concern that they believe there is already some on-street problem and there would be increased utilization of on-street parking spaces with this proposal. Concern was also focused on "strangers" coming into the neighborhood, traffic impacts, and potential that if the conditional use were allowed for this proposal, future owners might utilize the conditional use authorization in a manner more impacting and detrimental.

19. A witness testified to the existence of one and possibly two, child care centers in the area closer than 600 ft. dispersion mandated by the code.

20. In response to a post-hearing Order by the Hearing Examiner, the Director's representative confirmed that the Department's records evidence that there is no legally established institution within 600 ft. of the subject property.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code.

2. The Hearing Examiner is to give no deference to the DCLU's Director's decision on conditional use appeals. 23.76.022.C.7.

3. It is not established that this proposal was properly considered by the Director to be any type of institution defined in the code. An "institute for advanced study", as the definition for that type institution indicates, requires "research", and no comparable activity is anticipated with this proposed use. Indeed, none of the definitions for institutions found in Section 23.84.018, appear to clearly encompass this proposal.

4. If the proposal is not an institution, or some type of otherwise allowable use, the conversion from multi-family to nonresidential use is prohibited. If it is a permissible use, it would have to conform to standards, which it does not. (See Finding No. 2).

5. If the proposal is considered an "institute for advanced studies", it still does not smoothly slip into the group of institutions which are specifically allowed in a single family zone. As an "institute for advanced studies" it must be determined to be an institution "similar" to those listed in the code (see Finding No. 8). How, or whether, this determination was made is not disclosed in the information or testimony presented to the Hearing Examiner.

6. Regardless of how the definitional dilemma is resolved, the proposal fails to meet the necessary criteria to be authorized as a conditional use in a single family zone. Specifically, it fails regarding the provision for

yards, landscaping, and parking. The standards regarding dispersion, demolition, noise and odors, light and glare, and traffic are either not applicable or are of such minimal impact as to not influence the decision one direction or the other.


7. While the program envisioned by the appellant/applicant appears to be both worthy and necessary, there are many appropriately zoned locations that could readily accommodate the use proposed. The conditional use requirements cannot be met and an incursion into this residential area is unnecessary and unwarranted.

8. Regardless of whether one sees the proposal as not constituting a permitted use (i.e., not a use that could be authorized), or as a permitted use (i.e., an institution allowable in a single family zone) not meeting the conditional use standards of the code, the Director's denial of the application is appropriate.

#### Decision

The Director's decision to deny the administrative conditional use is **AFFIRMED**.

Entered this 20<sup>th</sup> day of September, 1990.

  
Meredith A. Getches  
Hearing Examiner

#### CONCERNING FURTHER REVIEW OF HEARING EXAMINER FINAL DECISION 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 the King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code 23.76.022.C.12.c.

If the Superior Court orders 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. Institutions for preparation of the transcript are available from the Office of Hearing Examiner, Room 1320 Alaska Building, 618 Second Avenue, Seattle, WA 98104, (206) 684-0521.