

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

P. A. C. E. (People Active for Community Effectiveness)

FILE NO. W-78-006

from an environmental determination  
of the Department of Community  
Development

The appeal is DENIED.

#### Introduction

The appellant organization, P.A.C.E., filed an appeal from a declaration of non-significance prepared by the Department of Community Development, hereinafter Department, with regard to a proposed action to convert approximately 200 square feet of a medical clinic into a dispensing pharmacy.

The appellants exercised their right to an appeal pursuant to Section 20, Ordinance 105735.

This matter was heard before the Hearing Examiner on April 27, 1978.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

#### Findings of Fact

1. The subject property consists of a medical clinic located at the northwest corner of 16th Avenue and E. Cherry Street. It fronts on 16th Avenue for 160 feet and E. Cherry Street for 120 feet. Parking is located on the north side of the building with access from both 16th Avenue and the adjoining alley.

2. The origin of the declaration of non-significance is the conditional use permit necessary for a pharmacy to be located in this Multiple Residence Low Density (RM 800) zone (Section 12.22(g), Ordinance 86300, as amended).

3. The present facility has been operated as a medical clinic prior to the lease negotiated by Group Health Cooperative, hereinafter Group Health, and the continued use as a clinic is permitted in the RM 800 zone. Group Health proposes constructing a dispensing pharmacy in the interior of the present structure and it is this additional use that requires the conditional use permit.

4. The pharmacy is proposed to occupy about 200 square feet in the interior of the clinic; its exact location is not yet determined. The term dispensing pharmacy is used to distinguish the intended use from a retail pharmacy or drug store. Only Group Health patients will be served by the pharmacy incidental to other medical needs which brings them to the pharmacy. There will be the usual refilling of needed prescriptions by both the clinic's normal and usual patients as well as patients of other Group Health facilities who may find the clinic's pharmacy useful for refill/pick-up purposes.

5. Group Health representatives point out that the clinic itself without the pharmacy would probably not be in much demand because patients needing both medical examinations and incidental medications would have to travel to a second facility for pharmacy services.

6. Residential uses abut or face the clinic on three sides; single-family residences on the east, across 16th Avenue and on the north adjacent to the parking lot; single-family homes, a duplex and an apartment are across the alley. A mix of residential and hospital/medical uses are located to the south.

7. The Department, which is the lead agency, prepared the declaration of non-significance with regard to the proposed pharmacy. The appellants, P.A.C.E, initially by a non-detailed letter, timely supplemented by a detailed request for a hearing have appealed the Department's ruling.

8. The appellants at the hearing originally felt inclined to let the appeal rest on the letter of appeal filed by them on April 10, 1978. Some members supplemented that letter by additional comments at the hearing.

9. It is best to state that the proposal amounts to the rearrangement of interior space with the allocation of some of that space for use as a pharmacy. This could explain the differing views of the applicants and the appellants.

10. The applicant believes that the small dispensing pharmacy will in itself not create much of an impact. The environmental checklist accordingly has all of the "No" spaces marked by the applicant.

11. Both sides concede there will be minor or no disruptions or changes in the following (numbers indicate check list items):

- |                       |                      |
|-----------------------|----------------------|
| (1) earth/soil        | (14) public services |
| (3) water             | (15) energy          |
| (4) flora             | (16) utilities       |
| (5) fauna             | (18) aesthetics      |
| (9) natural resources | (19) recreation      |

12. The Department has indicated that land use (item #8) should have been marked as a "yes"; the change in land use is the reason that the conditional use was applied for.

13. The appellants contend that the following items will be in some measure affected by the proposal:

- (2) Air - The contention is there will be increased automobile traffic leading to changes in air quality and odor.
- (6) Noise - The contention is generally related to increased automobile traffic; with additional increases in pedestrian use of the area.
- (7) Light and Air - The contention is related to increased automobile traffic.
- (10) Risk of Upset - The contention is the non-exclusive list of hazards leaves out the possible release (via burglary or robbery) of drugs which can be hazardous substances.
- (11) Population - The contention is that Group Health Facilities in the past have forced

relocation of various nearby residents due to increased traffic and parking problems in the vicinity of the facility.

- (12) Housing - (similar to the above); The contention is that the relocation has driven down housing demand and led to deterioration of the housing stock.
- (13) Transportation/Circulation - See air, noise, light and glare.
- (17) Human Health - Related to air quality.
- (20) Archaeological/Historical - The contention is that a church which is listed as a landmark will be lost if the residential character of the neighborhood deteriorates.

14. The applicant maintains that none or very little of the effect contended by the appellants are pharmacy related ones. They maintain that the clinic, a permitted use, will indeed cause some of the impacts but that the pharmacy, the proposal at issue, will not cause any significant additional effects. The Department concurs in this analysis of causation.

15. There were other possible impacts such as economic and drug/crime related, raised by the appellants which are not found in the checklist. The checklist is exclusive in a threshold determination. (WAC 197-10-360). Factors not on the list are not to be considered either by the Department or this Office on review.

### Conclusions

1. The State Environmental Policy Act (SEPA, RCW43.21C) requires an environmental impact statement only when there is a major action which would have a significant adverse impact on the environment. Significant adverse impact has been established by the court as that which occurs "whenever more than a moderate effect on the quality of the environment is a reasonable probability". Norway Hill Preservation & Protection Association v. King County Council; 87 Wn.2d 267, 522 P.2d 674 (1976).

2. The burden of establishing that the Department's determination is incorrect is upon the appellants because Section 20(7), Ordinance 105735, as amended provides that the Department conclusions are prima facie correct. RCW 43.21C.090, in addition, provides that the decision of the governmental agency relative to the threshold determination shall be accorded "substantial weight". What both these propositions mean is that the appellants, P.A.C.E, must present strong and revealing facts that the Department is wrong.

3. The appellants have failed to convince the decision maker that the Department was incorrect in issuing the declaration of non-significance. The appellants had the burden of explaining how the pharmacy, as separate from the clinic, would substantially create the impacts indicated in the checklist. We do recognize that some impacts will be heightened by the presence of the pharmacy. There probably will be some increase in traffic. Those changes in air quality and noise level associated exclusively with the pharmacy are probably minimal.

4. Most of the disputed impacts in the checklist can be attributed in the main to the clinic. Using the guidance

provided by the Norway Hill decision (see 1 above) it cannot be concluded that the effects caused by the pharmacy are more than moderate. No environmental impact statement is required.

Decision

The appeal is DENIED.

Entered this 11<sup>th</sup> day of May, 1978.

Fred J. Kaufman  
Fred J. Kaufman  
Hearing Examiner Pro Tempore

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination and any further appeal must be made to the courts.