

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

In the Matter of the Appeals of

LINDA JORDAN, ET AL. and
GRACE JANSONS

FILE NO. DSD-87-001 and
DSD-87-002

from a decision of the Director,
Department of Construction and
Land Use, pursuant to Chapter
23.79, Seattle Municipal Code

Introduction

Appellants, Linda Jordan, et al., and Grace Jansons, appeal the decision of the Director on development standard departures for the Whitworth Elementary School at 5215 46th Avenue South.

The authority for the hearing and jurisdiction of the Hearing Examiner are derived from Section 23.79.012, Seattle Municipal Code.

The hearing on these appeals was held on May 22, June 2, and 11, 1987. Linda Jordan served as representative of the signatories to the appeal bearing her name. Grace Jansons appeared pro se. The Director, Department of Construction and Land Use, was represented by the City Attorney, Vicki Toyohara, assistant. Seattle School District No. 1 was represented by G. Richard Hill, Foster, Pepper and Riviera.

All references to chapters and sections are 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 these appeals.

Findings of Fact

1. Funds were made available to the Seattle School District No. 1 ("District") through the approval of a 1984 bond issue to carry out the Phase I Capital Improvement Program (CIP) for the renovation or replacement of sixteen schools in the District including the Whitworth Elementary School.

2. The Whitworth Elementary School is located at 5215 46th Avenue South. It is situated on a site of 2.62 acres in a single family zone bounded by South Dawson Street to the north, 46th Avenue South to the east and by South Bennett Street for a part of its south side. Single family properties are on the remainder of the south side and the west side.

3. The Final Supplemental Environmental Impact Statement (Exhibit 30) for building and site improvements was issued by the District for the Whitworth Elementary School evaluating various alternatives.

4. The Seattle School Board ("School Board") approved the alternative to demolish the existing structure and build a new school and on May 7, 1986, the School Board approved expansion of the site through acquisition of seven parcels to 3.52 acres. The seven parcels are developed with single family residences. The District began acquisition of the properties needed for this expansion in 1986, prior to the completion of the public process through an advisory committee. Application was made for a demolition permit for these houses prior to the departure decision by the Director.

5. The District adopted generic educational specifications

and site specific specifications for the Whitworth School site. There are also educational specifications for space for moderately to severely handicapped students at Whitworth and childcare specifications. The latter have not been formally adopted by the School Board.

6. The School Board adopted a policy "to encourage the use of surplus space within an operating school building both during and beyond the regular day at fair rental or lease rates. Such use shall not be permitted if it conflicts with the school program...." Exhibit 27, p. 11.

7. A capital levy provided funds for the establishment of childcare facilities in the CIP schools. Exhibit 27, p. 6.

8. The District applied for development standard departures for the south side setback, Section 23.44.17C(1-3), to allow the location of a trash receptacle in the setback; from the 40 space parking requirement and parking location, Section 23.44.17E(1) and Section 23.44.17F(3), to reduce it to six to nine spaces and allow them in the front setback; and for bus loading, Section 23.44.17G(1), to have on-site loading for only four busses serving the moderately to severely handicapped program and to have loading/unloading for six busses in a curb indentation on South Dawson Street.

9. The Whitworth School Development Standard Advisory Committee ("Advisory Committee") was formed, met, held public meetings and issued its report. Appellant Jordan was a member of the Advisory Committee. Jay Laughlin, the Director's land use specialist assigned to the Whitworth School application, was a staff observer.

10. The Advisory Committee recommended approval of the District's request for departure from 40 required parking spaces to six and further departure to waive all on-site parking except for one on-site handicapped space. The Advisory Committee also recommended a departure waiving the requirement of a 5 ft. deep landscaped area shielding the parking to be located in the side setback.

11. The Advisory Committee recommended granting departure to allow placement of the trash receptacle in the side setback.

12. The Advisory Committee recommended that a departure be granted to require that six bus loading spaces be on-street in an indentation. It further recommended that a departure be granted to allow all bus loading spaces to be on-street within curb indentations.

13. The Advisory Committee recommended a departure from Section 23.44.17B.2 to require a 36 ft. building height to which could be added 15 ft. for a pitched roof. The District had requested to be allowed to go to 36 ft. where 35 ft. is permitted.

14. A departure was proposed, but not recommended because the vote was a tie, to require a setback departure for a 14 ft. setback from the front property line, and a 24 ft. average with 9 ft. minimum setback from the south property line.

15. The Director issued her decision and granted departures for side setback, number of parking spaces, parking location, on-street bus loading and height, subject to a series of conditions. The parking waiver was for 31 parking spaces. The height departure was to allow up to 40 ft. with an additional 10 ft. for a pitched roof.

16. To resolve the issues presented the Director by the tie vote, her staff requested a graphic depiction of the effects the District represented that a required 14 ft. setback would have.

A letter and graphics were provided the Director on December 22, 1986.

17. The Advisory Committee had concluded its work and so did not review the materials submitted to the Director on December 22, 1986.

18. The Director's representative regarded some of the statements in the December 22, 1986, letter in response to the request for graphic representation of the effects of a 14 ft. setback as self-serving on the District's part and gave them no consideration.

19. In evaluating the Advisory Committee minority report recommendation that a 14 ft. setback be required, the Director found that the objectives of providing adequate play space and optimal school design would be unfavorably affected. The considerations which outweighed the benefits were potential hazard to traffic from the relocation of the truck loading berth; increase in on-street parking demand from relocation of bus loading/unloading for the handicapped; placement of fill at the rear of the building to construct play areas for childcare; construction of a retaining wall to hold the fill; reduction of "efficient interactions of similar educational functions caused by the relocation of childcare and handicapped classroom;" possibility of interference with bus loading from childcare drop-off areas moved to Dawson Street; and that the reduction in area needed would not be sufficient to prevent housing demolition unless the play area was reconfigured in ways that would undesirably restrict the use. Exhibit 21.

20. The state standard for site size for a 500-student elementary school is ten acres. WAC 180-26-020(2). The District found this size to be unattainable in an urban environment and recognized that a desirable minimum size is one acre per 100 students in the urban environment. (Exhibit 18, p. 6). An informal guideline developed which was referred to, in testimony and the exhibits, variously as 3.25 to 4.25 acres, 4.25 to 4.5 acres, 3 to 4.5 acres and 4.25 acres.

21. The District anticipates that a site size waiver will be granted by the state for the expanded Whitworth site.

22. Some 27 District elementary schools are on sites smaller than 3.25 acres. Of the 14 CIP elementary schools, at least three will have smaller sites than that proposed for Whitworth and one smaller than the existing Whitworth site.

23. Area requirements for the playground at Whitworth total 68,300 sq. ft., according to Exhibit 15, the "T-3" report. The District plans, Exhibit 47, show the area of the upper playground, exclusive of buffers, to be 86,418 sq. ft. or 1.984 acres. The generic and site specific specifications do not include a minimum playground size. The generic specifications for site considerations do provide a number of guidelines as to relationship to classrooms, surfaces, whether or not its covered or fenced.

24. The educational specifications for Whitworth Elementary School, Exhibit 17, include a statement regarding the bus loading/unloading area for the moderately to severely handicapped students. The statement specifies that the area be designed for the needs of the students, the ground be level and a cover would be appropriate. Neither the generic nor the site specific specifications state that the area must on-site or the number of busses to be accommodated. The documents project 15 to 18 students in this category. Since busses accommodate four wheel-chairs it can be deduced that any space for loading must be large enough for four busses.

25. Curb-side loading/unloading of severely handicapped students occurs at the Green Lake Elementary School. The District's special education supervisor, Gary Hammonds, testified that an on-site area is important to the health and safety of these students. He explained that curb-side loading/unloading is not satisfactory because the wheelchair lifts do not completely reach the ground and that the process is time consuming which could tie up other traffic.

26. The educational specifications for space for the moderately to severely handicapped students at Whitworth require that rooms be located on the first floor and convenient to bus loading areas.

27. The generic educational specifications address community access and programs which includes the daycare/latchkey programs. The specification for this area is that it is to be located away from the main part of the building, be close to vehicle access so parents can easily drop off and pick up their children and that there be a separate, fenced outside area, among other specifications. The actual childcare center specifications include an outdoor fenced play area of approximately 1,500 sq. ft. with a gross floor area for the center of about 3,000 sq. ft.

28. The District's specifications for an elementary school for 500 students is a gross area of 58,400 sq. ft. The District plans for Whitworth provide for gross floor area of 60,980 sq. ft.

29. Appellants proposed an alternative plan which includes building with the required gross floor area on the existing site.

30. According to the District, a 14 ft. front setback instead of the 48 ft. proposed setback would have the following impacts on the educational program at Whitworth: kindergarten and childcare space would have to be relocated to the second floor on the west side of the building with a transfer of the accompanying playgrounds; the buffer area between the classrooms and playground on the west side would still be needed; there would have to be overlapping of outdoor activities; loading areas for students and preschoolers would be combined with potential for congestion and safety hazard; preschoolers and childcare children would have to climb a ramp or stairs along the side of the lot to reach the childcare center; the childcare play area would be adjacent to school recess area; on-site loading for handicapped students would not be available; fill would be necessary for the elevation difference between the playground and second level of the building; service trucks would park on and back out over the sidewalk; there would be no on-site parking for handicapped persons; only 3,000 sq. ft. in area would be gained; the opportunity to save trees would be lost; and a "non-district function," childcare, would be located in the middle of school program space. Exhibit 12.

31. Because of the topography of the site, the second level could be ground level as well as the first level.

32. The structure's design would have to be changed to support fill at the rear of the building or a retaining wall constructed.

33. The existing large evergreen trees will not be preserved under the current proposal.

34. Some overlapping of outdoor activities is required by the District's proposed plan.

35. If the childcare space is moved to the second level it would disrupt the modified clustering of classrooms now in the plan.

36. The elimination of the on-site bus loading and parking could save some on-street parking which would have to be eliminated for the busses to make the 90 degree turn into the site because of the narrowness of the street. Curb cut space would also be regained.

37. Appellants and the District disagree about the amount of savings which would accrue from the relocation of the building to a 14 ft. setback. The gross savings would appear to be approximately 9,780 sq. ft. less the area of the play areas which would have to be included on the other side of the building at approximately 2,640 sq. ft. each for a gain of approximately 4,500 sq. ft. The District had estimated approximately 3,000 sq. ft. and appellants approximately 9,000 sq. ft.

38. The Director accepted the proposed architectural program as the District's educational objective, according to Jay Laughlin, the land use specialist assigned to the application.

39. District documents show adopted facilities objectives which are part of the long range facilities plan. Exhibit 48.

Conclusions

1. The Director is to determine the amount of departure from development standards which may be allowed or required based on factors listed in Section 23.79.008, the report of the Advisory Committee and public comment. Section 23.79.010A. When the decision is appealed, the Hearing Examiner is to review the Director's determination and make the decision on the evidence upon the same basis as was required of the Director. The Director's decision is to be given substantial weight by the Hearing Examiner. Section 23.79.012D.

2. Appellant Jansons contends that substantial weight is the standard of review assigned because of the prior review by the Advisory Committee and, since the Advisory Committee was denied the opportunity to review the additional submission by the District, the matter should be returned to the Advisory Committee for review or the decision should not be accorded substantial weight. The general statutory scheme for hearing examiner review in Seattle, however, with some exceptions, provides for giving substantial weight to Director's decision, whether or not there has been any formal review or recommendation prior to the Director's decision. The Hearing Examiner is required to follow the requirements of the chapter and give that weight.

3. Two factors are to be considered by the Director: one is the relationship to the surrounding area including character and scale of the surrounding area, presence of edges for transition and scale, location and design of structures to reduce appearance of bulk, impacts on traffic, noise, circulation and parking and impacts on housing and open space; and the other factor is the need for departure. Next, the "physical requirements of the specific proposal and the project's relationship to educational needs shall be balanced with the level of impacts on the surrounding area." Section 23.79.008C.1.b. A third consideration is required when housing demolition is proposed. That is "the desirability of minimizing the effects of demolition must be weighed against the educational objectives to be served...." Section 23.79.008B.2.

4. Appellants do not challenge the departures granted by the Director but contend that she erred in not requiring further departure for parking, height and setback. The errors are alleged to have occurred because the Director accepted the District's representation as to the educational objectives to be served and educational needs to be met and as to the effect of departures on meeting those objectives and satisfying the needs.

5. Extensive legislative history was provided by appel-

lants. While housing demolition was not initially a concern in the development of the policies for schools, discussion ensued when it became apparent there could be substantial impact on housing. Authority was added to impose departures, as well as to grant departures, to reduce the need for demolition by relaxing development standards. Even when departures are required, however, the District would not be prohibited from demolishing housing under this chapter.

6. Representations by the District which appellants urge should be evaluated for their validity as educational objectives or needs include the size of the site, playground size, need for handicapped loading/unloading space, and the childcare center.

7. As to site size, there is no question that the School Board made the decision on the appropriate site size for Whitworth but appellants seem to suggest the Director should review the judgment made by the School Board as to the necessary size. They point to the other school sites for CIP schools which are as small or smaller than the expanded subject site. While the Director could conclude from comparison with other sites that a school meeting the generic educational specifications could be designed for a smaller site, her authority under the chapter is only to relax the existing development standards. Even though the City's police power includes providing for the general welfare of its citizens, an element of which is adequate housing, the City Council has not included a standard which restricts the size of a school site. The Director has no authority, then, to either relax or maintain standards which do not exist. Further, even if she required all reasonable departures to existing standards, the District would not be required to reduce the site size. While other designs may meet the adopted specifications on a smaller site, the District retains the sole authority to select the design which will best accommodate its programs. The Director has no means to require a smaller footprint even if housing impacts could be reduced. Except for the departure mechanism, the Director has no authority under this chapter.

8. Appellants argue that the Director has been misled about the amount of space actually needed for the playground. The record does appear to support appellants' contention that the minimum specifications for playground space have been exceeded. While the minimum specifications should have entered into the evaluation by the District as to the need for land acquisition, appellants have failed to show how any departure the Director could grant or require would reduce the playground size with the ultimate effect of mitigating housing demolition.

9. Appellants suggest that the school does not need on-site bus loading/unloading for handicapped students and that the District has falsely represented that there is a specification or educational objective requiring space for a certain number of busses. The specifications do refer to such an area which, presumably, would be on-site given the emphasis on safety in the specifications, and the specifications also indicate the number of moderately to severely handicapped students to be accommodated by the school. Accommodation of these handicapped students is clearly an educational goal. Since the students are now at another school with curb-side loading, the on-site loading itself cannot be considered an absolute need but is regarded as adding to the safety of these children. The desirability of providing the amenity can be weighed against the loss of housing along with the loss of on-site parking for nine cars.

10. Appellants urge that provision of childcare is not part of the educational mission of the District so need not be given weight in the balancing against impacts and demolition of housing. They also contend that childcare is not covered by the Land Use Policies for Public Schools since the policies are to "enable the provision of tuition free, open admission elementary and secondary education" which would not describe childcare for

preschoolers. The Land Use Code itself, however, specifically mentions daycare centers as accessory uses to public schools which are permitted outright in single family zones. Whether or not childcare is a valid educational objective or part of the educational mission of the District, since the City has permitted daycare centers as an accessory use to public schools it would be anomalous for the City Council to have given the Director authority to decide to refuse to recognize the use, on the basis that it could be provided elsewhere. The Director did not err by accepting representations as to the effect on childcare center or the need for space for the childcare center.

11. Appellants have shown that by requiring departure from the front setback standard in fixing that setback at 14 ft. the Director could make available some 3,000 to 5,000 sq. ft. which, if toward the upper end of that range, could be used by the District to preserve one of the seven houses proposed for demolition. The District listed a series of effects that such a change would have indicating that most would be at least less satisfactory in meeting needs if not harmful to the objectives of the school. The record shows that with some redesign, some of those problems could be handled and that some are really not problems. There would be some losses, however, including the on-site bus loading/unloading for the handicapped, direct access for childcare and kindergarten and the preferred arrangement of classrooms. The record shows that the Director considered the impacts on the educational objectives as expressed by the District and the potential reduction of the land acquisition and determined that the benefits of requiring the reduced front setback would be outweighed by the losses that would be incurred. While the area saved could be slightly greater than recognized by the Director, as much as one lot, appellants did not show that the Director's balancing was erroneous, i.e., the examiner cannot say that she is left with definite and firm conviction that a mistake in that balancing has been made.

12. Appellants ask that the Director require that the District utilize its height standard departure to assure a three-story building to avoid a larger building footprint. The Director's decision seems to reject this request to allow the retention of some design flexibility. Appellants did not prove error in the Director's decision as to height.

13. Appellants interpret the authority granted the Director pursuant to Chapter 23.79 to include an independent evaluation of the District's representations as to needs and educational objectives. The Director has taken a very restrictive view of this authority to the extent that unless the representation is patently "illogical" it will be accepted as valid. The code gives no assistance in that it fails even to define "educational objectives." Appellants take the position that only specifications formally adopted by the School Board may be treated by the Director as "educational objectives." The Director's position is that the proposed architectural program is the educational objective. District documents in the record provide "facilities objectives," which are so broad as to give the Director no assistance, adopted "specifications," other "specifications" and general statements of desired characteristics.

14. The City Council intends for the Director to exercise some independent judgment because judgment is necessary in order to weigh the effects of demolition against the educational objectives to be served. Assignment of weight to the one side of the equation can be done according to the number of units to be demolished. To measure the weight on the other side she must look to the District since "all matters involved in the educational processes and in the conduct, operation and management of the schools" is its domain, Edmonds School District v. Mountlake, 77 Wn.2d 609, 615, 465 P.2d 177 (1970). Weight can be assigned according to the degree of formality accorded the adoption of the objective, how essential to the educational mission the objective

is, e.g. program need v. architectural design, as defined by the District, the justification provided by the District, or other indicia of importance to educational process.

15. Appellants also cite as error the acceptance by the Director of additional information after receipt of the Advisory Committee report and termination of Advisory Committee proceedings. The Director is directed to make her decision based on evaluation of the factors listed in the chapter along with the reports of the Advisory Committees, comments from the public hearing and other comments from the public. There is nothing which prohibits the Director from gathering additional facts to assist in the evaluation. The Director's representative did indicate that he felt that some of the narrative provided by the District was self-serving and treated it accordingly. No error occurred.

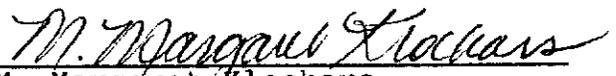
16. Appellants have not shown error in the Director's evaluation of the factors, procedures followed or balancing of the impacts on the educational objectives and needs from requested departures against the potential for mitigation of the housing impact. Therefore, her decision must be affirmed.

17. This case is one of first impression for the Hearing Examiner. As interpreted by the Director and the Hearing Examiner, Chapter 23.79 accomplishes its purpose of providing flexibility to the District in siting and developing a school. It also offers an opportunity for the City and members of the public to make the District aware of alternatives that would allow it to reduce or avoid demolition of housing. It provides the Director a very limited mechanism for "encouraging" mitigation of the housing impact. The success of the process in preserving housing, however, rests wholly on the District's commitment to the preservation of housing and its willingness to use the flexibility provided to that end.

Decision

The decision of the Director is affirmed.

Entered this 25th day of June, 1987.


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.