

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

In the Matter of the Appeal of

CHRIS JACKINS ET AL.,

from a decision issued by the Director, Seattle
Department of Construction and Inspections

Hearing Examiner Files:
MUP-18-010 (SDD)

Department Reference:
3026198

Introduction

The Director (“Director”) of the Department of Construction and Inspections (“Department”) issued a decision approving a land use application for an addition to Queen Anne Elementary School (“Decision”), and the Appellants, Charlotte Crockford, Kris Garratt, Chris Jackins, Barbara Koziol, Nancy Norling, Geness Reichert, and William Reichert (collectively herein “Appellants”) exercised their right to appeal the Decision.

The appeal hearing was held on May 4, 2018, before the Hearing Examiner. The Appellants, were represented by Chris Jackins; the Applicant, Corrie Rosen for Mahlum Architects (“Applicant”), was represented by Richard Hill and Katie Kendall, attorneys-at-law; and the Director was represented by Holly Goddard, Land Use Planner. The Hearing Examiner subsequently visited the site. The parties submitted written closing arguments on May 11, 2018, and the record closed on that date.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (“SMC” or “Code”) unless otherwise indicated. After considering the evidence in the record and reviewing the site, the Hearing Examiner enters the following findings of fact, conclusions and decision on the appeal.

Findings of Fact

Site and Vicinity

1. The subject site is addressed as 411 Boston Street (“Property”). The site is occupied by the Queen Anne Elementary School.

Proposal

2. The proposal is for a two-story addition to the existing school. The proposal includes construction of a 22,850 square foot addition with eight classrooms, gym, storage, expanded dining, covered play area and main office space. The proposal also includes onsite staff parking and a loading dock.
 3. Several development standard departures were sought for the proposal pursuant to SMC 23.79 including:
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- a. To allow a greater than allowed lot coverage. Up to 40% lot coverage, a portion of which is a two-story building.
- b. To allow less than required off-street parking (88 fewer stalls).
- c. To allow bus load and unload off-site.

Director's Review and Decision

4. The Department issued the Decision granting the proposed development standard departures on March 8, 2018. The Department accepted the recommendations of the Queen Anne Public School Departure Committee. The Decision's analysis included identifying the development standard departure approval criteria under SMC 23.79, and concluded that the criteria had been met.

Appeal

5. The Appellants filed a timely appeal of the Director's Decision. The Notice of Appeal raised issues that indicated that the departures for lot coverage, parking requirements, and off-site bus load and unload did not meet the criteria of SMC 23.79.
6. The Appellants presented testimony from neighbors Geness and William Reichert. Geness and William Reichert primarily testified as to the current condition of the site, traffic conditions, bussing, and the interaction of traffic with pedestrians.
7. The Appellants also presented legal arguments by Chris Jackins to support the issues raised in the Notice of Appeal.

Applicable Law

8. SMC 23.79.008.C.1 provides:

Departures shall be evaluated for consistency with the general objectives and intent of the City's Land Use Code, including the rezone evaluation criteria in Chapter 23.34 of the Seattle Municipal Code, to ensure that the proposed facility is compatible with the character and use of its surroundings. In reaching recommendations, the advisory committee shall consider and balance the interrelationships among the following factors:

- a. Relationship to Surrounding Areas. The advisory committee shall evaluate the acceptable or necessary level of departure according to:
 - (1) Appropriateness in relation to the character and scale of the surrounding area;
 - (2) Presence of edges (significant setbacks, major arterials, topographic breaks, and similar features) which provide a transition in scale;
 - (3) Location and design of structures to reduce the appearance of bulk;
 - (4) Impacts on traffic, noise, circulation and parking in the area; and
 - (5) Impacts on housing and open space. More flexibility in the development standards may be allowed if the impacts on the surrounding community are anticipated to be negligible or are reduced by mitigation; whereas, a minimal
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amount or no departure from development standards may be allowed if the anticipated impacts are significant and cannot be satisfactorily mitigated.

b. Need for Departure. 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. Greater departure may be allowed for special facilities, such as a gymnasium, which are unique and/or an integral and necessary part of the educational process; whereas, a lesser or no departure may be granted for a facility which can be accommodated within the established development standards.

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.79 SMC. Appeals are considered de novo, and the Examiner must give substantial weight to the Director's decisions. SMC 23.79.012.D. The Appellant bears the burden of proving that the Director's Decision was "clearly erroneous." *Brown v. Tacoma*, 30 Wn. App. 762, 637 P.2d 1005 (1981). This is a deferential standard of review, under which the Director's decision may be reversed only if the Hearing Examiner, on review of the entire record, and in light of the public policy expressed in the underlying law, is left with the definite and firm conviction that a mistake has been made. *Moss v. Bellingham*, 109 Wn. App. 6, 13, 31 P.3d 703 (2001).
 2. The Appellants argued that the proposal's increase in lot coverage was not a "necessary part of the educational process" under SMC 23.79.008.C.1.a.(5). The Appellants alleged that the gymnasium was over-sized due to design elements directed to meet adult recreation standards, and argued that these were not necessary to the educational process. The Appellants referenced documents showing that the School District and Park District had agreed the facility would be made available for adult activities. However, the evidence introduced by Appellants did not show that (1) any of the elements of the proposal were designed solely to meet the purpose of adult use, (2) there is any prohibition in the context of SMC 23.79 for joint use of facilities between children or adults, or (3) even if there were elements exclusive to adults that these would not be considered an "necessary part of the educational process." Testimony from the Applicant indicated that all elements of the proposal would be utilized by students of the school. Appellants did not meet their burden concerning this issue.
 3. Appellants did not introduce any evidence demonstrating that the parking departure did not meet the criteria of SMC 23.79. Instead, this issue was presented as a request for clarification concerning the parking conditions for the Decision. An appeal hearing is not the appropriate forum to raise questions about a proposal, or to request clarification of the meaning of certain conditions. Appellants failed to meet their burden concerning this issue.
 4. Appellants contended that the Decision improperly approved the departure for off-site bus loading and unloading. Testimony from Appellants' witnesses predominantly described existing conditions, and did not address new impacts that would be anticipated as a result of the proposal. The Appellants did not demonstrate that the Decision did not adequately consider public input, existing conditions, and potential new impacts by the proposal. Appellants offered alternatives that they felt should have been considered as part of the Decision, but the review process does not require consideration or adoption of alternatives presented by
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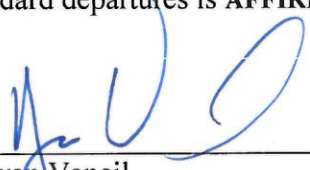
opponents of the proposal. In addition, the record shows alternatives, such as bus loading and unloading on Boston Street were considered as part of the review process.

5. Appellants argued that the departure for bus loading and unloading was improper because it did not meet the requirements of SMC 23.51B.002.I.3 which allows a departure from on-site bus loading “only when departure would contribute to reduced demolition of residential structures.” The Applicant and City testified that this criteria had been considered, and that by allowing bus loading off-site the proposal could proceed with onsite school development that might otherwise only be accommodated by off-site development in an adjacent residential area that could result in demolition of residential structures. Neither the Applicant nor the City showed any plans that had been considered indicating that displacement of residential housing could be an outcome, and did not identify any specific residential structures that were at risk of demolition. However, the Appellants introduced no evidence on this issue to contradict even the thin presentation from the Applicant and City, and it was the Appellants burden to demonstrate an error. Appellants merely raised this as a legal argument unsupported by evidence.
6. Many of the Appellant’s arguments are based on the assumption that the Department should be interpreting and applying the development standard departure criteria differently than in the Decision, but the Appellant failed to demonstrate that these different interpretations and applications are anything but a different point of view. It was Appellants burden to show that their interpretation and requested review processes are required by law, and that the City’s interpretation and practices are legally incorrect - the Appellants have failed to do so.
7. The Decision acknowledges the impacts to the neighborhood identified by Appellants. These impacts were adequately considered in the Decision in the context of the criteria identified in SMC 23.79.
8. On review of the entire record, the Decision was not shown to be clearly erroneous, and it should therefore be affirmed.

Decision

The Director’s Decision approving the development standard departures is **AFFIRMED**.

Entered this 27th day of May, 2018.



Ryan Vancil
Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.


**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **Chris Jackins**. Hearing Examiner File: **MUP-18-010 (SDD)** in the manner indicated.

Party	Method of Service
Appellant Chris Jackins PO Box 84063 Seattle WA 98124 Geness Reichert reichertfamily@msn.com	<input checked="" type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Applicant Legal Counsel Rich Hill rich@mhseattle.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Department Holly Godard SDCI holly.godard@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: May 30, 2018



Alayna Johnson
Legal Assistant