

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

In the Matter of the Appeal of

**FRIENDS FOR A SAFE ALKI
COMMUNITY,**

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

Hearing Examiner Files:
SDD-24-001

Department Reference:
3039297-SD

FINDINGS OF FACT

1. Background. Seattle Public School District is rebuilding Alki Elementary, 3010 59th Avenue SW. Following environmental review, Seattle’s Department of Neighborhoods reviewed the proposal, accepted comment, and issued a recommendation. Seattle’s Department of Construction and Inspections (“Department”) approved the proposal, which was appealed to the Examiner. The Examiner upheld the decision, except for a parking departure allowing no parking, rather than the 48 spaces otherwise required, SMC 23.54.015. On remand, the project was re-reviewed with respect to parking and several design changes were made, including the addition of 15 on-site parking spaces.¹ Friends for a Safe Alki Community appealed this second decision.² The only issue now before the Examiner is the revised parking departure approval.

2. Hearing. The hearing was held over three days on May 28 and 30, and June 3, 2024. Ms. Guillory represented the Department. Ms. Kendall and Mr. Patterson, of McCullough Hill PLLC, represented the School District. Ms. Clungeon, of Bricklin & Newman LLP, represented Friends. The parties submitted closing briefs on June 27.

3. Witnesses. The Department called Ms. Guillory, the assigned planner. Friends called Gary Norris, a transportation engineer, and several neighbors. These witnesses included Danforth Beal, Jr. (neighbor and retired teacher), Linda Brooks Cuddy (neighbor), Maryanne Elizabeth Wood (neighbor), Robert Laird (retired attorney/city code enforcement); Judy Hall (neighbor who has lived in the area for 49 years); Shauna Causey (neighbor who has lived in neighborhood for 34 years, ran a nearby preschool, and had a child who attended Alki Elementary); and Steve Cuddy (has lived on 59th, half-way down the playfield from the school for 30-years).

The School District called Chad Kersman (neighbor and parent of an Alki Elementary student); Brian Fabella Sr. Project Manager, Seattle Public Schools; Alki Elementary Principal Mason Skeffington; Rebecca Hutchinson, Architect with Mahlum

¹ Dept. Ex. 1 (Decision); Dept. Ex. 7 (Superior Court Order).

² Friends’ Ex. 40 (Member List); Testimony, Mr. Cuddy.

Architects Inc., and Project Manager; Tod McBryan, a transportation engineer with Heffron Transportation; Mike Swenson, a transportation engineer with the Transpo Group; Rebecca Asencio, District Capital Projects Planning Manager, Engineering BS; Ashley Clingan, President, Alki Elementary PTA; and, Vincent Gonzales, District Sr. Project Manager.

4. Exhibits. The Examiner admitted Department Exhibits 1-11; School District Exhibits 1-13; and Friends' Exhibits 1-49, except Exhibits 43, 44, and 45, which were withdrawn. The School District also submitted Exhibits 14 (ITE Manual, School Parking Generation Rates) and Exhibit 15 (Declaration on Parking Capacity Rate) during the hearing. As these exhibits were used for impeachment purposes, they were admitted. The School District also submitted Exhibit 16 (Street Map for Parking Study), which was already in the record but for certain illustrative markings which Mr. Swenson referred to in his testimony. School District 17 is the power point used at the hearing. It contained material already in the record but was admitted for efficiency.

5. Project and Location. The School District proposes to partially demolish Alki Elementary School and construct a new school. The new school would have capacity for 502 students (up from 369),³ 40 early learning students, and 65-75 staff members (an increase of 27-37).⁴ Alki Playground and Whale Tail Park are north of the site, as is Alki Beach, which is two blocks away. There is one right of way on the west bordering the school, 59th Avenue SW. Steep slope critical areas are mapped along the south and east property edges and liquefaction prone areas cover most of the site.

6. Zoning. The site is within the Lowrise 1 (M) or LR1(M) zone. To the north is Neighborhood Residential 3 (NR3), to the south is LR1(M), to the east is NR3, and to the west is LR1(M). The site is also within the Alki Area Parking Overlay, SMC 23.54.015, Map B. The Overlay does not apply to the school use.

7. Parking. In response to the remand, the School District submitted additional information to the Department including a transportation analysis ("Technical Memorandum," Heffron Transportation, Inc., December 7, 2023)⁵ and supplemental analysis with a revised site plan ("Parking Departure Correction Response," Mahlum, December 8, 2023).⁶ The proposed design was modified to include 15 on-site vehicular parking spaces, which reduced the departure request from 48 to 33 spaces.

Granting the departure to provide 15 vehicular parking spaces on site allows for a project with a building footprint similar to the existing school, and a ground floor which can accommodate the administrative suite, health clinic, preschool classrooms, kindergarten classrooms, dining commons and kitchen, and mechanical and receiving

³ Enrollment has varied, with 271 now, 368 in 2018, 415 in 2015, and 620 in the late 1950's. Testimony, Ms. Asencio.

⁴ Dept. Ex. 4 (SEPA Checklist), p. 2 and Att. 6 to SEPA Checklist (Traffic Analysis), p. 4; Dept. Ex. 9.

⁵ Dept. Ex. 10.

⁶ Dept. Ex. 9.

areas. Exhibits and testimony supported locating these uses on the first floor as a critical component of the educational program, and for student safety, site security, and optimal building operations.⁷

District witnesses explained that outdoor learning for the younger students cannot be moved to the roof. There are security concerns due to the younger group mixing with the older group upstairs and emergency exit challenges. Administrative staff need to be able to monitor the younger group. This includes having eyes on the street, which also further establishes community connections. The District explained that it would compromise safety to have the administrative offices on another floor and tucking the offices away is the opposite of District objectives. And regardless of student capacity, the educational program informs the first-floor footprint and cannot be reduced to provide the code-required parking while also meeting school educational needs.⁸

Friends did not substantiate the basis for any objections to the appropriateness of the ground floor uses.⁹ On the need for early learning, Friends pointed to several nearby small preschools, but did not provide evidence on their sufficiency, including for children with developmental needs. There was testimony opposing the atrium, but School District testimony detailed the necessity of natural lighting to support education objectives.¹⁰ Architect testimony detailed the efficiency of the building's design while still serving educational objectives. District evidence substantiated that the structure had been reduced in size as much as feasible, while still achieving educational objectives.¹¹ "This redesign sacrificed those elements ... desired for" school functioning "such as better loading, storage, and separated pedestrian path and left only those architectural elements that were necessary to meet education goals."¹² Denial of the departure would require increasing building height, or reducing the building footprint and outdoor open space, critical elements of the school which are necessary to accomplish educational goals.¹³

8. Alternatives. In lieu of surface parking, including an on-site parking structure was considered. The District presented evidence to support its contention that garage operational and security issues would contravene educational needs and school program functioning. A parking structure would introduce unwanted safety and security considerations, require a height increase, necessitate significant dewatering due to the water table, reduce the first-floor program to accommodate the vehicular entry, and is cost prohibitive. Given the physical requirements of a parking structure and the project's relationship to educational needs balanced with level of impact on the surrounding area by increasing building height, the School District determined parking garage development would be infeasible.¹⁴

⁷ Dept. Ex. 9; Testimony, Mr. Gonzales and Ms. Hutchinson.

⁸ Testimony Ms. Asencio, Ms. Hutchinson and Mr. Gonzales; Dept. Ex. 9.

⁹ Some testimony conflicted, such as on early education. *See e.g.*, Testimony, Mr. Cuddy and Ms. Wall.

¹⁰ Testimony, Mr. Gonzales.

¹¹ Testimony, Mr. Gonzales; District Ex. 17 (Power Point), PDF p. 12.

¹² Dist. Ex. 17 (Power Point), PDF p. 12. A map identifies functions/areas removed or relocated.

¹³ Dept. Ex. 9 (Parking Departure Correction Response); Testimony, Ms. Hutchinson and Mr. Gonzales.

¹⁴ Dept. Ex. 9; Testimony, Ms. Hutchinson and Mr. Gonzales.

Without a departure, critical components for learning would have to be removed.¹⁵ This could include the garden and open space in the lot's southeast portion which will provide preschoolers and elementary students an outdoor learning area adjacent to their first-floor classrooms. This interior-exterior relationship was substantiated as necessary for the school's proper and intended functioning and its educational program.¹⁶ Additionally, the mapped environmentally critical area, steep slope erosion hazard area, restricts further development of the southeast portion of the site.¹⁷

If offsite space is used to accommodate additional parking, housing demolition may be necessary. The District considered land acquisition and demolition of housing on abutting property to the south, now hosting a 16-unit apartment building. This parcel may accommodate up to 30 parking stalls but would require a variance or exception to develop within steep slopes and would displace those homes.¹⁸

Testimony from Friends' witnesses suggested a solution of dropping the school size to 300 students.¹⁹ However, providing optimal education opportunities requires a set number of students, and the School District determined such a reduction would be infeasible.²⁰ School District testimony and analysis substantiated the need for the planned school capacity to allow for needed resources.²¹ While Friends identified its preferences, expert witnesses were not called to counter these contentions.

9. Impacts. The School District provided an updated parking analysis ("Technical Memorandum," Heffron Transportation, Inc., December 7, 2023) with new data and analysis of existing on-street parking supply, existing on-street parking occupancy, future parking supply and demand, school day parking conditions, evening event parking and supplements the original transportation analysis.

Existing on-street parking occupancy (utilization) on school weekday periods was found to be 53-70%. Evenings have the highest utilization, with morning, mid-morning, and mid-afternoons ranging from 50-58% in 2021 and 2023 counts. The District now proposes 15 vehicular parking spaces on-site; therefore, the overflow parking demand (42-51 vehicles) could be accommodated on-street, increasing on-street parking utilization to 63-65% during school-day mid-morning and mid-afternoon, with 125-134 unused spaces. Based on this analysis, the parking impacts will not be significantly exacerbated with the parking departure. On-street parking occupancy is considered full capacity when above 85%. Expert testimony supported these figures,²² which included a peer review by transportation experts.²³

¹⁵ Dept. Ex 9; Testimony Ms. Hutchinson and Mr. Gonzales.

¹⁶ Dept. Ex. 9; Testimony, Ms. Hutchinson and Mr. Gonzales..

¹⁷ Dept. Ex. 9, PDF pp. 3-4.

¹⁸ Dept. Ex. 9, pp. 3-4; Testimony, Ms. Hutchinson and Mr. Gonzales.

¹⁹ Testimony, Mr. Cuddy.

²⁰ Testimony, Ms. Asencio and Ms. Hutchinson.

²¹ Testimony, Ms. Asencio and Ms. Hutchinson

²² Dept. Ex. 10; Dist. Ex. 15; Testimony, Mr. Swenson and Mr. McBryan.

²³ Dist. Ex. 5; Testimony, Mr. Swenson.

The parking demand estimate was developed on the rate derived for Alki Elementary School from counts performed at the interim Schmitz Park School location and is consistent with professional practice and consistent with real world experience.²⁴ As for capacity, there is now parking analysis based on 2021, 2023, and 2024 counts. The resulting analysis from two engineering firms was consistent. That the school is not present now provides a better baseline to measure impacts against. Had the school been in operation, the school would have to be separated from background conditions. This calculation did not have to be run.²⁵

With multiple counts from different times of year and years, along with peer review, the District and Department established the credibility of the analysis, which demonstrates adequate parking capacity to support the requested departure. Friends provided neighbor testimony and photographs showing limited parking during pick-up and drop-off.²⁶ This evidence was anecdotal rather than systematic and did not assess the whole study area. Friends' transportation engineer did not prepare an independent parking study.

10. Large Events. Large events typically occur during winter and spring and most are expected to increase on-street parking utilization to 65-86%. Curriculum Night is the largest school event, drawing approximately 300 people, and typically in September or October, a time when seasonal use of Alki Beach is generally higher. To mitigate impacts, the event would be split into two nights (as occurs at some other Seattle elementary schools). Additional on-street parking capacity is available in evenings in the bus load and unload areas and vehicle pick-up and drop-off areas on the east side of 59th Ave SW along the site's frontage and north to Alki Avenue SW.²⁷ With required mitigation, the Department and District submitted sufficient evidence to show these impacts can be accommodated.

11. ADA Parking. The District included "one ADA van stall, with the possibility of an additional ADA stall if the need arises."²⁸ With the ADA stall on the site, "the previously proposed on-street ADA stall across the street has been removed," retaining an additional on-street parking stall.²⁹ While continuing to raise concerns on this issue, Friends did not substantiate that the improved ADA parking and access provided with the revised proposal does not adequately address ADA stall demand.

12. Drop Off/Pick Up. Student pick-up and drop-off on 59th will be retained (North of Stevens and South of Lander). The adjacent right-of-way will be improved, including additional paved area for school bus loading and unloading. Bus loading and unloading location is not before the Examiner. Existing measures to mitigate traffic and circulation impacts such as school-zone speed limits and crossing guards, will continue.

²⁴ Testimony, Mr. Swenson and Mr. McBryan.

²⁵ Testimony, Mr. McBryan and Mr. Swenson.

²⁶ Friends Ex. 1.

²⁷ Dept. Ex. 10, § 2.3; Testimony, Mr. McBryan and Mr. Swenson.

²⁸ Dist. Ex. 17 (Power Point), PDF p. 13.

²⁹ Dept. Ex. 9, p. 4.

The management and operation of pick-up and drop-off, loading, and circulation are addressed in the Department's required conditions and include creation of a school transportation management plan, communication plan, and continued coordination with the Seattle School Traffic Safety Committee. The Department's required conditions are listed at Attachment 1.³⁰

The School District's traffic engineer prepared a draft TMP. It was developed by looking back at previous documentation and testimony, and discussions with the District on past experience. In addition to addressing transportation alternatives; education; and monitoring, it addresses traffic flow during drop-off and pick-up. There will be one-way flow north bound on 59th to avoid vehicles facing each other on the roadway. These patterns would be reinforced with cones and signage put up during pick-up/drop-off. Traffic engineer testimony supported the TMP as a tool for significantly improving pick-up and drop-off.³¹ The PTA President detailed available ways to communicate TMP information and her experience with pick-up and drop-off, with peak periods being about 10-20 minutes.³²

Friends' transportation engineer testified that pick-up and drop-off would take two hours, and in one document suggested it would take six.³³ The District's traffic engineer, along with other witnesses, estimated these peak periods would last about 15-30 minutes, consistent with patterns at other schools.³⁴ That pick-up and drop-off peak periods would last as long as Friends' witness claimed was not substantiated. Most parents who drop children off at school will not stay and the conditions for a school TMP, communication plan, and coordination with the Seattle School Safety Committee will help address the operation of the school program including traffic and circulation.³⁵ Regardless, as parking and drop-off/pick-up circulation are separate functions, Friends did not substantiate that parking lot size would materially impact this time frame.³⁶

13. Safety. Friends addressed an accident on Admiral³⁷ and raised concerns on safety, but did not substantiate the tie between accident history and the degree of parking provided on site. During peak drop-off/pick-up periods, mitigation is in place to ensure traffic flows smoothly and safe crossings are provided. A TMP will be used to improve circulation and the adjacent right-of-way will be improved. The evidence presented did not substantiate a connection between 33 less parking spaces to accident increases or safety degradation.

³⁰ Testimony, Mr. Swenson and Mr. McBryan.

³¹ Testimony, Mr. Swenson

³² Testimony, Ms. Clingan.

³³ Testimony, Mr. Mr. Norris.

³⁴ Testimony, Mr. McBryan.

³⁵ Testimony, Mr. Swenson and Mr. McBryan.

³⁶ Testimony, Mr. McBryan, Mr. Norris.

³⁷ See e.g., Friends Ex. 47.

CONCLUSIONS OF LAW

1. Jurisdiction and Review Standard. The Hearing Examiner has jurisdiction.³⁸ “The decision of the Director shall be given substantial weight, and the burden of establishing the contrary shall be upon the appellant.”³⁹ The review scope is de novo, using the criteria the Department used.

2. Departures. In Seattle most schools are in residential zones as the zoning code lacks a school zone. Typically, school renovations do not meet all underlying zoning requirements, so the SMC allows public schools to request land use code departures. This process provides an opportunity for the surrounding community to provide feedback on the requested departures. The code sets forth criteria specific to public school code departure requests.⁴⁰ The intent is to grant departures from code requirements to accommodate program educational needs. The criteria balance neighborhood context with necessity. Code intent governs facility compatibility with its surroundings, and the Department is to “consider and balance the interrelationships among” these factors:

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 amount or no departure from development standards may be allowed if the anticipated impacts are significant and cannot be satisfactorily mitigated.

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.⁴¹

³⁸ SMC 23.79.012.

³⁹ SMC 23.79.012(D).

⁴⁰ SMC 23.79.002.

⁴¹ SMC 23.79.008(C)(1)(a) and (b).

3. Balance of Overall Impacts. The now more limited parking departure request is appropriate in relation to the character and scale of the area. The departure does not exacerbate or diminish the area character; and the departure will not significantly exacerbate traffic, noise, circulation, parking or impact housing or open space in the area. Without the departure, there would be an increase in structural bulk and/or a reduction in open space and edges which improve school and neighborhood compatibility. Friends did not meet its burden to demonstrate the educational need for this departure was unsubstantiated and project impacts cannot be adequately mitigated by the increased parking on site and the required conditions.

Greater departures may be allowed for special facilities which are an integral and a necessary part of the educational process. While the departure requested is modest, the educational functions proposed are necessary components of the educational process, and further reductions or changes to the project to increase parking on site are not feasible.


In response to the Hearing Examiner decision, the District explored site redesign options, including increased on-site parking, a parking structure, and housing condemnation, and again studied parking impacts through supplemental technical analysis, which was peer reviewed. Because of this exploration and study, the District now proposes an on-site surface parking lot to accommodate 15 vehicles including an accessible (ADA) space (and providing for another space if necessary).

The District substantiated that the anticipated parking demand can be accommodated on site with spillover parking on the street within 800 feet of the site, while still allowing adequate on-street parking capacity. The expert testimony supporting the approach was credible. The District's experts arrived at similar if not the same conclusions and substantiated those conclusions. As District briefing noted, opposing testimony included irreconcilable or unsupportable conclusions,⁴² and did not meet the burden of proof required to reverse the Department's decision. The School District and Department took the parking concerns seriously and balanced the issue against educational needs to ensure the code criteria were addressed. The Department's decision approving the parking departure should be upheld.

DECISION

The Department's decision is **UPHELD**. The appeal is dismissed.

Entered July 1, 2024.



Susan Drummond
Deputy Hearing Examiner

⁴² District Brief, pp. 13-15.

Attachment 1
Conditions Related to Transportation and Parking

- 1. School Transportation Management Plan (STMP):** Prior to the school reopening each year, SPS and the principal of Alki Elementary will establish a School Transportation Management Plan (STMP) to educate families about access load/unload procedures for the site and distribute information to families about travel routes for approaching and leaving the school. Staff and parents should also be instructed not to block or partially block any residential driveways with parked or stopped vehicles.
- 2. Engage Seattle School Safety Committee:** SPS will continue ongoing engagement with the Seattle School Traffic Safety Committee (led by SDOT) to review crossing paths with school buses or traffic control to help encourage pedestrian and non-motorized flows at designated crosswalk locations.
- 3. Neighborhood Communication Plan for School Events:** SPS and Alki Elementary's administration will develop a neighborhood communication plan to inform nearby neighbors of large events each year. The plan will be updated annually (or as events are scheduled) and provide information about the dates, times, and magnitude of large attendance events. The communication would be intended to allow neighbors to plan for occasional increases in on-street parking demand that would occur with large events.
- 4. Update right-of-way and curb-side signage:** SPS will work with SDOT to confirm locations, extents, and signage (such as times of restrictions) of the school bus and/or school load zones established or eliminated on adjacent streets.
- 5. Large Event Plan:** For the one or two largest events each year expected to attract 400 or more attendees the school will develop a large event plan that modifies the event to reduce total peak parking demand by separating it into two sessions or into two nights based on grade levels as occurs at some other Seattle elementary schools.

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 Hearing Examiner's decision is the final decision for the City of Seattle. Under RCW 36.70C.040, a request for the decision's judicial review 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 the judicial review request must be commenced within twenty-one (21) days of the date the motion for reconsideration order is issued.

The person seeking review must arrange for and initially pay for 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.

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 below, in **FRIENDS FOR A SAFE ALKI COMMUNITY** Hearing Examiner File: **SDD 24-001** in the manner indicated.

Party	Method of Service
<p>Authorized Representative Bricklin & Newman, LLP</p> <p>Audrey Clungeon clungeon@bnd-law.com</p>	<p><input type="checkbox"/> U.S. First Class Mail <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</p>
<p>Applicant Legal Counsel McCullough Hill PLLC</p> <p>Katie J. Kendall kkendall@mhseattle.com</p> <p>Isaac A. Patterson ipatterson@mhseattle.com</p>	<p><input type="checkbox"/> U.S. First Class Mail <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</p>
<p>Department SDCI</p> <p>Carly Guillory Carly.guillory@seattle.gov</p>	<p><input type="checkbox"/> U.S. First Class Mail <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</p>

Dated: July 1, 2024

/s/ Angela Oberhansly
Angela Oberhansly, Legal Assistant