

appeal filing of City Decision to approve Loyal Heights school project permit – March 27, 2016

Appeal addressed to:

City of Seattle Office of Hearing Examiner, P.O. Box 94729, Seattle WA 98124-4729
Physical address: Seattle Municipal Tower, 700 5th Avenue, Suite 4000, 40th Floor, Seattle WA 98104
Phone: 206-684-0521; FAX: 206-684-0536; www.seattle.gov/examiner

APPELLANT INFORMATION

#1. Appellant(s)

1. Seattle Committee to Save Schools
2. Chris Jackins, P.O. Box 84063, Seattle WA 98124; 206-521-3288
3. ~~XXXXXXXXXX~~ Names attached

#2. Authorized Representative

Chris Jackins, Coordinator, Seattle Committee to Save Schools, P.O. Box 84063, Seattle WA 98124; 206-521-3288
Documents by U.S. Mail

RECEIVED BY
2016 MAR 30 AM 10:18
OFFICE OF
HEARING EXAMINER

DECISION BEING APPEALED

#1. Decision being appealed: Decision of Department of Planning and Development (DPD) to approve MUP # 3019776 dated March 21, 2016, with appeals due no later than April 4, 2016

#2. Property address: 2511 NW 80th St, Seattle (Loyal Heights school)

#3. Elements of decision being appealed:

X - Adequacy of conditions X - Departures from zoning Code X - Other - See our objections to the decision

APPEAL INFORMATION

#1. What is your interest in this decision? How are you affected by it? Our group is concerned about preserving historic schools, and providing a good environment for education and neighborhoods; we include taxpayers of the Seattle School District, the City of Seattle, and the State of Washington; we include alumni, parents, and guardians of children of the Seattle School District; we include people who have historic, cultural, and educational connections to the site; we include people who live or work in neighborhoods who are affected by construction, traffic, parking, etc, impacts.

#2. What are your objections to the decision? List and describe what you believe to be the errors, omissions, or other problems with this decision.

1. The DCI Decision erred by posting inadequate public notice of the Decision with regard to development departures.

The notice published in the March 21, 2016 Land Use Information Bulletin simply states "Conditionally Grant - School Development Standard Departure". The three specific requested departures - lot coverage, height, on-site parking - are not referenced, but should have been.

The Decision also acknowledges that with respect to lot coverage, "anything in excess of 45% would require a Director's waiver" [page 5, para. #2 from bottom] and states that "the Director grants the departure request of 47.7% lot coverage". [page 7, para. #4] The Director's 2.7% waiver decision was on top of the 45% departure decision and thereby part of the DCI Decision, and would also seem to require separate notice.

The Decision should be remanded for renote.

Notices for past school projects referenced the particular departures. Two examples are attached:

(A) Project # 3015479 1330 N 90th St, Wilson Pacific school – the February 12, 2015 notice included a description of the departures, as well as referencing an ECA Exception.

(B) Project # 3015707 7711 43rd Ave NE, Thornton Creek school – the original October 30, 2014 notice only listed SEPA and made no mention of the decision on departures; this Decision was remanded for renote which appeared on November 20, 2014 and included a description of the departures.

2. The City and DCI should have given more weight to the majority recommendations given by the Department of Neighborhoods Departure Advisory Committee.

The Advisory Committee rejected all of the departure requests for a number of reasons specified in the Departure Report, including that the proposed project is too large for the site, with impacts to lot coverage including losing 30% of the existing playground space, too high buildings, and providing zero on-site parking rather than the 70 spaces required. [page 4]

The Advisory Committee strongly rejected all of the departures based on careful evaluation of the project including strong community input that asked that the departures be rejected. Detailed documents were written and considered by the Advisory Committee. See, for example, the reference to a written document submitted into the record by an Advisory Committee member. [page 7, last paragraph, October 15, 2015 minutes, Advisory Committee Report]

3. In a number of areas, the Decision failed to state the reasons for the modification of the Advisory Committee recommendations to reject all the departures, and thereby violated SMC 23.79.010.A.

The DCI Decision states “If the Director modifies the recommendations of the Advisory Committee, the reasons for the modification shall be put forth in writing.”

In some areas, the Decision states reasons that the DCI reached its own alternate conclusions to grant all of the departures. But this is not the same as stating the reasons for the modification of the Advisory Committee recommendations.

For example, the DCI Decision states that “The Committee thought the educational program and student body size (approximately 660 students) was too ambitious for this site which in turn was causing the building programmatic needs to be outsized.” [page 6, para. #2] The DCI does not state that the Advisory Committee was wrong in this view. By SMC 23.79.010.A, the DCI is required to do more than state the Advisory Committee recommendations, and then present the DCI recommendations. The DCI must explain why it modifies the Committee recommendations: the Committee recommendations are the default decision of the DCI, and cannot be changed unless the DCI explains the reasons for modifying them.

The DCI Decision simply adopts the School District’s assertion of program requirements including 660 students: “The School addition must serve the future larger population of students and staff.” [page 6, para. #4] The Decision does not give the reasons why it disagrees with the Advisory Committee that the project is “too ambitious for this site”. [page 6, para. #2] If the District program requirements included capacity for 50,000 students rather than 660, the DCI could similarly ignore that the 50,000-student project is “too ambitious for this site” and approve a departure to allow capacity for 50,000 students.

4. The Decision failed to mention that 30% of the playground space would be lost, according to the SEPA review. [Finding #27, page 8, District Hearing Examiner Recommendation, attachment to Minority Report #2 of Advisory Committee Report] There are also reasons to view the impact of the loss as being greater.

5. The DCI Decision states “the Director grants the departure request of 47.7% lot coverage. [page 7, para. #4] This statement is an error: a departure beyond 45% is not allowed.

The Decision notes “The Departure Advisory Committee could contemplate lot coverage of up to 45% through the departure process and anything in excess of 45% would require a Director’s waiver.” [page 5, para. #2 from bottom]

6. The Decision imposed a departure condition related to lot coverage [page 7, para. #4] and related to the need for the departures [page 9, para. #4]. This condition is not adequate to balance the impacts.

The Decision states the condition as: “The north, internal courtyard, bounded on all sides by the school building, shall be made available for play at the direction and programming of the staff and principal of Loyal Heights Elementary School.” [page 14]

The “internal courtyard” should not be counted as open space, as it is “internal”: it is not accessible to the public and it is not viewable by the public. This area is not currently surrounded on all sides by the school building: see the Existing Site Aerial and Proposed Site Plan diagrams on pages 3 and 4, Departure Advisory Committee Report. This loss of access to open space was not properly stated and not properly weighed by the Decision.

7. Based on the Decision’s imposed departure condition requiring play use in the internal courtyard [page 14], the Decision causes the project to be out of compliance with the adopted Educational Specifications for the project. This undercuts the basis for much of the Decision: “In reviewing this departure request, the Director has reviewed the District required school program”, and “The School addition must serve the future larger population of students and staff”. [page 6, para. #4] Specifically undercut are the lot coverage and on-site parking departures both of which the Decision tied to play space, but also undercut is the need for all of the departures as the Decision tied the courtyard play use condition to the need for all of the departures [page 9, para. #4]. The Decision is in error, all of the departures should be denied, and the permit should be denied.

When the Loyal Heights Educational Specifications were adopted by the School Board on April 22, 2015, a condition associated with the Educational Specifications was confirmed by the Board “that the courtyard will not be used as a play space”. [page 6, item #4, April 22, 2015 School Board minutes] This is clear and binding legislative intent.

The imposition by the DCI Decision of the condition requiring play use in the courtyard shows that an unconditioned proposal would be out of balance and that the departures should be denied.

8. In referencing possible expansion of the site, the DCI Decision:

(i) erred, as site expansion is not possible because program requirements forbid it, and therefore no Director waiver of lot coverage restrictions is allowed; and/or

(ii) erred in failing to evaluate and weigh the possibility of changing stated program requirements to serve 660 students, because changing these requirements would take exactly the same type of action as expanding the site: both would require formal School Board action to change program requirements.

If the program requirements are viewed as unchangeable, then “removing single family homes” must be viewed as not possible, and thereby the Director is not allowed to waive the lot coverage restrictions beyond 45% to the requested 47.7%.

The DCI Decision referenced requirements for a waiver and cited arguments that may have been intended to support a waiver. "Lot coverage restrictions may be waived by the Director as a Type I decision when a waiver would contribute to reduced demolition of residential structures." [page 5, para. #2 from bottom]

The Decision cites the School District's minority report, stating "The second minority report also noted that closing 77th Street and removing single family homes in the next block is a possible solution but not one the School District wants to pursue." [page 6, para. #3]

The Decision states "The Director has reviewed the District's site plan showing a possible expanded school site to the south across 77th Street and understands it is not a site planning solution the District wishes to follow." [page 6, para. #4] Under present District program constraints, such a "solution" is not possible and/or is as possible as changing the 660 student school size.

The Decision asserts that "The School addition must serve the future larger population of students and staff". [page 6, para. #4] This assertion reflects program requirements stated in the Educational Specifications (Ed Specs) which were adopted by the School Board on April 22, 2015 and which would require School Board action to modify. The April 22, 2015 School Board Action Report for this action referenced Generic Educational Specifications for Four-Section Elementary Schools, the 660 student school size (four class sections per grade level). [page 3]

To expand the site and remove single family homes is likewise not allowed without School Board action. The Loyal Heights project is a BEX IV levy project, and there are no property acquisition funds in the February 2013 BEX IV levy. This is acknowledged by the same DCI analyst in a decision on the Wilson Pacific project #3015479, "*The BEX IV levy funds projects to meet educational program needs. There are no provisions in the BEX IV program for purchasing new property for existing school programs.*" [page 14, Decision on Wilson Pacific]. The School Board Resolution authorizing placing the levy on the ballot states "the District shall acquire, construct, equip and make other capital improvements to the facilities of the District, all as the Board of Directors finds necessary". [page 4, Section 2, Resolution 2012/13-4, adopted November 7, 2012]

9. The Decision references Advisory Committee concerns over lack of adequate open space to assemble students for a fire drill. [page 6, para. #2] In response, the Decision states that "the project will undergo review by building and fire code officials to ensure compliance." [page 6, para. #4] Given the Advisory Committee's concern, the DCI response is inadequate, and review should occur prior to approval of the project permit.
10. The Decision erred in evaluating the acceptable or necessary level of departure with respect to the loss of three Exceptional trees [page 12] in terms of SMC 23.79.008 C1.a.1 "Appropriateness in relation to the character and scale of the surrounding area."

The surrounding neighborhood contains many wonderful trees, and the loss of these three large Exceptional trees would cause the school to become more out of character in terms of the surrounding area.

11. The design of setbacks was changed after the Advisory Committee's recommendations were issued. [page 9, para. #1] School District discussion during Advisory Committee meetings and during SEPA administrative review had indicated that increasing setbacks would increase lot coverage. It is not clear that a proper re-analysis of lot coverage has occurred.
12. The DCI Decision improperly gave too much weight to the Advisory Committee's Minority report #1 with regard to its stated "approval" of the lot coverage departure request. [page 6, para. #3]

The DCI Decision apparently did not notice that in citing Minority report #1 as recommending approval of the lot coverage departure request [page 6, para. #3], the author of Minority report #1 in fact voted against the lot coverage departure request. The author of Minority report #1 is Constance McBarron. [page 4, attachment #4, Minority report #1, Advisory Committee Report]

The minutes of the October 15, 2015 Advisory Committee meeting show that Constance McBarron, the author of Minority report #1, voted "Yes" on the motion to reject the lot coverage departure request. The vote was 7 to 1 (only the School District's direct representative Eric Becker voted "No"). [page 8, top of page, October 15, 2015 minutes]

The Decision thereby gave improper weight to Minority Report #1, as its author had clearly not simply been 100% in favor of the lot coverage departure request.

13. The DCI Decision was too uncritical in its evaluation of Landmark Status constraints on the project as "significant" [page 6, para. #4] and as putting "limits" on the stacking of classrooms [page 6, para. #1]

Minority Report #2, written by the School District's project manager Eric Becker, stated "The Landmarks Board and its Architectural Review Committee have close to full control over the design of the proposal." [page 1, para. #5, attachment #5, Advisory Committee Report]

The DCI Decision analyst has reason to know that the School District maintains that the City Landmarks Board does not have any jurisdiction over Seattle School District school buildings. The District sued the City Landmarks Board over the Wilson Pacific school landmarking. The lawsuit asks a court to declare the City landmarks Ordinance SMC 25.12 "unconstitutional" and "invalid as applied to the District". [page 2; page 8, section 4.4; page 11, section 9.1; King County Superior Court Case # 14-2-21496-1 SEA]

14. The Decision incorrectly allowed the height departure.

The Decision incorrectly evaluates the character and scale of the surrounding neighborhood not as it actually currently exists, but as it "may eventually" (hypothetically) exist, including 40 foot high buildings on 24th Avenue NW that do NOT exist now and without any citations to actual planned projects with such buildings. [page 6, para. #5; page 7, para. #1]

The Decision incorrectly minimizes the Advisory Committee's concern that the mechanical penthouse is "long". [page 8, para. #2]

15. The Decision incorrectly allowed the on-site parking departure. Zero on-site parking spaces are allowed, while Code requires 70 on-site parking spaces.

The Decision incorrectly states that providing any on-site parking will reduce play space [page 8, para.#5]:

(i) The Decision is being inconsistent. If play space is the DCI Decision's top concern, then the Decision should have concluded that the lot coverage departure should have been denied or reduced.

(ii) The Decision ignores the Advisory Committee's process of dealing with each departure request in a deliberately specified sequence: (1) lot coverage, then (2) setbacks, then (3) parking, then (4) height. [page 6, bottom vote tables, October 15, 2015 minutes] When the parking departure was considered, the lot coverage departure had already been denied. The District stated that without the lot coverage departure the project would have to be redesigned, so approving a parking departure for an unknown new plan would have been a black check unsupported by any data. There had also been public input toward seeing if some underground parking could be provided – this was not considered by the Decision.

16. On SEPA: The loss of three large exceptional trees should not be allowed. It is too great an impact. If the District is required to redesign the project to reduce lot coverage, as appellants request, a blank check should not be provided for removing trees without public review of the new plans.

#3. What relief do you want?

Remand the Decision for renote to include references to the three specific requested departures: lot coverage, height, and on-site parking, as well as to the Director's 2.7% waiver decision on lot coverage to reach 47.7%.

Reverse the Decision. Deny approval of the project. Affirm the Department of Neighborhood Departure Advisory Committee recommendation to reject all requested departures (lot coverage, height, on-site parking).

Deny the Director's 2.7% waiver decision on lot coverage to reach 47.7%.

Deny approval for removal of the three Exceptional trees.

Reject the departure condition proposed on page 14 related to lot coverage [page 7, para. #4] and related to the need for the departures [page 9, para. #4] as not adequate.

Signed: Chris Jenkins Date: 3/28/15
(Appellant or Authorized Representative)

Maryann Firpo
7515 25th Ave NW
Seattle, WA 98117
206-529-7608
lemonfirpo@gmail.com

Jim Wurzer
7718 Earl Ave NW
206-719-9312

Richard & Laura Werner
7739 26th Ave NW
Seattle, WA 98117
206-789-6310

Jan Anderson
7733 26th Ave NW
Seattle, WA 98117

Darrel Toland
6706 28th Ave NW
Seattle, WA 98117
pixelphish@mac.com

John Ellefson
7527 26th Ave NW
Seattle, WA 98117
jellefson@usa.net
206-612-2968

Michael Jancola
8314 Jones Ave NW
Seattle, WA 98117
mjancp;a@gmial.com
215-758-7167

Andrea Kent
7511 25th Ave NW
Seattle, WA 98117
dear.andrea.kent@gmail.com
206-789-6381

Brian Utting
7511 25th Ave NW
Seattle, WA 98117
brianutting@speakeasy.com
206-784-1778

Betsy Swart
7303 28th Ave NW
Seattle, WA 98117
206-853-0317
wonderwing@earthlink.net

Frank Swart
7303 28th Ave NW
Seattle, WA 98117
206-853-0317
frank.swart@comcast.net