

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

In the Matter of the Appeals of

Hearing Examiner File:

**JOHN DAVIS and ETHAN VAN ECK
And ARMAND MACMURRAY**

**MUP-14-020(CU) and
MUP-14-021(CU)**

From a decision by the Director of the Department
Of Planning and Development

Department Reference: 3016841

Introduction

The Director, Department of Planning and Development issued a decision and the Appellants timely appealed.

The appeal hearing on the above-referenced matter was held on February 10, 2015, before the undersigned Deputy Hearing Examiner. Parties represented at the proceeding were: the Appellants, John Davis and Ethan Van Eck, pro se; Appellant Armand MacMurray, pro se; the Director, Department of Planning and Development, by Bruce Rips, Land Use Planning Supervisor; and the Applicant, Low Income Housing Institute, by G. Richard Hill, attorney at law. The record was held open through February 17, 2015, for submittal of the parties' written closing statements and the Hearing Examiner's viewing of the site.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. After due consideration of the evidence elicited during the hearing and the Examiner's inspection of the site, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The site is addressed as 2014 NW 57th Street in Ballard. The property is the site of a previously-approved 51-unit apartment building, Ballard Senior Apartments/Cheryl Chow Court (Cheryl Chow Court).
2. The site is located mid-block on NW 57th Street, between 20th Avenue NW and 22nd Avenue NW. To the east, west and north of the site are multifamily development. To the south across NW 57th Street is a surface parking lot associated with a mortuary; redevelopment of that site has been proposed under Master Use Permit 301779.
3. Other uses in the vicinity include Saint Luke's church to the northwest, the Ballard Library to the west and south across NW 57th Street, Ballard Commons Park to the west across 22nd Avenue NW, and the Urness Nyer House, which is located south of NW 56th Street and east of 20th Avenue NW.

4. The site is zoned Midrise Residential Commercial (MR-RC) and is within the Ballard Hub Urban Village. The MR-RC zone runs along the north side of NW 57th Street from 22nd Avenue NW to 17th Avenue NW, as shown in Ex. DPD7. To the south across NW 57th Street, the zoning is Neighborhood Commercial with a height limit of 65 feet (NC3-65), and to the north, the zoning is Lowrise 3 (LR3) and LR3 RC. Zoning in the vicinity is shown in Ex. DPD7. The Ballard Library is located in the NC3-65 zone and the Nyer Urness House is located in the NC3-85 zone.

5. The site is about two blocks north of NW Market Street, which is served by several Metro bus routes. Metro's RapidRide service provides frequent connections to downtown Seattle and Uptown stops on 15th Avenue NW, about 0.4 miles from the site.

6. The applicant, Low Income Housing Institute (LIHI), proposes to develop and operate the Ballard Urban Rest Stop (BURS) on the ground floor of the Cheryl Chow Court apartment building. The BURS would be 1,952 square feet, and would be located at the western end of the building. No off-street parking is proposed to serve the BURS.

7. The Cheryl Chow Court building was permitted pursuant to MUP 3012980. Although LIHI had initially planned to include the BURS in its application for MUP 3012980, it withdrew the BURS from the proposal after considering comments made at public meetings. DPD subsequently issued a SEPA DNS and design review approval for MUP 3012980.

8. At the time that MUP 3012980 was approved, a one-story house was located to the west of the Cheryl Chow Court site. Since that time, this neighboring site has been developed as a seven-story, 20-unit residential building, the Solo Apartments. The first floor of the eastern side of the Solo building accommodates a driveway ramp into the garage; ten of the units on the upper floors overlook the proposed outdoor waiting area for the BURS.

9. LIHI convened a Community Advisory Committee to help it plan for the BURS, and subsequently applied for approval of the BURS as a separate proposal. The proposed use is classified by the Code as a "community center," which is an institution. Institutions are conditional uses in the MR zone.

10. The BURS would have five clothes washers, nine dryers, five shower rooms and restrooms as shown in the drawings; Ex. A12. The BURS would provide its services free of charge. LIHI will give out appointment times, to avoid queuing by people waiting to do their laundry or take a shower. A laundry limit of 15-18 pounds every other day would be imposed. There would also be a waiting area inside the building and an exterior covered area that would serve as a waiting area.

11. There are no proposed operating hours for the BURS at this time, and the applicant indicated that it wishes to maintain flexibility to meet the needs of its clients. However, in its application for a conditional use permit, LIHI stated that the BURS would operate a maximum of 10 hours per day (including one hour mid-day when the facilities are being cleaned and restocked), 7:00 am to 5:00 pm, Monday through Friday. The application states that these are

the hours of operation laid out in the purchase and sale agreement for the property and the proposed condominium declaration.

12. The BURS is expected to serve, at full capacity, approximately 135 people a day. It will have two staff people, and two-three volunteers per day. The Cheryl Chow Court building will also have on-site live-in staff, a social worker, and janitorial staff.

13. LIHI anticipates that the busiest hours for the facility would be the first two hours after opening, based on its experience at its other rest stops. The interior waiting area has a capacity of 14 people, and the exterior space has a capacity of 21 people. LIHI expects that managers of the BURS would open the gate to the outdoor waiting area prior to the opening of the BURS, so that clients would wait in the plaza area.

14. The plaza area would be a 445-square L-shaped area extending along the west side of the structure. A fence is proposed to separate the plaza from NW 57th Street, and a raised planter is also located here to screen the plaza from the right of way. A six-foot high opaque wall on the west property, which was approved under the MUP permit for the structure, would separate the waiting area from the residential building to the west. The BURS proposal includes the addition of sound baffling material on the lower side of the canopy that covers the plaza area, which was recommended by LIHI's acoustical consultant, JGL.

15. During the application process, LIHI submitted to DPD the "Ballard Urban Rest Stop Good Neighbor Plan" and the "Ballard Urban Rest Stop Patron Code of Conduct;" Ex. A9 and A10. LIHI at hearing confirmed that it would implement the Good Neighbor Plan and enforce the Code of Conduct once the BURS is in operation.

16. In evaluating the potential noise impacts of the proposal, DPD's decision noted that the applicant had not specified hours of operation. DPD noted that, in order to address noise that might arise in the plaza and on the sidewalk prior to the opening of the gates, it would require the applicant to provide a staff person on site to monitor noise in the early morning hours.

17. LIHI has operated an urban rest stop in the University District for over two years and the downtown urban rest stop at 1924 Ninth Avenue for 13 years. LIHI now desires a presence in Ballard, in order to serve the existing homeless population in Ballard. The additional restroom facilities may reduce the use of other facilities, including the Ballard Library, that are currently utilized by the homeless. LIHI also expects that those who use St. Luke's Church's meal service and shelter will benefit from the location of the BURS.

18. Sharon Lee, LIHI's Executive Director, noted that the success of the BURS depends on everyone feeling safe. In addition, clients want these services, and have a vested interest in making sure they can continue to receive the services. LIHI has a Code of Conduct at its other rest stops. Clients who do not adhere to the Code can be barred from the facility, and because staff at the rest stops become familiar with the clients, the staff are able to enforce this bar against clients who fail to comply with the BURS rules. The Good Neighbor Plan provides for

LIHI to notify the police if any observed or suspected criminal activity occurs, but Ms. Lee noted that LIHI has rarely had criminal conduct at its other rest stops.

19. Witnesses at hearing described seeing people who were presumably patrons of the rest stop waiting in line on the sidewalk in front of the URS; some of whom were smoking. Mr. Mollenholt observed 28 people waiting in line for an hour or more between the hours of 5:00-7:00 a.m. outside the downtown URS.

20. Mr. Davis and Mr. Van Eck also prepared parking demand counts at the downtown URS. These are shown at Ex. JD7.

21. The Seattle University "Seattle Vehicular Residency Research – 2012 Advisory Report" is shown at Ex. JD24. The report was prepared by Graham Pruss, currently a doctoral candidate at the University of Washington. Mr. Pruss has lived in Ballard for the last 20 years, and part of his research for his 2012 report involved observations of homeless persons living in their vehicles in Ballard. Mr. Pruss at hearing noted that he had identified 79 occupied vehicles in Ballard. Among Mr. Pruss's conclusions, based on his studies and observations, were that homeless vehicle "campers" tend to desire invisibility, because they are afraid their vehicle may be towed or broken into. Industrial locations in Ballard and SODO are desirable for parking, because recreational vehicles are allowed to park in these areas, which in turn encourages other vehicle "campers" to use these areas to blend in with the group; Ex.JD24, at section IX. Mr. Pruss was of the opinion that if a desirable parking space is found, the vehicle owner tends to leave it parked in place, and not move it for short-term errands; the risk of losing a viable spot in which to live outweighs the benefit of being able to drive to services, even free services, such as a hygiene center.

22. The applicant's transportation engineering consultant, Heffron Transportation, assessed the potential parking demand that would result from the BURS; Ex.A3. Heffron concluded that, up to five percent of the BURS clients (equaling one or two vehicles) would drive to the site and park. This conclusion was based on the patterns of client transportation behavior observed by managers at the downtown and University District rest stops. Heffron noted that clients preferred walking or riding the bus as the cheapest forms of transportation, and that those clients who owned a vehicle did not move it often due to the costs of driving and parking.

23. Heffron also updated the parking utilization study that it had done in 2012 for the Cheryl Chow Court project, and conducted new parking demand counts on May 22, 2014 at 7 am and 12 pm, as shown on page 2 of Ex. A3. Heffron concluded that, based on the new parking counts, there was ample on-street parking to accommodate the parking demand of 1-2 vehicles associated with the BURS.

24. Heffron prepared a report dated February 9, 2015, reviewing the site's proximity to transit and noted the bus stops that are within 1/3 mile, which Heffron noted to be a reasonable walking distance to transit. The report also concluded that studies of rider behavior tended to support the notion that the RapidRide service, with its frequency and reliability, was a service that riders would walk to, even though it was 0.4 miles away. Ms. Heffron also noted that

predictability was a key incentive for transit riders, who will walk further if the transit service is predictable. She also noted that the 15-18 pound limit of laundry allowed at the rest stops is an amount that a person can carry in a backpack, and does not pose a disincentive to using transit. Ex.A5; Heffron testimony.

25. In the February 9 report, Heffron also considered other development projects in the vicinity of the BURS which were listed in the DPD Activity Locator for recent project applications within 800 feet of the site. Heffron calculated potential parking overspill from the other projects, and concluded that the potential cumulative overspill would be highest during the overnight hours.

26. A list of 911 calls received by the Seattle Police Department is shown at Ex. JD13. The list identifies the number of 911 calls from four locations during 2010-2013: the Downtown URS, the Wiggins Mortuary, Ballard Library and Ballard Commons Park. The exhibit also indicates the types of calls received. For example, 130 calls were made during that four-year time period for the downtown URS, 234 for the Ballard Library, and 714 for the Ballard Commons.

27. SMC 23.45.506 addresses conditional uses in multifamily residential zones and states in part:

Institutions other than public schools not meeting the development standards of 23.45.570, Institutions, and Major Institution uses as provided in Chapter 23.69, may be permitted subject to the following:

- 1. Bulk and Siting. In order to accommodate the special needs of the proposed institution, and to better site the facility with respect to its surroundings, the Director may modify the applicable development standards. In determining whether to allow such modifications, the Director shall balance the needs of the institution against the compatibility of the proposed institution with the residential scale and character of the surrounding area.*
- 2. Dispersion Criteria. An institution that does not meet the dispersion criteria of Section 23.45.570 may be permitted by the Director upon determination that it would not substantially worsen parking shortages, traffic safety hazards, and noise in the surrounding residential area.*
- 3. Noise. The Director may condition the permit in order to mitigate potential noise problems. Measures the Director may require for this purpose include, but are not limited to the following: landscaping, sound barriers, fences, berms, adjustments to yards or the location of refuse storage areas, location of parking areas and access, structural design modifications, and regulating hours of use.*
- 4. Transportation Plan. A transportation plan is required for proposed new institutions and for those institutions proposing to expand larger than 4,000*

square feet of floor area and/or required to provide 20 or more new parking spaces. The Director may condition a permit to mitigate potential traffic and parking impacts pursuant to a Transportation Management Plan or Program as described in directors rules governing such plans or programs. The Director will determine the level of detail to be disclosed in the transportation plan based on the probable impacts and/or scale of the proposed institution.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to SMC 23.76.022. Under SMC 23.76.022.C.7, the Director's decision on a conditional use application is given no deference by the Hearing Examiner.
2. Mark Smithsund, one of the identified witnesses for Appellants Davis and Van Eck, submitted a request to intervene for purposes of preserving the right to appeal on February 6, 2015. The request was received by the Hearing Examiner but was not served on the parties. Nevertheless, at hearing, the Examiner heard argument on the request and denied the request because it did not meet the criteria for intervention contained in Hearing Examiner Rule 3.09(a) and (b).
3. In a February 3, 2015 Order on Motion to Dismiss and Motion for Summary Judgment, the Examiner dismissed certain issues from the Davis and Van Eck appeal.
4. The remaining issues in the appeals are whether the Director's decision is in error because: DPD did not include the Ballard Library and Urness Nyer House as institutions as part of the dispersion analysis; the project is not appropriately sited because people will queue on the sidewalk, make noise, or engage in other undesirable behaviors; the proposal would cause crime; the proposal does not have a transportation plan pursuant to SMC 23.45.506; the proposal will cause traffic and parking impacts; and the conditions are not adequate to address the proposal's impacts.

Dispersion

5. The Davis and Van Eck appeal contends that DPD failed to consider the fact that the BURS would be within 600 feet of several institutions, not just St. Luke's Church. However, the dispersion requirement of SMC 23.45.570.J applies to other institutions in a residential zone. The institutions identified by the appellants – the Ballard Library and the Nyer Urness House – are located within commercial zones, so the dispersion requirement does not apply to them. In their closing statement, the appellants argued that the project was not properly dispersed because there would be frequent patron trips back and forth between the three institutions, and LIHI should have co-located the BURS with St. Luke's. This was not identified in the appeal as a claim regarding dispersion, but in any event, the fact that BURS clients may travel between different institutions does not show an impact that DPD was required to consider as part of its dispersion analysis.

Public Safety/Crime

6. The Davis and Van Eck appeal contended that the proposal would have “public health, safety and welfare impacts, including...criminal activities,” Davis/Van Eck Appeal, page 2. In support of this claim, the appellants submitted 911 call logs, including calls for the downtown URS. But even if the calls for the downtown URS could somehow be considered predictive of calls at the BURS, the evidence, including the call records, does not show that the BURS would cause crime to increase.

Noise

7. The Davis and Van Eck appeal claimed that the proposal will generate substantial noise. The appellants argued that people waiting outside the BURS before it opens would make noise. SMC 23.45.506.C authorizes the Director to condition the project to mitigate potential noise problems. The proposal includes the addition of noise baffling to the underside of the canopy over the plaza to reduce noise that might rise to the second level of the SOLO Lofts. The Code of Conduct also prohibits loud noise or conversation while waiting in line for services. DPD concluded that potential noise impacts could be intrusive on adjacent neighbors during early hours of the morning, and conditioned the proposal to require that a staff person be on site an hour before the facilities open, to monitor for noise by clients. The noise that may be generated by the proposal would be adequately mitigated by the measures identified above.

Siting/Residential character

8. The Davis and Van Eck appeal claimed that the proposal was not compatible with the residential character of the surrounding area, and this argument is presumably based on SMC 23.45.506.C.1. As noted above, the appellants infer that the BURS will increase the crime rates, but the evidence does not support this claim. The appellants also noted that lines of people waiting for the downtown URS include some who smoke or talk or place their belongings on the sidewalk. The neighborhood in the immediate vicinity of the proposed BURS includes multifamily residential, commercial and institutional uses permitted within the Ballard Hub Urban Village. As DPD observed at hearing, the character of this neighborhood is not a homogenous residential community. It contains a variety of uses, consistent with the RC designation at this site. The BURS clients, like other pedestrians in Ballard, will not be invisible. But even if BURS clients smoke, talk, or play music while standing outside, walk from the park to the library, or place their backpacks on the sidewalk, these activities are not inherently incompatible with the residential character of the neighborhood. The Director’s decision to waive a development standard, i.e., the on-site parking requirement, was also correct in light of the provisions of SMC 23.45.506.C.1 regarding siting.

Transportation and parking

9. The appeals also argued that the proposal did not have a transportation plan as required by SMC 23.45.506.D. The Code allows the Director to “*determine the level of detail to be*

disclosed in the transportation plan based on the probable impacts and/or scale of the proposed institution.” At hearing, the DPD’s transportation planner testified that the responses to correction notices filed by Heffron Transportation, were considered by DPD to be an adequate transportation plan for the proposal. The Heffron reports contained adequate information and analysis to show that the parking and transportation impacts from the proposal would be minor, and DPD committed no error in accepting the reports as the transportation plan.

10. Both appeals claim that the parking impacts of the proposal would be greater than assumed by DPD and the applicant. The appellants argue that the Heffron studies are not accurate and that there is less parking supply and more demand than that described in the reports. The appellants argue that the percentage of clients who will drive to the BURS is greater than the five percent assumed in the Heffron analysis. The appellants argue that the Ballard location offers more free parking, so that a higher percentage of BURS clients will drive to the site. The claim is also based on the presence of persons living in their vehicles in Ballard; the MacMurray appeal contends that perhaps 50-75 percent of the BURS clients will drive. But, the appellants’ evidence was not persuasive and does not show that the five percent assumption was incorrect or unreasonable. The testimony of Mr. Pruss and Mr. Lee regarding the client population and its driving habits, and Ms. Heffron’s opinion concerning transit proximity and pedestrian behavior, show that it is reasonable to assume that clients will not drive to the BURS; they will instead walk or use transit. The five percent figure used by Heffron was reasonable.

11. The MacMurray appeal also contends that proposal will cause a much higher parking utilization rate than predicted because the Heffron parking study area was not correctly defined; Ex. AM6. But the evidence shows that Heffron’s parking survey and supply calculations were consistent with DPD guidance for calculating parking supply, and that the utilization rates for the block faces on the dates observed was accurate.

12. Appellant MacMurray also argued that new development projects nearby were not included in the parking demand calculations, but the February 2015 Heffron “conditions update” report, Ex.A5, includes an analysis of development projects found in the DPD Activity Locator within an 800-foot distance of the site. The appellant argued that other projects were not included in the analysis, but one of these (Bartells) would produce no overspill parking, and the peak parking demands for other residential projects are expected to occur during the evening and overnight hours, rather than the weekday morning hours when the BURS is expected to experience its highest client volumes. The testimony of Ms. Heffron, and Mr. Shaw, the only transportation experts to testify at hearing, was also persuasive as to the minor nature of any parking overspill that could reasonably be expected.

Conditions of approval

13. The Davis and Van Eck appeal asserted that the conditions of approval were not adequate to mitigate impacts. The appeal argues that the Good Neighbor Policy Plan and the Patron Code of Conduct are not adequate conditions to address the project’s impacts and appear be temporary and non-enforceable; that a single staff person is not sufficient to monitor behaviors; and should include limits on hours of operations and other limits on the project’s operations.

14. The DPD conditions of approval reference the Good Neighbor Policy Plan and Code of Conduct under “prior to issuance of a certificate of occupancy,” which presumably is why the appellants are concerned that these rules are only temporary. At hearing, LIHI indicated that it intends to operate by the Plan and the Code, and that they are not temporary. The condition should be amended to reflect that the condition is one for the life of the project.

15. DPD also imposed a condition requiring a staff person on site an hour before opening to monitor exterior noise, in order to address noise impacts from persons waiting outside before the facilities open. The appeals argue that one person is not sufficient to monitor the noise. There are other factors in place to address the noise of persons waiting outside, including the baffling on the canopy, the Code of Conduct, and the desire of the clients to not be cut off from this service. The condition for one staff person to monitor clients prior to opening is reasonable in light of any noise impacts from clients. The condition will be modified to reflect that the monitoring must commence one hour prior to opening (rather than 8:00 a.m.) during days of operation. The condition is adequate to address the potential noise impacts that the BURS clients may cause.

16. DPD’s decision, with modification of conditions shown below, was correct, and should be affirmed.

Decision

The Director’s decision is hereby **AFFIRMED AS MODIFIED**; the conditions on pages 6-7 of the Director’s decision are modified as follows:

CONDITIONS – ADMINISTRATIVE CONDITIONAL USE PERMIT

Prior to Issuance of a Certificate of Occupancy and for the life of the project:


1. The hygiene center operator will comply with its Ballard Urban Rest Stop Good Neighborhood Policy Plan and post its Ballard Urban Rest Stop Patron Code of Conduct on the exterior of the building facing the west side queuing area and the sidewalk in front of the building.

For the Life of the Project

2. The operator of the hygiene center will provide a staff person on the site to monitor noise in the exterior waiting area and the sidewalk at all times prior to 8:00 AM beginning one hour prior to facility opening during days of operation.
3. The Ballard Urban Rest Stop Good Neighbor Policy Plan and the Ballard Urban Rest Stop Patron Code of Conduct shall be distributed annually to

adjacent neighbors on all three sides of the building and to the properties directly across NW 57th St.

Entered this 25th day of February, 2015.



Anne Watanabe
Deputy 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.

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**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

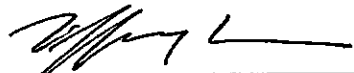
CERTIFICATE OF SERVICE

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 John Davis and Ethan Van Eck and Armand MacMurray, Hearing Examiner Files: MUP-14-020 (CU) and MUP-14-021(CU) in the manner indicated.

Party	Method of Service
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Armand MacMurray 1753 NW 57 th Street, #304 Seattle, WA 98107 throwaway1@mindspring.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
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Dated: February 25, 2015



 Tiffany Ku
 Legal Assistant