

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

LAKESHORE ACCESS ASSOCIATION

FILE NO. S-81-006

from a determination of the Director,  
Department of Construction and Land Use

#### Introduction

Appellant, Lakeshore Access Association, appeals an interpretation by the Director of the Department of Construction and Land Use of the Zoning Ordinance as applied to the property in the 9700 block of Lake Shore Boulevard N.E.

The appellant exercised his right to appeal pursuant to Section 24.10.030 of the Zoning Ordinance Title 24 (86300, as amended).

Parties to the proceeding were: Appellant, Lake Shore Access Association, represented by counsel Lance Dahl, and the Director, represented by Darcy Goodman, Assistant City Attorney.

This matter was heard before the Hearing Examiner on April 2, 1981.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance Title 24, (86300, as amended).

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

#### Findings of Fact

1. The subject property consists of a 30 ft. strip of land in the 9700 block of Lake Shore Boulevard N.E. alongside the Burke Gilman Trail and legally described as follows:

A portion of Government Lot 2, in the N.E.  $\frac{1}{4}$  of Section 34, Township 26 North, Range 4 East, WM (being a portion of the railroad right-of-way as shown on the Plat of Lakeshore View, as recorded in Volume 13, of Plats, Page 15, Records of King County, Washington, now a portion of the Burke-Gilman Trail) more particularly described as follows:

A strip of land 30 feet wide, the easterly line being 30 feet easterly of and parallel and concentric with the easterly margin of Lake Shore Boulevard North East as dedicated in said Plat; the southerly line being the projection west of a line drawn 15 feet southerly of and parallel with the northerly line of Lot 21, Block 21, in said Plat; and the northerly line being the projection west of the southerly line of Lot 8 in said Block 21.

2. This strip of land was part of the Burlington Northern right-of-way which was purchased by the City of Seattle for the Burke-Gilman trail. It is now owned by the City, but Ordinance 108401 was passed July 30, 1979, to authorize its sale to appellant herein, Lakeshore Access Association, for individual use for parking and vehicle storage (private garages) and landscaping purposes.

3. Lake Shore Access Association, appellant herein, is an association formed of seven property owners of Lots 8-21, Lake View Addition to the City of Seattle, whose property runs parallel to the subject property, between the Burke-Gilman Trail and Lake Washington.

4. The Association was formed at the suggestion of City officials to simplify a transfer of the subject property, with conditions attached, to insure its development in a way consistent with the Burke-Gilman Trail.

5. The appellant seeks to purchase subject property to provide street access and private garages accessory to their residences on property which has no street access.

6. This subject property is zoned RS 5000.

7. The Zoning Ordinance permits single family residences and accessory structures in this zone.

8. The Director refused to accept a variance application to build private garages accessory to the residences on the subject property citing Municipal Code Chapter 24.74.030, Section 28.3:

No variance shall be granted to permit the establishment of a use otherwise prohibited in zone in which the property concerned is located, and application for such variance shall not be accepted for filing.

9. The Director concluded that the subject property and property sites of the residences could only be viewed as different lots, since the Burke-Gilman Trail lies between the residences and the subject property, precluding the development of this land with accessory use pursuant to Municipal Code Chapter 24.08.220, Section 3.22, which defines "accessory use" as:

A use or structure incidental to the permitted principal use, provided that such use or structure shall be located on the same lot as the principal use or structure, except when permitted elsewhere as specifically set forth in this Ordinance.

10. The definition of "Lot" includes:

"...parcel of land...abutting by not less than twenty feet upon a street...."

The parcels of land upon which the residences of the appellant are located have no such street access.

11. In July 1980, the appellant's architect filed an application for administrative conditional use, as advised by the Department. The application was lost, and after repeated delays the Department advised that the Association could neither apply for a conditional use nor a variance pursuant to Municipal Code Chapter 24.74.030, Section 28.3.

12. A written interpretation of Municipal Code 24.74.030, Section 28.3, was requested which concluded inter alia:

"5. Uses not permitted in the RS 5000 zone are prohibited. A variance to permit a use not otherwise allowed in the zone would be a "use variance" and prohibited by Section 29.3 (sic) of the Ordinance. That section prohibits even the acceptance of an application for such a variance."

"6. The Department has accepted variance applications to allow accessory uses on lots other than the principal use lot so long as the use being proposed is not prohibited in the zone as a principal use...."

13. The strip of land at issue is presently used as parking for the residences as it was when the railroad owned the land.

14. The development of the Burke-Gilman Trail has brought added people and access to this area, and significant vandalism to cars parked here.

15. The Zoning Ordinance of Seattle is a comprehensive one designed to provide different zones for different purposes and compatible uses. Its purpose for residential zone classification is "to promote and protect various densities and uniformity of development within each." (Chapter 26.02.040)

### Conclusions

1. RS 5000 zone classification permits single family dwellings and private garages.

2. Zoning ordinances are to be construed as a whole and any unreasonable construction must be rejected. Bartz v. Board of Adjustment, 80 Wn.2d 209, 492 P.2d 1374 (1972). The Director's refusal to accept an application in this case reflects an unreasonable and technical reading of the Ordinance which ignores the basic scheme of the Ordinance and the purpose of residential classification.

3. The literal interpretation utilized by the Director to find that the proposed accessory garages were principal uses, rather than accessory uses to the existing residences because of the intervening Burke-Gilman Trail thwarts a clear intent to permit enclosed parking in single family zones consistent with development within the area. Zoning ordinances should be given a reasonable construction and application in order to serve their purpose and scope (emphasis added). State ex rel Edmond Meany Hotel, Inc. v. Seattle, 66 Wn.2d 329, 402 P.2d 486 (1965).

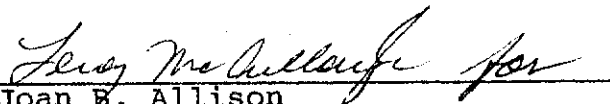
4. Chapter 24.10.070, Section 25.44, provides the determination appealed from is to be considered prima facie correct and the burden of proving the contrary is on the appellant. To overcome the presumption, the trier of fact must find from a fair preponderance of credible evidence that the findings and the decision are incorrect. Allison v. Department of Labor and Industries, 66 Wn.2d 263 (1965). The appellant met this burden and presented sufficient evidence that the interpretation contradicted the purpose of Chapter 24.74.030, Section 28.3, which when read as part of the whole Ordinance, is to avoid incompatible uses in a zone. Access to government would be denied were this appellant denied the right to file an application to construct private garages, accessory to private residences, on the closest land to the residences. The only intervening land is the Burke-Gilman Trail.

5. The Burke-Gilman Trail brought with it problems of vandalism to these citizens. The cooperation of various other departments of the City and the City Council in working with these citizens to ameliorate their problem ought not be negated by this Department unless the application were inconsistent with the zoning scheme or protections provided by the Comprehensive Plan.

Decision

The decision of the Director of the Department of Construction and Land Use is REVERSED.

Entered this 13th day of April, 1981.

  
Joan E. Allison  
Hearing Examiner Pro Tempore

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981).