

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

JAMES A. AND DOROTHY E. DERMODY

FILE NO. S-79-010

from a determination of the  
Superintendent of Buildings

The appeal is GRANTED and the Findings and Decision of the  
Superintendent of Buildings are reversed.

#### Introduction

James A. and Dorothy E. Dermody, appellants, filed an appeal of the advance ruling of the Superintendent of Buildings regarding property at 308 North 41st Street.

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

Parties to the proceeding were: Dorothy E. Dermody, appellant, and Joyce C. Kling, representing the Superintendent of Buildings.

This matter was heard before the Hearing Examiner on June 11, 1979, and continued for the submission of additional evidence to June 26, 1979.

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. An advance ruling was prepared for appellants as to the legality of a residential building site at 308 North 41st Street, the subject property.
2. In about 1910 two lots, Lots 9 and 10, were divided into three, 300 North 41st, 304 North 41st and 4108 Greenwood Avenue North.
3. A permit was issued in 1913 to build a house on Lot 9, the lot at 304 North 41st. Mr. De Jarlais purchased Lot 9 in 1915.
4. In 1918 a permit was issued to De Jarlais to build a garage with a concrete floor on the lot at 304 North 41st. A short time after the issuance of the permit the inspector approved the change to a garage without a floor.
5. The subject property, adjoining 304 North 41st, came under the same ownership in 1946. The garage on the lot at 304 North 41st was dismantled about this time and one was constructed on the subject property, without a building permit, within 10 ft. of the front lot line.
6. Appellants purchased Lots 8 and 9 at 304 and 308 North 41st in 1970. They later sold Lot 9 to Paul Quay.
7. The subject property contains 4800 sq. ft.
8. Section 22.32(a) of the Zoning Ordinance states:

In any zone, except an M or I Zone, a single family dwelling may be established on a lot which cannot satisfy the lot area requirements of the zone, provided that all other bulk regulations shall apply, and provided further that the owner of such lot does not own any adjoining vacant property, and that such lot was of public record or under bona fide contract of purchase prior to the effective date of this Ordinance. Said exception shall not apply to any lot which was formerly a part of two or more contiguous, vacant lots fronting on the same street and held under common ownership on or after the effective date of Ordinance 105289."

9. The Superintendent of Buildings, hereinafter Superintendent, initially published his advance ruling stating that the subject property met the lot area modification under Section 22.32(a).

10. Mr. Quay gave the Superintendent information he did not have about the presence of the garage on the subject property.

11. Section 5.2 of the Zoning Ordinance states:

No required lot area, required yard, or other open space or a legally established offstreet parking or loading area existing on or after the effective date of this Ordinance shall be reduced in area or dimension below the minimum required by this Ordinance, nor shall any existing required lot area, required yard, or other open space or legally established offstreet parking or loading area less than the minimum required by this Ordinance be further reduced, nor shall any required open spaces be used as the required lot area, required yard, offstreet parking or loading area for another structure or building except as provided in Section 23.28, provided, however, that in the case of offstreet parking and loading areas, a reduction in the existing space may be permitted when other such space is provided in accordance with the provisions of Article 23."

12. The Superintendent retracted the initial ruling and issued a new advance ruling, published May 15, 1979, that stated that the subject site is not a legal building site unless one off-street parking space is reestablished.

13. Appellants filed their appeal of that ruling May 30, 1979.

14. Lot 8 was treated as a separate lot of record when a building permit was requested in 1973.

15. The Zoning Ordinance in effect prior to 1957 provided that a garage on an otherwise vacant lot had to be set back at least 25 ft. from the front lot line.

#### Conclusions

1. The parties agree that the determinative issue is whether there exists on the lot a "legally established off-street parking or loading area". The Superintendent's definition of "legally established," that it met bulk and other requirements at the time it was established whether or not a permit was issued was not challenged and will be accepted as correct for the purpose of this decision.

2. As the garage was located closer to the front lot line than permitted under the Zoning Ordinance in 1946 and no record of a permit or variance was found, the lot did not

have a "legally established" off-street parking area, according to the Superintendent's definition.

3. The lot is not, therefore, removed from the exception of Section 22.32(a), by the operation of Section 5.2.

Decision

The appeal is GRANTED and the Findings and Decision of the Superintendent of Buildings are reversed.

Entered this 27<sup>th</sup> day of June 1979.

M. Margaret Klockars  
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Deputy Hearing Examiner

Notice of 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 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418(1977).