

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

LEON COHEN

FILE NO. S-78-031

from a ruling of the Superintendent
of Buildings.

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

Introduction

The appellant, Leon Cohen, filed an appeal from an interpretation of the Zoning Ordinance by the Superintendent of Buildings (Superintendent) that a substantial development permit would be required to construct a private easement road at 10603 47th Avenue S.W.

The appellant exercised his right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

Parties to the proceeding were: the appellant in person and by his attorney, Jerome O. Cohen, and the Superintendent through his representative, Joyce C. Kling, zoning administrator.

This matter was heard before the Hearing Examiner on December 19, 1978.

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 at 10603 47th Avenue S.W., is part of the property proposed to be divided into three lots in a short subdivision application, file no. 78-140. The subject property is the proposed Parcel B and measures approximately 105 by 200 ft. It is almost entirely within the Shoreline District.

2. The subject property slopes down toward Puget Sound. The roadway extension would be perpendicular to the slope. Cutting, filling and grading has been done or may be required. Slides have occurred in the general vicinity.

3. The appellant proposes to construct a residence which he will occupy on proposed Parcel B. Access to Parcel B would be by means of an access easement roadway from 47th Avenue S.W. A private roadway, known as Maplewood Place S.W. now exists. Under the proposal it would be extended between 130 ft. and 150 ft. to a proposed garage on Parcel B. Between 50 and 80 ft. would be within the Shoreline District. The total length of the roadway from the street to Parcel B would be approximately 605 ft. Variances with conditions have been granted for the length necessary and to exceed the maximum number of permitted uses. That decision has been appealed to the Board of Adjustment.

4. The Superintendent, in his written interpretation dated November 20, 1978, concluded that a private easement road is different from a driveway from a public street and is not customarily incidental to a single family residence and therefore not exempt from the substantial development permit

requirement.

5. The appellant filed the instant appeal from the decision that a substantial development permit is required for the extension of the access easement roadway.

6. Section 21A.40 sets forth uses permitted in each of the Shoreline District environments. In addition to the specified uses, accessory uses customarily incidental to those uses and not expressly prohibited are also permitted.

7. Section 21A.13 of the zoning ordinance requires the obtaining of a substantial development permit for any substantial development within the Shoreline District. "Substantial development" is any development which costs more than \$1,000 with certain exceptions. Section 21A.154"S"(vi) excepts owner-used single family residences from this definition.

8. The Superintendent of Buildings considers accessory uses customarily incidental to the exempted single family residence to be within the ambit of the exception.

9. Section 21A.71(a), stating that proposed developments shall be consistent with the Shoreline Master Program and Shoreline Management Act, was cited by the Superintendent in his decision.

Conclusions

1. The determinative issue of this appeal is whether an extension of an access easement roadway is an accessory use "customarily incidental" to a single family residence.

2. The Superintendent contends that while a driveway is a customarily incidental accessory use, an access easement may not be and, more particularly, this one is not because of its length and the condition of the variance which requires a 16 ft. width instead of the usual 11 ft. width of a driveway.

3. To determine whether a use is customarily maintained in conjunction with another the court in cases cited in Anderson, American Law of Zoning looked at the use to see if it is "habitually, commonly, and by long practice" associated with the principal use. Factors which may be useful in deciding this are the nature of the primary use, the use made of adjacent property, the economic structure of the area, and whether there are actual incidents of similar use in the area. See Lawrence v. Zoning Board of Appeals, 168 Conn. 509, 264 A.2d 552 (1969).

4. Some of these factors will be used to analyze the facts of the instant case. Conforming single family residences in Seattle usually have either a driveway from the street to the off-street parking space or a roadway on an easement over other property with street frontage. Each seems to be permitted as incidental to the principal use. A minimum width and maximum length is set by the ordinance for the access easement. Moreover, the Office of the Hearing Examiner hears requests for variances from the width, length and maximum number of uses restrictions almost weekly and most are granted. From the evidence that a variance was requested and granted for length and number of uses, it can be assumed that other homes are served by this roadway in the immediate vicinity. One can conclude from these factors that an access easement roadway is commonly associated with a single family residence.

5. The Superintendent's position is that the width of more than 11 ft. and the length of this roadway sets it apart even if a roadway would otherwise be customarily incidental. While driveways may ordinarily be 11 ft. wide, access easements are required to be 20 ft. wide and the Hearing Examiner's experience with variance requests reveals that the width of the hardsurfacing varies from none to almost 20 ft. A 16 ft. width does not, therefore, take the instant roadway out of the customarily incidental category. As to length, the Superintendent's representative acknowledged that no standard has been established, by the Building Department at least, as to what length would be considered a customarily incidental accessory use and at what point it would not be. In the absence of such a standard to support the Superintendent's position the record must reflect something more than the opinion that the roadway is too long and wide. Without more the Superintendent's decision cannot be upheld.

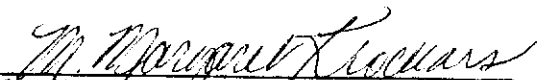
6. The reason for the Superintendent's citing of Section 21A.71(a) was not fully explained, however that provision would support the requirement of a permit if the Superintendent's interpretation were correct.

7. The inclusion of access easement roadways as accessory uses customarily incidental to owner-used single family residences and thereby exempting their construction from the permit requirement does not eliminate application of all restrictions. Section 21A.12 states that no development shall be undertaken unless it is consistent with the policy of the act, notwithstanding the fact that no substantial development permit is required.

Decision

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

Entered this 4th day of January 1979.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination and any further appeal must be made to the courts.