

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

GEORGE A. TOULOUSE, JR.

FILE NO. MUP-81-020(V, CU)
APPLICATION NO. X-80-290

from a determination of the Director
of the Department of Construction and
Land Use on a Master Use Permit
application

Introduction

George J. Toulouse, Jr., appellant, appeals the granting of an administrative conditional use to establish parking accessory to a principal use on a lot other than the principal use lot and yard variances for property at 9718-38 Lakeshore Blvd. N.E.

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

This matter was heard before the Hearing Examiner on August 11, 1981.

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

Findings of Fact

1. Applicant, Lakeshore Access Association, applied for a master use permit to allow the construction of seven garages accessory to seven residences at 9718-38 Lakeshore Blvd. N.E. The Director of the Department of Construction and Land Use (DCLU) granted an administrative conditional use to allow the establishment of parking accessory to a principal use on a lot other than the lot with principal use, conditionally granted a variance to allow that parking to be enclosed and granted rear and front yard variances.

Appellant filed a timely appeal of those decisions.

2. The members of the applicant association began their effort to resolve their parking problem in 1975 and brought their need to the City's attention in 1976 hoping to have it addressed in the planning of the Burke-Gilman Trail. In 1979, the City Council authorized the sale of a portion of the Burke-Gilman Trail right-of-way to the association for the proposed parking facilities.

The Association attempted to apply for conditional use and variances but DCLU would not accept the application. The applicant requested an interpretation of the Zoning Ordinance as it applied to the subject property. The Director of DCLU concluded that private garages may not be built on lots separate from the principal buildings. Applicant appealed this interpretation and the Hearing Examiner reversed that decision. The instant application was then filed.

3. The Superintendent of the Department of Parks and Recreation approved the sale of the property to the Association for the proposed use.

4. The subject property is a strip of land 30 ft. wide and approximately 350 ft. long, which is part of the Burke-Gilman trail right-of-way, located next to Lakeshore Boulevard N.E. in the 9700 block. Lakeshore Blvd. is on its west side and the portion of the trail developed for travel is on its east side.

The seven residences to which the parking would be accessory are located farther east, at a lower elevation, accessible by stairs or switch back path, on the waterfront.

5. The residences which were built some 40 years ago utilized the subject property for parking when the now trail property was a railroad right-of-way and continue to do so after acquisition by the City .

6. The residents of the houses using the trailside parking have experienced vandalism and thefts from and of the vehicles. Because of the difference in elevation between the trail and the homes the cars are not visible from at least some of the houses. The garages would provide increased security for the vehicles parked in the now open parking area.

7. Proposed are seven double garages in four buildings. Each garage is to measure 25 by 22 ft. and be approximately 16 ft. high. The entrances to the garages would face the next building and not the street so there would be no need for cars to back on to the street. The lot lines would bisect the structures with two garages through the party wall.

8. DCLU has determined that Sections 24.64.160, 24.20.060 and 24.16.070 require a conditional use to establish this parking on lots separate from the principal use and variances to allow it to be enclosed. Sections 24.20.090 and 24.62.150 require a 20 ft. front yard and 10 ft. rear yard for each lot. The lots would provide 4 ft. and 1 ft., respectively, so variances from those provisions would be required.

9. All other properties situated between the water and the Burke-Gilman Trail from Mathews Beach Park north to the City limits have some type of vehicular access, either by street frontage or easement. No reasonable means of obtaining vehicular access to the seven properties exists.

10. Most residences in the area have enclosed parking.

11. The owner/members of the applicant association were aware or should have been aware at the time they acquired their property that there was no access provision for enclosed parking.

12. Security problems have increased with the advent and increased usage of the Trail.

13. The subject area, as currently maintained, presents an unkempt appearance - gravel, blackberry vines, garbage cans. The structures and landscaping would provide an aesthetic improvement.

14. Owners of property adjoining the Trail north of N.E. 100th to N.E. 105th have landscaped and maintained the unused Trail right-of-way.

15. Sale of the subject property will foreclose the possibility of eventually widening the Trail pathway. The present pathway would not be affected by the sale or use.

16. A witness who owns property abutting the Trail testified that he will ask to purchase excess Trail right-of-way property at the price the applicant association would pay. He considers the price too low. He and others believe that this sale would set a bad precedent.

17. Owners of property across the street from the subject site have expressed approval of the Associations' plans. The structures would not interfere with the view of the Lake from those residences.

18. Issues of compliance with lot coverage and height provisions raised at the hearing are matters for interpretation by the Director and not properly before the Hearing Examiner on appeal of the granting of specific variances.

19. The appellant questioned applicant's right to file the application under Section 24.74.040 as the Association does not currently own the subject property.

20. The special warranty deed approved by the City Council in Ordinance No. 108401 authorizing the sale subjects the conveyance of the property to conditions subsequent including one which requires completion of construction within three years of final permits.

Conclusions

1. The condition of having no vehicular access to their lots is unique to these seven properties. The record reflects that others with access have enclosed parking. These properties are denied this development and, therefore, suffer security problems that others can avoid.

2. The 30 ft. depth of the property will not allow construction of a reasonable sized garage and provision of front and rear yards meeting the requirements of the Code.

3. Since these seven properties are unique and other properties are able to enjoy enclosed parking no special privilege would be conferred by the granting of the requested variances.

4. Since no alternative exists for enclosed parking for these properties, the variances are the minimum necessary for relief.

5. Both for conditional use authorization and for variance approval there must be no material detriment or injury from the proposed development. The alternative of leasing the land is not before the Examiner. The proposal and action by the Park Department and City Council is to sell the property. No evidence was presented of any future plan or reasonably foreseeable need to widen the Trail. The evidence shows an improved appearance would result from the proposal.

The main concern raised was one of setting a precedent which could lead to other sales of Trail property. Since the conditions surrounding the seven properties of the members of the Association are truly unique, the reason for the sale and these approvals easily can be distinguished from any other requests. Therefore, with no showing of any actual physical detriment or injury that requirement of the Code is satisfied.

6. The approvals would have no effect on the Comprehensive Plan.

7. The Examiner accepts the analysis of DCLU that authorizing the conditional use to establish these garages on lots other than those of the principal uses would be consistent with the spirit and purpose of the ordinance.

8. Applicant should be considered an agent ad hoc of the City for purpose of filing the application to avoid the cost to applicant and taxpayers of reprocessing the application for a City applicant or for this applicant after delivery of the deed. The deed clearly contemplates application for permits by the grantee. Therefore, reversal or remand on that ground would serve no practical purpose nor would it further the intent of the Council or code.

Decision

The decisions of the Director of the Department of Construction and Land Use are AFFIRMED.

Entered this 2nd day of August, 1981.

M. Margaret Klockars
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Deputy Hearing examiner

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).