

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

In the Matter of the Appeal of

JAMES BUCHANAN, et al.

FILE NO. MUP-84-049 (V)
APPLICATION NO. 8401693

from a decision of the Director,
of the Department of Construction
and Land Use on a master use
permit application

Introduction

The applicant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on August 7, 1984, and the decision date was continued to August 28, 1984, to accommodate the Hearing Examiner's request of DCLU to supplement the record in this proceeding.

Parties to the proceedings were: applicant, James Buchanan, applicant's architect, John Ginn and the Director, Department of Construction and Land Use by Hermia Ip.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

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

Findings of Fact

1. Applicant proposes to develop property at 2903 E. Madison Street, legally described in the record and incorporated herein by this reference. The subject property is located in a BN zone and is a corner lot at the western tip of a triangular shaped block bounded by E. Madison Street, Dewey Place E., E. Republican Street, and 29th Avenue E. on the south and southwest. The subject site is at 29th and E. Madison Street situated on the south side of E. Madison Street. The lot is 80' x 100' and presently developed with a one story building containing a laundry at the northeast portion of the lot and a two story, 4-unit apartment building at the southern portion of the lot. The block has no alley access to the lot.

2. Applicant's proposed development is to upgrade but reduce the size of the present laundry to 1775 sq. ft. and provide 1347 sq. ft. of retail space on the existing first floor. A second story will be constructed providing 2500 sq. ft. of office space and five off-street parking stalls will be provided with access from 29th. Three of the parking stalls will be substandard in size.

3. The area immediately west of the subject property has been petitioned for rezone from RM 800 to BN, file CC-84-006. The Director's representative testified credibly that the petition was approved and adopted by the City Council in July. This Madison area, including the CC-84-006 site and the subject site, is being reviewed by the City Council for Commercial Area Policies NC2 zone classification; however such review is not controlling in this appeal since the Commercial Policies designation has not yet been approved or adopted by the City Council.
4. Per the applicant's credible testimony, applicant purchased the subject property in 1967 and has operated a laundry in the one story building since that time and no parking has ever been required for the laundry. Applicant indicates his permit for change of use to provide pool tables was approved in 1973, requiring four parking stalls; but that the change in use never occurred.
5. The proposal requires variances for expansion of a nonconforming building (the existing building does not meet the 10 ft. front setback requirement); front and side yard variances; and variances related to parking location, stall size, and stall number. At issue in this appeal are the variances regarding parking. The Hearing Examiner received two letters opposing the entire development; however no appeal was filed by opponents, nor was opposing testimony presented at the hearing. The Hearing Examiner also received a petition signed by over 100 neighborhood residents supporting applicant's proposed development.
6. Applicant's architect challenges the DCLU Director's application of Seattle Municipal Code Section 24.64.120 which requires the laundry to provide two parking stalls based on a manufacturing classification. Applicant's architect would rather classify the laundry as a retail use which would result in no parking stalls required for the first floor, or alternatively, one stall for 500 sq. ft. in excess of 2500 sq. ft. of the first floor. As this issue is one of interpretation, Chapter 23.88, is better addressed in a hearing for that purpose, and no decision therein will be made in this decision.
7. Applicant's architect also challenges the Director's assessment that the 1973 permit requiring four stalls has attached to the property. Likewise, at this time the issue is not properly before the Hearing Examiner.
8. The Hearing Examiner accepts the statement from the Neighborhood Commercial Areas Policies that 60% of automobiles now purchased are compacts (and should be therefore taken into consideration for size of parking stalls in proposed developments such as applicant's).
9. The Hearing Examiner does not find that other property owners identified by applicant have been granted similar parking variances and relief as requested by applicant. In all cases reviewed by the Hearing Examiner: 2925 E. Madison; 2626 E. Madison; 2811 E. Madison; 2812 E. Madison; 2800 E. Madison; rezone petition CC-84-006, no property owner was afforded the relief that applicant presently seeks. In the case where variance relief was conditionally granted, the property owner was required to provide 5 ft. front and side yards but a reduced number of stalls or reduced size of parking stalls was neither requested nor granted. The subject vicinity is increasingly congested and has a declining number of on-street parking spaces.
10. With respect to the State Environmental Policy Act (SEPA) Chapter 25.04, Seattle Municipal Code, the proposal has been determined by the responsible official to not have a significant adverse impact upon the environment.

Conclusions of Law

1. Relevant zoning criteria for BN property can be found at:

- 24.14.040. Any building conforming as to use but which is a building nonconforming as to bulk as of the effective date of the ordinance codified in this subtitle (86300 7/24/57) may be altered, repaired or extended; provided, that such alteration, repair or extension does not cause such building to further exceed the bulk provisions of this subtitle.
- 24.40.100(A), front yard: 10 feet for nonresidential buildings, twenty feet for residential buildings.
- 24.64.040(A)(5), no parking space shall be located in a required front yard or in a side yard abutting upon a street...
- 24.64.030(a)(1). Each parking space shall be at least 8½ ft. in width and 19 ft. in length, exclusive of access drives or aisles...
- 24.64.120 (number of parking spaces required).
 - : retail, less than 2,500 sq. ft. = 0
 - : Manufacturing, 1 for each 1,000 sq. ft.
 - : Office, 1 for each 800 sq. ft.

2. Relevant variance criteria is found at Seattle Municipal Code Section 23.40.20:

Variances from the decisions or requirements of this Land Use Code shall be authorized only when all of the following facts and conditions are found to exist:

- 1) Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code will deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity;
- 2) The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located;
- 3) The granting of the variance will not be materially detrimental to the public welfare or injurious to property or improvements in the zone or vicinity in which the subject property is located;
- 4) The literal interpretation and strict application of the provisions or requirements of this Land Use Code would cause undue and unnecessary hardship;
- 5) The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan component, as applicable.

3. The Hearing Examiner notes that applicant's presentation was primarily directed at the Director's rather suspect classification of the laundry as a manufacturing use and at the ramifications of the permit issued in 1973. Only by a review of the Director's interpretation would the question of the exact number of required stalls be resolved.

4. The Hearing Examiner acknowledges the Director's conclusion that strict application of the Land Use Code would require 10 ft. front and side yards and adherence to this 10 ft. requirement would deprive the applicant of rights and privileges enjoyed by other properties in the zone or vicinity, such as the property across Madison, reference Application No. 83-516.

5. The Hearing Examiner also acknowledges, as has DCLU, the site location between public streets and the existing construction on-site as unusual property conditions. However, the Hearing Examiner concludes from comment letters and testimony at the hearing that the requested parking variances for a reduced number of parking stalls and reduced dimensions would be inconsistent and an unwarranted precedent, in that there is no record of similar parking variances for this vicinity. The variance approval would be materially detrimental because the record reflects present congestion and a premium of on-street parking. Applicant must satisfy all requirements of the variance criteria and having failed to do so, the variance is denied.

6. This decision is not meant to foreclose other proceedings pursuant to the proposed Neighborhood Commercial Areas Policies and its recognition of the trend forward ownership of smaller cars, when those policies are adopted.

Decision

The decision of the DCLU Director is affirmed.

Entered this 23rd day of August, 1984.

Roger H. Shimizu
Roger H. Shimizu
Hearing Examiner Pro Tempore

CONCERNING FURTHER REVIEW OF HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

The decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. 2 Am. Jur. 2d., Admin. Law Section 524. Any request for judicial review of the decision must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36(B) (11); Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73.

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.