

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

In the Matter of the Appeal of

SAFEWAY STORES, INC.

FILE NO. MUP-84-009(CU,V)
APPLICATION NO. 83-574

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

Introduction

Appellant, Safeway Stores, Inc., appeals the decision by the Director, Department of Construction and Land Use, to deny an administrative conditional use and variances for proposed accessory parking at 1410 East John Street.

The appellant exercised its 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 February 24, 1984.

Parties to the proceedings were: appellant, by Derrill T. Bastian, attorney at law, and Jim Carroll, real estate director for Safeway Stores, and the Director, by Nanette Mozeika, land use specialist.

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, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Appellant applied for a master use permit to establish the use of property at 1410 East John Street as a parking area accessory to an existing food market. The Director denied an administrative conditional use to allow a parking area in a pedestrian-oriented business zone and variances from setback requirements and to locate a parking area on a principal business frontage in a pedestrian-oriented business zone. A timely appeal was filed.

2. The City Council designated the area along 15th Avenue East from East Denny Way to north of East Mercer Street a pedestrian-oriented business district as provided for by Section 24.64.240 in 1974.

3. The purpose of the designation of areas as pedestrian-oriented business districts is

"to preserve, protect and encourage the pedestrian scale and character of certain established business districts of the City, to provide continuous retail frontages uninterrupted by vehicular accessways and parking facilities, and to minimize pedestrian-automobile conflicts in areas of high pedestrian traffic....

Section 24.64.240.

4. The subject property is a 121.5 by 67 ft. lot at the corner of 15th Avenue East and East John Street which was used by a service station in the past. It is now owned by appellant and is vacant.

5. Appellant occupies most of the block with its store building and 107 spaces of accessory parking. Safeway's customer parking and driveways to that parking join the site on its north and west sides. The block is zoned Community Business (BC) and Lowrise 3 (L-3). The subject site is zoned BC and is within the pedestrian-oriented business district.

6. To the north of the Safeway property, in the same block and fronting on 15th East is Aquarian Foundation property. North of that, across East Thomas Street, is a branch bank. South of the Safeway property, across East John is a small park, and south of that is a restaurant and then other small businesses. Across 15th East is the Group Health Hospital facility and to the north, small businesses.

7. Appellant proposes to convert the corner subject site to a parking area with 26 spaces for employee parking.

8. In 1981, Safeway applied for a master use permit to construct an addition to the existing store. That addition was constructed in 1983, according to Director's Exhibit 1 which shows a "1983 addition." Nineteen parking spaces were removed at that time. Safeway offered evidence at that time to the Director showing that 30-40% of its customers do not drive to the store to show that the loss of parking would not cause an adverse environmental impact.

9. In 1983, the Council enacted a residential parking zone (RPZ) for the area around Group Health which restricts the time a non-resident-owned vehicle can park on the street to two hours.

10. Safeway employs 70-80 persons at this store. The number working at any one time was not given. The majority of the employees live in Seattle, many on Capitol Hill, and some walk to work.

11. Section 24.64.270 provides that parking areas in pedestrian-oriented business districts be permitted only as conditional uses subject to a series of conditions. Appellant requests variance from two of the conditions which must be met for conditional use approval. Section 24.64.270 C provides that the parking area not be located on the principal business frontage so as to interrupt such frontage. The site is on the principal business frontage. Section 24.64.270 E requires that each street margin be screened as required by Section 24.64.170 and that the screening be set back a minimum of 10 ft. from the street margin with landscaping in that setback. Less than a 10 ft. setback is proposed from both street margins.

12. Appellant indicates it can provide a 10 ft. setback from 15th Avenue East by eliminating two parking spaces. A 10 ft. setback from East John would not leave sufficient depth in this part of the Safeway property for two rows of stalls with a driving aisle. Whether additional space could be gained from the remainder of the lot by reconfiguring the parking or other measures was not disclosed.

13. The existing parking area does not maintain a 10 ft. setback from street margins.

14. Numerous other businesses fronting on 15th East have floor area smaller than 8,100 sq. ft. and there are lots similar in size to the subject site.

15. A customer of the Safeway store testified as to her need for parking and the problem she has in finding a space or having to wait for a space when the parking guard, who restricts parking to Safeway shoppers, is not on duty.

16. On the occasions Ms. Mozeika visited the site the vacancy rate of the existing parking was approximately 40-60%.

17. Two curb cuts providing for two-way traffic now exist on the 15th Avenue East frontage of the accessory parking area.

18. Bus stops are located adjacent to the subject site on East John and in front of the existing parking area on 15th Avenue East.

19. Businesses established in the pedestrian-oriented business district are not required to provide any accessory parking.

20. Existing parking facilities are to be discontinued two years after the designation of a pedestrian-oriented business district. Section 24.64.260.

21. Many businesses along 15th Avenue East in this district provide no parking.

22. Safeway has encouraged ride-sharing among its employees but offered no evidence that it has made any organized effort to get employees into transit or ride-sharing.

23. Safeway purchased the subject site in 1979.

24. Mr. Carroll testified that he talked to Group Health sometime in the past about the parking situation and that Group Health would have liked to use some of Safeway's parking. No evidence was offered that an actual attempt was made by Safeway to obtain parking for its employees by joint use or other cooperative means.

25. A declaration of non-significance for the proposal was issued by the Director pursuant to Chapter 25.04 and SEPA.

Conclusions

1. To obtain a variance an applicant must show that all required conditions are satisfied. Section 23.40.20(C) sets out the five facts and conditions that must be shown to exist. The applicant has failed to establish that all are present for each of the variances requested.

2. As to the requested variance from the prohibition against locating the parking area on the principal business frontage so as to interrupt that frontage, there seems to be no unusual condition because of which the requirement deprives the property of rights enjoyed by other properties in the vicinity. The location of the property cannot be used as the condition since the location, or the use of property in this location, that is at issue. Appellant suggests, in its brief, that the size of the property is unique, but the record shows numerous uses with less space and lots of comparable size in the vicinity. No examples of other properties which have rights this property is denied were offered except for the remainder of the nonconforming Safeway parking lot. The applicant's own property, which is the site of the principal use to which the use of the subject is to be accessory, cannot be the basis of the determination as the property already has rights which other properties cannot claim.

3. Since the property is not entitled to relief the variance would go beyond the minimum necessary and confer special privilege inconsistent with other properties in the zone and vicinity.

4. The variance would go toward providing additional parking which some see desirable but would have to be seen as detrimental to the public welfare since the Council has determined, through its designation of the area as a pedestrian-oriented business district, that the public welfare would be benefited by prohibiting parking on the principal business frontage.

5. The record did not show that the strict application of this provision would cause undue hardship. Other uses can be made of the land under the restrictions and the district designation occurred before Safeway's acquisition of the property.

6. The variance would be inconsistent with the spirit of the Land Use Code.

7. Appellant suggests that no variance from this provision is really necessary in that the parking area would not "interrupt" the frontage but continue it. Since an application for the variance resulted in the decision and appeal, that issue is not before the hearing examiner.

8. As to the variance from the street margin setback requirement, no unusual condition was shown to exist because of which the setback requirements would deny rights comparable to those enjoyed by other properties. The other property pointed to by the appellant is the remainder of appellant's property. No evidence of other variances or legal nonconforming properties was cited.

9. Further, appellant has not established that the setback variance would not go beyond the minimum necessary for relief, if relief were warranted, since no showing was made that any desired spaces could not be supplied on the remainder of the lot. Granting variance in this case would confer special privilege on this Safeway property.

10. The variance to reduce the setback would be contrary to the spirit of the Land Use Code for this pedestrian-oriented district which is to de-emphasize the automobile. It is not clear that the lesser setback would be materially detrimental to the public welfare except to the extent it conflicts with the intent of the code and policies.

11. The proposed parking area requires conditional use authorization which is subject to all of the conditions of Section 24.64.270. Not all of the conditions are satisfied. The record must show that the size and location of such parking area are necessary to the successful operation of the use served. Appellant explains that the residential parking zone has made parking difficult for its employees and therefore, by inference, the parking area is "necessary." Appellant did not show however, that employee transportation needs could not be met by a program of subsidization of transit fares, conversion of customer parking to employee use, or other reasonable means.

12. A question was raised about the interpretation of condition B which requires that driveways to the parking area not be located across a sidewalk on the principal business frontage unless there is no other way to access the area. Mr. Jacobs argues that the driveways to the existing parking which would be used to reach the employee parking do cross the 15th Avenue East sidewalk so this condition is not satisfied. The Director, who has the authority to interpret code provisions,

apparently has concluded that use of these driveways for access to the proposed area does not violate this condition. For the purpose of a master use permit appeal, the hearing examiner must accept the Director's interpretation. Accepting the Director's decision that this application requires variance, it is in violation of condition C, location on the principal business frontage, and without variance the proposal does not satisfy condition C.

13. No showing was made that "all opportunities for cooperative and joint use parking facilities" were explored as required to meet condition D.

14. The application also fails to satisfy condition E in that the 10 ft. setback from street margins are not provided.

15. Appellant argues that the situation surrounding this property is a "spot zone in reverse" apparently contending that this small property has been singled out and treated differently from surrounding land without there being a substantial relationship to the general welfare. See SORE v. Snohomish County, 99 Wn.2d 363 (1983). Appellant also suggests a denial of equal protection. The restrictions of the pedestrian-oriented business district apply to all properties in the district. Some, including the remainder of the Safeway street frontage, are legally nonconforming as pre-dating the designation. Any change in those properties would have to comply just as the change in this property requires compliance.

16. Appellant also maintains that no permit is required for the proposed use maintaining that the service station use has not been abandoned though the lot is vacant and no intent to continue the operation of a service station was stated. As appellant applied for a permit this claim will not be addressed.


17. Since the application has not satisfied the criteria for conditional use as an accessory parking area under Section 24.64.270, it cannot meet one of the general conditions of Section 24.74.010 that authorization be consistent with the spirit and purpose of the Zoning Regulations subtitle.

18. The application should be denied.

Decision

The master use permit application for variances and conditional use is denied.

Entered this 9th day of March, 1984.


M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Chapter 23.76.36(B)(11). Should such request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of transcript but will be reimbursed by the City if the appellant is successful in court.