

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

In the Matter of the Appeal of

EARL P. LASHER III

FILE NO. S-76-022

from a ruling of the Superintendent  
of Buildings

The appeal is DENIED and the interpretation of the  
Superintendent of Buildings is affirmed.

Introduction

The appellant, Earl P. Lasher III, filed an appeal from an interpretation of the Superintendent of Buildings concerning property located at 3731 "A" East Prospect Street.

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

This matter was heard before the Hearing Examiner on September 9, 1976.

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 Superintendent of Buildings (hereinafter Superintendent) published on July 29, 1976, notice of a decision to issue a use permit as requested by Dr. Ray Fenner (hereinafter the permittee). The appellant filed an appeal from this decision on August 12, 1976, alleging that the subject property did not comply with the definition of a "lot" in the zoning code.

2. The subject property is located at 3731 "A" East Prospect Street, which is located in a Single Family Residence Medium Density (RS 7200) Zone. The permittee seeks a use permit for the development of a single-family residence.

3. A "lot" is defined, with respect to the zoning code, in Section 26.06.130, Seattle Code, which states in part that a lot is a parcel of land:

...abutting by not less than 20 feet upon a street sufficiently improved for automotive travel, or having an exclusive, unobstructed, permanent access easement serving not more than two principal uses and jointly owned by the two property owners served and at least 20 feet wide and not exceeding 150 feet in length to such street.

4. The subject property was part of short subdivision number 135, Comptroller's File # 280666, which was approved by the City Council on March 24, 1975. In that instance, the City Council approved the division of a piece of property into resulting lots, one of which is the subject property. Although in that instance the City Council was most concerned with the definition of a lot as it appears in the Seattle Platting Ordinance (Section 25.32.050, Seattle Code), inherent in the decision that the short subdivision merited approval was a determination, pursuant to Section 25.16.030, Seattle Code,

that the resulting lots conformed to zoning ordinance requirements.

5. The proposed access to the subject property is by means of a perpetual right of way which runs in a north-south direction and is actually a vacated portion of 38th Avenue E. The right of way has a legal width of 30 feet, but is actually developed at the present to varying widths of from 11 feet to 18 feet. Substantial rockeries border the east and west margins of the developed portion of the right of way.

6. The subject property is located 135 feet south of East Prospect Street and is connected to this street by the aforementioned right of way.

7. The residence proposed by the permittee would be the second principal use served by the access road. Although two other residences in the area actually use the road in question as access to their off-street parking area, these properties have frontage on East Prospect Street, and, consequently, are not considered principal uses served by the access road, with respect to Section 26.06.130, Seattle Code.

8. Actual developed access to the subject property for off-street parking purposes must be a minimum of 11 feet in width, pursuant to Section 26.46.020(a)(2).

9. It is the long-standing interpretation of the Superintendent that for purposes of the definition of a "lot" (Section 26.06.130, Seattle Code), the property must have legal access of a width of not less than 20 feet, irrespective of how much is actually developed. Further, pursuant to Section 26.46.020(a)(2), the access must be actually developed to a minimum width of 11 feet, in order to provide the proper access to the required off-street parking space on the property.

10. The proposed development will provide all of the required setbacks from the lot lines of the subject property.

### Conclusions

1. The appellant has not met the burden of proof of overcoming the prima facie correctness which is attributed to the Superintendent's interpretation and, further, the appellant has not established that the interpretation and decision of the Superintendent is clearly erroneous. The subject property complies with the definition of a "lot" in the zoning ordinance, pursuant to Section 26.06.130, Seattle Code. The access to the subject property is of adequate legal width, does not go beyond the length restriction for access, and the access would not serve more than two principal uses.

2. In approving the short subdivision which concerned the subject property, the City Council was cognizant of the fact that the access in question was a 30 foot wide perpetual right of way which was not fully developed to a 20 foot width and that, pursuant to the Superintendent's interpretation, this complied with zoning code requirements. The City Council, therefore, recognized at that time that the resulting lots from the division complied with the lot definition, both in the subdivision ordinance and in the zoning ordinance. Great weight should be given to the construction of an ordinance by officials charged with its enforcement, especially where it is accompanied over a period of years by the silent acquiescence of the legislative body. Morin v. Johnson, 49 Wn.2d 275, 300 P.2d 569 (1956). Consequently, the interpretation of the Superintendent is both appropriate and consistent with prior determinations by the City Council.

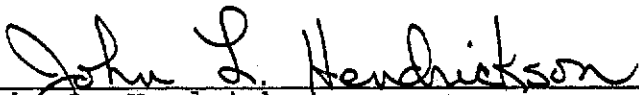
3. Administrative authorities, such as the Superintendent, are properly concerned only with compliance with an ordinance and not with its wisdom or desirability. The Superintendent does not have the discretion to apply an ordinance in a manner which would be inconsistent with previous administrative

determinations and those made by the legislative body for the city. The most effective recourse for the appellant would be to seek a text amendment to the zoning ordinance which would specify that the access width must be 20 feet of actual or developed width. This is not articulated at the present so that provision of the legal width for access is sufficient to comply with the zoning code requirements.

Decision

The appeal is DENIED and the interpretation of the Superintendent of Buildings is affirmed.

Entered this 15<sup>th</sup> day of September, 1976.

  
John L. Hendrickson  
Deputy Hearing Examiner