

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

In the Matter of the Appeal of

THEODORE H. KLEIN

FILE NO. S-89-006

from an interpretation of the
Director, Department of
Construction and Land Use (DCLU)

Introduction

Theodore H. Klein, owner of property addressed as 4507 Sunnyside Avenue N., proposes to construct a residential-commercial building on site with parking for 5 vehicles in the front setback. DCLU's Interpretation indicated that parking could not be located as proposed. Applicant then submitted this appeal.

The appellant exercised the right to appeal pursuant to the Seattle Municipal Code, Section 23.88.020, as amended.

Parties to the proceedings were appellant by Bob Hintz, land use consultant, and the DCLU Director by Hermia Ip.

This matter was heard before the Hearing Examiner on July 19, 1989.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23, as amended, 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. The essential facts are undisputed. The subject property is a vacant parcel located in the Wallingford neighborhood of Seattle at 4507 Sunnyside Avenue North. The parcel is legally described as "Lots 11-12, Block 8, Baltimore Addition."

2. The subject site has 50 ft. of frontage to Sunnyside Avenue N. and is 114 ft. deep. North 45th Street is approximately 1 lot to the south.

3. The lot is generally level. Based on the testimony and evidence of record, the Hearing Examiner finds that the lot has no unusual topographical, drainage or other site specific problems.

4. The "internal block" in which the subject property is located is bounded on the north by N. 46th Street, on the west by Corliss Avenue N., on the south by N. 45th Street and on the east by Sunnyside Avenue N. There is no alley in this "block" nor in adjacent blocks.

5. The subject lot has an existing curb cut and driveway to Sunnyside Avenue.

6. The subject parcel is zoned Lowrise 1/Residential-Commercial. South adjacent is the Neighborhood Commercial 2 zone along N. 45th. North adjacent is the Single Family 5000 residential zone.

7. In 1982 the subject lot was reclassified from Duplex Residential (RD 5000) to SF 5000. In 1986, the parcel was reclassified from SF 5000 to its present L-1/RC classification. This reclassification was pursued by the property owner and his

land use consultant after a history of frustrated efforts to use the site for accessory parking.

8. More specific history of the site was provided by the applicant-owner. In 1972, applicant and his business partner built a building across the street from the subject site. In 1976, applicant purchased the subject property. At that time, applicant was under the impression that the subject property's RD 5000 zoning and adjacency to commercial zoning would allow its use as a parking lot. In 1983, applicant learned that the lots were zoned single family, and not RD 5000. Then, as noted above, applicant pursued the reclassification to the present L-1/RC zoning.

9. After DCLU advice that the property could not be used as a parking lot, applicant designed the presently proposed building.

10. Generally, the L-1/RC zone is designed to provide a transition between commercial and residential uses. There are relatively few RC zones within the City.

11. Applicant proposes to develop the subject site with a two-story building. Approximately 1960 sq. ft. of commercial use would be located at ground level and another 1960 sq. ft. of upper floor residential space for two units would be provided.

12. Applicant's proposal to DCLU called for five on-site parking stalls in the site's front setback. The parking would be accessed by a new 22 ft. wide curb cut and driveway to Sunnyside N. The Landscape Plan, Exhibit 3, shows a concrete patio in the southwest corner of the lot. The Exhibit 4 Plot Plan shows what the Hearing Examiner understands to be additional private open space in the south-central portion of the lot.

13. Applicant requested an Interpretation, Chapter 23.88 Seattle Municipal Code, as to whether parking could be located as proposed between the proposed structure and the street lot line. DCLU concluded that neither the curb cut nor the parking, as proposed, was permitted. Appellant then pursued this appeal from the DCLU decision on the parking location.

14. Applicant's site would not be the first to have parking in the front setback. Three duplexes across Sunnyside Avenue from the subject site have front yard parking. The south abutting site is developed with a gas station/mini-mart which has setback area parking. Directly across the street from the subject property is land used as accessory parking for commercial uses that front to N. 45th.

15. Applicant's lots are similar in size to others in the vicinity. Development of neighboring lots, however, occurred under different zoning.

16. There is a severe shortage of available on-street parking in the vicinity.

17. Applicant's consultant testified and the Hearing Examiner finds that a spring was discovered on the south adjacent lot. The record does not show the force or volume of the spring. Neither DCLU nor applicant showed that a spring or any similar condition was absent or present on the subject site.

18. Applicant's consultant also urged that the narrow width of the lot made it difficult to construct a building with accessways, turnaround space and parking to the rear. In addition, per applicant's presentation, a north south building orientation would offer improved views and would facilitate private (rear) open space amenities. Regarding open space, DCLU countered that fencing can define the private open space.

19. Although applicant is required to provide three or less off-street parking spaces, he is proposing five. This would improve the present on-street parking scenario. (No off-street

parking is required for the commercial use since floor area is less than 2,500 sq. ft.)

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.88, Seattle Municipal Code. Seattle Municipal Code Section 23.88.020E.5 provides that the Director's interpretation shall be given "substantial weight." Further, the Hearing Examiner decision shall be made "upon the same basis as was required of the Director."

2. Chapter 23.46, Seattle Municipal Code, addresses uses and standards for the Residential-Commercial zone. Seattle Municipal Code Section 23.46.002D provides that the standards for parking quantity, access and design are provided in Chapter 23.54. Seattle Municipal Code Section 23.46.002B states that the "development standards of the designated residential zone shall apply to all structures in the RC zone..."

3. It is undisputed that less than five off-street parking spaces are required. Seattle Municipal Code Section 23.54.015A, Chart A. Nor is the code-provided 10 ft. maximum curb width in issue. Seattle Municipal Code Section 23.54.030E. (Appellant does question the wisdom of applying a 10 ft. maximum to this curb cut.)

4. The essential issue relates to the location of the parking.

5. Seattle Municipal Code Section 23.46.002 directs the inquiry to Chapter 23.45, Seattle Municipal Code. The latter addresses general multi-family residential area uses and standards. Specific Lowrise 1 parking and access are the topics of Section 23.45.018.

6. Parking may be located between the front line and a portion of the structure but may not, in the absence of special circumstances, be located in the front setback. Section 23.45.018C.3.

7. Pursuant to Seattle Municipal Code Section 23.45.018C.4.b, the DCLU Director may allow variations from parking location standards

...for lots which have no alley access and which meet one...or more of the following conditions:

(1) Street frontage of less than eight feet...

(2) Lot depth of less than one hundred feet...

The other conditions (status as a waterfront lot or a lot with a 12 ft. rise or drop within the first 60 ft. from the street) are not applicable to this case.

8. To permit alternative parking solutions

...the Director must determine that siting conditions, such as the topography of the rest of the lot, or soil and drainage conditions, warrant the exception, and that the proposed alternative solution meets the following objectives: maintaining on-street parking capacity, an attractive environment at street level, landscaped street setbacks, unobstructed traffic flow and, where applicable, the objectives of the shoreline master program.

9. It is undisputed that the lot is without alley access and that the street frontage (at 50 ft.) is less than 80 ft. Although the lot is not "less than...100 ft." in depth, Seattle

Municipal Code Section 23.45.018C.4.b.2, it is acknowledged that the 114 ft. depth suggests some special review of the project site.

10. However, appellant's presentation did not overcome the "substantial weight" accorded the DCLU Director's decision. The record fails to show special topographic, drainage or other conditions which warrant an exception from the prohibition against front yard parking.

11. The site is generally flat. There is no indication of record that the site itself has a spring or is impacted by any adjacent water flow. Appellant's suggestions that the subject site is similar in drainage-water table matters to the adjacent site is without foundation. Further, there is no evidence that a spring would preclude standard development.

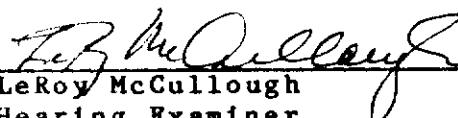
12. The Hearing Examiner agrees with DCLU's position that the amount of street frontage, lot depth, shoreline adjacency and a lot's marked elevation or decline show the kinds of site specific conditions that may be considered in the question of parking siting variation. The code does not suggest that factors external to the specific lot should be considered.

13. The question of design departure, variance or other relief from these Section 23.45.018 provisions is not before the Hearing Examiner.

Decision

The DCLU Interpretation is AFFIRMED.

Entered this 24th day of July, 1989.


LeRoy McCullough
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City, and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. 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 the transcript but will be reimbursed by the City if the appellant is successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104.