

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

In the Matter of the Appeal of

GORDON R. ILES

FILE NO. MUP-81-089(V)
APPLICATION NO. 81204-0210

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

Introduction

Appellant, Gordon Iles, appeals the decision of the Director of the Department of Construction and Land Use (Director) to deny a parking variance for property at 1127-10th Avenue East.

The appellant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceeding were: Appellant, represented by Janet Quimby, attorney at law, and the Director represented by Elizabeth A. Edmonds, assistant city attorney.

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 February 19, 1982, after a continuation from January 14, 1982.

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 applicant, an agent for Gordon Iles, applied for conditional use to establish parking accessory to a professional office building on an abutting RM zoned lot and for variance to waive four required parking spaces. The Director granted conditional use but denied the parking variance. Iles appeals. Conditional use to establish professional offices on the site was granted in 1978. Variance from the parking requirement was denied at that time by the Hearing Examiner and the Board of Adjustment.

2. The Director moved, prior to hearing, to dismiss the appeal on the basis of the doctrines of collateral estoppel and res judicata. After argument, the motion was denied because Section 24.74.130 may be read to provide for reapplication after 12 months.

3. The subject property is a lot with 50 ft. of frontage on the west side of 10th Avenue East. It is developed with a structure which has been converted from a single family residence to professional offices and dwelling unit and with a garage astride the property line at the end of a driveway jointly serving the subject lot and the lot to the south. The lot is in a Multiple Residence Low Density (RM 800) zone.

4. The use of the building on the subject site has been determined by the Director to require parking for 8 cars pursuant to Section 24.64.120.

5. Appellant has proposed removing the garage and creating two parking spaces at the rear of the building and three at the rear of the residence at 1121-10th Avenue East, the adjoining lot. Access to the parking would be gained via the joint driveway. Since one parking space is required for the residence at 1121-10th Avenue East the total requirement for the two properties would be nine resulting in the variance request for a waiver of the requirement for four of those spaces.

6. The uses nearby in the zone consist of single family residences, duplexes, triplexes, apartment buildings, parking lots and real estate office. Many of the uses occupy similar-sized structures on similar-sized lots.

7. Just to the north and west is the Scottish Rite Temple and its associated parking lots. One block to the west is a Single Family Residence High Density (RS 5000) zone. Another RS 5000 zone starts with the eastern half of the block on the east side of 10th Avenue East.

8. Tenth Avenue East is a busy street with a parking prohibition from 7-9 a.m. on the west side and from 4-6 p.m. on the east side. Residents and long term parkers, therefore, use side streets making parking space on-street readily available to others between 9 a.m. and 4 p.m.

9. The appellant's current tenants consist of various professionals most of whom use their offices for part-time practices and with a low rate of patient/client visits. Iles has experienced little turnover in his tenants since 1973 when he converted the building to offices. One dwelling unit is located in the basement.

10. Seven cars can be, and are, parked on the subject site now - two in the garage, two in front of the garage and three along the side of the driveway. Bus service is convenient to the subject site and frequent to downtown, the University District and the south end.

11. The Multi-Family Land Use Policies propose Lowrise 3 zoning for the property along 10th Avenue East in this area. Professional offices would not be a permitted use under this designation.

12. The subject lot is fairly level but has a slight slope and rockery in front. It is surrounded by a mature laurel hedge. The adjacent lot has a retaining wall or bulkhead in front.

13. Appellant has attempted to secure a joint use arrangement with the Scottish Rite Temple and with other properties. All possibilities have been exhausted.

14. The only variances granted in the area resulting in a reduced requirement for number of parking spaces have been one at 207-10th Avenue East to waive two spaces required for the conversion of one floor of a duplex to a professional office and one for the Scottish Rite Temple. The duplex covered less than 29% of the lot but because of the location of the structure on the lot space for parking was not available. Further, the lot abutted upon a lot with a restaurant and was adjacent to several large parking lots. The Scottish Rite Temple variance was based on the unique circumstances surrounding the properties involved including returning use

of lots used for parking to residential and using others for parking to effectuate an agreement reached to improve the situation caused by Scottish Rite parking. Other variances have been granted for location of parking and stall size.

Conclusions

1. Section 24.74.030A requires an applicant for a variance to establish that a particular code provision operates to deny the property of comparable development rights because of some unique condition of the property not created by the applicant. Appellant offers, as that unique condition, the slope of the property, the bulkhead on the adjacent property, the size of the structure and its location on a busy street.

2. No showing was made that but for the bulkhead the required parking could be accommodated. Further, the size of the structure is not different from many in the area for which no variance has been granted. The location on 10th East was not shown to create any hardship.

3. The property was not shown to be denied comparable development. Nearby are single family, duplex, and triplex residences on similar-sized lots. Appellant has tried to achieve a more intensive use than these other properties but his property cannot legally accommodate it. Variance in such case would confer special privilege.


4. The record does not show that the requested variance would cause injury to other properties or material detriment. On-street parking appears to be readily available during office hours and the demand generated by current tenants is less than would normally be anticipated for such use.

5. The variance would not conflict with the actual terms of the Multi-Family Policies, which replaced the Comprehensive Plan for this area, because those policies do not address required parking for office use. If the policies' intent is not to permit office-use in this area, then a variance which would legalize that use would contravene that intent.

Decision

The Director's decision to deny the variance is AFFIRMED.

Entered this 3rd day of March, 1982.


M. Margaret Lockars
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). Should an appeal 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.