

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

GARY L. KETTEL

FILE NO. MUP-84-069(V)  
APPLICATION NO. 8402232

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

#### Introduction

Applicant appeals the DCLU Director's denial of variance relief required to locate a car wash within 100 ft. of a residential zone at 11310 Lake City Way N.E.

The appellant 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 October 17, 1984.

Parties to the proceedings were: appellant by J. Tayloe Washburn, attorney at law; and the DCLU Director by Cliff Portman, senior land use specialist. Neighbors to the proposed development also appeared and participated.

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. The subject T-shaped parcel consists of three lots that are on the east side of Lake City Way N.E. The outside two lots are 100 feet deep and fall within a linear General Commercial zone that borders Lake City Way. The easterly 175 ft. deep center lot extends into an adjacent Single Family (SF) 7200 zone.

2. Topographically, the site declines easterly, toward 28th N.E. Immediately southeast of the site, the land drops off into a wooded gulley area that separates this portion of the subject parcel from adjacent properties, such as a duplex, that have frontage on 113th N.E.

3. The subject site itself is principally level and paved. It is developed with a 70 ft. by 28 ft. tunnel-style car wash that is set back 4 ft. from the front property line. The property's self-serve gasoline pumps are in an area east of the tunnel car wash.

4. The existing car wash was the subject of 1969 variance which approved location of an automobile laundry in this CG zone although less than the required distance from a residential zone was and is provided.

5. Applicant proposes further development of the site with a 4-bay coin operated car wash that would be located 22 ft. from the east adjacent residential zone, approximately 2 ft. from the southernmost property line, and roughly 56 ft. from Lake City Way. The proposed 22 x 59 ft. car wash structure would house the foaming brushes and high pressure hoses, but would offer no mechanical blowers. As part of the overall proposal, vacuuming devices would be relocated from their present east boundary location to the middle lot "approximately 150 ft. from the nearest residence." The present 2 ft. wide front landscaping would be enlarged to 4 ft. With revenues from the new car wash, applicant proposes to reduce the horsepower for the tunnel wash from 90 to 35 within 2 years of the coin-op operation. South and east border fencing and other landscaping improvements are also part of applicant's overall proposal. The car wash lighting and pumping would be off from 10:00 p.m. - 7:00 a.m.

6. Applicant selected the specific coin-op site so that two cars could wait to use the new car wash without queuing onto Lake City Way. Since the proposed car wash would be less than 100 ft. from a residential zone, variance relief was required. Applicant appealed DCLU's denial of the variance.

7. Nearby development is essentially as illustrated in Exhibit 3. The north adjacent site is developed with the Lone Star Restaurant. Next is a used car lot and then the service station at 115th and Lake City Way. An apartment complex is directly east of the service station.

8. South of the subject site is a furniture store, then 113th N.E. The oddly shaped "block" is generally bordered on its eastern boundary by a curving 28th Avenue.

9. With regard to the action proposed in this application, a declaration of non-significance (DNS) has been prepared by the responsible official pursuant to the State Environmental Policy Act of 1971 (SEPA) and Chapter 25.04, Seattle Municipal Code, and is part of the record.

10. Generally, no new traffic will be attracted to the site by the additional use.

#### Conclusions

1. Section 24.52.030(A), reference Section 24.50.040, permits an automobile laundry in the CG zone "when all principal buildings are located one hundred feet or more from any lot" in a residential zone. Applicant proposes a 22 ft. residential zone setback and therefore requested variance relief.

2. The variance criteria, paraphrased in the DCLU decision here at issue, are found at Seattle Municipal Code Section 23.40.20.

3. Appellant cites the Hearing Examiner decision of In re Carlstedt, X-77-340 (1978), for support of his proposition that the 22 ft. setback should be approved. According to Conclusion 1 of Carlstedt,

To strictly apply the ordinance would deprive the applicant of a use of his property granted to others in similar circumstances...The embankment separating it from the R zoned lot and the garage... serve some buffering function.

4. Before distinguishing this case from Carlstedt, some review of the variance theory is appropriate.

It is said that a variance is "designed as an escape hatch from the literal terms of the ordinance which, if strictly applied, would deny a property owner all beneficial use of his land and thus amount to confiscation."

3 Anderson, American Law of Zoning, Section 18.02 (2d ed. 1977).

5. The present fact pattern before the Examiner fails to show that absent a variance, the applicant would be deprived of "all beneficial use" or even reasonable use of the subject property. As distinguished from Carlstedt, the subject property already enjoys variance relief from the setback provisions and is already developed with a car wash.

6. Turning to the specific variance criteria, the Examiner is not persuaded that the facts show any unusual condition which deprives the applicant of comparable development privileges. Applicant has shown the proximity to a wooded ravine (a natural barrier) and that the property is near a busy arterial marked by auto and other commercial uses. However mitigating those circumstances are the applicant is not deprived by unusual conditions of comparable development. Applicant's setback restriction is one shared by an area, and is therefore not unusually applicable to the subject property.

7. Additionally, considering comparatives, applicant points to no property which has on-site two car wash uses-with a variance for each. Granting this variance to the subject property under the facts of this record would therefore constitute a grant of special privilege to applicant.

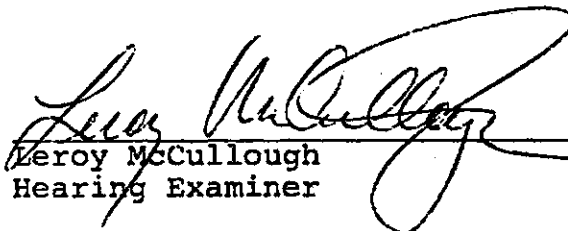
8. Except for its precedential impact the Hearing Examiner does not conclude that the variance would be materially detrimental. The operating hours, landscaping and fencing plans all show that on balance, some improvement to the public welfare would result from approval of the application.

9. The fact that greater profit would result from the variance approval is insufficient to sustain variance relief. 2 Anderson, supra, Sections 18.23, 18.22.

#### Decision

The Director's decision is affirmed.

Entered this 31st day of October, 1984.

  
Leroy McCullough  
Hearing Examiner

#### 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. 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.