

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

In the Matter of the Appeal of

JOHN AND SUZANNE RICHMOND

FILE NO. S-79-032

from a determination of the
Superintendent of Buildings

The appeal is DENIED and the Findings and Decision
of the Superintendent of Buildings are affirmed.

Introduction

John and Suzanne Richmond, appellants, filed an appeal from the Superintendent of Buildings determination to issue a use permit for a garage at 5019 Second Avenue N.W. An earlier decision to issue a use permit for the garage was reversed on appeal.

The appellants exercised their right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: Appellants represented by Janet Quimby, Evans, Quimby and Hall, Inc., P.S., attorneys at law; the Superintendent of Buildings represented by Joyce C. Kling, Zoning Administrator; and Dr. Clayton B. Noonan, applicant/property owner, represented by David A. Webber, Adair, Kasperson, Petersen and Hennessey, attorneys at law.

This matter was heard before the Hearing Examiner on November 7, 1979.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance (86300, as amended).

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. Clayton T. Noonan filed an application for a use permit to establish a garage use at 5019 Second Avenue N.W. on October 9, 1979. Notice of intention to issue the permit was published by the Superintendent of Buildings (Superintendent) on October 11, 1979.
2. The subject property is a Single Family Residence High Density (RS 5000) zoned lot developed with a single family residence and the subject garage structure.
3. A building-use permit was issued on January 30, 1978, to construct a 20 ft. by 40 ft. detached garage per plan.
4. Evidence adduced at a hearing on appeal of the rescission of that permit showed that the residence was occupied by a tenant and that the accessory building was used for storage of medical records from Dr. Noonan's recently-closed clinic.
5. The residence on the property is now used periodically by Dr. Noonan. No one actually resides or dwells continuously in the house. Dr. Noonan has at least one residence in Seattle and one out-of-state.

6. The garage structure measures 20 by 40 ft. and is 16 ft. high which is large enough for storage of 3 or 4 automobiles. It is currently used for storage of tools, automotive and sports equipment belonging to Dr. Noonan.

7. The garage structure appears to be larger than the house.

8. The garage structure is designed for the storage of vehicles.

Conclusions

1. Section 3.08 defines "Private Garage" as:

"An accessory building or an accessory portion of the principal building, designed or used for the shelter or storage of vehicles owned or operated by the occupants of the principal building."

2. The evidence offered at the hearing on this matter showed that the garage structure is designed for the storage of vehicles contrary to the evidence presented at the hearing on the first appeal.

3. The remaining issue is whether the size of the garage structure in relation to the house can be considered. Section 6.31 includes the following in its statement of accessory uses permitted outright:

(a) Accessory uses customarily incidental to a principal use permitted outright, such as private garages containing in total not more than one thousand (1,000) square feet...."

4. The Superintendent urges that the ordinance does not permit the Superintendent to deny a permit on the basis of size for any garage smaller than 1,000 sq. ft. and that to consider the relationship between the garage and residence could result in an "improper" conclusion that persons in small houses do not have the right to store as many vehicles as those in large houses.

5. An approach was suggested by the Hearing Examiner in the previous decision on this matter of using the ordinary meaning of "accessory" and "incidental" to determine if a garage structure of that size should be permitted as "accessory" to the small house. After that decision was issued, the Examiner found the case of Pearson v. Evans, 51 Wn.2d. 574 (1958), which was cited by the Superintendent in the later appeal. Pearson involved a challenge to a permit for a structure in a residential zone 4/5 of which was to be used for hydroplane "storage". Plaintiff alleged and the concurrence suspected that maintenance was also going to occur. The majority held that the plans complied with the letter of the zoning ordinance and that the spirit or policy could not be considered in administering it. The dissent would have held that the use of "customarily" was intended to make certain that "incidental" and "accessory" would be given their ordinary meaning and that 4/5 of a structure's use for hydroplanes was not an accessory portion of a dwelling.

6. While it is possible to read Sections 6.31 and 3.08 "Private Garage" to permit garages of a size subordinate to the principal structure but in no case greater than 1,000 sq. ft., the Pearson case dictates a conclusion that a strict construction of the provision must be applied. Therefore, the Superintendent may not consider the size relationship of the house and garage.

Decision

The appeal is DENIED and the decision of the Superintendent to issue a use permit is affirmed.

Entered this 19th day of December 1979.

M. Margaret Klockars
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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 appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).