

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JOEL W. KENNON FOR
THE CHURCH IN SEATTLE

FILE NO. S-83-007

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

Introduction

Appellant challenges the DCLU Director's interpretation that the Church School is required to provide parking in addition to that provided for the Church.

The appellant exercised his right to appeal pursuant to the Seattle Municipal Code, Chapter 23.88.

Parties to the proceedings were: appellant, pro se and by Glen Clover, and the DCLU Director by Judy Talman.

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 basic facts are undisputed. The Church in Seattle is located at 6900 Woodlawn Avenue N.E., between 4th Avenue N.E. on the west and 5th Avenue N.E. to the east. East Green Lake Way N.E. and the southern edge of the Green Lake playfield is one block north. The subject site is zoned General Commercial (CG).

2. A November 1975 letter from the Board of Adjustment spelled out authorization for the church to jointly use the parking facilities of the Seattle Trust and Savings Bank, 400 N.E. Ravenna, to satisfy the off-street parking requirements for the proposed new church meeting hall. The Board of Adjustment action was preceded by a church-bank agreement.

3. A Certificate of Occupancy for the church was issued on October 11, 1977.

4. In 1980, the church began operating the Heritage School in the church facility. Students, and staff all are part of the church family.

5. Prior to beginning the school, however, the church had made extensive efforts to identify and comply with all permit and code related requirements.

6. In 1982, after complaints were filed and the issue brought to the attention of the church, the institution applied for a use permit.

7. The plans dated October 8, 1982, bear notation that off-street parking was to be provided under church-Seattle Trust Bank joint use agreement. However, the applicant was advised by DCLU that the joint use parking agreement was not applicable to the school, and that fourteen on-site parking spaces were required.

8. The modified, second set of plans, also dated October 8, 1982, showed seven on-site parking spaces. Four of the seven spaces were located along the rear lot line and the remaining three beneath a building overhang.

9. In order to reduce the on-site requirement to seven spaces, the church was required to reduce the area of the large, multi-purpose room, since the area of the "auditorium" determines the amount of required parking.

10. While proceeding through intended compliance with DCLU directives, the applicant came to the conclusion that the DCLU conditions were not required by the Code. The church therefore requested an interpretation.

11. The DCLU interpretation No. 83-010 concluded that the school was

... required to provide parking in addition to that provided by the Church in Seattle and the School's parking requirement cannot be satisfied through the existing joint use parking agreement between the Church and the Seattle Trust and Savings Bank.

12. Applicants submitted this appeal.

13. The church school has 7-8 full-time and a "few" part time instructors. The typical class day is 8:15 a.m. - 3:05 p.m. Monday through Friday, for the 100 or less students grades 2-12.

Conclusions

1. In Hearing Examiner appeals of the DCLU Director's interpretations, "the interpretation of the Director shall be given substantial weight, and the burden of establishing the contrary shall be upon the appellant." Section 23.88.20 E. 4.

2. Although appellant would urge that the unity of participants should mean that the school and the church uses should be considered as a single use, which would allow joint use agreement to cover that single use, the weight accorded the Director's decision and the plain reading of the statutory provision leads to a contrary result.

3. Section 24.64.70, provides in relevant part that:

In the case of two or more uses in the same building, the total requirements for off-street parking facilities shall be the sum of the requirements for the several uses computed separately.

4. "Use" is defined at Section 24.08.220(1) as "the purpose for which land or a building is designed, arranged or intended, or for which it is occupied or maintained, let or leased."

5. The more recent Land Use Code definition similarly states that "use" is "the purpose for which land or a structure is designed, built, arranged, intended, occupied, maintained let or leased." Section 23.84.40.

6. The Heritage School and the Church are two distinct uses, i.e. purposes for which the land is maintained. The code definitions do not distinguish between situations where one body of persons may in fact conduct more than one operation on a single site. And, as pointed out in the Director's response, schools and churches are subject to clearly distinctive locational and other land use criteria.

7. The next issue then is whether, given that two uses are on site, the existing joint use agreement between the Church and the bank is sufficient to cover the parking needs of the additional use, the Heritage school.

8. Section 24.64.100, joint use, provides:

The Director may authorize the joint use of parking facilities by the following uses or activities under the following conditions...

Thereafter follow specified circumstances relating to, for example, theaters, bowling alleys, dance halls, and bar restaurants (Subsection A).

9. Section 24.64.100(C) provides that up to 100 percent of parking facilities required by the chapter

for a church or for an auditorium incidental to a public or private or graded school may be supplied by the off-street parking facilities provided by

"banks... and other similar primarily daytime uses when authorized by the Director..." Section 24.64.100(D).

10. The Code considers church use, and the use of an auditorium incidental to a public or private graded school as "nighttime or Sunday uses." Section 24.64.100(E).

11. Section 24.64.100 does not specify whether a public or private school is a nighttime or Sunday use, or whether it is a daytime use, similar to a bank.

12. Applicant would urge that the parking requirement for the auditorium is the only parking requirement for a school. Therefore, the argument continues, since the Code categorizes the auditorium use as a Sunday or nighttime use, there is no conflict between, the hours of the school parking needs (per Code, nighttime) and those of the bank (days). However, this argument is confronted head-on by specific Code language.

13. In order for a joint use agreement to fulfill parking needs, the distance between the (church) uses, and the (bank) parking facility shall be within 800 ft. Section 24.64.100 F.1. This condition is met. Further,

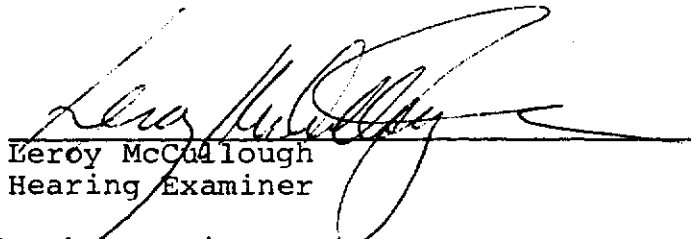
the applicant shall show that there is no substantial conflict in the principal operating hours of the two buildings or uses for which joint use of off-street parking facilities is proposed. (emphasis added) Section 24.04.100 F.2.

14. To consider the Heritage School as anything other than a daytime use would strain the credibility of the statute. Since the school admittedly is a Monday through Friday, 8:00 a.m.-3:00 p.m. use, there is a prohibitive conflict in the operating hours of the bank and the school. Therefore, a church/(day) school-bank joint use parking arrangement would violate the specific terms of Section 24.64.100 F.2. Finally, Section 24.04.070, "mixed occupancies," provides that off-street parking facilities for one use may not be considered as providing required parking for any other use except as specified for joint use.

Decision

The Director's interpretation is Affirmed.

Entered this 19th day of December, 1983.


Leroy McCullough
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). 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.