

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

THRIFTY PARK, INC.

FILE NO. MUP-84-089(CU)
APPLICATION NO. 8404660

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

Introduction

Appellant, Thrifty Park, Inc., appeals the decision of the Director, Department of Construction and Land Use, to deny an administrative conditional use for a parking lot at 2321 5th Avenue.

The appellant exercised its 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 January 15, 1985.

Parties to the proceedings were: appellant represented by John E. Phillips, Phillips and Wilson, and the Director represented by Leslie Lloyd, land use specialist.

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. Appellant/applicant filed an application on September 17, 1984, for a master use permit to demolish an existing retail structure and expand an existing commercial parking lot from 26 spaces to 52 spaces on property at 2321 5th Avenue.

2. On September 24, 1984, the City Council adopted the Framework Policies of the Land Use and Transportation Plan of Downtown Seattle by Resolution 27186.

3. Parties stipulated to the following facts:

A. The subject site consists of two lots on the west side of 5th Avenue between Bell and Battery Streets.

B. The property is zoned RM-MD.

C. The part of the subject site now used for parking is gravelled, has access from 5th Avenue and from the alley abutting the east side of the site.

D. The remaining portion of the site is occupied by a one story, brick commercial structure.

E. Development in the area of the subject site is a variety of low-scale commercial businesses, surface parking lots and multifamily uses in three to four story structures.

F. The monorail tracks run above the center of 5th Avenue.

G. The new parking lot would be regraded, provided with drainage facilities, surfaced with asphalt and landscaped.

4. The Director issued a DNS pursuant to SEPA finding no significant impacts. The analysis disclosed impacts related to use which are not significant; namely: increased surface runoff, air quality decrease, increased noise level, additional light from automobiles, increased vehicular traffic, decrease in demand for off-street parking, alteration of circulation patterns, increased traffic hazards to pedestrians on 5th Avenue, and potential improvement to aesthetics due to landscaping and resurfacing. Conditions attached to the DNS require that the grading and drainage control provisions be met, the site be graded, compacted, surfaced with two inches of asphaltic concrete over two inches of crushed rock, and that the existing chain link fencing on the eastern edge of the site be removed and landscaping be installed and maintained as proposed.

6. Section 24.64.130.D.1 provides that in Area B of the Downtown Area, principal use parking on open lots is permitted as a conditional use in accordance with Section 24.74.010 "if the proposed use does not have a significant adverse effect upon traffic flow or surface street capacity, particularly at peak hours."

7. The subject site is in Area B of the Downtown Area as established by Section 24.64.130 and Plate 4.

8. The Director concluded there would be no material detriment to the public welfare or injury to other properties in the zone or vicinity from the proposal and no significant adverse effect upon traffic flow or street capacity. The Director denied the administrative conditional use, however, based on application of the Framework Policies which "do not permit surface parking lots for principal use parking at this location."

9. Policy 2: Uses, Guideline 2: Restricted Uses of the Framework Policies, provides:

Where certain uses conflict with the intended character and function of an area they shall be restricted or subject to review and evaluation before approval.

b. Principal use parking. Special regulations shall apply to principal use parking structures and open parking. In all locations where principal use parking is permitted in accordance with Policy 9: Parking, it shall be a conditional use subject to administrative review and approval.

10. Policy 9: Parking, Guideline 8: Location of Principal Use Parking, Framework Policies provides:

c. Surface parking lots shall be permitted through administrative criteria and review procedures only in the nonresidential areas north and east of the retail and office cores. In other areas, surface parking would be inconsistent with the short and long term parking policies, and policies concerning the pedestrian and street level environment.

11. The subject site is located within the area designated as "residential" on the "Residential Neighborhood" map at 3a, of the Land Use and Transportation Plan for Downtown Seattle.

12. The subject site is located in the area designated for "Short and Long Term Garages" on the "Principal Use Parking" map at p. 16a, Land Use and Transportation Plan for Downtown Seattle.

Conclusions

1. The applicant is entitled to the conditional use permit if the conditions for approval are satisfied. Those conditions are that the proposed parking lot would not have a significant adverse effect on traffic flow or street capacity, the use will not be materially detrimental to the public welfare or injurious to other properties and that its authorization will be "consistent with the spirit and purpose of this subtitle." Sections 24.64.130.D.1 and 24.74.010. There is no disagreement that the first two conditions are met. The decision turns on what the spirit and purpose of the zoning regulations includes.

2. The purpose of the Subtitle I, Zoning Regulations, is set forth in Section 24.06.020 and is, generally, to promote the health, safety and general welfare of the residents of Seattle. The Director's decision, which is to be given no deference, Section 23.76.36.B.7, considered the new Framework Policies as an indication of the spirit and purpose.

3. The appellant/applicant urges that it has a vested right to have the regulations in force at the time of application applied and since the application was made prior to the adoption by resolution of the new policies those policies could not be used. Appellant asserts that even if a different vesting rule is applied, the Framework Policies are not regulations. Furthermore, appellant urges that "this subtitle" of the code does not include Land Use Policies.

4. Seattle's master use permit "vesting" rule is found in Section 23.76.40. It provides for vesting at the time of issuance of the permit stating that "no land use regulation which becomes effective after the issuance of the Director's decision on a valid master use permit shall apply to that Master Use Permit". Seattle's rule is different from that applied by our courts which appellant urges be observed. The date of vesting according to that rule is the date of application, if the permit is eventually issued. Mercer Enterprises, Inc. v. Bremerton, 93 Wn.2d 624, 611 P.2d 1237 (1980).

5. Appellant's argument that comprehensive plans or "policies" are not regulations but blueprints or guides is supported by the case law. See Westside Hilltop v. King County, 96 Wn.2d 171, 634 P.2d 862 (1981), Buell v. Bremerton, 80 Wn.2d 518, 495 P.2d 1358 (1972). The regulations to be applied are the zoning code provisions in effect at the time of the issuance of the permit. The code permits surface parking lots in this area subject to the stated conditions. All conditions are met unless the policies adopted by resolution serve to amend the "purpose and spirit" of the subtitle, zoning regulations. Because the new policies would support regulation prohibiting surface parking on the subject site, the policies cannot be reconciled with the existing code as an indication of "spirit" but must be regarded as calling for an amendment.

6. It is generally true that an ordinance must be amended by ordinance, not a resolution. See Anderson, 1 American Law of Zoning 2d 246 (1976). The general rule applies to Seattle since our City charter provides that all legislation shall be by ordinance. Charter of the City of Seattle, Section 7. Though Resolution 27186 has language that implies intent that the policies be used in conditional use decisions, even prior to their implementation in new code provisions, the policies may not be used as a de facto repeal or amendment of the code.

7. Because the application meets the requirements of the regulations in existence on this date, the appellant is entitled to the conditional use permit.

Decision

The decision of the Director is reversed and the conditional use permit is granted subject to the conditions imposed on the DNS.

Entered this 29th day of January, 1985.

M. Margaret Klockars
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Deputy 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. Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73. 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, 400 Yesler Building, Seattle, Washington 98104.