

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CLEO STONE and MARGARETTA DELGARDO

FILE NO. MUP-85-031(V)
APPLICATION NO. 8400577

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

Introduction

Cleo Stone and Margaretta Delgado appeal the decision of the Director, Department of Construction and Land Use, to grant a variance from the parking requirement for a catering service and private dining room at 3001 East Yesler Way.

The appellants exercised their 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 July 24, 1985.

Parties to the proceedings were: appellants, pro se; the Director by Malli Anderson; the applicant, Market Place Caterers, by Judith M. Runstad and Craig T. Kobayashi, Foster, Pepper and Riviera.

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 applicant operates a catering business at 3001 East Yesler Way, the subject property. It proposes to add a private dining room for which an administrative conditional use has been granted. A variance from the requirement for off-street parking was requested and granted. Appellants appeal that decision.

2. The structure on the subject property covers 77% of the lot extending nearly to the property line on two sides and within six and eight feet of the property lines on the other two sides. The garbage dumpster area is located in the six foot setback on the south side of the building and the area next to the building on its east side provides access to a side entrance.

3. The property is in a Lowrise 1 zone developed with single family and multi-family residences.

4. The last legally established use in the building was a grocery store and dwelling unit. The grocery store use is non-conforming in the L-1 zone.

5. A tearoom or restaurant, called the Conscious Exchange, was located in the structure after the grocery store use. The restaurant was open for breakfast, lunch and dinner and, though enjoyed by many in the neighborhood, competed with nearby neighbors for on-street parking.

6. The proposed dining room would be available for private parties and would seat a maximum of 50 (48, according to Exhibit 3).

7. The catering business has five full-time employees including a secretary. Part-time people to serve at parties are added as needed and would be used for the private dining room. A maximum of 13 persons working at any one time was projected when the proposal included a restaurant in addition to the private dining room. Since the restaurant proposal has been deleted the staffing requirement would be less than 13.

8. No parking had been provided for the prior use so none was required. The change of use of the dwelling unit portion triggered the parking requirement. Section 24.64.120 requires a total of 19 spaces for the proposed uses.

9. A traffic and parking study was done by TDA, Inc. The study estimated the parking demand that could be generated by the new uses and determined the available parking supply and utilization. The study concluded that the maximum demand would be for 35 spaces and that was based on an occurrence when the earlier proposed restaurant were open, the catering service is in operation and a dinner party was taking place. The utilization of on-street parking within 300 ft. walking distance averaged 30% with a 35% maximum. This left at least 76 available spaces so the 35 additional vehicles could be accommodated.

10. The neighbors on 30th Avenue South in the block between Yesler and Washington testified that the existing utilization of parking on that street is greater than indicated by the survey.

11. There is space for eight vehicles on each side of the street. If no vehicles were parked in that block during the survey and all 16 spaces were to be occupied at the same time the maximum demand is generated by the catering business and dining room there would still be sufficient on-street spaces within 300 ft. to accommodate the cars associated with the use.

12. Nearby residents were inconvenienced by the cars associated with the prior restaurant parking in front of their homes.

13. Some residences have driveways and garages but some of those garages are used for storage and not available for parking.

14. Since there is around 3,800 sq. ft. of floor area, any other single use of the building would require a parking variance.

15. No space is available within 800 ft. to establish off-site parking accessory to the subject property.

16. The grade of Yesler, east of 30th Avenue estimated by the transportation consultant at 9-10%, makes parking there less desirable than on 30th or on Yesler west of 30th.

17. During snow or ice, parking on 29th and 30th Avenues is in demand by residents who cannot park on steeper parts of Washington.

18. Since all use of the dining room would be arranged in advance, Joe McDonnal offers to see that each host is asked to request that his or her guests park on Yesler rather than on a side street.

19. The applicant had a private dining room associated with its catering service when it was located in the Pike Place Market. That dining room was never used more than twice in one week. The applicant predicts a similar usage at the new location.

Conclusions

1. A variance may be granted only if the facts and conditions set forth in Section 23.40.20(C) exist. The Director's decision as to the variance is entitled to no deference on re-

view, according to Section 23.76.36(B)(7).

2. The Code requires that there be an unusual condition of the property because of which strict application of the parking requirement would deprive the property of rights enjoyed by other properties. Here, the structure, which was not built by the applicant, covers the lot to the extent that there is no space left to provide parking. The structure is appropriate for commercial use and cannot be used without a parking variance. Other properties are in use, either by providing parking or because they are legally nonconforming. Therefore, this property would be denied the right to use, which other properties enjoy, by the strict application of the parking requirement.

3. Given the limitations of the property the variance requested to waive all parking is the minimum necessary for relief and would not be a grant of special privilege.

4. A variance must not cause material detriment to the public welfare or injure other property. On occasions that the dining room is filled to capacity before neighbors' cars return home, and the applicants' patrons park on 30th rather than Yesler, the neighbors will be inconvenienced. Since the dining room's use is projected to be twice per week, and many times, at a fraction of its capacity, this kind of inconvenience should be infrequent. Moreover, Mr. McDonnal has offered to request that the parties' hosts ask their guests to park on Yesler, to the extent possible, rather than on side streets. In judging detriment to the public welfare, this occasional inconvenience to neighbors must be balanced against no use of the property or other uses that may be more intrusive. It appears, on balance, the variance would not be materially detrimental to the public welfare and it would not cause injury to other properties.

5. The denial of a parking variance would cause undue and unnecessary hardship since no single use of the property could be established.


6. The variance must be consistent with the spirit and purpose of the Land Use Code and Land Use Policies. The policies are largely silent as to parking for nonconforming uses. The Code provision which allows conversion of one nonconforming use to another on certain conditions, Section 23.45.184(c), includes consideration of the relative parking impacts of the prior and proposed use. The Director had to determine for the conditional use, which was not appealed, that these impacts would be the same or less. The variance then, would be consistent with the purpose of the Code to assure no escalation of impacts.

7. Since the facts and conditions necessary for relief from the parking requirement are present, the variance should be granted.

Decision

The appeal is denied and the variance is granted.

Entered this 6th day of August, 1985.


M. Margaret Klockars
Deputy 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).

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.