

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

THE EASTLAKE COMMUNITY COUNCIL, ET AL. FILE NO. S-80-002

from a determination of the Director,
Department of Construction and Land Use

Introduction

The Eastlake Community Council, Edward Britcher for the Thunderbird Marina, D. H. Devin for Washington Employers, Inc., Jud Nelson, and Beth Means, appellants, appealed a joint use determination by the Superintendent of Buildings, now Director of the Department of Construction and Land Use (Director), for property at 11 East Allison Street.

The appellant 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 Beth Means and Janet E. Quimby, Evans, Quimby, Hall, Holman and Gannett, Inc., P.S.; the Director represented by Ross Radley, Assistant City Attorney; and Hal Lyons, H & L Marine and Northwest Boat Owners Association (NWBOA), applicants, represented by J. Richard Aramburu, attorney at law.

This matter was heard before the Hearing Examiner on October 23 and 27, 1980.

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. The Director issued Findings of Fact, Conclusions and a Decision that the joint use parking provisions of the Zoning Ordinance apply to a use at 11 East Allison Street; that the use is a "bar" for the purpose of the joint use provision; and that no use will be permitted during the day that requires more parking than is available on the site.

2. Appellants filed an appeal challenging various findings of fact, conclusions and the decision.

3. Applicants desire to legally establish the use of the subject property as a private yacht club. Parking for 27 vehicles must be provided to satisfy the Zoning Ordinance requirements, as determined by the Department of Construction and Land Use (CLU). The applicants propose to satisfy the requirement with joint use parking.

4. The site to be jointly used for parking is located at 3108 Fairview Avenue East. It provides accessory parking for an office building at 3107 Eastlake Avenue East.

5. A joint use agreement for the lot at 3108 Fairview Avenue East was executed by Hal Lyons, President, H & L Enterprises, Inc., and Robert W. Beach, the owner of the office with use of the parking lot.

6. The 11 East Allison property, hereinafter, "principal site", is occupied by a barge structure attached to the property, piers, moorage slips and hard-surfaced parking area. Moorage is also provided in the East Allison Street right of way under a street use permit. No use permit exists for any of the current or proposed uses of the property.

7. The NWBOA is a yacht club offering social and educational functions to its members with the purpose of promoting boating. The barge is to operate as a bar for members from 5:30 p.m. to 2 a.m. The office is to be open from 9:00 a.m. to 5:30 p.m. and the remainder of the building is to be open to members working on their boats for use of the restrooms, etc.

8. The barge structure has the office, a bar on the mezzanine level, tables and booths on both levels, a small dance floor on the first level, restrooms and storage area with ice machine and cooler. There is no evidence of any food preparation capacity, however, the Club intends to make available prepackaged snack foods.

9. At one time water separated the barge from the shore. A shoreline revision permit was issued in 1976 to allow 260 cubic yards of fill, retroactively approving some work that had taken place. The evidence is not adequate to determine what amount of fill has been placed.

10. None of the proposed parking is over water, however, two to four spaces are located on the pier structure.

11. For the purpose of joint use parking, CLU assumed the entire parking area had pre-existed the Shorelines Master Program (SMP) so that the requirements of the SMP for screening and yard setbacks would not apply. The parking area would be reduced by the requirements of the SMP were it applicable.

12. The Director treated the proposed use as a private club for the purpose of determining the amount of parking required under Section 23.3. One space for each 200 sq. ft. of gross floor area is required for a private club.

13. For the purpose of joint use parking under Section 23.28 the use was considered a bar.

14. The use could be treated under Section 23.3 as an establishment for the sale and consumption on the premises of food and beverages, which definition includes fraternal and social clubs. Parking required under that section is none if under 2000 sq. ft., one for each 200 sq. ft. of gross floor area if larger than 2000 sq. ft., and 20 spaces plus one for each 150 sq. ft. over 4000 sq. ft.

15. The gross floor area of the barge is greater than 2000 sq. ft. and smaller than 4000 sq. ft.

16. There would be no substantial conflict in the operating hours of the office and yacht club uses as described at hearing.

17. The fee is apparently held by Lake Union Hidden Harbor Associates which has leased the building to Windentide, Inc. Windentide has leased the building, exclusive of the office space, to Northwest Boat Owners Association. The leases also include nonexclusive use of the parking area and moorage.

18. H & L Marine Enterprises has no present ownership interest in the subject property. A document assigning its interest in the Joint Use Agreement to Windentide, Inc., is an exhibit in the case.

19. A new determination as to joint use parking would be necessary if other uses rely on the principal site parking.

Conclusions

1. Appellants did not show that the use was not consistent with the definition of "bar" but argued instead that since the term "yacht club" is used elsewhere in the Ordinance, its omission from the joint use section has significance.

2. The term "bar" which is used in the joint use provision, Section 23.28, is neither defined in the Ordinance nor is it used in the sections which list permitted uses. Therefore, since it is presumed to be included for a purpose, the Director is permitted to treat uses that fit the common definition of a bar as a bar for that purpose.

3. The joint use provision is applicable to the bar and office uses subject to the agreement.

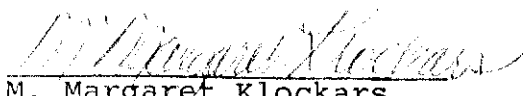
4. The determination as to whether the principal use site can accommodate 50% of the required parking was critical to the Director's decision. Section 5.1 provides that no building, structure or premise may be used except in conformity with the Ordinance provisions with the exception of nonconforming uses and building. Article 25 makes the Director responsible for enforcement of the Ordinance and specifically provides that a use permit may be issued only if he is satisfied that the plans conform to the Ordinance requirements. Section 21A.10 provides that all property within the Shoreline District is to be used in accordance with these regulations. These provisions do not permit the Director to assume that a parking area, not meeting the present ordinance requirements, is "grandfathered", for purpose of the use permit and by extension for joint use parking. The applicant must prove that he is outside the application of the Ordinance. Further, appellants produced substantial evidence to rebut the Director's assumption that the parking area preexisted the ordinance. Therefore, the Director erred in not requiring that proof of the applicant.

5. The evidence shows that H & L Marine Enterprises, applicant for the use permit and joint use parking, does not have an ownership interest in the property or control of the use, contrary to Mr. Lyons' representation to CLU. The Director should impose conditions, on remand, to assure that the use of the lot is properly restricted and that the joint use agreement binds the NWBOA.

Decision

The matter is remanded for determination as to the status of the principal site parking area and its ability to accommodate 50% of the required parking.

Entered this 12th day of December 1980.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal

A final decision of the Hearing Examiner 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).