

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

PUGET CONSUMERS COOP, INC.

FILE NO. S-80-016

from a determination of the
Superintendent of Buildings

The appeal is DENIED and the Decision of the
Superintendent of Buildings is AFFIRMED.

Introduction

The appellant, Puget Consumers Coop, Inc., filed an appeal of that portion of an interpretation of the Superintendent of Buildings regarding the legality of a parking lot at 6512-20 20th Avenue N.E.

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

The appeal was consolidated for hearing on May 5, 1980, with an appeal by the Concerned People of the Ravenna Neighborhood of other portions of the interpretation and continued for post-hearing submittals to May 28, 1980.

Parties were represented at hearing as follows: Puget Consumers Coop, Inc., by Diane Dray Kenny, attorney at law; Concerned People of the Ravenna Neighborhood, by Robert W. McKisson, attorney at law; and the Superintendent of Buildings by Darcy C. Goodman, Assistant City Attorney.

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. A parking lot is located at 6512-20 20th Avenue N.E. on lots 10, 11 and 12 of Block 2 of Dingley's Addition and is used for parking accessory to Puget Consumers Coop (PCC).
2. A permit was granted on September 6, 1949, to "install and establish an open air parking lot", "per section 4(E) Zoning Code", "per restrictions of City Engineering and Planning Commission."
3. Section 4(E) allowed renewable permits for open air automobile parking lots to be issued for terms of 5 years or less.
4. The permit for the subject parking lot was not renewed after its expiration.
5. Accessory parking was not required by law when the grocery store use was established.
6. No amendments to the Zoning Code between 1949 and 1957, when the current ordinance was adopted, authorized the subject parking lot as an outright permitted use.

7. Section 3.27, Ordinance 86300, as amended, defines "Non-conforming Use" as:

A lawful use of land or structure in existence on the effective date of this Ordinance or at the time of any amendments thereto and which does not conform to the use regulations of the zone in which such use is located.

8. Section 6.42(b) permits parking areas accessory to permitted uses in an abutting BN zone with conditional use approval.

9. The parking lot has been continuously used since 1949.

Conclusions

1. Since the permit for the parking lot had expired, the subject parking lot did not lawfully exist on the effective date of Ordinance 86300 and is therefore not a nonconforming use.

2. The parking lot is in violation of the Zoning Ordinance.

3. Most courts have not applied the doctrine of equitable estoppel through laches when the enforcement of valid zoning ordinance provisions would be frustrated. See, Rathkopf, Law of Zoning and Planning, Chapter 57, Section 12 Anderson (4th Ed. 1979); Yokely, Zoning Law and Practice 15-8 (4th Ed. 1978); American Law of Zoning 2d., Section 6.15 (1976). Exceptions exist, however, for the unusual case to prevent a manifest injustice as in Finch v. Matthews, 74 Wn.2d. 161 (1968).

4. No actions were taken or statements made to mislead PCC about the legal status of the parking lot and the delay in enforcement in the instant case does not create an estoppel through laches since no manifest injustice would result. The principal use, since it was established prior to on-site parking requirements, is not legally dependent upon accessory parking. Furthermore, PCC can apply for conditional use authorization to legalize the existing lot.

5. The Superintendent of Buildings' interpretation is correct.

6. The procedure for accessory conditional use authorization, while somewhat duplicative of the past hearings, provides notice to residents and property owners who may not have been involved in the instant appeal and who may wish to make their views known and also gives the City opportunity to assess impacts and impose any appropriate conditions.

Decision

The appeal is DENIED and the Decision of the Superintendent of Buildings is AFFIRMED.

Entered this 14th day of June 1980.

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).