

FINDINGS AND DECISIONS  
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

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DEPT OF CONSTRUCTION & LAND USE  
LAND USE DIVISION

In the Matter of the Appeal of

CINEPLEX ODEON

FILE NO. S-87-007

from an interpretation of the  
Director, Department of Con-  
struction and Land Use

Introduction

Cineplex Odeon appeals an interpretation of the Land Use Code made by the Director, Department of Construction and Land Use, as it applies to a parking lot at 2331 42nd Avenue S.W.

Parties to the proceedings were appellant by Sarah E. Mack, of Hillis, Clark, Martin & Peterson, P.S., and the Director by Guy Fletcher, land use specialist.

This matter was heard before the Hearing Examiner on September 3, 1987, along with companion appeals of master use permit decisions for property related to this parking lot.

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 the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject of the interpretation is a parking lot at 2331 42nd Avenue S.W..
2. The parking lot is across California Avenue S.W. from the Admiral Theatre, now owned by appellant, Cineplex Odeon.
3. The prior ownership of the Admiral Theatre was the Sterling Recreation Organization, apparently owned by the Danz family.
4. The parking lot was owned by members of the Danz family for many years.
5. The parking lot has been available to moviegoers for many years. At one time a cross walk led from the theatre to the lot.
6. A permanent sign at the lot designates the lot for Rainier National Bank parking with the following statement: "Reserved for theatre patrons evenings and weekends".
7. In 1963, a permit, No. 500734, was issued to the John Danz Estate to demolish a residence on Lots 9, 10, 11 and 12, Block 4, Niesz plat of West Seattle at 2324 California Ave. S.W.
8. In December, 1968, a permit, No. 530280, was issued to wreck two buildings on Lots 12-14, Block 3, to the National Bank of Commerce, also for 2324 California Ave. S.W.
9. In December, 1968, a permit, No. 530384, was issued to construct a building, to be occupied as a bank, on Lots 9-14, Block 4, 2324 California Ave. S.W., and to establish 66 off-street parking spaces, ten of which were required. The permit stated that additional accessory parking would be provided at 2333 42nd Avenue S.W. under permit No. 530382.

10. In January, 1969, a permit, No. 530502, was issued to the National Bank of Commerce for Lots 9-14 of Block 4, 2333 42nd Avenue S.W., to wreck a residence.

11. Permit No. 530382, issued December, 1968, was to "construct and establish an accessory parking lot to existing principal use per plan. Principal building located at 2324 California Ave. S.W. Permit No. - ". This permit was issued to the National Bank of Commerce and was for lots 12, 13 and 14 and N. 11 ft. of Lot 15, Block 3 at 2329-35 42nd Ave S.W. This legal description coincides with that of the subject parking lot.

12. The parking lot is not used exclusively by theatre patrons. In addition to Rainier Bank use, Puckerfield's restaurant use and a real estate company, all by agreement, tavern patrons and apartment dwellers also use the lot.

13. The search of the records by staff at the Department of Construction and Land Use found no permits establishing the parking as accessory to the theatre.

14. A parking covenant between Fredric Danz and Puckerfields, Inc., a restaurant, to the City was filed allowing the restaurant to use the subject parking lot for 20 required off-street parking spaces.

15. The Director determined that Section 23.40.004B applied and her conclusion was that "The 57 parking spaces on the subject property that have been used by the Admiral theatre are legally established as accessory to the Admiral Theatre". Ex. 4, p.4.

16. At hearing, the Director's representative, Guy Fletcher, testified that because the project is vested to the substantive standards of Title 24, the section controlling is Section 24.14.020, not 23.40.004B. He indicated the same conclusion is reached under that provision.

17. At hearing, Guy Fletcher testified that 45 spaces are legally established as accessory to the theatre, not 57.

#### Conclusions

1. Section 24.14.020 provides:

No required lot area, required yard, or other open space or a legally established off-street parking or loading area existing on or after the effective date of the ordinance codified in this subtitle shall be reduced in area or dimension below the minimum required by this subtitle, nor shall any existing required lot area, required yard, or other open space or legally established off-street parking or loading area less than the minimum required by this subtitle be further reduced, nor shall any required open spaces be used as the required lot area, required yard, off-street parking or loading area for another structure or building except as provided in Section 24.64.100, provided, however, that in the case of off-street parking and loading area, a reduction in the existing space may be permitted when other such space is provided in accordance with the provisions of Chapter 24.64.

2. The Land Use Code does not define "legally established" so in interpreting the provision, the Director looked to definitions of "nonconforming use" and "nonconforming structure" for guidance. The current definitions address a use or structure which was "lawful when established" but does not now meet requirements. In each case the definitions state that the structure or use

...shall be considered established if it conformed to applicable zoning regulations at any time, or when it is built (or commenced) under permit, a permit for the structure (or use) has been granted and has not expired....

Section 23.84.026.

3. The meaning of "lawful when established", which allows a use to continue despite changed standards, and "legally established", which requires a use to be retained, are not necessarily parallel. Section 23.84.026 states what is necessary for a use to be "lawful when established", i.e., conform to applicable zoning regulations or receive a permit. The Director agrees with appellant that to be "legally established" requires more than to be in existence. The Director adds conformance to the code standards in existence at the time as a further requirement which is the same test as that for legal nonconformity. By that test the parking lot would be legally established in that it exists and, apparently, conformed to code requirements. But in this case, it is also legally established because a permit was issued establishing the use.

4. That the lot was "legally established", however, is not enough to reach the conclusion drawn by the Director. The evidence shows that it was legally established but as parking accessory to a bank, with ten of the spaces required, and then later 20 additional spaces satisfying the requirement for a restaurant. The Director of the department which issued the permit to legally establish the parking as accessory to one use cannot now ignore the permit and assert that the use must be treated as established as accessory to a different use.


5. The department's earlier treatment of the lot, when it allowed assignment of 20 spaces to fulfill the requirements of parking for another use, is inconsistent with its current position, that the spaces were accessory to and required for the theatre and also lends support to appellant's position that these spaces were not legally established as accessory to the theatre.

6. The interpretation by the Director is entitled to substantial weight, Section 23.88.020.E.5. However, appellant has shown it to be clearly erroneous in that it ignores that the lot was legally established as parking accessory to another existing use. The decision must be reversed.

Decision

The Director's decision that the parking spaces were legally established as accessory to the Admiral Theatre is reversed.

Entered this 23rd day of September, 1987.

  
M. Margaret Klockars  
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 further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App.418 (1977); JCR 73 (1981). Should an appeal 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.