

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

In the Matter of the Appeal of

CORTANA SPACE PORT, INC.

FILE NO. MUP-82-068(V)  
APPLICATION NO. 82-0340

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

Introduction

The applicant exercised its right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

Parties to the proceeding were: applicant, Cortana Space Port, Inc. by Judith Runstad; the Director of the Department of Construction and Land Use by Diane Althaus.

This matter was heard before the Hearing Examiner on January 19, 1983.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24, as amended, 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 subject property is located at 4337 University Way N.E., Seattle, Washington. The legal description is Lot 3, Block 2, Brooklyn Addition to the City of Seattle. Said property is located within a Community Business (BC) zone.
2. The 4,120 sq. ft. area site is developed with a two story plus basement structure constructed in the early 1900's. The lower level, approximately 2,000-2,400 sq. ft., contains applicant's video arcade with 50 to 70 coin operated game machines.
3. The location of the subject property is just south of N.E. 15th on University Way N.E. and one block west of the campus of the University of Washington. The area has been variously described in testimony as "one of the City's most pedestrian-oriented areas", as a "second downtown", etc. Other businesses near applicant's location include book stores, clothing stores, jewelry stores, drug stores, restaurants and florists.
4. Applicant Cortana Space Port, Inc., lessee of the subject property, has over three dozen other operations in cities throughout the United States and has several other operations also near college campuses.
5. The subject property had been remodeled by applicant to change the use from retail to its present use as a video arcade. The Director's interpretation dated March 27, 1981, determined that pursuant to Section 24.64.080 (23.60) and Section 24.44.050 (15.23) the video arcade fit into the classification of "indoor place of public assembly" and that the parking requirement would be the same as that for other indoor places of public assembly. The Hearing Examiner notes a difference in the addresses but it is determined that the properties are the same.

6. Since the structure on site covers all of the subject property, the Code parking requirement was met by applicant providing covenant off-site parking at 4545-15th N.E. This covenant expired December 31, 1982, and covenant parking is no longer available to the applicant. Testimony indicates and the Hearing Examiner finds that all potential parking locations for possible covenant off-site parking within 800 ft. of the subject property have been investigated and no covenant parking is available.

7. The applicant now seeks a variance from the Code requirement of 20 spaces and proposes to substitute a token validation system, in use in the University District for some time, to replace the covenant parking previously provided. Customers would receive tokens as payment for parking fees in certain parking lots. Applicant further proposes to provide monthly parking passes at a parking lot for its three employees.

8. The applicant stated that its objective was to attempt to attract college students as its customers and that 80 percent of its customers were in fact college students during the regular school year. The applicant's employees conducted an informal survey and further found that the customers arrived by modes of transportation other than by auto and that the customers stayed for only a short period of time.

9. The applicant conducted a more formal survey by TDA, Inc. which determined that only a small number of auto drivers and passengers had the arcade as their primary destination. This survey also determined that only a small number of parking stalls were utilized by the customers. The survey concluded that only a small number of parking spaces were needed to fulfill the applicant's parking requirements.

10. The Director's denial of September 17, 1982, of applicant's request for waiver by variance of required off-site parking, Section 24.64.120, was withdrawn so that the criteria established by Title 23 of the new Land Use Code could also be utilized on nonresidential zones as well as residential. The Director's subsequent decision denying applicant's request for waiver on November 23, 1982, was intended to supersede the Director's earlier decision.

### Conclusions

1. The Examiner is not persuaded by applicant's contention that it is not correct to classify a use which had not been specifically anticipated and provided for in the Code. The Director does have such authority to classify uses. Section 24.64.080 (23.26), as amended.

2. Variances from the provisions or requirements of this Land Use Code shall be authorized only when all of the following facts and conditions are found to exist:

- a. Because of unusual conditions applicable to subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code will deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity;
- b. The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity or zone in which the subject property is located;
- c. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located;

- d. The literal interpretation and strict application of the provisions or requirements of this Land Use Code would cause undue and unnecessary hardship; and
- e. The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan component, as applicable.

3. The Hearing Examiner notes proceeding X-74-069 (July 31, 1974, Skipper's, 4520 University Way N.E.) wherein the applicant's request for waiver of the parking requirement was denied. However, this denial is squarely at odds with preceding X-79-145 (December 1, 1975, University Bookstore, 4326 University Way N.E.) in which the Examiner concluded

"...none are as directly oriented to these persons (University students and employees) (sic) as is the applicant. This unique factor distinguishes the subject property and its use from any other property in the vicinity with the possible exception of the other nearby large bookstore...."

The Examiner also concluded

"...The location of the subject property in close proximity to the University of Washington and the orientation of the bookstore towards the students and employees of the University result in less substantial need for parking than would be found in most other uses in the District."

Despite an apparent inconsistency in these rulings, the variance criteria have basically remained unchanged. In that regard, X-74-069 appears to represent the better application of that variance criteria.

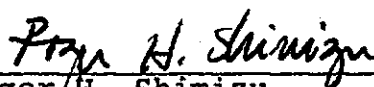
4. Applicant determined and the Hearing Examiner agrees that its use created little new demand for parking in that its customers were generally students from the University of Washington; and therefore, applicant's need for parking spaces was minimal and of little impact to the area. However, all of the variance criteria must be met.

5. Variance relief is authorized under the Code only when unusual property related conditions are found and such is not the case here in respect to applicant. If other property users in the area changed their use to that of a place of indoor assembly, and if such use resulted in required additional parking, the parking would have to be provided off-site. Therefore appellant's property condition is not unusual or distinct from these other properties. Although strict application of the parking requirement does cause financial hardship to the applicant, applicant has not shown the unusual property related conditions as required for variance relief. In the absence of a proved unusual property condition, the grant of a variance in this instance would amount to a grant of special privilege to the applicant.

#### Decision

For each of the above reasons, the application for variance is DENIED. The decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 2 day of February, 1983.

  
\_\_\_\_\_  
Roger H. Shimizu  
Hearing Examiner Pro Tempore

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.