

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JEAN W. FRALEY

FILE NO. S-79-022

from a determination of the  
Superintendent of Buildings

The appeal is GRANTED and the Findings and Decision  
of the Superintendent of Buildings are reversed.

#### Introduction

Jean W. Fraley, agent for Mr. and Mrs. Hal Griffith, appellants, filed an appeal from the Superintendent of Buildings' decision not to re-establish a use permit for property at 1730 Howell Place.

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

This matter was heard before the Hearing Examiner on September 13, 1979.

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. Use and building permits were issued February 22, 1978, to construct a single family dwelling with garage at 1730 Howell Place.

2. The appellants short platted the property, were required to install a fire hydrant and replace an old sewer line with a cast iron line, they had water and power undergrounded, obtained a permit for and constructed a dock all in preparation for construction of their house. It then became necessary to reduce the size of the planned house for financing so new plans were submitted on August 21, 1979.

3. More than one year, since the issuance of the use and building permits, having passed, the Superintendent refused to renew the old permits and denied the application for a new use permit on the basis that the plans do not conform with the current interpretation of Section 21A.35(c) of the Shoreline Master Program.

4. The setback from the shoreline of the proposed house was not changed from the February 22, 1978, filed plans to the August 21, 1979, filed plans.

5. The earlier plans were determined to be conformance with Section 21A.35(c) because the structure was to be no further forward on the lot than the adjacent residence and could provide a 25 ft. setback.

6. The interpretation upon which the denial was based provides that when the shoreline is regular and there are adjacent structures on both sides, the setback line for a new building shall be determined by subtending a line between the

nearest shoreside corner of the existing principal buildings located on either side of the subject lot. This interpretation is included in Superintendent's Ruling No. 14-79. Notice of adoption of the ruling was published August 14, 1979.

7. A line drawn, as directed by the ruling, shows approximately one-third of the structure too close to the shoreline. Because of the front yard requirement on the opposite side from the shoreline, the remaining building envelope would be too small for reasonable development.

8. The house on the north side of the subject property is closer to the shoreline than the house on the south side and, therefore, limits views to the north. The proposed house would have only a minor effect on the view to the north from the southern house and virtually none on the views from the northern house because there are no windows on its south side.

#### Conclusions

1. The pertinent part of Section 21A.35(c) is as follows: "Residential structures shall not be located closer to the shoreline than adjacent structures".

2. By ruling No. 7-77, the Superintendent interpreted Section 21A.35(c) to allow the exercise of reasonable discretion in the administration of the provision. The reason given in the ruling was:

The intent of this provision is to prevent adverse impact on existing residential uses by new construction ahead of the historic setback line; the primary concern is view blockage and maintenance of open space along the shoreline. On occasion, the provisions as drafted do not accomplish this purpose and a reasonable administrative flexibility is necessary in order to administer the regulation effectively.

3. Ordinance 102228 provides the authority and the procedure for adoption of rules. Section 3 requires the publication of notice of the adoption of a rule. Section 5 of the ordinance provides that rules promulgated pursuant to the ordinance are effective on the date of filing the rules with the City Comptroller.

4. The Superintendent had applied the interpretation of Superintendent's Ruling No. 14-79 to other cases prior to its effective date and urges that it is not required to await the effective date of a ruling prior to applying it when it does appear to be a correct interpretation of existing law.

5. In this case, the intent of the Shoreline Master Program and Shoreline Management Act of 1971 would be carried out by the earlier interpretation as applied to this property. Since the applicant had knowledge of the earlier interpretation, had relied on that interpretation and the ruling changing that interpretation was not effective, according to the Administrative Code, the Superintendent erred in denying the re-establishment of the use permit.

#### Decision

The appeal is GRANTED and the Findings and Decision of the Superintendent of Buildings are reversed.

Entered this 2nd day of October 1979.

M. Margaret Klockars  
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 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).