

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

DAVID L. HALINEN, TRIAD ASSOCIATES, INC.  
FOR GARY MERLINO

FILE NO. S-80-040

from a determination of the Director  
of Construction and Land Use to deny  
a use permit

The Findings and Decision of the Director of  
Construction and Land Use are AFFIRMED.

#### Introduction

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

Parties to the proceedings were Appellant, represented by  
Scott Bigbie, Triad Associates; Intervenors Calvin Bannon and  
LaVonne Bannon, represented by Attorney Laird Peterson; and  
Department of Construction and Land Use (CLU), represented  
by Attorney Joyce Kling, Zoning Administrator.

This matter was heard before the Hearing Examiner on  
August 26, 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 and a view of the subject area, the following  
findings of fact and conclusions shall constitute the decision  
of the Hearing Examiner on this appeal.

#### Findings of Fact

1. The subject property is located along Puget Sound at  
9607-50th Avenue S.W. The legal description is found in the  
record.
2. The property is in a Single Family Residence Low Density  
zone.
3. Applicant proposes to construct a single family  
residence with one off-street parking space at the subject address.
4. Neighboring to the south is a single family home owned  
by the Bannons. The principal residence is approximately 60 ft.  
inland (easterly) from the existing bulkhead, and is within 100  
ft. of the proposed residence.
5. North of the subject property is another single family  
residence owned by the Frasers. This residence is located further  
inward than the Bannon residence. The Fraser residence is  
separated from the subject property by trees and other view  
obstructing vegetation and a wood slat fence.
6. The building plans at issue concern a proposed residence  
with a substantial portion within 100 ft. of the southwest corner  
of the Fraser residence.

7. Applicant's proposal is to build a residence with a setback roughly equivalent to that of the Bannons, with allowances for the views of the Bannons. The Director's determination was that the ordinance required that the building setback line should be from the corner of the Fraser home nearest the shore to the corner of the Bannon residence nearest the shore.

8. Applicant resists suggestions of a more easterly construction because to applicant the residence would in fact be less of a "shoreline" residence, and secondly because of perceived difficulties in addressing an existing sewer easement which bifurcates the applicant parcel in an east-west fashion. Applicant also urged that due to the vegetation and fence separating the applicant's and the Fraser's residences, view considerations from the north are less of a factor.

9. The shoreline does not form a cove at the site of the proposed structure, nor does the shoreline project at that site.

10. The Department concluded that based on the aerial photographs, site inspection, the driftwood pattern, the fairly straight shoreline, and the absence of pronounced coves or protrusions that the shoreline was regular.

#### Conclusions

1. The Director's determination is to be considered prima facie correct. Ordinance 86300 (as amended), Section 25.44. Examiner Appeal Rule 2.9.

2. The Shoreline Master Program Regulations (S.M.P.R.) state as their purposes:

...to implement the policy and provisions of the Shoreline Management Act of 1971 and the goals and policies of Resolution 25173 by regulating development of the shorelines in order to (a) preserve, enhance and increase views of the water and access to the water, (b) encourage water-dependent uses, and (c) provide for maximum public use and enjoyment of the shorelines of the City. Section 21A.01.

3. Section 21A.12 prohibits any development in the Shoreline District that is inconsistent with the policy of the Shoreline Management Act and the Master Program Regulations. Section 21A.12, S.M.P.R.

4. Section 21A.35(c) provides:

Residential structures shall not be located closer to the shoreline than adjacent structures. If there is no other structure within 100 ft., residential structures shall be located at least 25 ft. back from the line of higher regulated lake level of Lake Washington, Lake Union and connecting fresh water, or the line of ordinary high tide.

5. Shoreline adjacent structures are "the principal buildings, together with existing or authorized view decks, balconies, porches and/or parts, when located within the Shoreline District and 100 feet as measured from the point of any principal building(s) closest to the proposed residential structure. The adjacent structure on a given lot for purposes of determining setback shall be the principal structure closest to the shoreline." Superintendent's Ruling 14-79, as amended by 20-80 (May, 1980) (emphasis added). A principal building is the primary as distinguished from separate or accessory use or building. Superintendent's Ruling 14-79 (November, 1979).

6. We conclude that the shoreline is not jagged or characterized by coves or points, such that it is a regular shoreline.

7. It is clear that the plans here at issue call for construction of a building that would rest within 100 ft. of both north and south adjacent structures.

8. Where, as in this case, the shoreline is regular and adjacent structures (within 100 ft.) are located on both sides of the proposed structure,

the residential setback line...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, provided, however, that when such building faces are irregular, the line shall be subtended from the corners located closest to the shoreline. Superintendent Ruling 14-79, supra.


9. A view of the subject property reflects that the appellant's concerns are not without foundation. It does not appear that the dwelling views of present north or south adjacent neighbors would be greatly impacted by the appellant's proposal.

10. However, the demarcation by the Director is in compliance with present zoning provisions on the subject. Other hypothetical setbacks are not germane to this decision. The more eastward setback dictated by this decision serves to comply with the purposes and prohibitions of the Shoreline Master Program and would maximize certain yard views of Puget Sound and the shoreline.

#### Decision

The determination of the Director is AFFIRMED.

Entered this 10th day of September, 1980.

  
Leroy McCullough  
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).