

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CARL F. GOULD

FILE NO. S-81-028

from an interpretation of the
Director, Department of Construction
and Land Use

Introduction

This appellant seeks review of an interpretation by the Director of the Department of Construction and Land Use (DCLU) entered August 24, 1981 which determined that a 64-foot registered vessel presently moored at 1900 Westlake Avenue in Lake Union is a building under the Shoreline Master Program, that its present use as professional offices is nonconforming and it cannot be moved to another location unless its use is changed to a conforming one.

The appellant exercised his right to appeal pursuant to the Seattle Municipal Code, Section 24.10.030, as amended.

Parties to the proceeding were: Carl F. Gould, appellant represented by counsel, Donald Schmechel: Director, represented by Judy Talman.

This matter was heard before the Hearing Examiner on November 2, 1981.

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. This 64-foot vessel designed and built by the owner-naval architect Carl F. Gould has been moored in a Lake Union commercial marina since approximately 1965.

2. It is moored at 1900 Westlake Avenue. The legal description of the moorage site is: Lots 11-18, Block 94, Lake Union Shorelands.

3. The specific vessel is used for offices for (1) its owner-naval architect (who has no employees), (2) a marine surveyor and (3) a sailboat charter service.

4. There are approximately 775 square feet of office space in the vessel.

5. The site has changed owners several times. One owner required the vessel be moved from one side of the dock to another. At present the appellant has only a month-to-month lease for his moorage.

6. The appellant's vessel is valued between \$100,000 and \$200,000, depending on whether one takes a cost-depreciation approach or a replacement approach.

7. The vessel is moored on property which is zoned M (Manufacturing) and designated US/LU (Urban Stable Lake Union), under the Shoreline Master Program designation, adopted October 8, 1976.

8. The purpose of this designation is set out in Section 24.60.350:

Purpose of Urban-Stable/Lake Union
(US/LU) environment

The purpose of the US/LU environment is similar to the purpose of the US environment, but also incorporates additional goals based on the particular characteristics of Lake Union:

- A. Enhance the form and appreciation of Lake Union and environs as a major component in Seattle urban structure;
- B. Preserve a maximum of open water commensurate with reasonable economic development;
- C. Develop a diversity of commercial and residential activities related to the use and enjoyment of the waterfront, the service and maintenance of water-related activities, and public access to the water;
- D. Encourage multiple use concepts having a wide range of intensity while preserving views of the water from upland and adjacent properties; and
- E. Eliminate physical and visual blight from areas surrounding Lake Union and Portage Bay.

9. The vessel is registered as a vessel, but has not operated as a boat. It lacks only the engine to so operate.

10. Section 24.60.300 exempts boats, ships and other vessels "designed and used as such" from the regulations of the Code.

11. "Building" is defined in the Shoreline Master Program (section 24.60.025 of the Municipal Code) as

"Building" means any structure built for the support, shelter or enclosure of persons, animals, mechanical devices or chattels, or property of any kind ..."

12. DCLU finds this vessel a building pursuant to the Ordinance definition and Superintendent's Ruling 22-79:

The definitions of 'building' in the Building Code (108508), 'use' and 'structure' in the Zoning Code (86300) shall be interpreted under certain conditions to include vessels or other floating structures. The Zoning Ordinance would, in general, apply neither to facilities exclusively on water, rather than on land nor to facilities not attached to the ground. A use permit would not be required for a facility not attached to the ground, since such a facility would not be a structure, and would not involve land. If, however, any attachment to the ground is required, as to a utility or to a loading facility regularly available for entry and exit, the proposed facility would be a structure, and thus fall under the general regulation of the Zoning Ordinance. Such structures shall be subject to all permit requirements of the Zoning Ordinance and the Building Code, such as a change of use, parking, construction, etc., and including a substantial development permit where applicable.

Documentation as a vessel does not preclude application of these requirements. The public who use these facilities, be they offices, shops, houseboats or other uses, are entitled to the same protection as provided for any other structure.

13. The vessel does have hook-up to the land for its utilities, but it is floating with no attachments to pilings, except for the access walkway.

14. Professional offices are a permitted use in zones much less intense than the underlying Manufacturing Zone here. In the general ordinance scheme, professional offices are permitted outright down to multi-family residential, and of course are permitted in residential areas as accessory uses when the primary use is residential (home-offices).

However, here the Shoreline designation of Urban Stable Lake Union precludes offices from establishment as a permitted use (although permitting retail shops and restaurants). Section 24.60.420.

15. When the Seattle Shoreline Master Program was adopted on October 8, 1976, the subject office use became a nonconforming use.

16. The Code strictly limits nonconforming uses through Section 24.14.060 which states in relevant part:

Limitations on nonconforming
buildings and uses

A. Subject to Section 24.14.050, any nonconforming building or part may be maintained with ordinary repair, but, no such building or part shall be extended, expanded or structurally altered, except as otherwise required by law, nor shall a nonconforming use be extended or expanded; provided, that nothing in this subtitle shall prevent the restoration of a nonconforming building destroyed by fire or other act of God.

B. Any change of a nonconforming use in a conforming building shall be to a conforming use.

C. Except as provided in subsection D or E, a nonconforming use in a nonconforming building or part may be changed only to a use permitted in a less intensive zone than the nonconforming use.

D. A nonconforming building or part which has been unoccupied continuously for one year or more shall not be reoccupied except by a nonconforming use.

E. In any zone, except an M or I Zone, a nonconforming use in a nonconforming building, may be changed to a use permitted in a less intensive zone than the zone in which the nonconforming use would be conforming, or to another use which is listed and grouped in the same zone classification as an outright permitted use, if such new use will be no more detrimental or injurious than the previous nonconforming use to other property in the same zone or vicinity.

17. No expansion, intensification of use, or enlargement of any kind is sought by this appellant. He seeks to move his vessel to another site in a similar underlying zone, Manufacturing, within the Shoreline Urban Stable Lake Union zone and continue his use as offices.

18. Evidence indicated this is a unique situation. Although there are office buildings on the west bank of Lake Union, and floating homes, which are regulated specifically, this small floating vessel is clearly distinguishable from each.

19. The Director says the Ordinance does not permit a nonconforming building to be moved from one location to another where it would be equally nonconforming. Since this vessel is a "Building" under the Codes, he urges the same result to be consistent with the state policy on phasing out nonconforming uses.

20. This is an overlay zone, enacted as the Seattle Shoreline Master Program, which includes as a goal of the Urban-Stable designation providing

areas for controlled development and redevelopment, encouraging a variety and mixture of compatible uses while also maintaining the existing characters, scale and intensity of use.

21. The charter sailboat office use is a water-dependent use, which is preferred. The marine surveyor use is water-related. The naval architect office is water-related, although not water dependent.

22. The appellant-architect was highly credible in his testimony regarding his concern for the beauty and use of Lake Union.

23. No evidence of detriment was presented, nor any argument advanced that a move of this vessel within the US/LU zone would be detrimental.

Conclusions of Law

1. This vessel is subject to regulation and restriction under the Shoreline Master Program since it must attach to utilities from the land.

2. Its use as professional offices is nonconforming since the adoption of the Shoreline Master Program.

3. Although the Code does not permit a nonconforming building to be moved, that is interpreted in the ordinary sense of the word 'building'. The protection provided to the public by classifying even a vessel a structure is not circumvented by permitting the vessel to be moved.

4. The Director cites Keller v. Bellingham, 92 Wn. 2d 726, 600 P. 2d 1276 (1979) as affirming the public policy of the state to restrict and eventually phase out nonconforming uses. However, that case permitted intensification of a nonconforming use by permitting modernization of a chlorine manufacturing plant after a zoning ordinance passed which, among other things, prohibited the manufacture of chlorine in a heavy manufacturing zone. Ibid at p. 728. It also affirms that enactments in derogations of common law are to be strictly construed.

5. The Director concludes that the

vessel cannot be moved to another location in Lake Union unless its use is changed to one permitted in the US/LU shoreline environment.

That would permit its being used as a restaurant or for retail stores - more intense uses than its present use. It would permit conversion to a "floating home" with a home office for a resident.

6. The fact that this is a vessel, merely moored, rather than a traditional building distinguishes its position. We have developed extensive floating home legislation to protect floating home owners from losing their moorages. There is no such protective legislation applicable to this vessel. Its owner does not own the moorage (site).

7. The appellant is not seeking to enlarge a structure, introduce new nonconformity, nor intensify the nonconforming use. The policy of phasing out nonconforming uses is to enhance the neighborhood.

This vessel fits well in the Lake Union neighborhood. This use is consistent with the mixed development around Lake Union. It is not a large office building, which spawned the prohibition of future professional offices in the Lake Union environment. Rather, it is a small, attractive vessel, with low-intensity use which does not pollute, interfere with water view, add noise or traffic.

8. Any zoning scheme, including the Seattle Shoreline Master Program, must be interpreted with its purposes in mind: protection of the neighborhood, environment, and citizens. Authorization of a move of this vessel, with no enlargement, no intensifying of use, within the underlying manufacturing zone, in the designated Urban Stable Lake Union zone is consistent with that policy. Its unique situation as a vessel precludes precedential use to argue for movement of not naturally moveable nonconforming structures, and the strict safeguards of the protective legislation for our shorelands ensure no new development of professional office vessels.

9. Although the Director's interpretation is accorded substantial weight, the appellant met the burden of proof.

Decision

For these reasons, the interpretation of the Director is reversed.

Entered this 16th day of November, 1981.

Joan B. Allison
Joan B. Allison
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.