

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

BILL WIGINTON

FILE NO. MUP-86-038(v)

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

FURTHER FINDINGS AND
FINAL DECISION

This matter was remanded by this examiner on August 26, 1986, to the Director, Department of Construction and Land Use, to determine whether adequate space for turning radius and maneuvering area would be available if parking was reconfigured. A report was filed by Ed Somers for the Director. Based upon the information contained in that report the following findings are added:

19. The distance from the front property line to the loading dock is 25 ft. 4 in. instead of about 31 ft. shown on the plans submitted with the variance application.

20. Even if the parking area was reconfigured to make the parking spaces parallel to the loading dock there would not be sufficient maneuvering space solely on private property.

Based on these additional facts the following conclusion is added:

12. Since turning movements cannot be accommodated entirely on the private property and the full 18 ft. radius cannot be provided, the variances requested would not go beyond the minimum necessary for relief.

Decision

The variance from the 100 ft. separation requirement is denied and the variances from the required turning radius and from the requirement that turning and maneuvering areas be located on private property are granted.

Entered this 26th day of September, 1986.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review of
Hearing Examiner Final Decisions on Master Use Permits

The decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104, (206) 625-4197.

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

BILL WIGINTON

FILE NO. MUP-86-038(V)
APPLICATION NO. 8502020

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

Introduction

Appellant, Bill Wiginton, appeals the decision of the Director, Department of Construction and Land Use, to deny variances for property at 2533 Westlake Avenue North.

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

This matter was heard before the Hearing Examiner on August 11, 1986.

Parties to the proceedings were: appellant, pro se, and the Director by Ed Somers, land use specialist.

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 decision of the Hearing Examiner on this appeal.

Findings of Fact

1. In an agreement settling a Land Use Code enforcement action, appellant agreed to apply for variances from the required vehicle turning area and from the minimum required turning path radius. After the application was submitted, the Director's staff determined, from the uses proposed, that a variance from the required 100 ft. separation from residential lots would be required. The Director denied all three variances and this appeal followed.

2. The subject property is at 2533 Westlake Avenue North. The lot has 150 ft. of frontage on the west side of the street and is 120 ft. deep. The rear two thirds of the subject lot rises steeply to the west. The slope is covered with trees and underbrush.

3. The lot is within a C2-40' zone, which was General Commercial (CG) at the time of the application. The rear lot line abuts property zoned Lowrise 3, a residential zone. The subject property faces M zoned property across Westlake.

4. The uses proposed by appellant are 1) manufacturing of boats (under 48 ft.), metalwork art/sculpture; 2) retail sales: building materials and supplies, lumber, delivery vehicles, contractors' equipment, machinery, boats (under 48 ft.), tools, second hand items, appliances, office equipment, furniture; 3) wholesale: building materials and supplies, lumber delivery vehicles, contractors' equipment, machinery, boats (under 48 ft.), tools, second hand items, appliances, office equipment, furniture; 4) repair shop (general): boats (under 48 ft.), contractors' equipment, machinery, tools, appliances, office equipment; 5) auto repair: major and minor; 6) rental shop: delivery vehicles, contractors' equipment, machinery, tools; 7) warehouse/storage: everything pertaining to 1-6; 8) recycling station; 9) caretakers' quarters. Accessory uses are to be: foundry, welding, machine shop, blacksmithing, sheet metal working, plumbing shop, cabinet shop, upholstery shop, locksmith, pottery workshop and sandblasting.

5. The Director determined that a machine shop, welding or other metal working shop and blacksmith shop are permitted in the CG zone if 100 ft. or more from an R zone. Sections 24.52.060 and 24.54.050.

6. Plans were approved in 1977 for the addition, by appellant, of a loading dock to the property. The plans showed a 39.5 ft. by 31.5 ft. parking area plus an 11 ft. aisle leading to the loading dock. Apparently, this parking area included some portion of the street right-of-way, though not identified as such on the plans. At that time appellant was operating Rainbow Recycling.

7. The plans submitted with the variance application show a parking area measuring 16 ft. by 19 ft. east of the loading dock. A storage shed has been added to the area available for maneuvering in 1977, as well as a van trailer and a van truck. Apparently, a 50 ft. lot has been added to the property since the 1977 application as well.

8. The Director has determined that Section 24.64.030(D)(2) requires a turning path radius of 18 ft. where an 11 ft. radius has been proposed. Section 24.64.030(D)(4)(c) requires that turning and maneuvering areas be located on private property where the appellant proposes that a portion of the space be in the 6 ft. width of street right-of-way to the west of the sidewalk. Variances are required from these provisions.

9. Other businesses along Westlake appear to use the public right-of-way for maneuvering and, in some cases, parking. Photos show Pacific Delivery trucks parked immediately adjacent to the sidewalk on the property just south of the subject property. (Exhibit 7.) Delivery trucks at the John L. Bird Co. farther south appear to utilize the street right-of-way for maneuvering and parking. (Exhibit 6.) Some maneuvering must occur on the public right-of-way at Rowan Northwest, south of the subject property. (Exhibit 5.)

10. The Director's staff did not report variances for the properties using the street right-of-way for maneuvering.

11. The plot plan shows a horizontal measurement from the loading dock to the lot line abutting a residential zoned lot of 83 ft. Because of the change in elevation between the site of the loading dock and the property line, the actual measurement, from the lot into the loading dock is 128 ft.

12. The loading dock is a building enclosed on three sides. It has been insulated and faced with plywood inside and out to absorb sound. The open side faces Westlake and the M zone.

13. Appellant proposes to use the loading dock as a machine shop and for metalworking, welding and blacksmithing. He considers these uses accessory to a workshop use.

14. There are places on the lot more than 100 ft. from the residential-zoned lots where metalworking, etc., could be done but not in an enclosure.

15. Appellant plans to do all sandblasting within a cabinet designed to contain the dust.

16. Appellant used glass crushing equipment when he operated Rainbow Recycling. He received no complaints about noise from residents on the hillside above the property.

17. Appellant has not ascertained whether, by placing parking spaces parallel to the loading dock, all maneuvering could be done on private property.

18. There is very little pedestrian traffic along the west side of Westlake in this area. Bus stops are several hundred feet away.

Conclusions

1. Variances may be granted if all the facts and conditions set out in Section 23.40.020.C are present. Appellant, as applicant, must satisfy these requirements.

2. The subject property, and others along the west side of Westlake, presents an unusual condition in that a large portion of the lot is extremely steep and unusable for commercial purposes. Therefore, the Code's maneuvering area requirements may deprive the property of reasonable use of the commercially usable area. The record shows that other similarly situated properties are making use of the street right-of-way for maneuvering and, in some cases, parking. Whether this use has been approved or not, it seems to have been condoned by the City.

3. While not particularly desirable, it does not appear that the use of the right-of-way for backing and turning would be materially detrimental to the public welfare as there seems to be no reason to expect any increase in pedestrian traffic in front of the subject property.

4. Whether the turning variances would go beyond the minimum necessary for relief and whether strict application of the Code provisions would cause unnecessary hardship depends on whether, by altering the parking layout, the turning movements could be accommodated on private property. If those movements can be accommodated, the property is not entitled to variances.

5. If the criteria for variance are satisfied, the variances would be consistent with the Code and policies.

6. Since a variance may or may not be warranted depending upon whether a reconfiguration of the parking would free up space for maneuvering, the matter should be remanded for that determination.

7. As to the variance for the uses within 100 ft. of a residential zone, the same criteria apply. The property is not denied the right to the proposed uses by the Code. It is the location of the uses on the lot which is the issue. The condition of the property which causes concern about the strict application of the code is the location of the loading dock which has been specially prepared to house the uses. The code provision, Section 23.40.020.C, does not allow consideration of this condition, however, because the condition relied upon may not have been "created by the owner or applicant...." The record shows that the applicant sought the permit in 1977 to add the loading dock in its present location. By creating the condition he disqualified himself from having it serve as the basis for variance relief.

8. It appears unlikely that the variance for 17 ft., given the change in elevation and the lack of complaints in the past regarding noise, would be materially detrimental to the public welfare or injurious to other properties.

9. Strictly applying the separation requirement does cause unnecessary hardship in this case since the ideal location, for both appellant and neighbors, is within the structure.

10. The variance would be consistent with the spirit and purpose of the Land Use Code and policies if the variance criteria were met in this case.

11. Because the appellant has not satisfied the requirement that conditions necessary for the variance exist, the variance must be denied.

Decision

The variances from turning path radius and maneuvering area on private property requirements are remanded to the Director for the sole purpose of determining whether adequate space for turning radius and maneuvering area would be available if parking was reconfigured. A report of the result should be filed with the Hearing Examiner who retains jurisdiction to enter the decision on the variance. The decision on the variance from the 100 ft. separation requirement will be entered at the time the final decision is entered on the remaining variances to allow any appeals to be consolidated.

Entered this 26th day of August, 1986.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner