

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

In the Matter of the Appeal of
BAYVIEW CONDOMINIUM HOMEOWNERS
ASSOCIATION

FILE NO. MUP-89-041(V)
APPLICATION NO. 8805329

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

Introduction

Applicant applied for variance relief to allow a non-residential use to rest more than 3 ft. above sidewalk grade. DCLU granted the variance with a condition. Appellant group challenged the grant of the variance.

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

This matter was heard before the Hearing Examiner on September 21, 1989. Appellant moved to defer consideration of the variance pending "further review including use, zoning, SEPA and shorelines components..." The Hearing Examiner denied the motion and the matter proceeded to hearing.

Parties to the proceedings were: appellant, represented by Richard Aramburu, attorney at law; applicant, Roger Cayce pro se; and the DCLU Director was represented by John Doan, 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. The applicant proposes to construct a six-story mixed use building on property addressed as 1619 Harbor Avenue S.W. and applied for a variance to allow the commercial floor to rest more than 3 ft. above sidewalk grade pursuant to Seattle Municipal Code Section 23.47.008E.3. Neighbors appealed the variance approved by DCLU.
2. The subject site is a 55 ft. wide parcel located on the east slope of West Seattle. Approximately three lots to the north the block forms a triangular point to a segment of California Way S.W.
3. The subject site is zoned Neighborhood Commercial-2 and has a 65 ft. height limit (NC2/65').
4. The subject site has a lot area of approximately 5,637.5 sq. ft. The lot is generally 100 ft. deep.
5. Although the average lot grade is 60 percent, the rear of the property is considerably steeper and is, as a practical matter, more difficult to develop.
6. The site is within an area designated as environmentally sensitive because of steep slopes and slide potential. A 1986 slide damaged a house that was on site and the adjacent house. Shortly thereafter the two affected homes were removed pursuant

to an abatement order.

7. In conjunction with removal of the houses, and with permit processing assistance from DCLU, an extensive retaining and foundation wall was constructed some 42 feet from the rear of the subject site and to the rear of the adjacent site to the north. This construction was considered by appellant to be an emergent, mid-winter project that would allow parking for an envisioned four-unit structure.

8. The retaining wall cost approximately \$150,000, inclusive of excavation costs. Although the wall could be technically relocated 10-20 ft. to the west, this would increase project building costs and the resulting costs per unit.

9. Appellants urge that the emergency did not require such an expensive wall and that therefore applicant should not be allowed to presently use the wall siting as an exculpatory basis for the variance.

10. Although the subject vicinity site and the other property on the west side of Harbor Avenue S.W. are zoned NC2/65', the opposite side of Harbor Avenue retains Title 24 CG (General Commercial) zoning. Zoning proposed for this site is a new designation for parks and recreation facilities. One development across Harbor S.W. is the newly-constructed Seacrest Marina Park.

11. The subject site and the upland portion of the property across Harbor S.W. are within the Urban Stable (US) shoreline environment.

12. Behind the site are uphill sites within various residential zones. Some of the property is within greenbelt areas.

13. Development along the west side of Harbor S.W. is mixed. In September 1987, DCLU approved a master use permit for a five-story, three-unit mixed use building that is currently under construction for the north adjacent lot. South adjacent to the site is the nine-unit, four-story, Bayview Condominium which has open parking at the first level with egress to Harbor Avenue. From the sidewalk, it is set back approximately 18.5 ft.

14. Continuing south is the five-story, 18-unit Harbor Crest Condominium which also offers first floor parking access to Harbor S.W. Its front setback approximates 6 ft. At the end of this extended block face and abutting Fairmount Avenue S.W. is the 40-unit Harbor Park Condominium Development. Between the Harbor Crest to the north and the Harbor Park to the south is a mix of residential uses and a boat sales-skin diving business. A local tavern has been closed and vacant for a short period of time.

15. In the main, the Bayview, Harbor Crest, and Harbor Park developments occur on parcels 106, 168 and 309 ft. wide and approximately 100 ft. deep. Some of the less intensive uses along Harbor are developed on single or double 25 ft. - wide lots. These other developments, however, are not constricted by a westward slope and wall so that more area of these (larger) and wider lots is covered by their developments.

16. Harbor Avenue S.W. is classified as a general minor arterial and is fully improved with curbs and sidewalks.

17. The subject area is not a pedestrian-oriented commercial area.

18. Applicant proposes to construct a six-story mixed use building on the forward 60 ft. of the subject site, front of the retaining wall. Proposed for the first level is a parking garage partially below grade for seven vehicles with egress to Harbor

Avenue.

19. Potential parking in the front yard is not favored because the parked cars would need to be screened and because they would likely be forced to back onto the Harbor Avenue arterial.

20. One of appellant's witnesses observed that turning into the subject property from Harbor Avenue sometimes constitutes a severe traffic hazard.

21. The second level would consist of 2,450 sq. ft. of office space. According to applicant and DCLU, the location of the parking level results in the second level's elevation 7 ft. above the sidewalk. Seattle Municipal Code Section 23.47.008E.3 provides that commercial uses in a mixed use building are required be no more than 3 ft. above or below sidewalk grade. Applicant is therefore requesting a 4 ft. variance.

22. The remaining four floors of the building would be developed with a total of four residential units, hence the request for seven-parking spaces at ground level.

23. Parking for seven cars on one level, partially underground as proposed, requires the second level to be 7 ft. above the sidewalk grade. This is because the functional lot space is considered too small and environmentally sensitive to further excavate and provide vehicle ramps between floors. If four parking spaces were offered, they could be provided at the same floor as the commercial space, (with an impact on the office space) and the present issue would not be presented. Four parking spaces would accommodate approximately three residential units.

24. At lot area of 5,637 sq. ft., the average density for four units would be 1,400 sq. ft.; for three units approximately 1,870 sq. ft./unit. Property developed to the immediate south has unit densities of approximately 1,250 and 900 sq. ft./unit.

25. Applicant asserts that the

...only way to make this site financially feasible for anyone, is to develop it under the NC-2 mixed-use code provision. This will allow us to spread out our forced costs over four residential units and one floor of office-retail.

Exhibit 6, p-5.

26. One of the proposed units would be occupied by one owner of the site who previously lived on site in one of the houses affected by the 1986 slide.

27. DCLU asserted and the Hearing Examiner finds that strict compliance with the Code requirements results in either additional excavation or a potential single purpose residential structure.

28. Single-purpose residential use of commercially zoned land is disfavored by the Land Use Code. Seattle Municipal Code Section 23.47.006B.5.

In order to conserve the limited amount of commercially zoned land for commercial uses, single-family purpose residential structures shall generally not be allowed in commercial zones. Single-purpose residential structures...may be permitted in NC2...zones as an administrative conditional use only if (specified)... circumstances exist...

29. Single purpose residential development in the NC2 zone is limited to L-2 development standards (L-3 standards prior to

imposition of interim controls).

30. The proposal would require several additional variances, Exhibit 16, and would be subject to further SEPA shorelines, use and zoning review by DCLU.

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code. The Hearing Examiner affirms the in-hearing decision to allow the appeal of the requested variance to proceed independent of the other components that may be presented in future aspects of this project. Seattle Municipal Code Section 23.76.022C. only requires that all "appeals," other than shoreline decisions, be consolidated in a hearing before the Hearing Examiner.

2. Applicant is seeking a variance to allow the commercial floor of a proposed building to rest more than 3 ft. above sidewalk grade. The variance criteria are listed at Seattle Municipal Code Section 23.40.020C. The first requires an unusual property condition not caused by the owner or applicant.

3. The subject site has several unusual property conditions. One is its width. South adjacent development occurs on parcels that are 106 and 168 ft. wide. The subject parcel is only 55 ft. wide.

4. Second, the west portion of subject parcel consists of steep bluff that is, as a practical matter, difficult to develop. An extensive retaining wall was placed at the toe of this bluff after a 1986 slide. These factors effectively reduce the lot size by approximately 40 percent.

5. The Hearing Examiner is aware that the wall could have been less extensive; and that the retaining wall can now technically be removed and resited farther west. However, the fact that applicant, in siting the wall, envisioned a four-unit apartment with rear parking is not determinative. The Hearing Examiner considers the "vision" as one of several factors that dictated the existence, location and cost of the retaining wall.

6. Third, the site and surrounding hillside are in a designated environmentally sensitive area because of the steep slopes and slide potential. A slide occurred on the subject site in 1986.

7. Applicant's proposal is one which attempts to minimize excavation and disturbance of the slope and wall.

8. The unusual conditions would, in the absence of variance relief, deprive applicant of comparable development rights such as those enjoyed by the south a adjacent, four-story, nine-unit condominium that offers ground level parking. Farther south is a five story 18-unit condominium.

9. The average density for four units on this 5,637 sq. ft. site would be 1,400 sq. ft./unit and for three units 1,870 sq. ft./unit. These sites to the south are developed at approximately 1,250 and 950 sq. ft. /unit.

10. The variance relief allows first level underground parking, without ramping and excessive excavation. The second level, for commercial use, would rest above the sidewalk some 7 ft. In light of the foregoing, the relief sought is the minimum necessary to afford comparable development relief. The variance would not be inconsistent with limitations placed upon other properties in the zone or vicinity. The Hearing Examiner is persuaded that the above-grade height is merely a function of development proposed for the first floor.

11. The variance would not be materially detrimental to the public welfare or injurious to local properties. Rather, it will facilitate a mixed use development in this commercial zone

where condominium and other residential uses are prevalent. The record reflects no material issue of pedestrian hazard or safety related to this variance.

12. In light of the nature of the variance sought, the environmental sensitivity of the land and other options presented, e.g. application for single purpose residential, the literal interpretation and strict application of the 3 ft. above grade height limit would constitute an undue hardship.

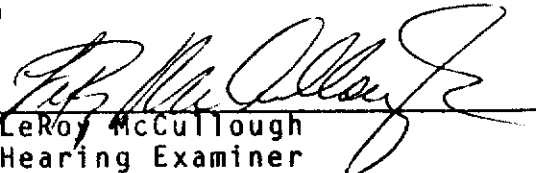
13. The variance would allow a more comparable development density for applicant's project. It would offer reduced disturbance of the soils and of the retaining wall and rearward materials. It would encourage more commercial use along this strip of commercially zoned land. As little pedestrian commercial activity occurs on this stretch of Harbor Avenue it does not appear that the 7 ft. elevation will disinterest potential users of the commercial space. In light of these considerations, the variance would be consistent with the spirit and purpose of the Land Use Code.

14. The DCLU grant of variance, as conditioned by DCLU, is affirmed.

Decision

The DCLU decision is AFFIRMED.

Entered this 6th day of October, 1989.


LeRoy McCullough
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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.