

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

In the Matter of the Appeal of

MARTIN SELIG, et al.

FILE NO. S-76-011

from a ruling of the Superintendent
of Buildings

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

Introduction

The appellants, Martin Selig, Jim D. Braman, Jr., and Gary D. Gayton, filed an appeal on March 31, 1976 from a written ruling of the Superintendent of Buildings, hereinafter Superintendent, which was published on March 25, 1976.

The appellants exercised their right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

This matter was heard before the Hearing Examiner on April 13, 1976.

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. In a written decision dated March 23, 1976, the Superintendent set forth an interpretation of Section 26.36.120, Seattle Code, which is the provision relating to the computation of gross floor area and the height of buildings located in a General Commercial (CG) Zone. It is the Superintendent's interpretation that Section 26.36.120, Seattle Code, sets forth the exclusive method for computing the gross floor area ratio and that Sections 26.35.080, Seattle Code, relating to bulk provisions in the Metropolitan Commercial Zone Temporary (CMT) cannot be utilized to assist in the computation.

2. In their appeal the appellants contend that the gross floor area ratio provisions of Section 26.36.120, Seattle Code, relate back to the bulk provisions set forth in Section 26.35.080, Seattle Code, regulating bulk provisions in the CMT zone. In support of their interpretation the appellants cite Section 26.36.020, Seattle Code, which controls uses allowed in the CG zone and provides in part: "Principal uses permitted outright. The following uses: (a) CMT principal uses permitted outright as specified and regulated in Chapter 26.35 unless modified in this chapter...".

3. Section 26.36.120, Seattle Code, sets forth the bulk regulations for CG zoned properties and provides in part:

"No building shall exceed the height of sixty (60) feet, except as modified in Section 26.44.030, and except for structures located on lots within eighteen hundred (1800) feet of a CM or CMT Zone, the gross floor area of which, excluding floor area for accessory parking, shall not exceed

four (4) times the lot area; provided that when such structures occupy less than one hundred (100) percent of the lot, the floor area ratio may be increased proportionately..."

4. Section 26.35.080(a), Seattle Code, sets forth the following bulk regulation for CMT zoned properties and provides in part:

"...for the purpose of computing the gross floor area ratio, adjacent properties under common ownership, or linked for this purpose by appropriate legal agreements and deed restrictions, may be considered together so that one structure may exceed the ten (10) to one (1) ratio provided that the other property or properties fall sufficiently short of this ratio so that their combined bulk does not exceed ten (10) times the area of all the lots taken together.

5. The legal description of the property which is the subject of this appeal is: Lots 3,4,5,6,7 and 8 , Block 35, Bell and Denny's Second Addition. The subject property consists of two areas: the half-block (lots 5, 6, 7, and 8) bounded by 4th Avenue, Battery, and Wall Streets (hereinafter referred to as area A) and a quarter of a block (lots 3 and 4) bounded by 3rd Avenue and Wall Street (hereinafter referred to as area B). Areas A and B are separated by a 16 foot wide public alley. See attached map, appendix A. It is the appellant's contention that both areas should be considered in computing the gross floor area ratio but under the Superintendent's interpretation only area A can be considered.

6. The subject property is zoned Multiple Residence Mixed Density (RM-MD) and is located within 1800 feet of a CMT zone. The Denny Regrade area, in which the subject property is located, was recently rezoned to RM-MD. Ordinance 105156 allows development of RM-MD zoned property under the prior zoning classification, if a valid application for a building permit is submitted within 2 years of the effective date of the reclassifying ordinance. The appellants plan to utilize the CG zoning classification.

7. The appellants propose to construct an 11-story office building on the area A site and area B would not be developed. If the appeal is denied, the appellants can construct an 8-story office building on the area A site and a 5 story building on the area B site.

8. In a decision dated August 7, 1975, and concerning Gerald D. Hines and a proposed building at 1100 Fourth Avenue, the Superintendent interpreted the term "adjacent properties" as used in Section 26.34.080, Seattle Code. Although the two parcels of Metropolitan Commercial (CM) zoned property, that were the subject of the decision, were separated by a 60 foot wide strip of privately owned property, they were held to be adjacent. See appellant's exhibit B.

9. Appellant's exhibit A is a report from the planning staff to the Planning Commission. It sets forth the background which led to the amendment of Section 26.36.120, Seattle Code. As a result of the amendment, flexible floor area ratios were established for CG zoned properties located with 1800 feet of a CM or CMT zone.

Conclusions

1. The CMT and CG zones compose two of the three commercial zone classifications. The following code sections illustrate the interrelationship between the CG and CMT zones: Section 26.36.020, Seattle Code, provides that CMT principal uses are permitted outright in the CG zone except as modified; Section 26.36.120, Seattle Code, sets forth a specific exception for bulk provisions in the CG zone for properties located within 1800 feet of a CMT zone.

2. In the instant case, the location of the subject property within 1800 feet of a CMT zone adds further confirmation to the interrelationship of the zones. Appellant's exhibit A, the planning study, clearly indicates that the intent of the amendment to Section 26.36.120, Seattle Code, was to provide special bulk provisions for CG zones located near CM and CMT zones.

3. In interpreting Section 26.36.120, Seattle Code, the critical word is "lot area". Under the general code definitions (Section 26.06.030, Seattle Code), "lot area" is defined as the total horizontal area within the lot lines of a lot. This definition of "lot area" provides no assistance in interpreting the section in question with regard to the issue of whether or not both areas A and B can be considered as the "lot area".

4. To assist in the interpretation one needs to read both Sections 26.36.120 and 26.35.080, Seattle Code, together. Such a reading leads to the conclusion that for purposes of determining "lot area", adjacent properties under common ownership may be considered together. In arriving at this conclusion, the interrelationship of the CG and CMT zones was considered as well as the need to refer to the CMT code section for a reasonable interpretation of "lot area".

5. The term "adjacent properties" is defined as lying near, close or contiguous. ANDERSON, AMERICAN LAW OF ZONING, Section 12.11. Under the foregoing definition, it is reasonable to conclude that properties separated by a 16 foot wide alley are adjacent. Furthermore, this is in conformity with the Superintendent's previous ruling that properties separated by 60 feet are adjacent.

6. Under the foregoing interpretation, the lot area of both areas A and B can be included in computing the gross floor area ratio. However, the appellants cannot exceed the maximum floor area ratios set forth in Section 26.36.120, Seattle Code.

7. This interpretation of the zoning ordinance is in conformity with the general rule of interpretation recognized by the Washington Supreme Court:

"It is the general rule, recognized and adopted by this court, that zoning ordinances should be liberally construed to accomplish their plain purpose and intent. At the same time the court bears in mind that they are in derogation of the common-law right to use property so as to realize its highest utility and should not be extended by implication to cases not clearly within the scope of the purpose and intent manifest in their language. (Citing case) State ex rel. Standard Mining & Development Corp. v. City of Auburn, 82 Wn.2d 321, 510 P.2d 647 (1973).

The plain purpose and intent of Section 26.36.120, Seattle Code, is to permit a developer to construct a building of greater height

than would normally be allowed in return for providing more open space in the form of plazas and arcades. This flexibility is only applicable to zones that are so situated that the additional height would not be detrimental to surrounding zones, which is clearly the situation in the instant case. The Superintendent's interpretation of "lot area" clearly defeats the intent and purpose of Section 26.36.120, Seattle Code.

8. Pursuant to the procedural requirements of the State Environmental Policy Act of 1971 (SEPA) (RCW 43.21C), the action proposed in this appeal is not considered a major action having significant environmental impact.

Decision

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

Entered this 21st day of April, 1976.



William N. Snell
Hearing Examiner