

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CHG INTERNATIONAL

FILE NO. S-79-023

from a determination of the
Superintendent of Buildings

The appeal is DENIED and the Findings and Decision
of the Superintendent of Buildings are affirmed.

Introduction

The appellant, CHG International, filed an appeal challenging a written interpretation of the Superintendent of Buildings (Superintendent) relating to property located in Block 29 of C.D. Boren's Addition.

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

Parties to the proceeding were: the appellant, represented by John E. Sloan, and the Superintendent by Joyce Kling.

This matter was heard before the Hearing Examiner on October 1, 1979.

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, the following findings and fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is located in Block 29 of C.D. Boren's Addition which abuts Interstate No. 5. In Block 29 Lots 2 and 3, the vacated alley abutting Lots 5, 6, 7, 8 and the westerly half of the remaining vacated alley that abuts Lots 1 and 4 are owned by CHG International and will be referred to as Parcel A. On Superintendent's Exhibit 1, it shows that Parcel A consists of approximately the northeast one-fourth of Block 29.

2. In Block 29, Lots 1, 4, 5, 6, 7, 8 and the northeasterly one-half of the vacated alley adjoining Block 29 are owned by the State Highway Department and will be referred to as Parcel B. On Superintendent's Exhibit 1, it shows that Parcel B consists of all of the remaining portion of Block 29 not contained in Parcel A.

3. Parcel B is developed with access lanes to Interstate No. 5. The access lanes are reserved for use by buses and high occupancy vehicles. The access lanes lead to a portion of Interstate No. 5 which has a change in the direction of traffic flow at noon each day which results in the temporary closure of the access lanes until the changeover is complete. Both Parcels A and B are zoned CM.

4. The appellant requested from the Superintendent a written interpretation concerning a transfer of development rights under Section 17.61(a) from Parcel B to Parcel A.

The Superintendent entered a written interpretation, dated August 29, 1979, and held that the transfer could not be approved since the parcels were separated by a street. The appellant filed a timely appeal.

5. In the CM zone, Section 17.61(a) provides that the gross floor area shall not exceed 10 times the lot area with the following exceptions:

"However, for the purpose of computing the gross floor area ratio, adjacent properties and properties located across an abutting alley, 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 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." (Emphasis supplied.)

6. The Zoning Code contains the following definitions:

"Alley" - "A public or private way not less than ten (10) feet in width permanently reserved and so recorded in the county records as secondary means of access to abutting property." (Section 3.02)

"Adjacent Properties" - "Properties within the same block and same zone. For purposes of computing floor area ratio, adjacent properties shall not include properties separated by public rights-of-way". (Section 3.02).

"Street" - "A public way thirty (30) feet or more in width permanently open to public use including an avenue, place, drive, boulevard, parkway, highway and any similar way, except an alley." (Section 3.20).

Conclusions


1. It is clear from the language in Section 17.61(a) that development rights cannot be transferred unless properties are adjacent or separated by no more than an alley. In this case, the properties in question are separated by access lanes to an interstate freeway.

2. The transfer of development rights across freeway access lanes would be clearly contrary to the purpose and intent of Section 17.61(a) and the language contained in the definitions of "street" and "adjacent properties". The definition of "adjacent properties" specifically states that for purposes of computing floor area ratio properties across a public right-of-way shall not be included. Freeway access lanes due to their width, openness to public use and purpose are obviously public rights-of-way as opposed to an alley, which is a narrow secondary means of access. Since freeway access lanes cannot be classified as an alley, there is no basis for permitting the transfer of development rights.

Decision

The appeal is DENIED and the Findings and Decision of the Superintendent of Buildings are affirmed.

Entered this 10th day of October 1979.


William N. Snell
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).