

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

In the Matter of the Appeal of

HARRY B. RICH, A.I.A., ARCHITECTS

FILE NO. S-79-036

from a determination of the
Superintendent of Buildings

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

Introduction

The appellant, Harry B. Rich, A.I.A., Architects, filed an appeal from an interpretation by the Superintendent of Buildings regarding preliminary plans for a proposed development at 626-36 West Mercer Place.

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

Parties to the proceeding were: Appellant, represented by Larry Barokas, attorney at law and the Superintendent, represented by Greg Borba and Joyce Kling, Zoning Administrator.

This matter was heard before the Hearing Examiner on December 20, 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 of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. A variance, File No. X-79-044, from the height limitation on a building in an RM 800 Zone was granted the appellant for property at 626-36 West Mercer Place June 6, 1979 by the Deputy Hearing Examiner and upheld by the Board of Adjustment August 3, 1979, on appeal.

2. The property conditions justifying the variance were the steep slope and lack of access. Any new development on the site requires excavation for access and extensive slope stabilization. The cost of such work would be prohibitive for an average height of 35 ft. It was found that no injury would accrue to the properties in the vicinity from development proposed to reach 140 ft. in elevation above sea level which is lower than a 35 ft. structure on existing grade would be and lower than at least one of the existing structures.

3. The variance was opposed by the United South Slope Residents and other persons.

4. The plans submitted for the variance showed average lot grade of 98.38 ft., average building height of 41.62 ft., 6 stories and 12 units.

5. Preliminary plans, dated November 9, 1979, submitted for review prior to application for an use permit showed 6 stories, 12 units, average lot grade of 89.41 ft. and average building height of 50.59 ft. The roofline would be at the same 140 ft. level. The total mass of the building would be the same. An additional approximately 7 ft. of facade would be exposed on the street side.

6. The change in average grade from the previous plans was the result of a different and less expensive engineering solution to slope retention.

7. The Superintendent concluded that the November 9, 1979, plans submitted by the applicant did not comport with the variance approval and entered a formal interpretation to that effect. The instant appeal followed.

Conclusions

1. While the Ordinance provides that the examiner is to make the decision on appeal upon the same basis as was required of the Superintendent, the instant appeal presents the unusual case of an interpretation of the examiner's earlier decision. In that case, the ordinance should not be read to preclude the examiner from using the information gained from the hearings and the intent of the variance approval in interpreting the variance.

2. The access and slope conditions which required the extensive excavation and stabilization on which the variance relied still exist. It is reasonable to expect that differing approaches to the solution of those problems would result in differing finished grade levels. The only figure regarded as absolute was the approximately 140 ft. elevation for the roofline which assured that no new view obstruction from the park would occur. While a difference of 8.97 ft. would, in most cases, be a significant deviation, in this case it is not unreasonable or unexpected, so long as the actual mass of the building is unchanged.

3. Given the reliance on the approximate elevation of 140 ft., no protrusions above that level should be permitted except for those allowed by the Zoning Ordinance.

Decision

The appeal is GRANTED and the determination by the Superintendent of Buildings is reversed.

Entered this 3/10 day of November, 1979.

M. Margaret Klockars
M. Margaret Klockars
Deputy 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).