

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JOHN LIMANTZAKIS

FILE NO. S-80-035

from a determination of the
Director, Department of Construction
and Land Use

The Findings and Decision of the Director of
the Department of Construction and Land Use
are AFFIRMED.

Introduction

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

Parties to the proceeding were: John Limantzakis, by
and through John Rassier, Attorney at Law, and the Director
by and through Attorney Joyce Kling, Zoning Administrator.

This matter was heard before the Hearing Examiner on
September 4, 1980. Parties waived the 41-day limitation.

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. The subject property is located at 1232 Westlake
Avenue North in a Manufacturing (M) Zone. The property also
lies in the Urban Stable/Lake Union (US/LU) shoreline
environment on Lake Union.

2. The evidence shows that the subject structure,
constructed over Lake Union, was designed as an engine works
facility equipped with loading areas.

3. Approximately 25 years after his initial involvement,
architect Sanders was reinvolved in 1973 to help the owner
Limantzakis alter the building to restaurant use.

4. Extensive and costly alterations to the two
principal building floors ensued.

5. One existing dining area is glass enclosed affording
the diners an eastward view of Lake Union and activity. The
third floor is used for storage.

6. To the north side of the restaurant, hidden from
landward view is an open deck area approximately 64 by 14
ft. Doors from the main restaurant to the deck may be opened
or closed depending on needs of the business, and in con-
sideration of area moored houseboats.

7. When appellant began operating the restaurant in
1973, the deck was occasionally used for boat christenings
and other exceptional events. Approximately spring of 1976,
appellant began using the deck for regular restaurant seating,
weather permitting. It is undisputed that the deck was
considered a part of the business, although projected specific
use as restaurant seating area was not known to the city.

8. Although the major restaurant has not enjoyed an overflow crowd in recent periods, appellant proposes to increase his view dining capacity by enclosing the deck with glass which would protect the customers seated on the deck from the elements. No increase in restaurant occupancy is proposed.

Conclusions

1. In 1977 the Shoreline Master Program regulations were added as supplementals to the Zoning Ordinance. Section 21A.11. The Regulations establish shoreline districts within which all property "shall be developed and used only in accordance with the regulations of this Article." Section 21A.10. Even though a substantial development permit may not be required, district development inconsistent with the regulations is prohibited. Section 21A.12.

2. Section 21A.17 provides that the regulations shall apply only to Shoreline District development after the Article's adoption, "provided, the limitations of Section 5.3 of this zoning Ordinance shall apply to existing nonconforming developments..."

3. The property is in a US/LU shoreline district environment. Restaurants are permitted in this environment. Section 21A.40. Restaurants are also permitted in the M zones. Section 19.21(a), references.

4. While permitted, "except as otherwise provided..., restaurants in the Shoreline District shall provide regulated public access and shall not be constructed over water." Section 21A.75. However, a principal water dependent use may be constructed over water. Section 21A.31, Table 1. (emphasis added).

5. Section 21A.155 defines "Use" as the "purpose for which land or a building is designed, arranged or intended, or for which it is occupied or maintained, let or leased." The same definition appears in Section 3.22.

6. Section 21A.151 and Section 3.03 define bulk as:

The size and location of buildings and structures in relation to the lot. Bulk regulations include maximum height of building, minimum lot area, minimum front, side and rear yards and maximum lot coverage. (emphasis added).

Websters New Collegiate dictionary considers bulk as spatial dimension; magnitude. (1973).

7. A building conforming as to use but not to bulk as of the effective date of the Zoning Ordinance or amendments may be altered, repaired or extended so long as the bulk provisions are not further exceeded. Section 5.32. In contrast, no nonconforming use may be extended, expanded or structurally altered, ordinary repair excepted. Section 5.34(a). The Washington State Court of Appeals recognized that state public policy and zoning spirit are to restrict nonconforming uses in order that they may be ultimately phased out. Keller v. Bellingham, 20 Wn.App. 1, 578, P.ed 881 (1978), and cases cited. Affirmed, 92 Wn.2d 726 (1979).

8. The subject building and subsequent restaurant were established over Lake Union prior to the enactment of the Shoreline Master Program amendment to the Zoning Ordinance. The building is constructed over water. This would not be permissible after the 1977 effective ordinance. A non-conformity therefore exists. We conclude that the issue concerns the location of the building in relation to the (Lake Union) lot. The building is therefore nonconforming as to bulk, i.e. spatial dimension or magnitude.

9. The building is occupied as a restaurant. Restaurants are permitted in the shoreline district and in the M zone. There is therefore no nonconformity as to use. Section 3.22, 21A.155. The nonconformity exists with respect to the physical location and dimensions of the use. While there is a general proscription, the Shoreline Master Program recognizes that "waterfront restaurants do provide members of the public with an opportunity to view and at times gain access to the water," Section 21A.75, and has accordingly made limited exceptions for restaurant uses over water. Section 21A.74. This suggests that the water-dependent characterization is but one step in the analysis.

10. A glass enclosure over the open deck area would cause the building to further exceed the bulk provisions of the ordinance. The present free air space would be clearly impacted by a nonporous wall and/or roof, regardless of the material selected therefor. The proposed enclosure falls within the category of alteration or extensions proscribed without variance relief.

11. One of the purposes of the Shoreline Management Act is to preserve to the greatest extent feasible the public's opportunity to enjoy the "physical and aesthetic quality of the natural shorelines." RCW 90.58.020. We are not persuaded that where, as here, a glass enclosed seating area already exists, the subject proposal for another enclosed area is in keeping with the Act's purpose in that ready access to the natural, "physical and aesthetic qualities" would be removed by the non-natural barrier proposed.

12. The instant case is distinguishable from Keller, supra, on the facts and on the applied law. Accordingly a variance is required for the proposal.

13. Section 21A.17 provides that the Article regulations shall apply only to development undertaken in the Shoreline District after adoption of the Article (1977), "provided, the limitations of Section 5.3 of this ordinance shall apply to existing nonconforming developments."

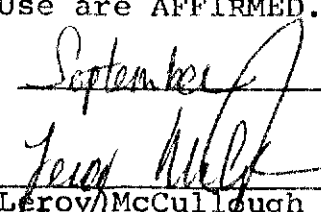
14. Development is defined as a "use consisting of the construction, exterior alteration, or demolition of structures" (emphasis added). Section 21A.151. The regulation did not distinguish new, partly new, minor or major developments. The proposal at issue thus is a "development" undertaken subsequent to the Master Program's adoption, and hence subject to its regulations. The reference to limitations of Section 5.3 is reference to the limitations only; those concerning alterations, expansions, extensions, etc. The building may not be altered, extended or repaired to increase the bulk provision.

15. The determination of the Director is deemed prima facie correct. Section 25.44. The appropriate variance criteria for this development is the shoreline variance criteria. Sections 21A.10; 21A.12.

Decision

The Findings and Decision of the Director of the Department of Construction and Land Use are AFFIRMED.

Entered this 17th day of September 1980.


Leroy McCullough
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).