

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CONSTRUCTION AND DEVELOPMENT
SERVICES

FILE NO. S-87-004

from an interpretation of the
Director, Department of Con-
struction and Land Use

Introduction

Appellant, CDS, appeals the interpretation of the Land Use Code by the Director, Department of Construction and Land Use, as it applies to the use of property addressed as 429 Boylston Avenue E.

Parties to the proceedings were appellant, pro se and the DCLU Director by Andrew McKim, land use specialist.

This matter was heard before the Hearing Examiner on July 9, 1987. The record was left open for any additional Hearing Examiner review of the record.

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 the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The findings are essentially undisputed. On May 8, 1987, the Department of Construction and Land Use Director issued Interpretation No 87-005 concerning the use of property addressed as 429 Boylston Avenue East. The Interpretation concluded that

The structure at 429 Boylston Avenue East is not within a one block radius of a commercial zone. Seattle Municipal Code 23.45.110A does not operate to permit commercial uses in that structure.

2. Notice of the decision was published on May 14, 1987 and appellant submitted its timely appeal therefrom on May 28, 1987.

3. The subject property is located on the west side of Boylston Avenue E. between E. Republican Street to the north and East Harrison Street to the south. The site is developed with a structure designed as a single-family residence. The record reflects no dispute with the DCLU contention that the structure is a single, as opposed to multi-family, structure.

4. The subject site and block face are zoned Midrise (MR). The subject block front faces another MR - zoned block face across Boylston.

5. The next street east parallel to Boylston Avenue E. is Harvard Avenue E. The west side of Harvard Avenue, between Republican and Harrison Streets, is zoned Midrise (MR). The east side of Harvard was rezoned by contract from Midrise Residential Commercial (MR - RC) to Neighborhood Commercial-3 (NC-3) effective September 18, 1986.

6. East parallel to Harvard Avenue E. is Broadway E. Both block fronts to Broadway are commercially zoned. Thus, the rectangular area between Harvard and Broadway Avenues E., and East Republican and East Harrison Streets is all commercially zoned.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.88, Seattle Municipal Code. Seattle Municipal Code Section 23.88.20 (E)(5) requires the Hearing Examiner to give substantial weight to the appealed-from Interpretation.

2. Seattle Municipal Code Section 23.45.110 provides that

Certain commercial uses shall be permitted outright on the ground floor of multi-family structures in Midrise and Highrise zones under the following conditions...

A. Location

1. In Midrise Zones, the use may be located only within a one-block radius of a commercial zone.

Office use is permitted as a ground-floor commercial use in the Midrise zone.

3. There is no definition of the phrase "one-block radius" in the Seattle Municipal Code. "Block" is defined. "In downtown zones, a block consists of the area bounded by street property lines." Seattle Municipal Code 23.84.004. In non-downtown areas,

a block consists of two... facing block fronts bounded on two... sides by alleys or rear property lines and on two...sides by the center-line of platted streets, with no other intersecting streets intervening...

4. A "block front" or "block face" is

the frontage of property along one...side of a street bound on three...sides by the center-line of platted streets and on the fourth side by an alley or rear property lines.

5. "Radius" is not defined in the code.

6. Seattle Municipal Code Section 23.16.002, Policy 15, Implementation Guideline 2(a)(i), addresses the location of ground floor commercial uses in Midrise areas:

Commercial uses shall be allowed to locate in multi-family buildings in Midrise zones adjacent to a healthy business zone within a radius of one block in each direction from the boundaries of a business zone... (Figure 41).

7. The Figure 41 illustration is reproduced at DCLU Interpretation's Conclusion 5. It shows as central a current business zone consisting of two facing block fronts. Radiating from this zone are shaded areas. The top and bottom shaded areas extend from the top and bottom of the business zone to encompass two facing block fronts. The same facing block front phenomenon is illustrated and shaded to the left and right of the central "business zone."

8. As the Hearing Examiner understands the DCLU posture, the term one-block radius refers to a distance determined by the length or width of the blocks in an area, which would exclude the subject site from its desired development; and further that underlying policies require a narrow construction of the exception which allows certain commercial use of midrise zoned property.

9. Given the substantial weight to be accorded the DCLU Director's decision, the Hearing Examiner is not persuaded to appellant's contrary view.

10. Since a "one-block radius" is not specifically defined in the Code, it is appropriate to consider the Figure 41 illustration of Seattle Municipal Code Section 23.16.002, Policy 15, Implementation Guideline 2(a)(i). Seattle Municipal Code 23.12.030. It is further appropriate to use the plain and ordinary meaning of the term "radius." Davis v. Employment Security, 108 Wn.2d 272 (1987).

11. Unlike the Figure 41 illustration, the business zone at issue in this case does not fit the definition of "block" for non downtown areas. The business zone at issue is bounded by four streets. Under the circumstances it is reasonable to deduce that the one block radius in Seattle Municipal Code Section 23.45.110-(A) refers to a distance equal or equivalent to one block from the business zone. This would mean that appellant's site would not be within the area within which commercial uses could be allowed.

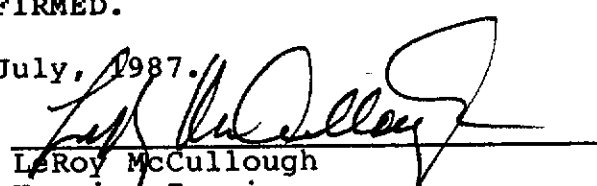
12. The appellant's interpretation would require inclusion of the east and west block faces of Boylston, i.e. the closest "block" per definition in 23.84.004. This approach would require the Examiner to ignore the west side of Harvard, zoned MR, in order to reach this definitional "block." Such a leap is not suggested by the Figure 41 illustration, nor by the scheme of the code policies and ordinances. Figure 41 shows computation of the "one-block radius area" to begin immediately from the boundary of the business zone. The DCLU approach is in keeping with that approach.

13. It is further concluded that in the absence of proof to the contrary, the subject structure fails to qualify as an MR-zoned "multi-family structure." The DCLU Interpretation is therefore affirmed.

Decision

The DCLU Interpretation is AFFIRMED.

Entered this 23rd day of July, 1987.


LeRoy McCullough
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City, and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.