

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DON PAULSON, JOHN P. GREENWALD AND
ELLEN H. WATERS

FILE NO. S-88-008

from an interpretation of the
Director, Department of
Construction and Land Use

Introduction

Appellants challenge the interpretation by the Director, Department of Construction and Land Use Code, of the Land Use as it applies to a proposal for 530 Melrose Avenue East.

The appellants exercised the right to appeal pursuant to the Seattle Municipal Code, Section 23.88.020 as amended.

Parties to the proceedings were: appellants, by their attorney, Samuel M. Jacobs; the Director, Department of Construction and Land Use, by Leslie Lloyd, senior land use specialist; and the applicant, Cosmos Development, by its attorney, George A. Kresovich, Hillis, Clark, Martin & Peterson, P.S.

This matter was heard before the Hearing Examiner on July 21, 22, 25, 26 and 27, 1988.

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

Findings of Fact

1. At the request of appellants, the Director, Department of Construction and Land Use ("Director") issued an interpretation of the Land Use Code ("Code") applied to the proposal for property at 530 Melrose Avenue East. The provisions of the code addressed by the interpretation related to this appeal included parking, height, wind/sun screens, height measurement, and access.

2. Two of four parking stalls designated as handicapped in the plans are half of a tandem stall. Appellants question whether these spaces constitute reasonable handicapped spaces under WAC 51-10-405.

3. To use tandem spaces, one car may have to be moved. Appellants allege that this violates Section 23.54.030C1.

4. Some parking spaces require several movements to enter because of pillars, elevator walls, etc. Appellants question whether they should be counted toward required parking.

5. The maximum height of a building in the MR zone is 60 ft. plus slope allowance. Certain items qualify as exceptions to the height maximum. The plans examiner in reviewing his calculation of the height during testimony found the building to exceed the maximum permitted height at two locations. Further corrections to the plans will be required.

6. The building is proposed step down one story from east to west. The lower roof on the west would provide private decks for the two top story apartment units and a common rooftop terrace for the building's tenants. A horizontal band which

constitutes the parapet on top of the roof of the units would continue around the entire circular perimeter of the building at the level of the higher rooftop. Below that parapet on the westerly portion of the building would be a feature denominated as a sun and/or wind screen. There appears to be an opening of about seven feet between the end of the upper story and the beginning of the sun/wind screen, topped by the horizontal band.

7. The top of the sun/wind screen is approximately 10 ft. above the roof surface. The architect described a 7 ft. high, 25-30 ft. wide opening in the screen west of the rooftop terrace and openings 7 ft. high and 10-12 ft. between columns to the southwest and northwest. The screening from sun or wind would be accomplished by the vertical features between the openings. The same materials are to be used for the parapet and sun/wind screen. No glass or other transparent material is planned for the openings.

8. The design of the sun/wind screen is intended to integrate the screen into the overall building design, give a sense of enclosure and security to rooftop users while capturing the view and provide some shielding from the sun and wind. The actual screening effects of the wall were not evaluated by the architect.

9. The westerly wall on top of the building would provide shade to some portions of the terrace depending on the time of year and day. A person sitting or lying behind the solid portions of the wall could be sheltered from winds from certain directions.

10. The westerly wall or screen encompasses almost the entire lower rooftop area including some rooftop area which is not used as deck or terrace.

11. From a distance the westerly wall will appear to be a full story, indistinguishable from the story with a parapet on the easterly portion.

12. The interpretation assumes that the "...top of the building...surrounded by a 3-foot high continuous cornice (sic) which starts 8 feet above the 5th floor line" is a sunscreen and windscreen. Exhibit 44, Finding No. 7. There is no discussion of what is required to be a sun screen or wind screen. Testimony by the plans examiner showed that the applicant's denomination of the feature as a sun/wind screen is accepted if the feature functions as a screen.

13. Roof coverage of the sun/wind screen and other rooftop features was calculated by the plans examiner by multiplying the thickness of the screen by its length and adding that area to the area of the mechanical equipment or elevator penthouse.

14. Appellants contend that the coverage of the rooftop is that area "enclosed" by the screen or wall and that exceeds the 15-20 percent permitted by Section 25.45.050D.3.

15. The interpretation concluded that alley access is not required because the alley is not improved to the standards for alleys in MR zones, 18 ft. of pavement in a 20 ft. wide right of way, per the Seattle Street Design Manual.

16. The alley adjacent to the subject site is currently paved to a 16 ft. width on a 16 ft. right of way.

17. The application initially proposed access both from the alley and from E. Mercer Street. The Director interprets Section 23.45.060 to allow access from either the street or the alley, not both, and required a plans correction. The applicant then proposed access from E. Mercer Street.

18. The master use permit decision did not require the applicant to dedicate any land to widen the alley right of way.

19. The proposal has two curb cuts on E. Mercer Street, one 10 ft. wide and one 20 ft. wide. The Director recognized that the two frontages on this corner lot totalled over 160 lineal feet so approved the curb cuts. Appellants read Section 23.54.030E to permit only two 10 ft. wide curb cuts or one 20 ft. wide, but not both.

20. The Multi-family Residential Areas Policies (MFRAP) address parking access:

Access to parking shall be from the alley, unless specifically allowed from the street (Figure 35). Where a higher intensity area borders across the alley on an area designated for lower intensity use, access to parking shall be required to be from the street or alley, or the choice will be optional, according to the chart on the following page.

Policy 9, Implementation Guideline 1, p. 23-38. In discussing unimproved alleys the policies state: "Where the alley is platted but unimproved, alley improvement is encouraged and may be required by DCLU as part of routine project review, following guidelines developed." Policy 9, Implementation Guideline 2, p. 23-38.

21. Policy 4: Height of Buildings states, in part:

The intent of this policy is to establish maximum heights, maintain a consistent height limit throughout the building envelope, require that the building heights reflect the topography of the site, reduce view blockage, encourage pitched roofs, and facilitate rooftop recreation and solar energy development.

In order to facilitate the placement of functional rooftop features, and encourage the use of rooftops for recreational purposes, rooftop features shall be allowed additional height above the height limit for the particular classification, under regulations which limit additional height, placement, coverage, and, to a limited extent, design.

MFRAP, p. 23-37.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.88.020.E.

2. The Hearing Examiner must accord substantial weight to the decision of the Director on appeal. Section 23.88.020.E. The burden is upon the appellants to overcome that weight by proving the decision to be clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. The Hearing Examiner's authority extends only to reviewing the Director's interpretation of the Land Use Code. Appellants' question as to compliance of the proposal with the state requirements for handicapped access (cited as WAC 51-10-405) is outside that authority.

4. Section 23.54.030C.1 requires adequate ingress to and egress from all parking spaces to allow parking without moving another vehicle. The Director correctly observes that the code treats a tandem space as one space long enough for two cars. Section 23.54.030A.5. The code requirement addresses ingress to and egress from a parking spaces, not what happens within the tandem parking space.

5. Appellants did not show that any of the parking stalls failed to meet the standards for dimension or location. There would have been no basis for the Director to discount any of the spaces which met code requirements because of the inconvenience or difficulty in their use.

6. The Director correctly interpreted Section 23.54.030E to allow both a 20 ft. and a 10 ft. curb cut for this project since its street frontage exceeds 160 ft.

7. Appellants contend that alley access to parking is required for this proposal. The code requires access from the alley, not a street, when..."the site abuts a platted alley improved to the standards of Section 23.54.010C" unless certain conditions, not applicable here, are present. Section 23.45.060B.1. When the alley is not improved to the standards of Section 23.54.010C, either street or alley access is permitted but if the alley is to be used it must be improved to those standards. Section 23.45.060B.3.c. To be considered improved an alley must have: 1) grading to both right of way lines; 2) standard pavement width and depth according to the Director's rules; and 3) drainage and grading according to code requirements. Section 23.54.010C. Since the standard for pavement width is 18 ft. and the alley is paved to 16 ft., the alley is not "improved" for purposes of Section 23.45.060. Therefore, access from the alley is not required.

8. Appellants cite the policy preference for access from the alley as the basis for their argument that the alley must be used. However, the language of the code conveys the legislative intent. Unless the words used are ambiguous there is no room for construction. Bavarian Properties Ltd. v. Ross, 104 Wn.2d 73, 700 P.2d 1161 (1985). Since there is no ambiguity in the language of the provisions, the examiner cannot resort to the policy to impose a different requirement.

9. Appellants have shown that, contrary to the Director's conclusion, the structure does not comply with the height provisions of the code. Correction must be made in the plans to bring the height into compliance prior to the issuance of construction permits.

10. Appellants dispute the Director's determination that the wall around the westerly portion of the roof qualifies for the 10 ft. height exception as a sun or wind screen. Section 23.45.050 allows exceptions to the 60 ft. height limit for the zone for rooftop features.

The following rooftop features may extend ten feet (10') above the maximum height limit...so long as the combined total coverage of all features does not exceed fifteen percent (15%) of the roof area or twenty percent (20%) of the roof area if the total includes screened mechanical equipment:

e. Sun and wind screens:...

Section 23.45.050D.3. The code provides no definition of sun and wind screens.

11. Appellants have shown that the westerly walls' wind/sun screening function was not the primary motivation of the architect in designing that feature of the building. The record shows that it will serve this function to some degree.

12. Appellants argue that the City Council would not have intended to allow an exception which would add significantly to the bulk of the building and cite the MFRAP. First, the code provision itself should be examined to discern the Council's intent. The list of exceptions shows the Council placed limits on location and design when that was its intent. The exception

in subsection c is "play equipment and open mesh fencing which encloses it, so long as the fencing is at least five feet (5') from the roof edge." Section 23.45.050.D.3.c. Since they placed restrictions on one exception and could have but chose not to on another, it must be presumed that no such restriction was intended.

13. Even if the MFRAP could be consulted, their intent to restrict the nature of the sun/wind screen is not clear enough to permit the additional regulation desired by appellants. That policy intent speaks both of reducing view blockage and facilitating rooftop recreation. It refers to "limited" regulation of design of rooftop features. The code reflects the extent of regulation the Council deemed appropriate which, for sun/wind screens, is only a limit on rooftop coverage.

14. Appellants urge that the "coverage" by the rooftop features be treated in a manner alien to the use of that term elsewhere in the Land Use Code and again use the MFRAP to support that different approach. Calculation of coverage is a common concept and lot area coverage is defined in the code. As presented in Section 23.45.050, "coverage" is not ambiguous. Moreover, the Director's representative showed the practical difficulty of calculating the area of enclosure, giving several examples such as when the screen is placed only on one side of the roof.


15. Appellants point to the fact that the sun/wind screen encloses virtually the entire roof even though the outdoor recreational portions occupy something less. They have not shown, however, that those portions along unused areas do not provide screening from the wind or sun for the decks and terrace.

16. Though the sun/wind screen will have the effect of making the building appear to be nearly a full story higher than it is allowed on one side of the building, the code does not regulate the design of sun/wind screens so the Director did not err in her conclusion that the feature is permitted.

Decision

The decision of the Director is reversed to the extent that it found the development proposed meets the height provisions of the code and is affirmed in all other respects.

Entered this 11th day of August, 1988.


M. Margaret Klockars
Deputy 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 a 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.