

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JOHN COWMAN AND ASSOCIATES

FILE NO. MUP-81-051(V)

APPLICATION NO. 81138-0048

from a decision of the Director of the Department of Construction and Land Use on a master use permit application.

Introduction

Appellant, John Cowman and Associates, appeals the decision of the Director of the Department of Construction and Land Use (Director) to deny variances in a master use permit application for property at 5050 Delridge Way S.W.

The appellant exercised its right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on December 3, 1981.

After due consideration of the evidence elicited during the public hearing the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Appellant, by its agent, Harvey Dodd, applied for a master use permit to allow the expansion of a warehouse located at 5050 Delridge Way S.W.

2. The Director determined that variances from Sections 24.14.060, 24.26.090, 24.62.150, 25.26.100, 24.64.040, 24.04.160 and 24.64.030 would be required. He denied those variances. Appellant appealed.

3. The property considered by the Director and shown on the plot plan, Exhibit 23, consists of a 30,000 sq. ft. parcel with 250 ft. on the east side of Delridge Way S.W. and a depth of 120 ft.

4. The appellant intended to have a larger parcel including property adjoining on the south which is approximately 12,000 sq. ft. considered in the application. Employee parking is to be located there.

5. A telephone exchange was established in the building on the site probably before 1923. In 1968, a variance was granted to convert the use of the building to a warehouse for drygoods with restriction on the use of the parking lot to parking use only. In 1977, a variance was granted to appellant to allow the intensification of the nonconforming use to warehouse housewares and hardware subject to conditions restricting the parking area to parking use and requiring landscaping, screening and surfacing.

6. The site is zoned Duplex Residence High Density (RD 5000). It is separated from a Single Family Residence High Density (RS 5000) zone to the east by a dedicated but unimproved alley. The RD 5000 zone is predominantly single family with a few duplexes, a church and a grocery store. A Community Business (BC) zone lies south of the RD 5000 zone also running down both sides of Delridge Way. It contains some commercial usage such as an auto repair shop, grocery store, etc. A small, one use BC zone is located two blocks north of the subject site.

7. Appellant desires to add 6,600 sq. ft. to the existing warehouse extending the rear wall, which is one and 5/8 inches from the lot line, 110 ft. north. The new addition would be set 59 ft. ten and 3/8 inches back from the front lot line, but the plot plan shows parking occupying the front area to within 10 ft. of the front property line for two thirds of the addition's length and to the line for approximately 20 ft. Yards required in the zone are 25 ft. for the rear and 20 ft. for the front. One half of the alley may be counted toward the required yard setback so the proposal would provide a rear yard of 8 ft. one and 5/8 inches.

8. The addition would increase the lot coverage of the parcel shown on the plot plan to 69.7 percent where 35 percent is permitted. If the adjoining property were included the coverage would be around 50 percent.

9. Parking is not permitted in the required front yard in this zone. Variance is requested from that prohibition.

10. The driveway is 15 ft. wide where the code requires a 20 ft. width for a two-way driveway.

11. A variance from the screening requirements is cited but the appellant indicated a willingness to provide necessary landscaping and screening.

12. Section 24.14.060 prohibits the expansion of a building nonconforming as to bulk and of a nonconforming use.

13. The site is designated under the Multi-Family Land Use Policies for Lowrise 3, a classification allowing medium bulk apartment buildings.

14. The appellant has turned a "derelict" building into an attractive warehouse. The operation is entirely wholesale and supplies Pay N Save and Ernst. As many as 15 employees may work at the site. Others are employed in other locations such as Hawaii, Salt Lake City, Montana and Spokane. The expansion is necessary if appellant is to stay in the city. The building has one door on the north side of the building making it difficult to handle the five or six trucks per day.

15. The Delridge Land Use Task Force, a group interested in revitalizing business on Delridge Way, offered its general support of the appeal since the area is depressed and the business is one of two still viable in the north part of Delridge.

16. The sewer system is not adequate for full development under current zoning.

17. Delridge Way S.W. is a four-lane arterial in front of the subject site.

18. With regard to the action proposed in this application, a declaration of non-significance (DNS) has been prepared by the responsible official pursuant to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, Chapter 25.04, Seattle Municipal Code, and is part of the record.

Conclusions

1. For variance relief, a condition of the property must be shown because of which the provisions of the zoning code prevent the property from development rights enjoyed by other properties in the zone and vicinity. Section 24.74.030A.1. The condition upon which previous variances were based is the existing building suitable only for uses not conforming to code provisions. This condition cannot support a variance to expand the nonconforming use and building unless other properties in the area enjoy greater development. Such is not in evidence. Other commercial uses do exist in the area but are very modest in size. The evidence shows the property to be enjoying rights well beyond those of other properties.

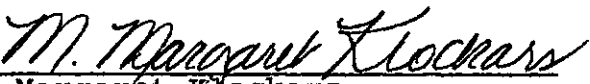
2. Without the requisite showing of hardship, any variance would go beyond the minimum necessary for relief, and would, in fact, confer special privilege, two conditions disqualifying the property from eligibility for relief. Section 24.74.030.A.2.

3. The record shows convincingly that appellant has removed a blight on the area and greatly improved the property, has evidenced sensitivity in the business' relationship with its surroundings and community, provides employment in the City, and, from its annual sales figures, supports the City in the form of tax revenues. The record does not show any foreseeable material injury to specific properties. Detriment would inhere, however, in encouraging the expansion of a use which is contrary to the zoning for the area and the recently adopted land use policy for the area. The hearing examiner need not determine whether the benefits of the expansion of the business and its retention in the City outweigh that detriment since an application must meet all criteria of Section 24.74.030A. for variance and the first two are not met.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 16th day of December, 1981.


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 further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal 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.