

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

In the Matter of the Appeal of
KARAWAN, INC.

FILE NO. MUP-83-084 (V)
APPLICATION NO. 83-544

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

Introduction

Appellant, Karawan, Inc., appeals the decision of the Director, of the Department of Construction and Land Use (DCLU) to deny a variance to allow the serving of alcoholic beverages closer than 500 ft. from school grounds at 5024 University Way Northeast.

The appellant exercised its right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on January 4, 1984.

Parties to the proceedings were: appellant, represented by Judith and Mohammed Lukatah and Mark White, and the Director by Nanette Mozeika.

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 decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Appellant filed a master use permit application for a variance to allow the serving of alcoholic beverages in an existing restaurant at 5024 University Way N.E. The Director denied the variance and the instant appeal was filed.
2. The subject site is directly across University Way N.E. from the University Heights elementary school, some 60 ft. away, but about 300 ft. along a route utilizing a legal crossing of the street at the intersection.
3. The school playground is bounded by a chainlink fence along University Way.
4. The site is within a Community Business (BC) zone which runs along University Way and 50th N.E.
5. The applicant proposes to offer beer and wine with meals. The family-operated business needs this feature to compete with other neighboring and distant restaurants to remain solvent.
6. Other restaurants in the immediate area, and same zone, some within 500 ft. of the school, serve alcoholic beverages. Within 500 ft. are Ivar's Seafood Bar, Herfy's, Sahara, Shakey's Pizza, Avenue 52, Teriyaki Sagano, and Outrageous Taco Company. Nearby, but beyond 500 ft., are University Bar and Grill, Costas, Lox, Stock and Bagel, Paul's Place and Goldies on the Ave.

7. The City's records show that only two of those restaurants within 500 ft. have obtained variance and therefore the others do not have a legal use. The Board of Adjustment in 1981 reversed the Hearing Examiner decision to deny Herfy's, at 1205 N.E. 50th Street, a variance concluding that the property would be denied comparable development without variance relief. Then in 1982, the Director awarded a variance to the applicant for Ivar's Seafood Bar at 4755-12th Avenue N.E. A variance was also granted a delicatessen at 5000 University Way N.E. but the decision was reversed by the Hearing Examiner on appeal.

8. The application and decision for the delicatessen property were under the former zoning code which required that the property have a "unique" condition which required variance relief which has now been changed to the requirement of an "unusual" condition.

9. The Seattle School District has no objection to the sale of alcoholic beverages at the Karawan.

10. A petition signed by parents of students at the school and school staff supports the variance application of Karawan and a variance for the 50th Street Cafe, the delicatessen which was denied a variance. Several letters of comment to the Director opposed the application and several support it.

Conclusions

1. It is clear from the record that, without variance, Karawan property would be deprived of rights and privileges enjoyed by other properties in the same zone and vicinity. The Hearing Examiner may authorize variances, however, only when all the facts and conditions required by Section 23.40.20 exist. That provision requires that the reason for the apparent inequity is an unusual condition applicable to the property such as size, shape, etc. The record shows no unusual condition or fact not shared by other properties within 500 ft. of the school. The apparent reason for the inequity is the violation of the City's zoning code by other restaurants and the uneven application of the provision in other cases. The applicant is forced to compete both with the legal uses and these illegal uses unless DCLU carries out its enforcement function.

2. In light of the wide sale of alcoholic beverages in the restricted area, granting a variance in this case would not confer special privilege, except as to the delicatessen, as long as variances were granted to the restaurants now planned for other properties on the block.

3. No injury to other property or material detriment to the public welfare can be foreseen were the variance granted.

4. The strict application of this code provision does cause undue and unnecessary hardship.

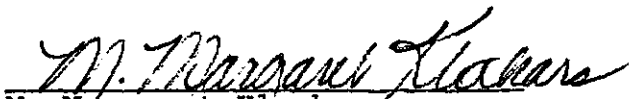
5. If the purpose of the Land Use Code is to restrict the sale of alcoholic beverages near schools, the granting of the variance would not be consistent with that purpose. The role of the hearing examiner is not to question, in an individual case, the wisdom of the law but to apply it. If a variance is granted for this property, and then those to follow, the intent of the law is subverted.

6. Feeling strongly that an inequity results, the hearing examiner still must deny the variance because the application fails to satisfy all the facts and conditions required for approval. This case represents another example to be considered by the Council if a change in the text of the Code is proposed.

Decision

The appeal is DENIED.

Entered this 18th day of January, 1984.


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. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App 418 (1977); JCR 73 (1981). 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.