

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DOJAC CORPORATION

FILE NO. MUP-84-091(V)
APPLICATION NO. 8405018

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

Introduction

Appellant, Dojac Corporation, appeals the decision of the Director to deny a variance from lot area requirements for property at 2125 Western Avenue.

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 17, 1985.

Parties to the proceedings were: appellant Dojac Corporation, by Karen Gilbert, attorney at law; the Director by Ed Somers, land use specialist.

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. Dojac Corporation applied for a master use permit to establish use for future construction of a five story building containing two stories of parking and three stories of offices per plans. The Director determined that a variance would be required to allow the proposed use on a lot with less than the minimum required lot area. The Director denied the variance and applicant appealed.

2. The site of the proposed development is a triangular shaped parcel bounded by Western Avenue, Elliott Avenue and Blanchard Street. The area of the property is 8,100 sq. ft. and that includes approximately 2,200 sq. ft. of Alaskan Way which was vacated by the City Council subject to conditions on appellant's petition. Those conditions include application for a master use permit for a structure presented to the City Council in concept drawings.

3. The site is zoned RM-MD and is located in the Belltown area of the Denny Regrade. It is immediately adjacent to the Alaskan Way Viaduct and an off-ramp.

4. The Director found that a variance would be required because Section 24.38.090 restricts development in this zone to lots of at least 12,000 sq. ft. except for residential or mixed residential and nonresidential use when the bulk regulations of Section 24.32.110, lot area requirements of the RMH 350 zone, are to apply.

5. Other bulk regulations for nonresidential use in the RM-MD zone establish the floor to lot area ratio as two times and the maximum height at 65 ft. The proposed development does not exceed those limitations.

6. Under the bulk regulations that would apply for residential use the height limit could be 350 ft. with design review. The floor area allowed a mixed use development would depend upon the percentage of residential use. Section 24.38.070.

7. Framework Policies A-P and Policies 1-26 and 41 of the Land Use and Transportation Plan for Downtown Seattle were adopted on September 24, 1984, and are the land use policies which apply to the downtown area including the Belltown area. The subject site is in the area designated as a residential neighborhood. According to Policy L and map at p.3a, Land Use and Transportation Plan for Downtown Seattle, as adopted. The language of Policies K and L in Appellant's Exhibit 10 was modified in the adopted version.

8. The subject property is one of only two small lots bounded on all sides by streets in the area. The other is developed with a City Light substation. There are other small lots in the area, however, they abut other properties which theoretically could be acquired to consolidate land to reach 12,000 sq. ft. in area for commercial development.

9. Appellant's architectural and planning expert testified that though variances would not be needed to build residential or mixed residential-commercial structure on the site the shape of the lot lends itself more to commercial than residential development, referring to the narrow point of the lot. It is his opinion that the site is not desirable for residential use because it is isolated from other uses by minor arterials, major arterials and the viaduct.

10. The site's proximity to the Public Market which is two blocks to the south and potential for views of Elliott Bay are attributes of the site which would be residential amenities.

11. Uses in the area include parking across the street to the south, abandoned commercial structures and a residential structure on Western. Further east on First and Blanchard is the Continental Plaza Condominium and to the west is the Alaskan Way Viaduct.

12. An all-residential development would cause a financial loss to the property owner, according to the appellant's expert.

13. The appellant's architect did not analyze a mixed use development because the client had not requested him to do so. He had assumed that the code would require at least 50% residential for a mixed use development.

14. With an all-residential development, assuming standard financing arrangements, the units would be higher than moderate cost units. Since the expert did not analyze mixed use, the cost of residential units in a mixed use development is not available.

15. Appellant's expert conducted a survey of recently completed condominiums in the area which extended south to the Public Market. Of approximately 140 units surveyed 75 units were for sale some of which are occupied by tenants. At the same time, there are waiting lists for low cost rental units.

16. Letters commenting on the variance application show a desire to have appellant's property, or at least the vacated

street, used for park or open space.

Conclusions

1. Variances from the provisions of the Land Use Code may be authorized when all of the facts and conditions set out in Section 23.40.20C are present. Appellant/applicant bears the burden of proof in this variance appeal.

2. The first condition is that an unusual condition of the property not created by the owner would cause the strict application of the Land Use Code to deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity. The condition relied upon by the applicant is the size and shape of the property and the fact that it is bounded on all sides by streets. The property is unusual in those features. The issue then is whether the property is denied comparable development rights because of these features. There has been no showing that other small properties have obtained variances to allow nonresidential uses in this area. There has been no showing that other small properties have been combined to create lots of larger than 12,000 sq. ft. for development of non-residential uses. It has been shown that appellant cannot add to its property beyond what has been done through the vacation, however, this alone is not sufficient to show that it is being denied development rights enjoyed by others.

3. The second requirement is that the variance not go beyond the minimum necessary to afford relief and not constitute a grant of special privilege inconsistent with limitations upon other properties in the area. The variance would go beyond the minimum necessary for relief where mixed use development is permitted outright on property of this size and there has been no showing that the inclusion of one or more dwelling units is not feasible. Moreover, other properties may be limited in their abilities to expand because of other considerations besides streets and further, all other properties similarly zoned are restricted in their use if they are smaller than 12,000 sq. ft. Therefore, the variance would be a grant of special privilege.

4. The third condition that must be found is that the variance would not cause material detriment to the public welfare or be injurious to property or improvements in the zone or vicinity. The variance to permit the office use instead of mixed or residential use would not injure any other property in that the scale could be even greater with residential use and no injury other than view blockage from scale is foreseen. Community desire for open space or a park cannot be considered since the owner has a right to use of the property consistent with zoning regulations applicable to the property. The only detriment to the public welfare is likely to be from the loss of opportunity for additional housing if all office use is permitted.

5. The fourth criterion is that the literal interpretation and strict application of the code would cause undue and unnecessary hardship. This has not been shown. The appellant did provide expert testimony that the site is not desirable for housing and any housing would be expensive, however, mixed use, which is permitted without variance, was not analyzed. Therefore, proof of this condition is not present.

6. The final criterion is that the variance would be consistent with the spirit and purpose of the Land Use Code and the Land Use Policies for the area. The purpose of the code provision restricting other than residential uses to lots of at least 12,000 sq. ft. is not stated however must be viewed in the context of the whole zoning scheme for the RM-MD which encourages


residential development. The parties differ as to the application of the Land Use Policies. Appellant urges that the intent of many of the policies would be met by providing a five story office building, mentioning Policy A, Preeminent Regional Center, Policy G, Urban Form, Policy I, Areas of Varied Character, Policy J, Office and Commercial Concentration, Policy L, Residential Neighborhoods, Policy M, Mixed Use Neighborhoods and Policy N, Shoreline. Appellant urges that this is a mixed use neighborhood where a mix of housing, office and retail uses are encouraged by Policy M in the area surrounding the office and retail core including the Denny Regrade. Appellant's position is that even if this is in what has been designated as a residential neighborhood where housing is indicated as a primary use, nonresidential uses still are permitted of a "scale and use compatible with a residential neighborhood". Since the site is in an area that has been designated as a residential neighborhood by the policies it must be concluded that a variance to permit the use of property for commercial use where residential use is a priority would be inconsistent with the policy.

7. All the conditions for variance set forth in the section must be met before variance may be authorized. Because not all the conditions are present the variance must be denied.

Decision

The Director's decision is affirmed and the variance denied.

Entered this 3/24 day of January, 1985.


M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW OF HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

The decision of the Hearing Examiner in this case is final 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 of the decision must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11); Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73.

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.