

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

In the Matter of the Appeal of

UNOCAL 76

FILE NO. MUP-88-044(V)

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

APPLICATION NO. 8801016

Introduction

UNOCAL 76 appeals the decision of the Director, Department of Construction and Land Use, to deny a variance for a service station proposal for property addressed as 159 Denny Way.

The appellant exercised the 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 August 10, 1988.

Parties to the proceedings were appellant by Lee Carlson and Jim Byers; and the Director, Department of Construction and Land Use, Christine Van Valkenburgh, land use specialist.

After due consideration of the evidence elicited during public hearing, the following shall constitute the Findings of Fact, Conclusions and Decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The facts of this case are essentially undisputed. The applicant wishes to construct a single-story, 96 sq. ft. (6 ft. x 16 ft.) area office and computer room addition to an existing gas station addressed as 159 Denny Way. DCLU denied the variance approval needed to allow the addition to the nonconforming use and the applicant submitted this appeal.

2. The subject property is located northwest of downtown Seattle within what is now a Downtown Mixed Commercial zone with a 65 ft. height limit. The 1985 Downtown Land Use Code prohibits automobile service stations as principal uses in the "downtown Seattle" area except for those within parking garages. DCLU regards the proposal to be an expansion of a nonconforming use which requires a variance from the prohibition of Seattle Municipal Code Section 23.49.28(C).

3. The irregularly - shaped subject lot has 141 ft. of frontage along north abutting Denny Way; 108 ft. of frontage to east abutting Eagle Street; and 175 ft. frontage to a south abutting alley. A portion of the lot also fronts (82 ft.) to Second Avenue. Vehicles access the site from the alley, Second Avenue and from Denny Way.

4. The subject property is located at the northernmost edge of downtown Seattle as defined by the Downtown Land Use and Transportation Plan, adopted by Ordinance 112303 July 13, 1985.

5. The lot is developed with a Union Oil/76 Station and parking lot. Included with the gas station use are two pump islands, a lube and tire service and a small sales room. The site buildings are generally located along the alley - side of the lot. As described by the applicant, the present sales room affords no security or privacy for cash accounting.

6. The lot is completely covered with impervious surfacing. The proposal would, if approved, cause temporary soil, air qua-

lity, noise and other construction - related impacts. A proposed tank replacement is not expected to generate any increase in the number of customer vehicle trips and did not require variance approval.

7. Denny Way is a heavily travelled, major traffic arterial.

8. The north block faces of Denny Way are outside of the downtown boundaries. These properties, zoned Neighborhood Commercial (NC3-65') and General Commercial (CG), are developed with residential, retail, parking lot, office, service station and similar low-scale uses. Service stations are permitted outright in NC zones.

9. Although there are two recently upgraded auto service stations on the north side of Denny Way (zoned NC), applicant's gas station is the only such service station on the south side of Denny Way (and thus within the downtown zone) from Westlake Avenue to Alaskan Way. The three service stations were zoned the same from 1923-1985.

10. DCLU's opinion is that

The enclosure of 6-foot by 16-foot...office/-computer space would be the minimum needed to perform the office work associated with the service station and improve the efficiency of the business...

On the other hand, DCLU concluded that variance approval would afford applicant a special, inconsistent privilege and that the approval would be precedentially detrimental to the public welfare.

11. The proposed addition would block no views but would be generally sandwiched between existing structural development. There is no other practical or reasonable location for the proposed addition. The business can continue to operate without the addition.

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to the procedures of Chapter 23.76, Seattle Municipal Code.

2. The requirements for a variance are cited at Seattle Municipal Code Section 23.40.20.

3. An application for variance relief is not summarily aborted because of the zone in which the subject property is located. The touchstone is whether comparable development privileges will be presented within the same zone or vicinity.

4. It is undisputed and the Hearing Examiner concludes that the requested variance does not exceed the minimum necessary to afford the relief desired.

5. The site's surroundings and location at the northernmost edge of a zone prohibiting service stations are unusual conditions that support variance relief. Denial of the variance would deprive applicant of minor upgrading privileges enjoyed by other service station properties within the same vicinity. Approval of the variance would be consistent with limitations upon those other properties within the vicinity. The unusual property conditions were not created by applicant.

6. In this case, variance relief would establish no material, detrimental precedent. Among other clearly unique and distinguishing characteristics are the site's consistent use history, the zoning history, the proximity to similar uses, and the minimum, inobtrusive degree of development proposed. Further, there are no other vicinity service stations along the

severely restricted.

7. Strict application of the code in this case would cause a hardship that is undue and unnecessary.

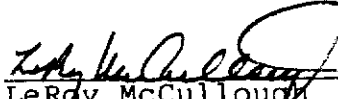
8. Accepting the proposal as an "expansion," a strict, literal reading of the Land Use and Transportation Plan for Downtown Seattle could suggest that a variance for the 6 ft. by 16 ft. addition should be denied. However, in that no increase is anticipated in base customer (automotive vehicle) traffic, the proposal should be considered as consistent with the "spirit and purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan component..." The proposal would facilitate service to the "broadest range of the region's population" and would enhance the retention of business within the "downtown" area. Land Use and Transportation Plan for Downtown Seattle, Framework Policies A, C. Further, the Land Use and Transportation Plan affords some leeway to the maintenance and expansion of nonconforming structures although within specific floor area ratio, setback, bulk and other standard parameters. Policy 45.

9. The variance should therefore be granted upon compliance with the landscaping and other SEPA conditions attached to the DCLU environmental decision.

Decision

The variance is Granted.

Entered this 25th day of August, 1988.


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 fifteen days of the date of this decision. Should such a request be filed, instructions for preparation of 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.