

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

PUGET SOUND BANK

FILE NO. MUP-88-064(V)
APPLICATION NO. 8803638

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

Introduction

Puget Sound Bank appeals the decision of the Director, Department of Construction and Land Use, to deny a variance to allow an extra drive-in lane at 4712 - 44th Avenue S.W.

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 October 26, 1988.

Parties to the proceedings were: appellant, Puget Sound Bank, by Ron Peterson, vice president; and the Director, Department of Construction and Land Use, by Jim Barnes, 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. The Exchange had obtained a building/use permit "to const kiosk and establish parking area as acessory (sic) for existing bank" in 1979. in october, 1987, a renewal of a permit with a different number was granted the savings bank of puget sound to "demolish 2 single family residences," "est use as a drive-in bank and const drive-in bank per plans." puget sound bank then applied for a variance to allow a third drive-in lane to be added to the approved facility. the director denied that variance and this appeal followed.

2. the site of the approved drive-in banking facility is made up of two lots mid-block on the east side of 44th Avenue S.W. The property now has a cash machine and parking for the appellant's branch bank. The site abuts an alley.

3. Appellant's branch bank is located across the alley from the subject site and has frontage on California Avenue S.W. and S.W. Alaska. The bank has been there since the mid 70's and is not experiencing any growth. It averages about 175 transactions per day which are made by about 150 customers per day.

4. The drive-in property is in a Neighborhood Commercial 2 65 ft. zone which extends to the north and south along the east side of 44th Avenue S.W. It faces property in the Neighborhood Commercial 2 40 ft. zone along the west side of 44th Avenue S.W. Across the alley to the east is a Neighborhood Commercial 3 85 ft. zone along both sides of California Avenue S.W. which is a pedestrian designated zone.

5. The existing permit is for a drive-in bank with two drive-in lanes. Appellant desires a third lane. The Director found that Section 23.47.028A.2 limits a drive-in bank to two

lanes in the NC2 zone so a variance from that provision would be required for the third lane.

6. Seafirst Bank has a drive-in facility with three lanes at the south end of the block in the NC2 zone associated with its branch at 4757 California Avenue S.W. First Interstate Bank has a four-lane drive-in facility at 4314 S.W. Alaska in the NC2 zone across S.W. Alaska from the subject block. U.S. Bank has a four-lane facility at 42nd S.W. and S.W. Edmunds in an NC3 zone and Rainier Bank has at least three lanes at 40th S.W. and S.W. Alaska in the NC3 zone. These drive-in facilities were established under prior zoning laws which allowed up to four lanes.

7. Appellant believes it is at a competitive disadvantage in this area because it cannot provide its existing customers with the convenience of drive-in banking.

8. Appellant does not expect to attract a significant number of new customers because West Seattle is not a growing area and it has numerous banks.

9. The uses both north and south of the subject site are principal use parking lots owned by an association of Junction merchants and property owners.

10. Appellant's experience is that one third of its customers use the drive-up facility if one is available which would be about 50 customers per day at this branch and transactions at the drive-up facility take 38 percent less time than transactions inside the bank.

11. The capacity of a two-lane facility is 40 customers per hour and with three lanes is 60 customers per hour.

12. The facility would have one lane entering the site at the south end of the property, three lanes for stacking and two lanes exiting at the north end of the site. A secondary entrance would be available from the alley. Several parking spaces will still be available for those using the bank across the alley.

13. Parking is of great concern in the "Junction".

14. Some intersections in the area are difficult because of vehicles entering from parking lots, through traffic and lack of traffic controls. Letters of concern about traffic congestion were received by the Department of Construction and Land Use from residents of the area.

15. The proposed extra drive-in lane would not add additional traffic to the area or generate demand for parking but would provide more room for stacking. Any accessory parking spaces lost to the lanes would be offset by the shift of customers from the in-bank to drive-up banking.

16. The structure to be constructed is to be one-story and 124 sq. ft. in area. The site is proposed to be landscaped.

Conclusions

1. A variance from provisions of the Land Use Code may be granted only when all the facts and conditions listed in Section 23.40.020C are found to be present. That section requires that because of unusual conditions applicable to the property not created by the applicant or owner the strict application of the code provision would deprive the property of rights and privileges enjoyed by other properties in the zone or vicinity; that the requested variance is the minimum necessary for relief and its approval would not confer special privilege on the property; that the variance would not cause material detriment to the public welfare or injury to other properties; that the application of the provision would cause undue and unnecessary hardship; and that the requested variance would be consistent with the spirit and purpose of the Land Use Code and policies.

2. As the unusual condition, appellant puts forth the fact that the current zoning applicable to the property limits the property to two drive-in lanes when four other nearby banks have three or more lanes. Though the code refers to an unusual condition "applicable to the subject property" and the development standards for the zone are applicable to the subject property, the zoning of the property and development standards applicable are not in the nature of the conditions applicable to the property intended to be the basis for the relief. The code provision, in reference to unusual conditions, states "...including size, shape, topography, location or surroundings...." The ejusdem generis rule of statutory construction require that the general words in the sentence accompanied by the more specific words as examples are to be read to embrace only similar kinds of factors. Electrical Contractors v. Pierce County, 100 Wn.2d 109, 667 P.2d 1092 (1983). Here, the specific words show a pattern of physical characteristics where the applicable zoning is a legal characteristic. Zoning, then, would not have been intended to be a factor on which the variance could be based, especially when it is the provision from which a variance is sought.

3. If relief were warranted, the variance for the addition of one lane would be the minimum necessary. Since the existing banks have at least three lanes the variance would not confer special privilege.

4. While concerns about traffic and parking impacts were voiced by area residents in their comment letters, the evidence showed that the additional lane would not generate more traffic nor cause greater parking demand on other facilities or on the street. Therefore, the requested variance would not cause material detriment to the public welfare or injury to other properties.

5. The restriction to two drive-in lanes in this case would mean customers of appellant would have less convenience than customers of the other banks and this would not be offset by any benefit to the general welfare. This restriction then would constitute unnecessary hardship.


6. The Neighborhood Commercial Areas Land Use Policies specifically address drive-in businesses by proposing restrictions on the number of lanes, requiring screening and landscaping and requiring a minimum amount of queuing space. The standards are intended to minimize traffic impacts and pedestrian-vehicle conflicts, avoid disruption of an area's business frontage and improve the appearance of the commercial area. p.23-74.14. The proposed facility with the additional lane, though conflicting with the limitation on the number of lanes, would not be inconsistent with the policy intent as traffic would not be increased, no business frontage would be disrupted since the site is now used for parking and the appearance would be improved with the proposed landscaping.

7. Since variance relief may be granted only if all the facts and conditions are present and the condition required by Section 23.40.020C.1, an unusual property condition, has not been shown the variance cannot be granted.

Decision

The variance is denied.

Entered this 10th day of November, 1988.


M. Margaret Blockars
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 party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

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, (206) 684-0521.