

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

FRANK GRANAT JR.

FILE NO. S-81-032

from an interpretation of the Director
Department of Construction and Land Use

Introduction

Appellant, Frank Granat Jr., appealed an interpretation of the Director of the Department of Construction and Land Use pertaining to moorage at 2201 Fairview Avenue East and 2321 Fairview Avenue East that the exchange of floating homes KCA 130 and KCA 146 with KCA 26 and KCA 192 could not be authorized since the total float area of the 2321 moorage would be increased.

The appellant exercised his right to appeal pursuant to the Seattle Municipal Code, Section 24.10.030, as amended.

Parties to the proceedings were: appellant, pro se; the Director of the Department of Construction and Land Use (DCLU) by Judy Talman.

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

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

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

Findings of Fact

1. Two of the subject floating homes, KCA 130 and KCA 146 are located at 2201 Fairview Avenue East in slips 1 and 2, respectively. Floating homes KCA 192 and KCA 26 are located in slips 1 and 2, respectively, of the moorage at 2321 Fairview Avenue East.

2. The legal description of 2201 Fairview Avenue East is:

Lot 1, Block 5, Lake Union Shorelands; together with adjacent land leased from the State of Washington between the combined harbor/pierhead line and Seattle Construction Limit Line.

The legal description of 2321 Fairview Avenue East is:

Lots 4 and 5, Block 54, Lake Union Shorelands; together with adjacent land leased from the State of Washington between the combined harbor/pierhead line and Seattle Construction Limit Line.

3. Both properties are zoned General Commercial (CG) and are designated Urban Stable/Lake Union (US/LU). The tidelands seaward of the pierhead line are designated Conservancy Management (CM).

4. The subject floating homes are located seaward of the pierhead line.

5. As modified at the public hearing, appellant proposes to relocate floating homes KCA 146 and KCA 130 to the 2321 moorage; and locate floating homes KCA 26 and KCA 192 to the 2201 moorage. The result would be KCA 26 in slip 1 at the 2201 address, KCA 192 in slip 2 at the 2201 address, KCA 130 in slip 2 at the 2321 moorage and KCA 146 in slip 1, also at the 2321 moorage.

6. The King County Assessors office records show the float areas of the subject floating homes are as follows:

KCA 130	1,058 sq. ft.
KCA 146	950 sq. ft.
KCA 26	726 sq. ft.
KCA 192	722 sq. ft.

In the past DCLU has relied on King County Assessor measurements although not all measurements have specifically matched DCLU measurements.

7. Appellant and DCLU differ in determinations of float areas for the four subject floating homes. Appellant suggests, for example, that the area to the sewer line of his floating home, KCA 26, should be included. DCLU shoreline compliance officer and witness Ed Schein, disagreed with appellant's suggested area of inclusion. Schein testified that in his view, a floating home's float area is any area of a floating home that is usable either for walking or indoor or outdoor storage. Schein obtained DCLU measurements by an on-site visit. The amount of a floating homes float area is pertinent to the issue of whether appellant's proposal would result in an increase in the float area of a given moorage.

8. Appellant submitted the following measurements:

Currently, 2201 Fairview	KCA 130	1,021 sq. ft.
	KCA 146	1,328 sq. ft.
Total float area		2,349 sq. ft.
Currently, 2321 Fairview	KCA 192	812 sq. ft.
	KCA 26	1,028 sq. ft.
Total float area		1,840 sq. ft.

9. DCLU measurement results were as follows:

Currently, 2201 Fairview	KCA 130	1,023.75 sq. ft. (excluding 182 sq. ft. of designated accessory float area)
	KCA 146	1,084.6 sq. ft. (excluding 144 sq. ft. of designated accessory float area)
Total float area		2,108.35 sq. ft.

Currently, 2321 Fairview	KCA 192	815.59 sq. ft.
	KCA 26	1,010.99 sq. ft.
Total float area		1,826.58 sq. ft.

10. The owner of KCA 146 related in his testimony his floating home ownership history and as well the history of the KCA 146 accessory float. That witness opined that DCLU measurements of KCA 146 appeared approximately correct.

11. Appellant testified that some accessory float areas, improperly included in the DCLU computation, were detachable.

Conclusions

1. In interpretation appeals, the ruling or interpretation of the Director will be given substantial weight. Hearing Examiner Appeal Rule 8.9. The burden of proof is on the appellant. The Director is affirmed.

2. This matter is adjudicated on the basis of existing measurements of the subject floating homes. No effort is herein attempted or required to adjudicate hypothetical rearrangements of detachable float areas.

3. Section 24.60.535(A)(6) provides that floating homes are not to be located between the combined pierhead/harbor line and the Seattle Construction Limit Line in Lake Union. The subject floating homes are located seaward of the combined pierhead/harbor line and therefore do not meet the locational provisions of the codified Shoreline Master Program.

4. Section 24.60.535(B) provides in relevant part that

the replacement...of a floating home at an existing moorage not meeting the...location provisions of this chapter shall be permitted if it results in no increase in the total float area as of the effective date of the adoption of this chapter....

5. As urged by appellant, in terms of actual Lake Union coverage, no difference will result if the proposed exchange is granted; rather, the location of the coverages will have merely shifted. Appellant was of the further view that since few if any floating homes are of equal size, the DCLU interpretation against allowing the proposed relocations would result in the freezing of the current locational pattern and the perpetual "right" of a floating home to its given moorage site.

6. The language of Section 24.62.535, however, militates against appellant's position. Section 24.60.535(A)(6) prohibits the location of floating homes between the combined pierhead/harbor line and the Lake Union Seattle Construction Limit Line. As a modification to that restriction


...the replacement, remodeling or new construction of a floating home at an existing moorage not meeting the... location provisions shall be permitted if it results in no increase in the total float area.... Section 24.60.535(B).
(Emphasis supplied.)

The moorage at 2321 is an existing moorage as contemplated by the referenced code provision. Section 24.60.535(B) is not read to address whether the total float area in all of Lake Union and its moorages would be increased by the proposed action. The code drafters could have specified such a result if that had been intended. However, in its present form, the subject of the "total float area" referred to 24.60.535(B) is an (or the) existing moorage, such as the moorage at 2321 Fairview. The action proposed by appellant would increase the total float area of the 2321 moorage in contravention of the code.

Decision

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

Entered this 17th day of December, 1981.


Leroy McCullough
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.