

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

In the Matter of the Appeal of
IRWIN L. AND BETTY LOU TREIGER

FILE NO. S-88-004

from an interpretation of the
Director, Department of Con-
struction and Land Use

Introduction

The appellant challenges an interpretation of the Land Use Code issued by the Director of the Department of Construction and Land Use. The interpretation concluded that an addition proposed for 1728 Howell Place, waterward of the residential setback line, was prohibited.

The appellant exercised the right to appeal pursuant to Chapter 23.88, Seattle Municipal Code.

Parties to the proceeding were the appellants, by Jeffrey W. Leppo of Bogle & Gates, and the Department of Construction and Land Use Director by Guy Fletcher.

This matter was heard before the Hearing Examiner on April 11, 1988.

For purposes of this decision all section numbers refer to the Seattle Municipal Code Title 23, as amended, unless otherwise indicated.

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

Findings of fact

1. The subject property is a waterfront lot on Lake Washington. It is located at 1728 Howell Place, in an area zoned Single Family 9600 (SF 9600) and designated for an Urban Residential (UR) shoreline environment.

2. The legal description of the lot is:

The south 30 ft. of Lot 3 and the north 45 ft. of Lot 4, Block 42, Lake Washington Shorelands;

Also the east 10 ft. of the south 30 ft. of Lot 10 and the east 10 ft. of the north 45 ft. of Lot 9, Block 1, Yesler and McGilvra's Addition to Seattle;

Also all that unplatted strip lying between the above-described portions of said Lots 9 and 10 and said Lots 3 and 4;

Together with a non-exclusive easement 20 ft. in width to Howell Place.

3. The established use of the property is a single family residence authorized by Building Permit No. 556669, issued on April 23, 1975.

4. The owners proposed several additions to the existing structure. Under Building Permit No. 633842 issued on November 5, 1987, the applicants obtained approval for remodelling the den, the utility rooms and the kitchen; but the proposal to expand the family room was not approved.

5. The proposed family room addition is located on the facade of the existing structure facing the water. The proposed addition would be 5 ft. by 12 ft. 6 inches, one story high. It would not be further waterward of the existing structure, but it would extend the existing building facade on the shoreside 5 ft. south of its present location.

6. The subject lot has a regular shoreline. The adjacent lots on both sides are developed with single family residences. The property to the north is addressed 1726 Howell Place, and the property to the south is addressed 1730 Howell Place. Both adjacent structures are within 100 ft. from the subject residence.

7. Based on the method established by (Director's) Rule 14-79, the residential setback line for the subject lot runs in a northwest-southeast direction, generally cutting through the existing dining room. The family room and its proposed addition are clearly waterward of the residential setback line.

8. The proposed family room addition would not affect the public's view of the shoreline because the subject property is located significantly below the street grade. Views of the adjacent residences would not be affected because the proposed addition is not further waterward of the existing residence. The addition would be visible from the water.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.88, Seattle Municipal Code. Seattle Municipal Code Section 23.88.020(E)(5) provides that the Director's interpretation shall be given substantial weight in an appeal and further, that it is the appellant's burden to establish a contrary position.

2. Seattle Municipal Code Section 23.60.198 (B)(1) provides that "residences on waterfront lots shall not be located further waterward than adjacent residences..." Reference former Seattle Municipal Code Section 24.60.395.

3. Director's Rule 14-79 (formerly Superintendent's Ruling 14-79) was promulgated to address the "determination of residential setbacks in the Shoreline District." By the definition in the Rule, appellants are seeking to extend the "principal structure" by expansion of the family room.

4. Director's Rule 14-79 defines "residential setback line" as:

The closest distance to the shoreline permitted for new residential structures or parts and for permitted accessory view decks and/or view balconies.

The rule also establishes the methods of determining residential setback lines. For a lot where the shoreline is regular and the adjacent lots on both sides are developed with residences within 100 ft., the Rule specifies that the residential setback line shall be determined by subtending a line between the nearest shoreside corner of the existing principal buildings on either side of the lot in question.

5. Director's Rule 17-82 states in part that

...no additions to existing residential structures shall be permitted in front of the residential setback line as determined by Director's Ruling 14-79 except for additions which are landward of the existing building, do not extend the width of the building relative to the shoreline, and are no higher than that portion of the building which they are behind.

6. The rule was promulgated to

clarify that Director's Ruling 14-79 applies to the remodelling of existing residences as well as to the construction of new residences. The one exception to the prohibition against new residential parts in front of the setback line will allow additions which are entirely within a landward extension of the existing building envelope. Such additions do not increase the amount of nonconformity of the building relative to the setback line and therefore should be allowed.

Director's Rule 17-82.

7. The subject family room addition would be waterward of the residential setback line. The addition would extend the southerly square footage of the structure waterward of the residential setback line and would increase the amount of structural height waterward of that setback line.

8. The proposed addition does not fall within the Rule 17-82 exception. The three exceptions are in the conjunctive. Per that Rule additions to existing residential structures are prohibited unless the additions are landward of the existing building.

9. The proposed addition would "increase the extent of nonconformity" in contravention of Seattle Municipal Code Chapter 23.60.124(A).

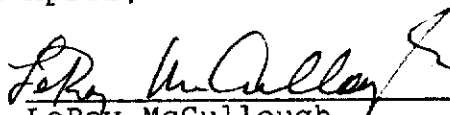
10. DCLU and appellant agree that the proposed expansion would not conflict with the goals and policies of the Seattle Shoreline Master Program. Because of the recessed topography the addition would impair no upland views of the shoreline areas. The Shoreline Policies must be considered on interpretation decisions, Seattle Municipal Code Section 23.60.004, but are not the sole determinants for decision-making.

11. The Hearing Examiner declines to decide in the context of this case that Director's Rule 17-82 is ultra vires or is otherwise invalid. The record reflects a reasonable basis for the Director's Rule.

Decision

The Interpretation is Affirmed.

Entered this 26th day of April, 1988.


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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 fourteen days of the date of this decision. Should such a 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. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.