

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

BARBARA T. YANICK

FILE NO. S-81-004

from a determination of the Director,
Department of Construction and Land Use

The motion of appellant Barbara T. Yanick for an Order of Restatement of Decision came before the undersigned Hearing Examiner.

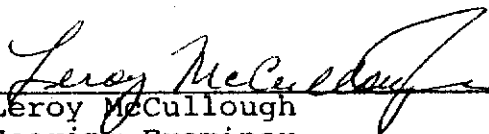
After having considered the written request of counsel for appellant; there being no objection from counsel for the Department of Construction and Land Use; and being advised in the premises:

IT IS ORDERED that the motion for Restatement of Order be and it hereby is granted.

The Decision in this case, S-81-004, entered February 17, 1981, is hereby modified to read as follows, effective nunc pro tunc:

The decision of the Director of the Department of Construction and Land Use that the appellant increased the specific side setback nonconformity by planking over existing pilings is AFFIRMED. The Director's decision that the surface area was increased by the remodeling is REVERSED.

Entered this 3d day of March, 1981.


Leroy McCullough
Hearing Examiner
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FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

BARBARA T. YANICK

FILE NO. S-81-004

from determination of the Director
Department of Construction and Land Use

The Decision of the Director,
Department of Construction and Land Use is affirmed.

Introduction

Barbara T. Yanick filed an appeal from a written interpretation by the Director of the Department of Construction and Land Use that work done to a preexisting pier at 1424 Lakeside Avenue South resulted in further violation of the bulk provisions of the Zoning Ordinance.

The appellant exercised her right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: appellant Yanick, represented by counsel Jerome L. Hillis, and the Director of the Department of Construction and Land Use by Gordon F. Crandall, Assistant City attorney.

This matter was heard before the Hearing Examiner on February 4, 1981.

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

Findings of Fact

1. The subject property is located on the west shore of Lake Washington at 1424 Lakeside Avenue South and is owned by appellant. The property is zoned Single Family Residence High Density (RS 5000) and is designated Urban Residential (UR) with Conservancy Management (CM) tidelands. Appellant has resided at this address since 1976.

2. In December 1979, the subject property owner applied for a building permit to "make dock repairs in kind to existing residential dock, per plan. (Remove eastern 12')". Department's Exhibit 2. The plot plan submitted therewith showed that a 6 ft. wide pier extended seaward for a distance of 144 ft., and that the pier was located 15 ft. from the north side lot line. Department's Exhibit 1. The plot plan was in error. In fact, the original pier was 4 ft. from the side lot line. The plan's hatched area represented a 12 ft. by 28 ft. area that would be eliminated by the proposal.

3. The pier was remodeled in January 1980. Whereas the original pier extended east, jogged south, then east, again, the remodeling involved covering two of the three pilings located roughly 4 ft. from the side lot line with planks. The easternmost piling was removed. The result was a pier that extends less waterward.

4. Based on aerial photographs of July 20, 1979, and August 9, 1980, the Army Corps of Engineers prepared drawings illustrating the configuration and dimensions of the original and remodeled piers. Appellant's Exhibit 3. The Director relied on these extrapolated measurements, and concluded that the jogged finger pier extension of the original pier was approximately 540 sq. ft. in area (35 ft. x 10 + 19 ft. x 10), and that the platform extension of the existing pier is approximately 552 sq. ft. in area.

5. Appellant's Exhibit 1 was personally prepared by the appellant in anticipation of work planned for the pier. That Exhibit shows, for example, a configuration with a greater north to south width (28 ft. vs. 25 ft.); and greater west to east dimensions. Per the appellant's Exhibit 1, the original pier area was 706 sq. ft. (22 ft. x 13 ft. + 35 ft. x 12 ft.). Appellant and the Department agree that the remodeled pier area approximates 552 sq. ft. Based on the direct knowledge and credibility of the appellant we find in accord with the appellant that the original pier was 706 sq. ft. in area and had a configuration with dimensions as illustrated in appellant's Exhibit 1.

6. An existing pier on the applicant's north adjacent lot is located less than 5 ft. from the common side lot line. Both piers predated the 1977 additions to the Zoning Code, i.e., the Shoreline Master Program Regulations, Article 21A.

7. The narrow finger pier of the remodeled pier is a portion of the original jogged finger pier.

Conclusions

1. Zoning Ordinance Section 21A.101(d) permits over water projections from single family piers:

"... limited to one finger or spur pier, angled extension, float or platform, not to exceed 100 square feet in area."

In addition, Section 21A.101(b)(1) prohibits piers' locations within 15 ft. of a side lot line unless the pier is shared with the adjacent lot owner or:

"... unless a pier is already in existence on said adjacent lot and located less than 5 feet from the common side lot line, in which case the minimum distance between a pier and ... the side lot line may be reduced to not less than 5 feet."

2. The original pier at 706 sq. ft. was nonconforming as to bulk as it was less than 5 ft. from the side lot line and exceeded 100 sq. ft. in area.

3. By Section 21A.17 of the Ordinance, the limitations of Ordinance Section 5.3 apply to "existing nonconforming developments." While Section 5.32 permits the alteration, repair or extension of a nonconforming building (see Section 3.03"B" definition), the action may not cause the building to further exceed the bulk provisions of the Ordinance.

4. Primarily two issues are presented; first is whether the surface area (nonconformity) was increased by the remodeling. We conclude that it was not. Based on the more direct and reliable testimony of record, we conclude that the original pier surface area was 706 sq. ft.; at present it is 552 sq. ft. Thus the surface area decreased.

5. The second issue is whether given the above conclusions, the nonconformity was nevertheless increased by planking over the preexisting pilings. Appellant urges that the pilings located 4 ft. from the side lot line and east of the jog point were "structures"; that as such they established the setback lines; that therefore, the planking adds no new area of nonconformity; and that any contrary conclusion would yield an impractical interpretation of the Ordinance.

6. The Director argued that covering the piling extended the nonconforming setback, since the location of pilings are not restricted except under circumstances not applicable to the instant case.

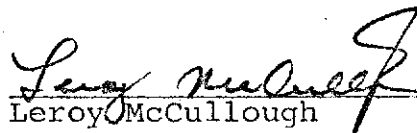
7. We conclude that the project increased the nonconformity of the side lot line by increasing in a waterward direction the net area nearer than 5 ft. to the side lot line. Appellant's argument would equate pilings and piers, and suggest that both establish the line of setback. Such a comparison is not supported by the Ordinance. Unlike pilings, piers are specifically restricted in their location. Section 21A.101. While the authorization criteria for pilings appears in the Ordinance their location is unrestricted except as indicated in Section 21A.104(c). Piers and pilings serve different purposes. In addition, one of the purposes of the Shoreline Master Program, viz. to "... preserve, enhance and increase views of the water and access to the water" is indeed better served by acknowledging the distinction between piers and pilings.

8. Thus, although the overall surface area of the nonconformity has been reduced, the specific side setback nonconformity has been increased. Variances from specific requirements or anomalies of the Ordinance may be authorized pursuant to Section 21A.61.

Decision

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

Entered this 17 day of February, 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. After 5 days from the date of this decision, a permit may be issued unless a party of record files with the Director of the Department of Construction and Land Use a written notice of intent to seek judicial review of the City's action. Any appeal to the Superior Court should be filed within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).