

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

In the Matter of the Appeal of

TODD WARMINGTON

FILE NO. S-81-008

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

Introduction

The applicant, Todd Warmington, appealed the interpretation of the Director which denied exchange of two floating homes at moorage at 2339 Fairview Avenue East because both exceed 16 ft. in height.

The appellant exercised his right to appeal pursuant to Municipal Code Section 24.10.070 (Section 25.44) of the Zoning Ordinance Title 24 (86300, as amended).

Parties to the proceeding were: Todd Warmington, appellant, pro se; and the Director, represented by James E. Fearn, Jr., Assistant City Attorney. David Keyle, President of Lake Shore Moorings, Inc., participated an Intervenor.

This matter was heard before the Hearing Examiner on April 1, 1981.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance, Municipal Code Title 24 (86300, as amended).

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 floating home moorages are located at 2339 Fairview Avenue East.
2. The exchange of houseboats proposed is KCA 185 from moorage "E" to "H" and KCA 153 from "H" to "E".
3. Both floating homes are classified as "existing".
4. Both floating homes exceed 16 ft. in height.
5. Both moorages are nonconforming moorages.
6. Concerning replacement and remodeling, Municipal Code Section 24.60.535(B.) states:

The replacement, remodeling or new construction of a floating home at an existing moorage not meeting the lot coverage, open water, site area, yard or location provisions of this chapter shall be permitted if it results in no increase in the total float area...and the height of the floating home does not exceed sixteen feet.

7. Floating homes have consistently been recognized as a unique feature of Seattle which should be preserved.

8. Legislation to preserve floating houses, but limit them has been reviewed by the Washington Supreme Court in Kennedy v. Seattle, 94 Wn.2d 376 (1980). Although the issues presented were not rent control and eviction rights, the reasoning applied to the eviction rights is pertinent to this case. The section of the Seattle Ordinance found unconstitutional in Kennedy v. Seattle, *supra*, required the owner of a moorage to locate "for the displaced floating house owner another lawful moorage site with the City of Seattle." Ordinance 107012, Section 2. Since that requirement was an impossibility, the result was to "in effect give a houseboat owner a perpetual right to use the moorage." 94 Wn.2d 376, 386. In the subject case, since both houseboats exceed 16 ft., the interpretation given would preclude either from being moved to another moorage, and in effect give a perpetual right to use the moorage to the houseboat owner.

9. Zoning interpretations are to reflect legislative intent. East v. King County, 22 Wn.App. 247 (1978). The intent of Section 24.60.535 appears to be to prevent any increase in density in the nonconforming moorages, either as to float area or height.

10. An exchange of floating homes which did not increase either height or float area would be consistent with the intent of the Ordinance, and a reasonable application of the Ordinance. Zoning Ordinances are to be construed as a whole and any unreasonable construction rejected. Bartz v. Board of Adjustment, 80 Wn.2d 209 (1972).

11. The analogy between land and nonconforming uses which are disfavored and water nonconforming moorages holds only so far. The existing houseboat is movable and therefore inherently different. This difference must be addressed in interpretations to avoid the perpetual use problem.

Conclusions

1. The exchange of two floating homes within this moorage does not increase total float area nor increase heights and is therefore within the intent of the Ordinance to avoid any increase in density.


2. The interpretation of the Director would result in perpetual use by the houseboat owner whose houseboat exceeded height limitations, and deprive the owner of the reasonable use of his property.

3. "Exchange" may be interpreted as different from "misplacement, remodeling or new construction" to permit a reasonable application of the Ordinance.

Decision

The decision of the Director of the Department of Construction and Land denying exchange of the two floating homes is REVERSED.

Entered this 13th day of April, 1981.


Joan B. Allison
Hearing Examiner, Pro Tempore

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).