

FINDINGS AND DECISION OF THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

GARY HURTEAU AND DAVID COLBY

FILE NO. MUP-89-057(V)  
APPLICATION NO. 8904033

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

Introduction

Appellants, Gary Hurteau and David Colby, appeal the decision of the Director, Department of Construction and Land Use, to deny a variance to allow expansion of a nonconforming use in a downtown mixed residential/residential (DMR/R) zone by moving their sheet printing press operations into a currently vacant 2,800 sq. ft. level corner or the existing structure, located at 2228 First Avenue.

The appellants exercise 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 Monday, November 20, 1989. The record was kept open until November 29, 1989, to allow for a site visit and submission of further evidence as requested.

Parties to the proceedings were appellants, pro se, and the Director, Department of Construction and Land Use, by Cheryl Waldman, Land Use Specialist.

After due consideration of the evidence elicited during the public hearing and site visit on November 29, 1989, and documents received prior to the closing of the record, the following shall constitute the findings of fact, conclusions of law, and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Appellants applied for a variance required to move their sheet printing press operations into a currently vacant 2,800 sq. ft. (approximately 40 ft. by 70 ft.) corner of the existing structure, located at 2228 First Avenue. The Director, Department of Construction and Land Use (DCLU), denied the variance.

2. The subject structure is situated on a parcel of land with a frontage along First Avenue of 210 ft. and a depth along Bell Street of approximately 111 ft., then along a back alley at the rear of the lot for 120 ft. and along the southern portion of the lot next to a parking lot for approximately 111 ft.

3. Based on the information garnered at the on-site visit, the vacant 2,800 sq. ft. corner is a rectangular space that runs approximately 40 ft. along First Avenue and 70 ft. in depth along Bell Street.

4. The subject lot is zoned downtown mixed residential/residential (DMR/R) and is situated in the Denny Regrade/Belltown area of the city.

5. The topography of the subject lot is steeply sloping to the west along Bell Street and also to the north along First Avenue. On First Avenue, the subject structure drops three ft. from the south corner down to the north corner. On Bell Street, there is a one-half story difference from the back of the structure to the front. The lowest point of the structure is the northwest corner.

6. The two-story structure consists of a main floor, mezzanine and second story. The main floor is occupied by appellants' printing business (approximately 12,000 sq. ft.), an unoccupied 2,800 sq. ft. space in the northwest corner and a subleased 1,600 sq. ft. space in the northeast corner of the building. The second story consists of three artist loft units on the First Avenue side of the structure and approximately 3,000 sq. ft. of limited use storage space. The floor of the second story cannot support the weight of the printing presses. The street frontage along Bell Street, due to the topography of the site, does not access the main floor. The main entrance is along First Avenue. The mezzanine floor is approximately 100 sq. ft. and of limited use.

7. The elevator, located at the rear of the structure, runs from the second story to the main floor level. The main floor is below ground level at the rear of the structure. The elevator is not capable of handling the heavy paper loads necessary to operate the printing presses.

8. It is undisputed that the structure has been used for a printing business for the past 23 1/2 years. It is also undisputed that appellant's printing business, Consolidated Press, is a nonconforming use in the DMR/R zone. The appellants purchased the printing business from Russ Newman 6 1/2 years ago. Mr. Newman testified that approximately 20 years ago the entire structure was used for the printing business. Since 1979, the 2,800 sq. ft. space has been used for a printing related business, which is no longer in existence. The printing related business was a conforming use of the DMR/R zone.

9. The proposal is to move the sheet printing operation from the southwest corner of the main floor to the vacant northwest corner. The proposal includes inserting double doors to provide access from First Avenue to the main floor and a customer service counter (approximately 50 ft.).

10. The alternative to using the vacant space would be to move the business to another structure. The alternative would cost approximately \$50,000 to move the equipment, remodel and improve the other structure, and to perform the needed electrical work.

11. Consolidated Press prints newspapers, business cards, flyers, and various camera-ready, sheet and rolling press materials. The majority of Consolidated Press' business consists of printing newspapers.

12. There is a DMR/C zone within one block of the lot. Light manufacturing, i.e., printing presses occupying more than 5,000 sq. ft., are permitted within DMR/C zones.

13. Murray Publishing, located in the DMR/R zone, and Valco Graphics, located within the same vicinity in a DMR/C zone, occupy substantially larger spaces (approximately 20,000 sq. ft. each). Murray Publishing has not applied for any variances. Murray Publishing's nonconforming use in the DMR/R zone was grandfathered and Valco Graphics does not need a variance since it is a permitted use in the DMR/C zone.

14. Murray Publishing has both printing press operations and a publishing business. Valco Graphics is a printing press operations similar to Consolidated Press.

15. The Belltown area has numerous printing related businesses, as well as other printing presses.

16. Eleven letters supporting the application were submitted, together with a petition signed by 102 supporters.

Conclusions of Law

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.76.022, Seattle Municipal Code.

2. The Director's decision on the Master Use Permit shall be given no deference on review. Seattle Municipal Code Section 23.76.022.C.7.

3. In the DMR/R zone, light manufacturing uses are prohibited as both principal and accessory uses. Section 23.49.144E. Consolidated Press, at its present size of over 12,000 sq. ft. of space, falls within the light manufacturing definition. "Light manufacturing" is defined by the Seattle Municipal Code as printing plants with more than 5000 sq. ft. of floor area. Seattle Municipal Code Section 23.84.025(4). The code provides that the nonconforming use shall not be expanded. Seattle Municipal Code Section 23.49.028B.

4. The nonconforming use of the 2,800 sq. ft. space as a part of the operations of Consolidated Press is not grandfathered in because the nonconforming use was not, on the basis of the evidence presented, one which existed prior to establishment of the present zoning code as provided by Section 23.04, Seattle Municipal Code.

5. Appellants' proposal which has been characterized as an expansion of a nonconforming use does not constitute a continuation of a nonconforming use after a discontinuance of more than twelve consecutive months as mandated by Seattle Municipal Code Section 23.49.028A because the immediate past use of the 2,800 sq. ft. space at issue, as a printing related business, was conforming in nature with the DMR/R zone.

6. Seattle Municipal Code Section 23.49.160 requires that at least 75 percent of street frontage in the DMR/R zone in the Belltown area of the City be occupied at street level with these six uses: retail sales and services, except lodging; human service uses; day care centers; customer service offices; entertainment uses; and museums. Seattle Municipal Code Section 23.49.160A.B. Retail sales and services are defined as goods sold at retail to the general public for direct consumption and not for resale. Seattle Municipal Code Section 23.84.032. Merchandise may be processed if the production is incidental or subordinate to the selling. Seattle Municipal Code Section 23.84.032. Consolidated Press prints newspapers, flyers, business cards, and assorted camera, sheet, and rolling press material. The majority of the printed matter does not fall within the definition of retail sales and service since the majority of the material printed are newspapers that are not sold at retail to the general public for direct consumption. The printing of the materials is not incidental or subordinate to wholesale selling of the printed material.

7. Appellants have proposed to use a small portion 50 ft. (10 ft. by 5 ft.) of the 2,800 sq. ft. to put in a customer service desk to allow customers to pick-up and drop-off materials or examine the printed materials. A customer service office is defined in Seattle Municipal Code Section 23.84.028 as on-site customer services which encourage walk-in clientele and in which generally an appointment is not needed to conduct business. The given examples of customer service offices include travel agencies, banks, brokerage firms, and governmental agencies providing direct services. Seattle Municipal Code Section 23.84.028. The service desk falls within the broad definition of a customer service office contained in Seattle Municipal Code Section 23.84.028. However this 10 ft. long space is not 75 percent of the total street frontage of either the 40 ft. of the proposed variance or the approximate 120 ft. of total First Avenue frontage.

8. A variance from the code requirements may be granted only if each of the five conditions listed in Seattle Municipal Code Section 23.40.020 are met.

9. The first requirement is that there be an unusual condition of the property, not created by the owner or applicant, because of which the strict application of the code would deprive the property of the rights and privileges enjoyed by other properties in the same zone or vicinity. Seattle Municipal Code Section 23.40.020(c)(1). Appellants offer three unusual conditions: the sloping topography; inability of the elevator and second story flooring to withstand heavy paper loads; and the location of the lot within one block of a DMR/C zone. The sloping topography is undisputed. While it is a condition shared by the property owners and renters in the zone, in this structure the sloping topography means that the heavy paper rolls and sheet paper can only go through double doors on First Avenue. The lowest point in the building is the southwest corner. The existing structure's elevator is unable to take the roll and sheet paper weight. The second story flooring is similarly unable to take the weight of the sheet presses. The location of the property next to the DMR/C zone does not qualify as an unusual condition since it is shared by many properties in the zone or vicinity. In this situation, approval of the variance is consistent with the unusual property conditions.

10. The second requirement is that the requested variance not go beyond the minimum necessary for relief or constitute a grant of special privilege. Seattle Municipal Code Section 23.40.020(c)(2). The requested variance constitutes the minimum necessary relief to allow the sheet presses to function effectively. There were comparable businesses in the same vicinity or zone. For example, Murray Publishing and Valco Graphics are similar sized printing companies. Each occupies a substantially larger square foot area than appellants. Murray Publishing has not applied for a variance. The standard is whether comparable development rights will be presented within the same zone or vicinity. See also MUP-88-044(V). In this instance, approval of the variance affords comparable development rights without constituting a grant of special privilege.

11. The third requirement is that the requested variance not cause material detriment to the public welfare or injury to other property in the area. Seattle Municipal Code Section 23.40.020(c)(3). Approval of the variance would create no material detriment. The eleven letters and petitions signed by 102 persons indicate a high level of community support. The site and structure have a consistent use history, proximity to similar uses, and the development proposal is minimal and unobtrusive.

12. The fourth requirement is that literal interpretation and strict application would cause undue and unnecessary hardship. Seattle Municipal Code Section 23.40.200(c)(4). Strict application of the code would cause a hardship in relocating the business that is undue and unnecessary.

13. Finally, the variance must be consistent with the spirit and purpose of the Land Use Code and SFRAP Section 23.40.020(c)(5). Similar to MUP-88-044(V), characterizing this variance application as an expansion by virtue of a strict, literal interpretation of the Land Use Code and adopted land use policies would possibly suggest a denial and thus violate that spirit and purpose. The proposal is consistent with retention of business in the downtown area and consistent with the current printing press character of the Belltown area.

Decision

The decision of the Director, DCLU, is REVERSED. The variance is GRANTED.

Entered this 14<sup>th</sup> day of December, 1989.

Gail S. Fujita  
Gail S. Fujita  
Hearing Examiner Pro Tempore

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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.