

FINDINGS AND RECOMMENDATION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Application of

CIHAN ANISOGLU FOR FRED STEINER

PROJECT NO. 8803323
C.F. NO. 297242

for Council conditional use
approval pursuant to the
provisions Title 23, Seattle
Municipal Code as amended

Introduction

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

Applicant proposes to construct a single family residence with an accessory pier at Lot 9, Block 44 Rainier Beach Addition; located at 9714 Rainier Avenue South. Approval of variances are required to allow a portion of the principal structure to extend into the front yard required by Seattle Municipal Code Section 23.44.014A (10 ft. setback required; zero ft. (0') setback provided) and to allow parking in the required front yard, Seattle Municipal Code Section 23.44.016C.2.

The proposal also requires a shoreline variance to allow the principal structure to be located farther waterward than adjacent residences following city approvals. The decision on a Shoreline Development Permit to allow construction of a single family residential pier in a Conservancy Recreation environment, Seattle Municipal Code Section 23.60.204B.5a, is also to follow city approvals. A SEPA analysis, pursuant to Seattle Municipal Code Chapter 25.05, disclosed that short and long term impacts are anticipated from this proposal.

The Director's report, submitted by the Department of Construction and Land Use (DCLU), recommended that the application be conditionally granted in that the requested front yard variance be granted; and that the requested parking variance be conditionally granted to allow two parking spaces according as conditioned. This report also made a threshold SEPA determination of non-significance (DNS) with conditions. These are appealable decisions.

The Director also recommends that the proposed structure be allowed to exceed the maximum allowable height of fifteen (15') and to be constructed to a total height of thirty ft. (30'). This recommendation requires a Council Conditional Use approval.

The Director further recommends that following City approvals the requested shoreline variance to allow the principal structure to be located farther waterward than adjacent residences as established in Seattle Municipal Code Section 23.60.198B and C., the Seattle Shoreline Master Program, be granted; and the shoreline development permit to allow construction of a single-family residential pier in a CR environment pursuant to Seattle Municipal Code Section 23.60.204B.5.a be conditionally granted (the pier would not conform with Seattle Municipal Code Section 23.60.204A which encourages development of shared piers).

This matter was heard before the Hearing Examiner on October 10, 1989.

Parties to the proceedings were: project applicant was represented by Cihan Anisoglu. The DCLU Director was represented by Jay Laughlin, land use specialist.

Three letters were received during the public comment period ending January 10, 1989. One letter supported the proposal as

being of comparable scale as surrounding development. A second letter from the Rainier Beach Community Club objected to the proposal based on concerns arising from restriction of public access to the shoreline, diminution of water quality, fish and waterfowl habitat, and disruption of recreational use of the shoreline. A third letter from the adjacent property owner to the south objected to the proposal based on its potential to block views, interfere with navigation and add unacceptable levels of bulk to the shoreline. These letters are part of the record herein. No live testimony in opposition was entered on the record at the time of the hearing. Exhibit 7, 5, and 6.

After due consideration of the evidence of record from DCLU, applicant, and of the letters submitted during the aforementioned public comment period; the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this application.

Findings of Fact

1. The site for construction of the proposed single family residence is located on Rainier Avenue South on the west shore of Lake Washington near the south City limit. The site is zoned as Single Family 5000 (SF 5000), with a shoreline designation of Urban Residential (UR) on the dry land portion of the site, and Conservancy Recreation (CR) on the submerged portion. The site has a total area of 6,092 sq. ft. with approximately 1,090 sq. ft. on dry land and approximately 5,000 sq. ft. on submerged land. The site has 53.97 ft. of frontage on Rainier Avenue South. The site slopes steeply downward from west to east. Total elevation change from the street property line to the shoreline is eight vertical feet over 20 horizontal feet. The horizontal distance from the property line to the curb face is 25 ft., having an equivalent slope. Exhibit 16.

2. The site area is approximately one half mile north of the Renton-Seattle border in south Seattle. Development in the area consists almost exclusively of single family residences. A small scale commercial area is located to the southwest of the site. Development along the shoreline consists of a mix of small-scale cottage-like homes and larger, contemporary residences. A number of newer residences have been built partially over water. Two of these residences are located at 9636 and 9640 Rainier Avenue South respectively. Exhibit 19 and 21.

3. Applicant proposes to construct a new single family residence with accessory deck and pier. The residence is to have 2,600 sq. ft. of living area, a 480 sq. ft. deck, and a 625 sq. ft. garage. The front of the residence along Rainier Avenue South will be built to the property line with no front setback. The rear of the house and an adjoining deck would extend between 21 and 27 ft. over water. Exhibit 1.

4. The height of the proposed structure would be 35 ft. above the level of ordinary high water along the east elevation. The height along the street property line would be approximately 14 ft. above the elevation of Rainier Avenue South. The proposed structure would have three floors to accommodate the considerable grade change from the street to the Lake Washington shoreline. All three floors would have equivalent floor area. Therefore, the structure would not be terraced down the slope.

5. The proposed deck would be approximately 3 ft. higher than the level of ordinary high water. A pier 6 ft. wide by 22 ft. long would extend from the deck to the line subtended between piers built on neighboring properties.

6. The proposed structure as planned would have a zero foot shoreline setback. The rear of the structure would have a maximum overwater extension of 16 ft. Exhibit 1, p.1. Consequently, the structure is to be located farther waterward

than adjacent residences. Exhibits 3 and 10. This siting is necessitated by the small, very narrow area of dry land on the lot.

7. The shoreline orientation from southwest to northeast is skewed in that lateral views across the subject property are currently available to the adjacent property owner to the south. Exhibit 1. DCLU has noted in its report that view blockage from the proposal would result potentially adverse effects on adjacent property to the south.

8. As noted in the introduction, that adjacent property owner has objected to the proposal primarily because of this potential to block his lateral water views. On the day of the hearing, testimonial evidence in the form of a second letter dated October 6, 1989 was received from the adjacent property owner and admitted into evidence. Exhibit 25. This evidence took exception to the description of the residential development surrounding the proposed construction site in the DCLU report.

9. The testimonial letter also takes exception to the Director's finding that much of the relatively recent development in the area "has similar overwater construction as that proposed." Exhibit 16 p. 4. Mr. Bolton, the adjacent property owner, asserts in his letter that

The homes that do incorporate over-water construction are by far in the minority. In addition, none are quite as ambitious as the proposed sites (sic) waterwards development, nor are they for the most part adjacent to land built houses....

The Hearing Examiner finds that this assertion is not supported by the evidence. Approximately sixteen (16) lots north of the proposed construction site are three properties similar in construction to that proposed. Exhibit 19. The residence at 9640 Rainier Avenue South is forty ft. (40') wide by fifty-two ft. (52') long, thirty seven ft. (37') of which is over water. Exhibit 21. The residence at 9642 Rainier Avenue South also sets waterward and is of similar dimensions. Exhibit 21, p.4. The SEPA DNS which was issued as part of the permit process for the residence sited at 9640 Rainier Avenue South noted that

Many of the homes along this stretch of Rainier Avenue South are built on pilings over water due to the steep bank drop 20-40 feet to the Lake, and the considerable percentage of each lot which is submerged.

Exhibit 21, p 2. In addition, evidence elicited at the hearing established that a similar overwater construction as that proposed is now sited at 9636 Rainier Avenue South.

10. Mr. Bolton also asserts that the deck of the proposed residence extends past the deck of his residence to the south unless his dock (which he states serves as a deck) is included and the proposed pier is excluded. He thus opposes the requested shoreline variance as a grant of special privilege. This assertion regarding the proposed deck is not supported by the evidence and is contrary to the the pier line map of the site plan. Exhibit 1, p.1.

11. Applicant proposes to construct a three (3) story residence which would be thirty five ft. (35') above the level of ordinary high water along the east elevation; the height above the street property line would be approximately fourteen ft. (14') above the elevation of Rainier Avenue South. Exhibit 16, p.2.; Exhibit 1.

12. At the hearing, DCLU testified that residences constructed prior to the early 1970's were more modest in size and extended less over water because of then applicable land use standards. Residences comparable to the proposed structure were,

according to DCLU's uncontradicted testimony, constructed in the recent past under the current land use standards which went into effect in 1976. As such, the Hearing Examiner finds that the proposed construction is not out of scale with that which has occurred in this area since the mid 1970's.

13. The proposed DCLU recommended structure of thirty feet (30') in height exceeds the maximum allowable height of fifteen ft. (15'). Seattle Municipal Code Section 23.60.394A. It is five (5') less than the applicant's proposed height for the structure. Applicant's proposed height includes five ft. (5') of pitched roof. Exhibit 2, p. 5. However, the additional recommended height would still be approximately fourteen ft. (14') above Rainier Avenue South. The Hearing Examiner finds this street level would not greatly impact the public from Rainier Avenue South.

14. The adjacent property owners would be greatly impacted by the construction of a residence on the subject site of thirty feet (30') in height. Specifically, Mr. Bolton, the adjacent property owner to the south would lose part of his existing view to the north across applicant's property. The Hearing Examiner finds, however, that the small amount of dry land on the site of this legal lot severely limits the constructable area of the lot such that less than three stories might render the proposed construction infeasible.

15. The Hearing Examiner also finds that the proposed height limit is consistent with the pattern of recent development elsewhere in the immediate vicinity for waterfront properties. Exhibits 19 and 21.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to the procedures Title 23, Seattle Municipal Code.

2. The burden of proving that a conditional use or a variance meets applicable criteria shall be upon the applicant. Seattle Municipal Code Section 23.60.064B. The procedures for meeting that burden shall be as required in Seattle Municipal Code Section 23.76, for a Master Use Permit and a Council Land Use Decision. Seattle Municipal Code Section 23.60.064A and .064C. Moreover, Chapter 23.60 is to be liberally construed in order to give full effect to the objectives and purposes of Chapter 90.58 RCW, the State Shorelines Management Act of 1971. Seattle Municipal Code Section 23.60.012.

3. The approval sought is one which requires a Council land use decision. It is a Type IV decision which is quasi-judicial in nature and made by the Council pursuant to existing legislative standards and based upon the Hearing Examiner record and recommendation. Seattle Municipal Code Section 23.76.004C. As such, the Director of DCLU has to prepare a written report on the decision for the application and any associated variances, special exceptions and administrative conditional uses. Seattle Municipal Code Section 23.76.050A.

4. Consistent with the requirement of this aforementioned code section the Director's report herein submitted contains the written recommendations or comments of affected City departments and other governmental agencies having an interest in the application, to wit; Gregory M. Bush, manager, environmental planning division of Metro by letter dated December 20, 1988, that Metro had reviewed the proposal and anticipated no significant impacts to its wastewater facilities. Metro did require that certain mitigation measures be employed during construction to protect water quality of Lake Washington by (1) preventing the introduction of toxic materials, petrochemicals and other pollutants into the surface water; (2) promptly removing floating debris; and (3) using a silt curtain or other techniques if any dredging occurs. Exhibit 8. The applicant has disclosed in the environmental checklist that there will be no dredging. Exhibit 15.

5. The Director's report must also include the responses to written comments submitted by interested citizens in response to any notice of application. Seattle Municipal Code Section 23.76.050A.2. As noted in the introduction, three letters were received during the public comment period. The letter of Larry G. Rand supported the proposal, Exhibit 7; the letter from the Rainier Beach Community Club misidentified the site but raised appropriate concerns about the adverse effects of new construction on fish and waterfowl habitat, on parking, on view blockage, on overdevelopment of the site, and on the dimensions of the proposed pier, Exhibit 5; the letter of Brian Bolton objected to loss of part of his existing view to the north across the subject site, objected to alleged navigational hazards and view problems posed by the proposed residential pier, and objected to the proposed structure as being out of character and scale with other structures in the surrounding neighborhood. Exhibit 6. The Hearing Examiner concludes that the Director made appropriate and adequate responses to the written citizen comments received.

6. The Director's report also was required to

evaluate the proposal based on the standards and criteria for the approval sought and consistency with the applicable goals and objectives of Seattle's land use policies as referenced in Seattle Municipal Code Chapter 23.16, the City's SEPA policies, as referenced in Seattle Municipal Code Section 25.05.660, and any other applicable official City policies....

Seattle Municipal Code Section 23.76.050A.3. The maximum height permitted outright in the CR Environment is fifteen ft. (15'). Seattle Municipal Code Section 23.60.394A.

7. Under ordinary circumstances the Shoreline District regulations requires that the height permitted in the Shoreline District "be the lower of the heights permitted by the applicable shoreline environment and the underlying zone." Seattle Municipal Code Section 23.60.014B.2. Shorelines within the underlying SF 5000 zone may have a maximum permitted height of thirty ft. (30'). Seattle Municipal Code Section 23.44.012. Thus, the Shoreline District regulation takes precedent over that governing the underlying zone.

8. Pursuant to a Council Conditional Use, the maximum height permitted can reach thirty ft. (30'). The ridge of pitched roofs, such as indicated in appellant's proposal, may extend five ft. (5') above the height permitted by this section. Seattle Municipal Code Section 23.60.394C. Thus appellants proposed height of thirty-five ft. (35') which includes a pitched five ft. (5') roof may be granted pursuant to a Council Conditional Use approval. Seattle Municipal Code Section 23.60.394B. No specific standards or criteria are set forth in the State Shorelines Management Act for approval of heights in excess of the fifteen ft. (15') height limit.

9. The Adopted Policies of Chapter 23.16 state as pertinent herein that the purpose of those policies

is to preserve and maintain the physical character of single family residential areas in a way that encourages rehabilitation and provides housing opportunities throughout the city for all residents.

Seattle Municipal Code Section 23.16.002. Moreover, in cases where there are steep slopes, such as here, the Director is empowered to "determine which adjacent residences should be considered" in making a recommendation upon a request to exceed the maximum allowable height in the CR zone. Id. (Bulk and Siting Policy Intent).

10. In view of the liberal construction which is to be given Chapter 23.60 to fully effectuate the objectives and purposes of Chapter 90.58 RCW the Hearing Examiner concludes that the Director has carefully considered (1) view blockage of upland properties by the approximate twelve (12) ft. of proposed structure which would rise above street level; (2) the consistency of the proposed structure's use, bulk and siting dimensions with comparable and recent single family residences; and (3) the protection to be afforded against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life while protecting generally public rights of navigation and fostering a reasonable and appropriate use by developing this shoreline site in a manner which promotes and enhances the public interest. RCW 90.58.

11. The Hearing Examiner also concludes that the Director has complied fully with Seattle Municipal Code Section 23.76.050A.4 by providing an annotated environmental checklist along with a DNS. Exhibit 15 and 2. This environmental checklist led to a soils report which recommended that a piling foundation system projecting out approximately fifteen ft. (15') over Lake Washington be driven through the soft soils and that a bulkhead bearing wall to guard against shoreline erosion be provided. Exhibit 14. Engineering Department comments received after the close of the hearing further establishes that soils stability in the environmentally sensitive area are adequately resolved. Exhibit 22. Thus, the Hearing Examiner concludes that the potential for this steep slope to slide have been addressed and eliminated.

12. It is concluded that short-term construction related SEPA impacts of decreased air quality; potential erosion during footing/bulkhead excavation and general site work; tracking of mud by construction vehicles onto adjacent streets; increased traffic and parking demand from construction equipment and personnel; conflict with normal pedestrian movement adjacent to the site; increased noise; water quality impacts and consumption of renewable and nonrenewable resources will result.

13. The Director's determination that the temporary nature and limited scope of these impacts cause them to not be considered significant is supported by the environmental documents and information in the DCLU file. Seattle Municipal Code Section 25.05.340. Moreover, the Hearing Examiner concludes that the report describes reasonable mitigation measures that would significantly mitigate these temporary impacts. Seattle Municipal Code Section 25.05.440E.1.

14. The Hearing Examiner further concludes that the Director has satisfied the requirements of the State Environmental Policy Act, RCW 43.21C and as such, his report has fulfilled the requirements of Seattle Municipal Code Section 23.76.050 with respect to the recommendation on the requested Council Conditional Use.

15. The Hearing Examiner concludes that the unusual lot size, shape and topography of the subject property, which was not created by the owner or applicant, should be granted a variance from the strict requirements of Chapter 24 with respect to allowing a portion of the principal structure to extend into the front yard required by Seattle Municipal Code Section 23.44.014A. Granting of that variance will not detrimentally effect the public welfare or be injurious to the property or improvements in the zone in which the property is located. Literal interpretation and strict application of the applicable provisions of Seattle Municipal Code Section 23.44.016C2 and Chapter 24 would cause undue and unnecessary hardship as well as be inconsistent with the spirit and purpose of the Land Use Code, adopted Policies or Comprehensive Plan component, where applicable.

16. Allowing parking in the front yard required by Seattle Municipal Code Section 23.44.016C2 would require an unreasonable reconfiguration of the floor plan which would result in substantially more of the structure being located overwater. The

severe slope of the lot and the small area of dry land further requires that parking be located as near the street property line as feasible.

17. These aforementioned site limitations are property conditions which are characteristics of the lot. As such to strictly apply the Seattle Municipal Code would deprive the property of similar rights and privileges of other properties in the SF. 5000 zone.

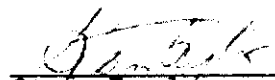
18. However, two spaces rather than three are the appropriate number necessary to afford a reasonable amount of parking. Two spaces are typical of recent development and consistent with the small amount of space reasonably available for parking. Thus, subject to required approvals, a variance to allow parking, as conditioned, would not exceed the minimum necessary to afford relief or constitute a grant of special privilege and should therefore be conditionally granted as recommended.

19. Long term SEPA impacts, specifically increased surface water runoff from greater site coverage by an impervious surface; increase site bulk; increased ambient noise associated with increased human activity and vehicular movement; minor increase in light and glare from exterior lighting and from vehicular traffic; as well as other associated impacts set forth in the Director's report are typical of a single family development and will be mitigated by applicable City codes and ordinances referenced in that report. Thus, it is concluded that further mitigation is not warranted.

Recommendation

In accordance with the foregoing, the Hearing Examiner recommends that the Council conditionally approve the Council Conditional Use application.

Entered this 6-1 day of November, 1989.


Stan Taylor
Deputy Hearing Examiner

NOTICE OF RIGHT TO PETITION FOR FURTHER CONSIDERATION

Pursuant to Seattle Municipal Code Section 23.76.054, as amended, any person substantially affected by a recommendation of the Hearing Examiner may submit a petition in writing to the City Council requesting further consideration. The petition must be submitted within fifteen days after the date of mailing the recommendation of the Hearing Examiner and addressed to: City Council, Urban Redevelopment Committee, Municipal Building, Seattle, Washington 98104. The request for further reconsideration shall clearly identify specific objections to the Hearing Examiner's recommendation, facts missing from the record, and the relief sought.

Pursuant to Seattle Municipal Code Section 23.76.054(D), if there is no request for further consideration Council action shall be based on the record established by the Hearing Examiner.

The City Council Urban Redevelopment Committee should be consulted for further information on the Council review process.