

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

In the Matter of the Appeal of

JOHN HANWAY, JR.

FILE NO. S-77-007

from a ruling of the Superintendent  
of Buildings

The appeal is DENIED and the decision of  
the Superintendent of Buildings is affirmed,  
with the exception that no height variance  
is required.

Introduction

The appellant, John Hanway, Jr., filed an appeal from a ruling of the Superintendent of Buildings which determined that a conditional use and variances were required for the proposed development of property located at 1315 N.E. Boat Street.

The appellant exercised his right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

This matter was heard before the Hearing Examiner on March 30, 1977.

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. On February 24, 1977, the Superintendent of Buildings (hereinafter the Superintendent) issued findings and a decision with regard to a request by the appellant for an interpretation of certain provisions of the zoning ordinance. Notice of this ruling was published on March 1, 1977, and the appellant filed the appeal on March 15, 1977.

2. The appellant applied for a substantial development permit for the construction of an office building on December 23, 1974, for property located at 1315 N.E. Boat Street. The permit was issued on August 29, 1975 with the condition that a specified amount of the building contain residential space.

3. The subject property is located near Lake Union and is within an area regulated by the Seattle Shoreline Master Program, so that a substantial development permit is required for development of the property. The property is also located in a Manufacturing (M) zone.

4. At the time the substantial development permit was applied for and issued, Draft 4 of the shoreline program was in effect. Subsequent to Draft 4, two additional drafts of the program became effective with the final draft, Draft 6, being promulgated as the final Seattle Shoreline Master Program. This document was approved by ordinance and amended the zoning ordinance (86300) and is referred to as Article 21A.

5. Uses which are not allowed in the underlying M zone are not permitted in a shoreline environment designation, pursuant to Section 5.1.1, Draft 4. While the development of a multiple family residential use is permitted outright in the shoreline environment designation in which the subject property is located, it would not be permitted in an M zone except as a council conditional use, pursuant to Section 19.31(a), Ordinance 86300, as amended.

6. The appellant's proposed development includes a structure that would be consistent with the height limitations of Draft 4, pursuant to Section 5.3.11, but would be contrary to the provisions of the underlying M zone, pursuant to Section 12.53, Ordinance 86300, as amended. The proposed front yard setback for the development would be in variance with both Draft 4 and the underlying M zone requirements. The Superintendent has not yet determined whether the proposed side yard setback is consistent with either the Draft 4 or the M zone requirements.

7. The regulations for the shoreline environment designations supplement and modify the requirements of the underlying M zone, pursuant to Section 5.1.1, Draft 4. This draft at Section 5.2.1 further provides that the shoreline environment designations are overlay zones which modify the underlying zoning in terms of permitted uses, bulk, height, lot coverage, parking, and related provisions.

#### Conclusions

1. The Superintendent has properly concluded that the final Seattle Shoreline Master Program, integrated into the zoning ordinance as Article 21A, is not applicable to the appellant's development due to the fact that the substantial development permit was applied for and issued prior to the effective date of this final draft. The appellant applied for the substantial development permit and it was issued during the time that Draft 4 of the shoreline program was in effect, so that all rights to the development vested at this prior time. The appellant has the alternative of voluntarily forfeiting the substantial development permit and reapplying at the present time so that Article 21A would be utilized in reviewing the permit request.

2. Although Draft 4 permits the development of multiple family residential uses in the shoreline environment designation in which the subject property is located, the draft does provide that uses not allowed by the underlying zoning will not be permitted in the shoreline environment designation. Since multiple family residential uses are not permitted in the underlying M zone unless council conditional use permission is received, the same requirement shall apply in the shoreline environment designation. Consequently, both Draft 4 and the underlying zoning require that the appellant receive council conditional use permission prior to beginning the proposed development.

3. The Superintendent has erroneously concluded that there is discretion to apply either the bulk provisions of Draft 4 or those of the underlying M zone, whichever is the strictest, to further the general purpose of the shoreline program. The provisions of Draft 4 establish that the bulk and height restrictions are to modify those included in the underlying zoning provisions. Consequently, the height provision of Draft 4 is controlling in this instance and since the proposed height conforms with this provision no variance is required. The specific provisions of Draft 4 further define and implement the general purpose of the shoreline program and there is no language which grants authority to an administrative agency to choose between the provisions of the shoreline program and the underlying

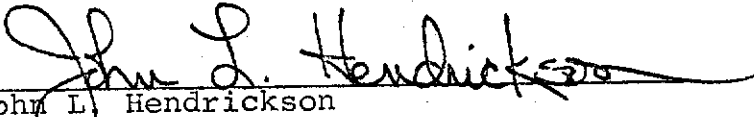
zoning provisions so that the strictest limitation would be applied.

4. The proposed front yard setback for the appellant's proposal is in variance with the setback requirements of Draft 4 and the appellant must therefore seek a variance. No conclusion on the proposed side yard setbacks is included herein due to the fact that the Superintendent has not yet reached a firm determination on this matter.

Decision

The appeal is DENIED and the decision of the Superintendent of Buildings is affirmed, with the exception that no height variance is required.

Entered this 13<sup>th</sup> day of April, 1977.

  
John L. Hendrickson  
Deputy Hearing Examiner

Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination. Any appeal must be made to the courts. Section 12, Ordinance 102228, the Administrative Code, sets forth the procedure for staying enforcement of an administrative order or decision pending judicial review.