

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

In the Matter of the Appeal of

STEPHEN W. McDERMOTT

FILE NO. S-78-002

from a ruling of the Superintendent
of Buildings

The appeal is GRANTED and the Findings and
Decision of the Superintendent of Buildings
are reversed.

Introduction

The appellants, Mr. & Mrs. Stephen W. McDermott, filed an appeal from a ruling of the Superintendent of Buildings denying a use permit for property at 5431-33 Beach Drive S.W.

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

Parties to the proceeding were: the appellants, represented by Paul F. Culotta, and Joyce C. Kling, zoning administrator, representing the Superintendent of Buildings.

This matter was heard before the Hearing Examiner on February 9, 1978.

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 appellants filed application for a use permit December 6, 1977, to construct a residence at 5433 Beach Drive S.W. The property was deeded to appellants by Mr. McDermott's mother, Bonnie J. McDermott, subsequent to the grant of variances for side yards and parking and filing of a short plat. Her residence adjoins the subject property on the north at 5431 Beach Drive S.W. The site is 25 feet wide and the proposed house would be 15 feet wide. Besides maximizing view for the residence the placement of the structure as proposed is necessary for the approach to the garage and access easement to the house at 5431.

2. The Superintendent of Buildings, hereinafter Superintendent, published intent to grant a use permit December 8, 1977. A decision to deny the use permit, after a change in interpretation of the ordinance provision determining setback requirement, was published January 24, 1978 and notice of withdrawal of the permit was published February 7, 1978.

3. The appellants were first informed that the required setback would be determined by drawing a line from the southwest corner of the structure at 5437 Beach Drive S.W. to the southwest corner of the deck at 5431 Beach Drive S.W. resulting in a shoreline setback of 42 feet 8 inches (bulkhead to 5 feet 4 inch deck). Section 21A.35(c), Ordinance 86300,

as amended, provides:

"Residential structures shall not be located closer to the shoreline than adjacent structures. If there is no other structure within 100 ft., residential structures shall be located at least 25 feet back from the line of higher regulated lake level of Lake Washington, Lake Union and connecting fresh waters, or the line of ordinary high tide."

4. The Superintendent published an interpretation of Section 21A.35(c) relating to property at 13602 Riviera Place N.E. That interpretation was appealed and found to be incorrect by the Hearing Examiner. The correct interpretation, limited to that case, was that residential structures shall not be located closer to the shoreline than the closer of the first structures on each side.

5. The Superintendent again published its interpretation of Section 21A.35(c) in January relating to property at 4101 Beach Drive S.W. The following excerpts from that interpretation were cited by the Department in the case before the Examiner.

"Residential structures shall not be located closer to the shoreline than that which would block the view of the next structure to each side."

"In order to fulfill the purpose of the shoreline program, the determination of the proper placement of the structure should be determined by drawing a sight line between the corners of the existing building on either side of the lot in question."

"A ground story deck higher than the existing grade level may not block view. Such a deck, and an open railing, may, if a sight inspection shows that no view blockage will occur, be permitted in the setback area."

6. To the south of the subject property is a two-story duplex residence with the basement level partially above ground. That structure is set back 55 feet 2 inches from the bulkhead. Mrs. McDermott's single-family residence to the north is set back 42 feet 8 inches. The shoreline (bulkhead) angles westerly as it goes north from the subject property. The single-family residence north of Mrs. McDermott's property (5427 Beach Drive S.W.) appears to be approximately 24 feet from the bulkhead and the one to the north of that (5423 Beach Drive S.W.) appears to be considerably closer.

7. The proposed structure would have no effect on the views of the residences to the north. The structure at 5423 Beach Drive S.W. limits the scope of water view to the north from the duplex. If appellants' figures are accurate, the mid-front ground level (basement) view from the duplex has a scope of 137° to the north. The proposed structure itself would cut 11° from that view and the second-story deck could cut another 11° from the view at that level if it were solid. An open fencing is proposed. The proposed structure would have no effect on the view from the top story of the duplex and somewhat less on the first level.

Conclusions

1. The Superintendent has attempted to apply this somewhat ambiguous section in a manner consistent with the purposes of the Shoreline Management Act of 1971 and the Seattle Shorelines Master Program. Section 21A.01 of the ordinance specifies these purposes: "to (a) preserve, enhance and increase views of the water and access to the water, (b) encourage water-dependent uses, and (c) provide for maximum public use and enjoyment of the shorelines of

the City." The means chosen by drawing a line from between the corners of the existing building on either side would certainly be one way of preserving the view of the structure set farther back. However, that method does not serve to enhance or increase any views.

2. Appellants contend that the final interpretation of that provision for the property on Riviera Place N.E. is the correct interpretation. The general rule of interpretation of zoning ordinances is that zoning ordinances are to be liberally construed to accomplish their plain purpose and intent. State ex rel Standard Mining and Development Corp. v. City of Auburn, 82 Wn.2d 321 (1973), Hauser v. Arness, 44 Wn.2d 358 (1954).

3. In looking at the facts of this situation, we see that placement of the structure no farther forward than the closer adjacent house, 5431 Beach Drive S.W., results in a loss of at most 22° of the water view and considerably less at most vantage points from the duplex, no view obstruction from any other dwelling, and an increase and enhancement of the view from the proposed residence.

4. Both appellants' preferred placement and that of the Superintendent would accomplish to some degree the purpose of the section. The ordinance providing for appeal from the determinations of the Superintendent direct that those determinations are to be regarded as prima facie correct. Section 25.44, Ordinance 104795. Were it not for evidence that the drafters used specific language for "averaging" or "subtending" when that was intended that determination would be upheld. We must conclude, however, that this was not the intent and given the language used the location must not be closer to the shoreline than the structures to each side.

5. In choosing which adjacent structure sets the limitations we should again consider the purpose of the ordinance. While some 22 degrees might be preserved by requiring the proposed structure to be placed no more closely than the duplex, a much larger part of the view from the proposed structure would be lost. Therefore, the closer structure, that at 5431 Beach Drive S.W., is the appropriate one to use to determine setback.

6. Again, this decision applies to the Superintendent's determination as to this property and should not be assumed to control in any but the instant case. Hopefully, the section will be clarified by amendment so as to avoid the need for repetition of this process.

Decision

The appeal is GRANTED and the Findings and Decision of the Superintendent of Buildings are reversed.

Entered this 22nd day of February, 1978.

M. Margaret Lockars
M. Margaret Lockars
Deputy Hearing Examiner

Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination and any further appeal must be made to the courts.