

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JAMES L. CUTLER

FILE NO. S-80-044

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

The Decision of the Director, Department of
Construction and Land Use, is AFFIRMED.

Introduction

James L. Cutler, appellant, architect for John and Sharon Bennett, filed an appeal of the decision of the Director of the Department of Construction and Land Use (CLU) to deny a use permit for proposed construction at 10502 Riviera Place N.E. for nonconformance with Section 21A.35(c).

Parties to the proceeding were: James L. Cutler, appellant, and the Director of the Department of Construction and Land Use represented by Joyce C. Kling, Manager, Land Use Support Services.

This matter was heard before the Hearing Examiner on September 15, 1980.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance (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. Appellant applied for demolition and use permits on behalf of the owners, John and Sharon Bennett, to demolish an existing residence and establish use for future construction of a single family residence at 10502 Riviera Place N.E., near the shoreline of Lake Washington.

2. On August 26, 1980, the Director published his decision to deny the use permit because, in part, the proposed residence violates the shoreline setback provision, Section 21A.35(c), of the Shoreline Master Program as interpreted by Director's Ruling 14-79.

3. Appellant filed his appeal of the decision August 26, 1980.

4. The subject lot measures 53 by 87 ft. and is developed with a one story, 700 sq.ft. single family house. The existing house would be removed and a new house constructed.

5. The shoreline of Lake Washington in the area is established by a concrete bulkhead which angles across the front of the subject property. At the north property line the bulkhead juts in and out to create a boat slip, and then continues at an angle but some 18 ft. to the west of the line south of the boat slip.

6. Section 21A.35(c) provides, in part: "Residential structures shall not be located closer to the shoreline than adjacent structures."

7. Director's Ruling 14-79, effective November 15, 1979, gives the interpretation of Section 21A.35(c) which CLU follows. Pursuant to that interpretation the required setback for the subject property was determined by "subtending a line between the nearest shoreside corner of the existing principal buildings located on either side of the subject lot...."

8. The lot adjoining the subject property on the north contains a residence and a two-story garage structure with boatshed attached on the water side. The garage boatshed structure is located closer to the subject property than the residence and the boatshed is situated over the water.

9. A residence on the second lot south of the subject property is located closer to the shoreline than the residence on the first lot south and effectively blocks any further view of the water to the south.

10. Appellant contends that the ruling is improperly applied to the subject property because 1) the shoreline is not regular; 2) the garage/boatshed structure should be the adjacent structure used to determine required setback as it obstructs the view to the north; and 3) the second residence to the south should be used in determining required setback since it blocks the view to the south.

Conclusions

1. If the shoreline were considered to be irregular, under Director's Ruling 14-79 the resulting required setback would be the same as for a regular shoreline. Therefore, that issue need not be resolved. Because the shoreline in front of the subject property is set farther east than that at the property adjoining on the north, under the ruling, a greater portion of subject property than adjoins properties is devoted to the required setback.

2. One purpose of the Shoreline Master Program is to "preserve, enhance and increase views of the water." Section 21A.01. Section 21A.35(c) attempts to implement that purpose by prescribing setbacks. Section 21A.35(c) is ambiguous in that the term "adjacent" modifying structures to be used for determining setback lends itself to differing meanings. The official charged with enforcing the ordinance is then required to construe the provision. He is required to interpret the ambiguous term in a reasonable manner to carry out the intent of the Council. The construction chosen carries out the purpose and while a different interpretation could also, the official's construction should be given deference. East v. King County, 22 Wn.App. 247(1978). The variance procedure is available for exceptions from the application of the general rule.

3. Assuming, for the purpose of dealing with appellant's final contention, that the garage/boatshed structure is the adjacent structure, the required setback would be greater than required by the Director. Recognizing the differing effects of a part of a structure with walls and a part attached to the ground but without solid walls, the Director has differentiated between the two types for setback. Under the ruling, the line is to be drawn between the walled structure on each side for the setback for a new walled

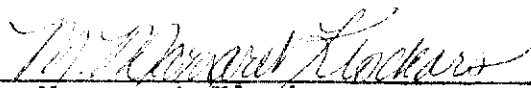
structure and between the decks attached to the ground but without walls for any new deck. Extending, by implication, the probable reasoning for making that differentiation, that one has a greater impact on views than the other, the boatshed attachment to the garage structure would be treated like a view deck. The setback line for the walled structure on the subject property would then be that drawn from the garage to the first structure on the south and the deck setback line would be drawn from the boatshed support to the structure on the south. Since the setback line, under that application, would be even farther inland than the line required by the Director and therefore less advantageous to the owners, it is assumed that it is unnecessary to determine whether the Director's construction of the "adjacent structure" provision is correct.

4. The burden is on the appellant to prove that the Director's decision is not correct. Section 25.44. Appellant has failed to prove that the interpretation is misapplied in the instant case or that if improperly applied would change or improve the results.

Decision

The determination of the Director, Department of Construction and Land Use, is AFFIRMED.

Entered this 2nd day of October, 1980.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).