

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

QUEEN CITY YACHT CLUB

FILE NO. S-82-008

from an interpretation of the Director,
Department of Construction and Land Use

Introduction

The appellant filed an appeal from an interpretation by the Director of the Department of Construction and Land Use (Director), dated September 21, 1982, concerning property located at 2608 Boyer Avenue in Seattle.

The appellant exercised its right to appeal pursuant to the Seattle Municipal Code, Chapter 23.88.

Parties to the proceedings were: appellant, represented by Theodore Cummings, attorney at law; the Director by Joyce Kling.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Titles 23 and 24, unless otherwise indicated.

This matter was heard before the Hearing Examiner on December 1, 1982.

After due consideration of the evidence elicited during the public hearing the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is legally described as:

An unnumbered tract lying East of 12th Avenue North and North of Roanoke Street and South of Edgar Street, less street and vacated street, and Block 10 of Lake Union Shorelands.

2. The property is zoned SF (Single Family) 5000 and is designated UR (Urban Residential) by the Shoreline Master Program.

3. Appellant's property consists of approximately 10 acres which have been developed since the early 1930's as a yacht club with moorage facilities. The facilities are north of and below an elevated approach to the Evergreen Point Bridge and are located directly west of similar facilities owned by the Seattle Yacht Club. The major portion of the moorage facilities consists of 16 structures on three piers providing covered moorages for pleasure boats. In addition, there are some open moorages and boathouses.

4. The 18 existing boathouses, which form the subject matter of this appeal, are dilapidated and for all practical purposes are in need of total repair.

5. The covered moorages afforded by the boathouses have become a nonconforming use due to passage of the Shoreline Management Act and attendant zoning.

6. The 18 individual floating boathouses have pitched roofs. Appellant proposes to demolish the existing boathouses and to construct three flat-roofed open floating structures in their place.

7. Appellant requested an interpretation by the Director of whether replacement of 18 floating boathouses with three flat-roofed floating moorage structures could be considered maintenance and repair.

8. On September 21, 1982, the Director entered an interpretation deciding that the proposal was not maintenance and repair, was not exempt from requiring a shoreline permit, and could not be authorized. Notice of the interpretation was published on September 28, 1982, in the Daily Journal of Commerce, Notice of Interpretation Decisions.

9. Appellant argues that the use of the proposed structures would be the same as the use of the existing structures and that the purpose of the proposed configuration is to bring it into conformity with the existing structures.

10. The Director maintained that covered moorage is not a permitted use in the UR Shoreline environment. Since covered moorage was permitted at the time the boathouses were built, the boathouses are legally nonconforming.

11. The Director also maintains that structures containing nonconforming uses may be continued but may not be structurally altered; therefore, work on such structures is strictly limited to repair and maintenance not involving any structural changes. Since total replacement is not considered to be nonstructural repair, a structure containing a nonconforming use cannot be totally rebuilt.

12. The Director maintains that "in kind" replacement of structures located in or on these waters is considered to be maintenance and repair which would not require a Shoreline Substantial Development permit. The issue is whether appellant's proposal amounts to maintenance or repair of existing structures.

13. Appellant proposes to build new moorage structures in essentially the same location as the existing boathouses. Three large structures differ substantially from 18 small ones. Large flat roofs are not the same configuration as narrow peaked roofs. Open structures are not the same as individual boathouses with walls.

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal. Title 23; Article VIII, Hearing Examiner Appeal Rules.

2. The Hearing Examiner shall consider de novo appeals from interpretations rendered by the Director. The Hearing Examiner's decision shall be made on the same basis as was required by the Director and shall afford the interpretation substantial weight. The burden of establishing a position contrary to the Director is the appellant's. Section 23.88.020(E); Hearing Examiner Appeal Rule 8.9.

3. Section 24.60.655 provides in relevant part:

"...covered moorage...is permitted as a principal use only in US and UD environments."

4. "Nonconforming use" is defined as "a use of land or structure which was lawful when established and which does not conform to the use regulations of the zone in which it is located." Section 23.84.26(N).

5. Section 24.60.315 provides in relevant part that nonconforming developments in the shoreline are regulated by the "nonconforming development provisions applicable in the zone in which the property is located".

6. Section 23.44.24, which regulates nonconforming uses in SF zones, provides in relevant part that:

"a nonresidential, nonconforming use shall not be expanded or extended. A building containing a nonconforming use which is not residential shall not be expanded, extended or structurally altered except as otherwise required by law,..."

7. Section 24.60.225 provides in relevant part that "normal maintenance or repair of existing structures or developments" is not considered to be substantial development requiring a Shoreline Substantial Development permit.

8. Director's Rule 22.79, which clarifies the types of development which can be considered maintenance or repair, includes the following:

"Piling, piers and bulkheads may be repaired without a substantial development permit. The materials used in replacement of work of damaged elements of the structure need not be the same as those used in the original construction, but there must be no change in size or configuration of the structure. A Corps of Engineers permit is not required."

9. The expression "maintenance or repair" is not defined in the City Ordinance pertaining to Shoreline Master Program Regulations. Section 24.60 et. seq., nor in the additional definitions contained in Section 24.08, which would also be applicable. Section 24.60:010.

10. The sole issue of this appeal is whether the proposal constitutes maintenance or repair of existing structures. If the proposal is not "maintenance and repair", it will not be exempt from requiring a Shoreline permit.

11. Terms which are not defined in the Seattle Municipal Code and the Zoning Ordinance will be given their ordinary meaning Tacoma Telco Fed. Credit Union v. Edwards, 94 Wn.2d 666, 669 (1980).

12. Websters New World Dictionary of the American Language (Second College Edition) defines maintenance in relevant part as

"...keeping a building...in a state of good repair".

Repair is defined in relevant part as "to put back in good condition after damage, decay, etc.; mend; fix".

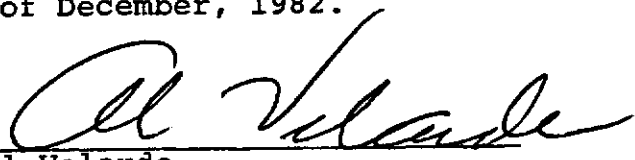
13. Blacks Law Dictionary (Fourth Edition) defines "maintenance" in relevant part as "the upkeep or preserving the condition of property..." and "repair" in relevant part as "...restore it to the condition in which it originally existed, as near as may be..."

14. Since appellant proposes to demolish the existing 18 boat-houses and walls and narrow peaked roofs, and to construct three flat-roofed opened, floating structures in their place, a change in size and/or configuration of the structures will occur. Therefore, the proposal cannot be considered "maintenance and repair".

Decision

The Director's Interpretation of September 21, 1982, is AFFIRMED.

Entered this 13 day of December, 1982.


Al Velarde
Hearing Examiner Pro Tempore

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.