

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

In the Matter of the Appeal of

BOONDOCKS, SUNDECKERS AND GREENTHUMBS, INC.      FILE NO. MUP-83-002  
APPLICATION NO. 82-0517

from a decision of the Director of  
the Department of Construction and  
Land Use on a master use permit  
application

Introduction

Appellant, Boondocks, Sundeckers and Greenthumbs, Inc., appeals the decision of the Director of the Department of Construction and Land Use (Director) to deny a sign variance for property at 3119 Eastlake Avenue East.

The appellant exercised its right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: appellant, by Paul Sikora, Diamond and Sylvester, and the Director by Ed Somers.

This matter was heard before the Hearing Examiner on March 15, 1983.

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. Appellant operates a restaurant in a building at 3119 Eastlake Avenue East upon which it proposes to mount a business sign.

2. Section 24.80.050, Seattle Municipal Code, prohibits any advertising sign within 660 ft. from the edge of a scenic view section of a freeway if any part of the advertising matter is visible from any place on the scenic view section.

3. The Director determined that a variance would be required for the proposed sign. The variance was denied on the bases that it would not conform to Section 24.80.070.A(9), the sign would create detriment and a variance would be contrary to the intent of the shoreline regulations.

4. The sign would measure 50 ft. by 8 ft. and be mounted on the western portion of the building facing west. A parapet wall extends 8 ft. above the rooftop on the east side of the building. A 3 ft. parapet wall rises on the west side. A clerestory rises approximately 7 ft. from the roof in the middle. The sign would extend 14 ft. above the roof, 11 ft. above the western parapet, 6 ft. above the eastern parapet, and 7 ft. above the clerestory. The sign would consist of open, channel letters spelling "Lake Union Cafe".

5. The property is located in a General Commercial (CG) zone and is not in the shorelines district.

6. The sign would be oriented toward N. and N.E. Pacific, 34th N.E., N. and N.E. Northlake Way. It would be visible from the water as well.

7. The sign would not be visible from I-5 as the property is approximately 75-100 ft. to the west of the freeway and the building approximately 80-110 ft. below the lower, express lane level.

8. The immediate shoreline is not visible from east of the subject property. From higher elevations there are views of the water and opposite shorelines. The concrete freeway pillars and existing development eliminate portions of the view from some vantage points. The visibility of the proposed sign from points east would be limited by the freeway pillars and by features of the building itself. The amount of obstruction of any water or shoreline view caused by the sign itself should be slight.

9. Appellant has offered to lower the sign 3 ft. to reduce any impact.

10. Section 24.60.575, Seattle Municipal Code, a part of the Shoreline Master Program, directs that signs in the shoreline district, where permitted, shall be constructed against buildings to minimize visual obstruction of the shoreline.

11. The Department of Construction and Land Use has issued a report, Adjacent Lands Report, to the State Department of Ecology which reviews Seattle's policies, regulations, plans and ordinances relating to lands adjacent to shorelines.

12. The City Council has not adopted regulations relating specifically to land adjacent to the shoreline district.

13. Appellant contests that its property is on "adjacent lands". With the very general definition provided in the Adjacent Lands Report and the other information in the record, it is not possible to determine if the property is an "adjacent land".

14. The Director offers that a roof top sign in an area visible from the shoreline district is contrary to the public interest since rooftop signs in the shoreline district are prohibited.

#### Conclusions

1. The hearing examiner has jurisdiction, following the filing of this appeal, to decide only whether appellant should be issued a variance. Whether the application comports with the code or requires the variance is an issue not within the hearing examiner's jurisdiction in this appeal.

2. Assuming, then, that a variance is required, the relevant general variance considerations are: will granting of the sign variance conflict with the intent and purpose of the chapter; will it be contrary to the public interest; will it be detrimental to the public welfare or safety; will it be injurious to property in the vicinity; will it make it difficult to view and comprehend other official or conforming signs; will it increase the density of signs along a regulated roadway to the extent that it tends to constitute a traffic hazard or a detriment to the appearance of the neighborhood; does it impinge upon a view of scenic interest. Section 24.80.070.

3. The variance may be granted if the answers to the questions above are negative and if the sign would be at an elevation significantly lower than the grade of I-5 and visible therefrom but primarily oriented to another roadway. Section 24.80.070A(9). This circumstance is met, assuming that the sign would be visible from the freeway since a variance would not otherwise be required.

4. The chapter's purpose, according to Section 24.80.010, is to implement the policy of the Highway Advertising Control Act and protect the public health, safety, welfare, convenience and enjoyment of public travel, to attract visitors to the city and to conserve natural and manmade beauty by regulating the size and location of signs adjacent to regulated roadways and scenic routes. It can be concluded that the concern of the chapter is with the signs' relationship to the freeway or other designated roadway and the character of that relationship. The record reflects nothing negative in the proposed sign's relationship to the freeway so it would not conflict with the purpose and intent of the chapter.

5. The Director urges that the sign would be contrary to the public interest in that it would be visible from lands within the shoreline district and from the water. This can be inferred, he argues, from the fact that a rooftop advertising sign would not be permitted within the shoreline district. The reason given for requiring that signs be against buildings is to minimize visual obstruction of the shoreline. Section 24.60.575B(3). No view of the shoreline would be obstructed from the water or other sides of the lake since the sign would be above the shoreline district. The view of the water and distant shoreline would be impinged upon only to the slightest extent from only certain locations, if the sign is lowered 3 ft. as, offered by appellant. The freeway supports, parapet walls, clerestory and other buildings reduce the existing view and the sign would be behind some of these. What portions of water and shorelines are visible will be largely unaffected since the proposal calls for an open-lettered sign. The sign would not affect views of the immediate shoreline. The amount of obstruction of views does not appear to be of a degree which can be considered to violate the public interest. It should be noted that while the lands within the shoreline district are the most rigorously regulated within the City, those "adjacent" are not, at this time, subject to special regulation due solely to their proximity to the shorelines.

6. No evidence of detriment to public welfare or safety appears on the record. No injury to property is reasonably foreseeable.

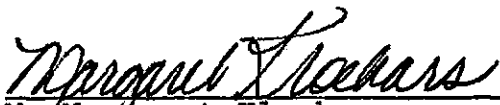
7. As the sign is not visible from the freeway it would not confuse the travelling public. No traffic hazard or detriment to the appearance of the neighborhood would be caused by the increase in density of signs.

8. "Views of scenic interest" does not appear to be defined in the Code. The Director's representative does not maintain that the view of the freeway is such a view. The photographs supplied as exhibits show pleasant views across the water but not views that would be impinged upon by the proposed sign.

#### Decision

The decision of the Director is reversed and the variance is GRANTED on the condition that the sign be lowered three feet as offered by appellant.

Entered this 29th day of March, 1983.

  
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 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.