

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

BARGHAUSEN CONSTRUCTION COMPANY

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

FILE NO. MUP-84-085 (CU,V)
APPLICATION NO. 8403897

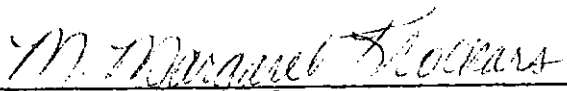
ORDER DENYING REQUEST
FOR RECONSIDERATION

Appellant, Barghausen Construction Company, requested reconsideration of the Office of Hearing Examiner's decision to affirm the decision of the Director, Department of Construction and Land Use, to deny an administrative conditional use and variance for a proposed drive-in window at 1140 Market Street without prejudice.

The submittal by appellant shows that the circumstances have now changed as to agreement on the alley and that there was additional information which could have been provided about who constructed the building. The Hearing Examiner has no specific authority to reconsider a final ruling though there may be some limited inherent power to reconsider where there has been fraud, mistake or misconception of facts. Hall v. Seattle, 24 Wn.App. 357, 602 P.2d 366 (1979). Though reconsideration could avoid the delay and expense of a new application, it does not appear that the circumstances of the request bring it within the Hearing Examiner's limited power.

Therefore, the request for reconsideration is denied.

Entered this 11th day of February, 1985.


M. Margaret Klockars
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FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

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Introduction

Appellant, Barghausen Construction Company, appeals the decision of the Director, Department of Construction and Land Use, to deny an administrative conditional use and variance for a proposed drive-in window at 1140 Market Street.

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

This matter was heard before the Hearing Examiner on December 26, 1984.

Parties to the proceedings were: appellant by Tom Barghausen and the Director by Ed Somers, environmental specialist.

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

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 applicant, Richard Leagjeld for Collins Foods International, Inc., applied for a master use permit to alter the restaurant at 1140 N.W. Market and add a drive-in window. The Director denied the needed administrative conditional use and driveway width variance without prejudice to reapply when certain conditions were met. Appellant filed this appeal.

2. The restaurant is sited on a lot with frontage on Market Street. The lot's west boundary abuts a 12 ft. wide alley. The restaurant building is set 10.13 ft. from the west property line.

3. The applicant proposes to renovate the restaurant building and add a drive-through window in the west wall. Section 24.44.080.H requires an administrative conditional use to establish a drive-in restaurant.

4. Access to the existing on-site parking is gained from Market Street on the east side of the building. Vehicles exit through the alley on the west side.

5. The driveway for the drive-through window is combined with the access way for the restaurant parking on the east side of the restaurant, then is separated at the rear of the building, passes the window on the west and then empties onto the alley. The driveway for the other patrons empties onto the alley some 35 ft. north of the drive-through exit.

6. Section 24.64.030.A.2 requires an 11 ft. width for the driveway. Applicant proposes a 10 ft. width and requests a variance.

7. The subject property is zoned Community Business (BC). Immediately north of the site are two duplexes in the L-1 zone. One abuts the alley. To the west, is a paint store with a loading area across the alley from the drive-through window.

8. The restaurant is around 15 years old and in need of upgrading, according to Mr. Barghausen. New landscaping would be provided which could include better screening between the property and the duplexes. Signing and curbing would be added to channel traffic through the site and from the drive-through window southbound into the alley. The distance between the drive-through exit onto the alley and the street entrance to the alley is less than 50 ft. so the speed of traffic should be low, especially since patrons have just stopped completely at the window.

9. Two-way traffic is permitted in the alley. At present the alley looks wider than 12 ft. because of the lack of separation from the subject property. Besides the restaurant and paint store traffic, some drivers use the alley to avoid 15th Avenue N.W. intersections at the west end of the block.

10. One existing parking space would be removed. The drive-through window should not increase the demand for parking, however.

11. Some increase in patronage on the restaurant can reasonably be expected from the addition of the drive-through window.

12. The Engineering Department has advised the Department of Construction and Land Use that the traffic circulation configuration is undesirable because of potential conflicts with northbound users of the alley. If the alley were to be one-way southbound, the Engineering Department's concerns would be satisfied.

13. The owners of the property north of the subject site do not agree to changing the alley to one way. The Engineering Department requires all property owners' agreement.

14. The Director denied the application chiefly because the new window's increased traffic would exacerbate the existing traffic circulation problem. A condition requiring the change to one way traffic could not be achieved so a conditional approval would not be appropriate. The denial was made without prejudice so that another application can be filed if the conflicts are resolved.

15. Market Street and 15th Avenue West are heavily travelled arterials. There does not appear to be heavy pedestrian traffic at the subject site.

Conclusions

1. A variance may be granted if all the conditions of Section 23.40.20.C exist. The property has an unusual condition in that the open space at the rear and west side of the restaurant is not sufficient to provide the required aisle width. A variance may be granted, however, only if the unusual condition relied upon was not created by the owner. Here, the owner is Collins Foods International, Inc. There is no evidence in that record that that corporation was not responsible for the building of the structure, the placement and size of which results in the insufficient space for the required aisle width. Although the other conditions for variance are present, without a showing that the owner did not create the condition, variance relief may not be granted.

2. Conditional use may be granted for a drive-in restaurant (drive-through window) if the conditions of Section 24.44.080.H and the general conditional use criteria of Section 23.44.18.C are met. The site does appear to be located in an auto-oriented portion of a business zone and is on the edge of that zone satisfying the first condition. Further, the area does not appear to be a high volume pedestrian area.

3. The applicant agrees to a condition requiring adequate refuse receptacles.

4. Compatibility of landscaping can be assured through conditions. The use, design, signing and illumination proposed are compatible with other uses and structures. The site, as the circulation pattern is designed, is not compatible with its surroundings because of the probable increase in traffic conflict in the alley.

5. Because of the reliance on the alley for circulation and the probable increase in business due to the addition of the drive-through window, the conditional use for the window would be detrimental to the public welfare. Therefore, the application must be denied.

Decision

The appeal is denied and the decision of the Department of Construction and Land Use is affirmed.

Entered this 9th day of January, 1985.


M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW OF HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

The decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review of the decision must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11); Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73.

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.