

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

In the Matter of the Appeal of

BLUE WALLSCAPES NORTHWEST, INC.,
BARRY R. BLUE AND ROBERT D. KATZ

FILE NO. R-84-003

from a Certificate of Approval Denial
Notice issued by the Department of
Community Development

Introduction

The appellant exercised the right to appeal pursuant to Chapter 24.68, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on February 24, 1984.

Parties to the proceedings were: appellants, by Mark Bennett, attorney at law; the Pioneer Square Preservation Board by James E. Fearn, Jr., assistant city attorney.

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

Findings of Fact

1. Applicants - appellants propose a 14 ft. high 48 ft. wide painted advertising sign for the south side of a four story furniture warehouse building located at 1020 First Avenue South. The building is described as a "straight, gray building," see photograph Exhibit 10, 16, 17, with a stucco over brick exterior.

2. The subject property site is near the corner of First Avenue South and Royal Brougham Way, near the southern edge of the Pioneer Square Special Review District. The land between the proposal site and Royal Brougham Way is in use as a surface parking lot and a gas station. The Kingdome is located immediately northeast of the site.

3. Vicinity uses include warehousing, distributing, manufacturing and parking; the neighborhood appearance is commercial and industrial.

4. Applicants secured a lease for the subject wall (space) in 1981. By letter dated November 30, 1981, the Pioneer Square Preservation Board notified the Department of Construction and Land Use that with reference to the applicants' sign (size) variance application for the subject property, the Pioneer Square Preservation Board had

... passed a motion to endorse the applicant's requested variance... qualified to note that final design, color scheme and other specifications must be reviewed by the Board for the required Certificate of Approval.

5. By decision entered December 4, 1981, DCLU granted the requested sign variance on the condition that the "the specific sign and color scheme be submitted to the Pioneer

Square Historic Preservation Board for review and approval." DCLU noted in its analysis that no detriment to the industrial-commercial appearance of the neighborhood was anticipated by the variance approval, and that no scenic view would be altered.

6. On January 18, 1982, and again on January 25, 1982, DCLU advised applicant Katz that in accordance with stated guidelines, DCLU would be able to issue a sign permit as soon as Pioneer Square Preservation Board specific sign and color scheme approval was obtained.

7. April 7, 1982, the Pioneer Square Preservation Board issued written approval of the application to clean up the south facade of the 1020 First Avenue South building and apply paint "to north existing gray tone of First Avenue facade."

8. Later in 1982, applicants' proposal for a cigarette ad for the space was rejected by the Pioneer Square Preservation Board "because the graphic was inappropriate to a historic district." Exhibit 64, pp. 2-3.

9. Through December 1983, applicants continued in their quest of customers for the subject wall space, and in December 1983 were approached by Nike. To applicants' view the Nike ad was non-commercial and highly artistic.

10. Accordingly, at the January 18, 1984 meeting of the Pioneer Square Preservation Board, applicants presented a color photograph of the proposed sign, Exhibit 1A. The photograph depicts to the left of the frame Carl Lewis, Olympic contender and 1983 athlete of the year, suspended in air while handily engaged in an apparent broad jump. Lewis' red track shoes bear the familiar Nike swoosh while his white socks trimmed in red also bear the Nike insignia. The athlete's shirt is white, the shorts red. The background is sky blue but marked by a somewhat billowy white "cloud" near frame-center. The blue background completes to the right edge of the frame. There in the upper right hand corner appears the word Nike, undercorded by the company swoosh. A white border runs along the top of the photograph and the left margin. Lewis' extended leg intrudes into the left border, while part of the head and a raised arm pierce the top border.

11. Photographic Exhibit 1A is somewhat glossy. The Hearing Examiner finds in accord with appellants' witness testimony that the photograph tends to show colors brighter than the colors would appear on a brick surface.

12. According to the minutes of the January 18 meeting,

The Board reiterated their concerns that the artwork (sic) was too contemporary and inappropriate to the District...ACTION TAKEN: ... deny the sign as presented due to inappropriate copy without historical character.

The Certificate of Approval of Denial Notice stated that "presented copy is not appropriate to the Preservation District" and "(2) No attempt was made to develop an appropriate graphic theme." The Community Development Director accepted the Board's negative recommendation. Applicants submitted this appeal.

13. The Board witness testified that in arriving at its decision the Board had no description of how the sign would appear on the wall, but rejected the sign's "bright colors and contemporary graphic approach." The witness continued

that the proposed sign would be "incompatible with the architecture of the building" and would detract from the subject building as well as "all buildings" along First Avenue. The Board had no objection to the subject matter, i.e., the broad jumper or the Nike sign, the witness continued. No specific evidence was produced showing the architectural significance or insignificance of the building.

14. The billboards in the Review District predated the establishment of Pioneer Square Preservation Board and are "grandfathered." Other signs cited by the appellants for comparative purposes were either "grandfathered," are illegal, or are without the bounds of the District.

15. The Pioneer Square Preservation Board witness gave the Duncan's boots and saddles wall sign, Photo Exhibit 5, offering a dark brown background and "old west" style lettering as an example of more appropriate historical representation; and the Washington State Ferry sign at Occidental and Washington as an example of more appropriate building complement. the Ferry sign is, by the Examiner's site visit, inobtrusively painted against a red brick background with very muted coloring and artwork.

Conclusions

1. The Pioneer Square Preservation District was established to, inter alia, preserve and enhance the Pioneer Square area buildings and "return unproductive structures to useful purposes." Section 24.68.100(A). One of the reasons Pioneer Square is considered unique is because the area "retains much of the original architecture and artifacts of its early history." Section 24.68.100(C)(1). The ordinance also notes that the area buildings "combine to create an outstanding example of an area in Seattle which is significant and distinguishable in style, form, character, and construction, representative of its (late 19th and early 20th century) era." Section 24.68.100(C)(2).

2. All property within the Pioneer Square Preservation District is to be developed and used only in accord with District development regulations. Sections 24.68.120; 24.68.100 (A), (B).

3. The provisions relating to District signs are found at Section 24.68.180. Pursuant thereto freestanding signs such as billboards are prohibited. Final determinations as to the "appropriateness" of a sign are to be based, per Section 24.68.180 (B) on the following:

1. The overall design of a sign including size, shape, texture, method of attachment, color, and lighting shall be compatible with the use to which the sign refers and the architecture of the building where it is to be installed, measured by
 - a. shape...
 - b. texture...
 - c. method of attachment...
 - d. color: the relationship of the proposed colors with the colors of the building for which the sign is proposed and with other signs approved for the building... (emphasis added)

2. Painted wall signs... shall be considered generally compatible with the predominant building type found in the District.

5. No sign shall be placed on a structure so that it would conceal or disfigure desirable architectural features or details of the structure.

4. In appeals to the Hearing Examiner of the Community Development Director's decision, the determination appealed from is to be given substantial weight. The burden of establishing a contrary position rests with the appellant. Section 24.68.060(C)(1).

5. As the billboards and other non "historic vintage" signs within the District have been shown to be illegal or to have predated the effective implementation of the Pioneer Square Preservation District regulations, applicants have not established their equal protection claim. Applicants' proposed sign by virtue of its application date stands on a different footing than the aforementioned signs within and without the District.

6. The proposed sign, however, is compatible with the (athletic) "use to which the sign refers", Section 24.68.180(B)(11), measured by shape, texture, method of attachment and color. (The colors (or graphics) could be considered as an integral part of the sign, to assist in depicting speed or prowess.) But the Seattle Municipal Code also requires that the signs be compatible with the architecture of the building where it is to be installed. And here is the rub.

7. The subject building is described as straight and gray with a stucco over brick facade. No specific evidence was given on the building's architectural significance or insignificance. The building's facade appears less distinctive than the deep red brick tone of the "Duncan's boots and saddles" building, Exhibit 5, or the brick exterior at Occidental and Washington. No specific architectural features appear along the south wall of the building proposed for the sign, and the Examiner has been directed to no features of the particular building which would be adversely impacted by the proposed sign.

8. Based on the testimony and evidence of record, the Examiner concludes that the gravamen of the Board's dissatisfaction with the proposed sign as presented is the sign's color and graphics. The Board had "no objection" to the sign's content, subject matter or even to the Nike logo, per the Board's witness.

9. The Board's position per the record is that neither a broad jumper nor the Nike logo are per se impermissible as District signs' subjects. Therefore, the Hearing Examiner is left with the conviction, supported by testimony of record, that a sign with more muted colors and graphics may well have met with a more positive fate. It is unclear from the record what authority or ability applicants have to reduce the sign's tone or graphics.

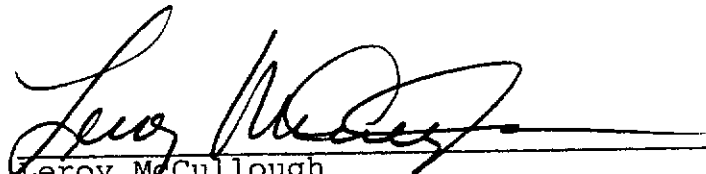
10. It does not appear from the record that the Board received sufficient evidence as to how the proposed sign would appear when painted on the stucco-brick wall. Appellants' testimony was that the actual wall sign would not and could not be as sharp as the photographic reproduction. Indeed, the sign's border is white which should be of a complement to the building. The great bulk of the sign consists of a "sky blue" wallscape interrupted by a depiction of a cloud. The "bright" red clothing attire is pictured at the left extreme of the frame.

11. In appeals of this nature, the Hearing Examiner may affirm reverse or modify the Director's decision. If the Hearing Examiner determines that additional information must be provided, or that the Hearing Examiner presentation was substantially different from the presentation to the Board the Hearing Examiner "shall remand the appeal to the Community Development Director for a further hearing..." Section 24.68.060 (C)(2). Since the Board was not presented with sufficient evidence of the sign's appearance as against the structure; and since the sign content is not at issue, the matter should be remanded. The applicants should make every effort to replicate the projected appearance for an ensuing Board presentation. Specific Board findings shall be issued in compliance with Section 24.68.060(B)(3). Based on the foregoing the Hearing Examiner need not reach the First Amendment question raised by appellants.

Decision

This matter is Remanded to the Board pursuant to Section 24.68.060.

Entered this 9th day of March, 1984.


Leroy McCullough
Hearing Examiner

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

In the Matter of the Appeal of

BLUE WALLSCAPES NORTHWEST, INC.,
BARRY R. BLUE AND ROBERT D. KATZ

FILE NO. R-84-003

from a Certificate of Approval Denial
Notice issued by the Department of
Community Development

Introduction

The appellant exercised the right to appeal pursuant to Chapter 24.68, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on February 24, 1984, and remanded to the Pioneer Square Preservation Board on March 9, 1984. The matter came on for second hearing September 18, 1984.

Parties to both proceedings were: appellants, by Mark Bennett, attorney at law; and the Pioneer Square Preservation Board by James E. Fearn, Jr., assistant city attorney.

After due consideration of the evidence of record, the following shall constitute the findings of fact, conclusions and the decision of the Hearing Examiner on this matter.

Findings of Fact

1. This record's Findings of Fact 1-15 entered March 9, 1984 are incorporated herein by reference.

2. Pursuant to the March 9, 1984, Order by Remand, the Pioneer Square Preservation Board (Board) reconsidered the question of the painted wall display. The Board issued a certificate of denial notice dated August 9 and applicants submitted this appeal. It is undisputed that the wall sign had been painted on the wall at 1020 First Avenue South subsequent to the March 9, 1984 denial notice.

3. Exhibit 1, the Board's Certificate of Approval Denial Notice stated:

My determination is based on... the case file and observation of the completed sign. It is noted that the sign was painted without Board approval during the period of application review...

4. The Denial Notice continued by stating the following reasons for denial:

"A. The sign is excessive in size...

B. The colors of the sign are not muted. The bright pastel colors and their application in a realistic and photographic quality distract from the architecture of the building and the district.

C. The sign graphic realistically portray Carl Lewis in motion against a sky background. This portrayal is appropriate in a district where figures and

objects are generally displayed statically against a solid color background."

5. The appeal from that notice came on before the undersigned for hearing September 18, 1984. Counsel for the appellants specifically requested that the Examiner view the sign before rendering a decision.

6. By the Examiner's site visit of October 1, 1984, the sign had been removed and all that remained was a gray toned, blank wall that was decorated with a rectangular white sign. That sign proclaimed "THIS SIGN SPACE FOR LEASE."

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 24.68, Seattle Municipal Code.

2. Seattle Municipal Code Section 24.68.100(B) provides that within the Pioneer Square District there shall be "an historic core supplemented by a buffer zone", but that all property within the District shall be developed and used in accord with specified government regulations. The Hearing Examiner therefore acknowledges the point urged by appellants that some consideration may be given to the fact that the subject sign and site are at the edge/threshold of the District.

3. As noted in the Conclusions of the March 9, 1984, decision, appellants' proposed sign was compatible with the athletic use to which the sign refers, Seattle Municipal Code Section 24.68.180(B) (1). The case was remanded, however, for a reevaluation of the proposed sign in relation to the subject building's physical presence and architecture. Subsequent to the remand the Board had the opportunity to review the sign as painted on the south facade of the building in question. The Board denied requested approval.

4. No specific features of architecture or historical significance are present along the subject south wall, which itself looks over a south adjacent automobile service station. Although within and at the edge of the District, vicinity uses include manufacturing, parking, warehousing and similar uses. The Kingdome is immediately northeast of the site.

5. As the Examiner understands the Board's position, there is no objection to the sign's content, subject matter or Nike logo. Colors and graphic remain as the key obstacles. See Conclusion 8, 9, decision of March 9, 1984.

6. With particular respect to color and graphics, no specific findings were made in the August 9, 1984, Board decision showing that adopted development regulations for the District require all muted colors or static displays. Section 24.68.060(3), as pointed out by the order of March 9, 1984, requires that:

a decision denying a certificate of approval shall contain an explanation of the reasons for the... decision and specific findings with respect to this subtitle and adopted development regulations for the District.

7. Secondly, appellants have made a sufficient showing that the particular wall sign (was) of minimal consequence to the architecture of the building. Third, while the Examiner cannot address the question of the constitutionality of the ordinance itself, the Examiner is persuaded that First Amendment constitutional issues are raised by the Board denial of the sign. In theory, the Board approves the subject Carl Lewis long jump and accompanying Nike logo. In practice, however, the Board denial strikes at the heart of the attempted message, i.e. to display (Nike assisted) speed and agility (as witnessed by the ethereal background). It is hard to envision any long jump subject as an "appropriate" entryway to the District, as that term is here interpreted by the Board denial. As tersely noted at p. 9 of appellant's brief, "modern day outdoor advertising contents and graphics are not designed in 19th century antique style."

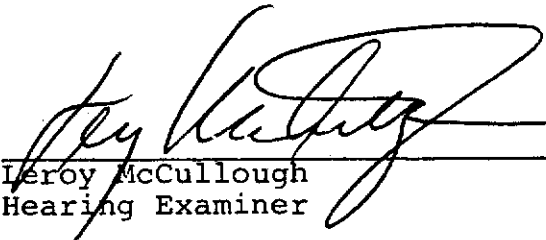
8. On April 7, 1982, the Board approved clean up of the subject south facade. The color was to be painted to match the "existing gray tone" of the First Avenue facade. Exhibit 7. The original application was for a 14' x 48' sign. To the degree that the actual sign advertising copy exceeds this approved dimension, the Denial Notice is appropriate. The Examiner cannot address the issue of the background painting since the same was not observable by the site visit.

9. Based on the foregoing, the denial should be modified.

Decision

The decision of the Community Development Director, which adopted the Board's recommendation to deny the sign application, is reversed. The portion of the Director's decision pertaining to sign size is affirmed per Conclusion 8 above.

Entered this 2nd day of October, 1984.


Leroy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW

The decision of the Hearing Examiner in this case is the final administrative determination by the City, 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 must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73. Should such request 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. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.