

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

HOWARD DONG

FILE NO. R-89-001

from a decision by the Director,
Department of Community Development

Introduction

Appellant, Howard Dong, appeals the decision of the Director, Department of Community Development, to issue a certificate of denial for exterior building features proposed for 601 South King Street. The appellant exercised the right to appeal pursuant to Section 23.66.030, Seattle Municipal Code.

This matter was heard before the undersigned hearing examiner on May 16, 1989. Parties to the proceeding were appellant, Howard Dong, represented by Joji Minatagawa, architect, and the Director, Department of Community Development, by the City Attorney, Pamela James, assistant.

For purposes of this decision, all section references are 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. Appellant proposes to replace a building which had been destroyed by fire at 601 South King Street. Because the site is within the International Special Review District a certificate of approval is required to construct a new building. The International Special Review District Board (hereafter, the "Board") reviewed the application and recommended to the Director, Department of Community Development (hereafter, "Director"), that approval be denied. The Director issued a certificate of denial. This appeal followed.

2. On September 27, 1988, the architect presented a proposal for construction of the replacement building to the Board. Among the issues raised by Board members at that meeting were the following: use of bronze anodized aluminum which would be contrary to new design guidelines adopted by the Board, would be too contemporary and would not be a compatible accent; and solid storefront bays and lack of 50 percent transparency.

3. At the March 14, 1989, meeting of the Board the architect again presented the proposal with explanation as to the reasons for the blank wall face and use of bronze anodized aluminum. The Board heard a report from its architectural review committee which had reviewed the project. It reported that the proposal was not in compliance with the 50 percent minimum transparency requirement and the required visible linkages with the street. It found the use of bronze anodized aluminum for the windows and spandrels inappropriate for a significant structure located within the Asian character retail core and the Chinatown Historic District. The Board referred to its guidelines as to use of anodized aluminum material. Recommendations were made to the applicant for changes to bring the proposal into compliance. The application was then withdrawn from consideration by the applicant.

4. On March 28, 1989, the architect presented a revised plan to the Board with expanded windows. The Board found the proposal still to lack 50 percent transparency and visible

linkages with the street and to conflict with the Storefront and Building Design Guidelines because of the use of bronze color and anodized aluminum. The Board voted to recommend denial based on noncompliance with the 50 percent transparency requirement, Section 23.66.336B.4, the two solid bays along South King Street which do not provide highly visible linkages with the street and colorful displays, Sections 23.66.336.8.4 and 23.66.302B, and on noncompliance with the Storefront and Building Design Guidelines Director's rule.

5. Appellant acknowledges that if the measurement method required by the Department of Construction and Land Use is used the transparent area of the facades is under 50 percent. The Department of Construction and Land Use calculated that 46.6 percent of the west facade would be transparent and 29.78 percent of the north facade would be transparent. Appellant urges that the code provision be interpreted as requiring 50 percent transparency of the storefront instead of the two street facades.

6. The International Special Review District Design Report provides an explanation about the intent and application of the 50 percent transparency requirement (Exhibit 5). The text explains that the purpose of requiring 50 percent of the exposed street level facade to be transparent is to maintain a highly visible linkage to the street. Another section (Exhibit 7) dealing with prohibited uses also addresses the visual transparency: "50 percent or more of the street facades directly related to the use must be transparent providing views into the interior of the use or providing window displays that contribute to the visual interest of the street...."

7. Philip Fujii, Board coordinator for six years, sees a direct connection between the code language about visible linkage with the street language and the 50 percent transparency requirement. He views the transparency requirement as the mechanism to accomplish the goal of having a visible linkage between the commercial activity and the pedestrian on the street.

8. Several buildings within the district were shown to have blank portions of walls as did the former building on the subject site. The examples cited by appellant showed the blank spaces on 7th Avenue South rather than on South King Street as proposed by appellant.

9. King Street, besides being in the retail core area, is a primary pedestrian area. Continuous storefronts are viewed as necessary for economic viability.

10. The nomination form (Exhibit 9) refers to special cultural characteristics of the district such as balconies on the upper stories, calligraphy, tile canopies and other oriental ornamentation. The architectural significance of the District, however, is as much the unified, harmonious streetscape and similarity of scale and building materials as any specific design details.

11. Four buildings recognized as historically/architecturally significant, or "primary" buildings, in the King Street Historic District are adjacent to the subject site. The four primary buildings adjacent to the subject site have common characteristics of continuous wood storefronts with large glass transoms, etc. These buildings, like others in the Asian character district, have contrasting trim colors against brick facades.

12. The subject site is within the King Street Historical District which is on the National Register of Historic Places and is within the ID Retail Core and the Asian Design Character District. South King Street lies at the center of the retail core.

13. There are several buildings with bronze or other colored anodized aluminum. Use of aluminum on noncontributing buildings has been approved since the adoption of the Director's rule but

painted in contrasting colors, not bronze.

14. A Director's rule was adopted September 13, 1988, entitled "Design Guidelines for Awnings and Canopies/Facade Alterations Security/and Signs." II.E. provides:

Anodized aluminum or other metal materials shall be reviewed by the Board and permitted when:

- ° The historic appearance of the building and district is preserved by replicating visual building details.
- ° The aluminum or metal material is painted of (sic) a compatible color.
- ° The building is a non-contributing historically or architecturally significant building.
- ° The appearance does not impact a primary facade.

15. The Board found the bronze color would not provide accent to, or contrast with, the brick facade. It would be used extensively and on two primary facades. Anodized aluminum in white or beige would cost the same as bronze but other colors would cost markedly more.

16. The prevailing practice is to limit the amount of aluminum material used in historic districts, according to the coordinator for the Landmarks Preservation Board.

17. The Board is attempting to assure that new buildings in the district will not be contextually different by giving attention to scale, color and finish.

18. The testimony of Board members shows that the Board is pleased with the general design concept and the scale of the proposed building and is concerned only with the compliance with the code and guideline requirements and the relationship of the building to the other primary historic buildings. Both the project architect and developer believe that the proposed building would be compatible in style and materials with the district.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.66.030E.

2. The Hearing Examiner may reverse or modify the decision by the Director only on finding that the decision was arbitrary and capricious. Section 23.66.030E.1. To find the decision to be arbitrary and capricious requires that the Hearing Examiner conclude that the decision is the result of willful and unreasoning disregard of the facts and circumstances. Barrie v. Kitsap County, 93 Wn.2d 843, 850, 613 P.2d 1148 (1980).

3. As to the 50 percent transparency requirement, the Board and Director relied on the method of calculating the transparent area used by DCLU and found in the Land Use Code. Appellant's argument that "storefront" may be substituted for "facade" limiting the requirement to only the front of a store is contrary to the language in Sections 23.66.33B.4, 23.86.026 and 23.86.028. While treated as a separate basis for denial in the certificate of denial, the required "highly visible linkages with the street" describes the intent of the transparency requirement and is met if the 50 percent transparency requirement is met. The Board's and Director's decision that the proposal does not meet the minimum transparency requirement is not arbitrary and capricious.


4. The Board and Director were not shown to have disre-

garded the existence and prior approval of aluminum features (including bronze) on buildings in the District but to follow the recently adopted rule. Application of that rule led them to conclude that the proposed color would not be compatible with the significant buildings adjacent to the subject site or provide an accent to the brick of the proposed building and that there would be extensive use of the material on two primary facades. The decision to disallow use of the bronze anodized aluminum was not arbitrary and capricious.

Decision

The Certificate of Denial is affirmed.

Entered this 31st day of May, 1989.


M. Margaret Klockars
Deputy 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. Should such a 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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104.