

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

In the Matter of the Appeal of

BOB APPEL AND MARVIN APPLE

FILE NO. R-86-002

from denial of a certificate of approval for development proposed for the Pioneer Square Preservation District

Introduction

Appellants challenge the decision of the Director, Department of Community Development (DCD), to deny a certificate of approval for construction of a McDonald's restaurant within the Pioneer Square Preservation District at First Avenue South and South Brougham Way.

A hearing was held in this matter before the Hearing Examiner on May 13, 1987. Parties were represented as follows: appellants, pro se and the DCD Director by James E. Fearn, Jr., assistant City attorney.

After due consideration of the evidence elicited during the public hearing and subsequent to a visit to the site and vicinity, the following findings of fact, conclusions and decision.

Findings of Fact

1. In September 1986 McDonald's Corporation applied to the Pioneer Square Preservation Board (hereinafter "the Board") for a Certificate of Approval to construct a restaurant facility at the northeast corner of Royal Brougham Way and First Avenue South. The application for change of use was approved, but the construction design application denied. Appellants, who have an interest in the consummation of the approval and subsequent realty arrangement, submitted this appeal.

2. The project site is at the southern edge of the Pioneer Square Preservation District within what is called the District's "buffer zone." The site is presently developed with a parking lot and an old gas station.

3. Properties on the west side of First Avenue South are not included within the District. Appellants describe this west side development as "modern office/warehouse type buildings." Also excluded from the District boundary is the imposing Kingdome structure.

4. From the project site north is a variety of warehouse structures fronting the east side of First Avenue. These buildings are generally 30 ft. in height, extend to the front property lines, have tall windows of 14-15 ft., and have exteriors of brick masonry, reinforced concrete, or stone.

5. The typical first floor is 14-15 ft. in height. The multifloor buildings typically have pronounced, dominant lines that separate the first and second floor level.

6. Included in the exceptions to the architectural pattern is the north adjacent building which appears as an undistinguished one-story building. This building, however, does have the large window pattern representative of this portion of the Preservation District. See photo Exhibits 1 and 4.

7. Structure setbacks are not regulated in the project site area of the Pioneer Square District. Map E, Section 23.66.150.

8. McDonald's proposal was to erect on-site a single-story

restaurant facility with a mansard-style roof. Building height would be 9 ft. 4 in. to the bottom of the roof and 16 ft. 2 in. to the back of the roof. McDonald's also proposed a manufactured wood type-siding (T-111) and residential-style windows smaller in scale than the District's prevailing fenestration pattern. Appellants assert and the Hearing Examiner finds that the proposed building would improve upon the site's present aesthetics and would offer a more economical dining alternative for the subject area.

9. Appellants' further view is that since the "existing structures running north and south between 1st Avenue South and Occidental Way" offer a variety of wood, stucco, brick and concrete buildings with different designs, there is no prevailing pattern with which the McDonald's building should be required to comport.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.66, Seattle Municipal Code.

2. Seattle Municipal Code Section 23.66.030(E)(1) provides in part that the Hearing Examiner may reverse or modify the decision of the Community Development Director only if the Hearing Examiner finds the decision to be "arbitrary and capricious." A decision is arbitrary and capricious if there is no support for the decision in the record. Hayes v. Yount, 87 Wn. 2d 280 (1976). The following illustrations show that there is ample support in the record for the DCD Director's decision. The DCD Director's decision is therefore affirmed.

3. Seattle Municipal Code Section 23.66.100 addresses the creation of the Pioneer Square Preservation District, and the legislative findings and purpose for the District. Section 23.66.100(B) specifies that

The District shall consist of an historic core and a buffer zone...All property in the entire district shall be developed and used in accordance with the use and development standards established in this chapter...(emphasis supplied).

4. District "development standards are included in Seattle Municipal Code Sections 23.66.120 -.190. Section 23.66.140 provides by reference to "Map G" that buildings on the project site should be no less than 30 ft. in height. The McDonald's structure would be a single story structure of less than 17 ft.

5. Seattle Municipal Code Section 23.66.180(A) provides that unless the DCD Director approves an alternative material,

...exterior buildings facades shall be brick, concrete tinted a subdued or earthen color, sandstone or similar stone facing material commonly used in the District.

Applicant proposed an exterior of processed wood while the most common exterior in the District is brick or concrete.

6. Seattle Municipal Code Section 23.66.180(B) requires that exterior building facades be compatible in scale with surrounding structures, and that

(W)indow proportions, floor height, cornice line, street elevations and other elements of the building facades...relate to the scale of the buildings in the immediate area.

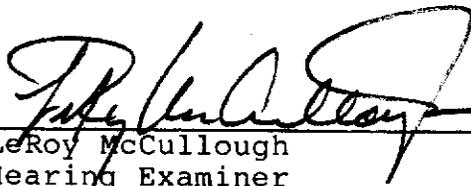
The proposed building would be compatible in scale with some of

the low-scale, immediate structures, such as the single-story building north adjacent to the site. However, the prevailing pattern is of 30 ft. buildings with pronounced and separate ground floors of roughly 14 ft. in height. Secondly, the proposed window proportions do not comport with the existing pattern of tall building windows. The DCD Director's decision must therefore be affirmed. Hayes v. Yount, supra.

Decision

The DCD Director's decision is AFFIRMED.

Entered this 19th day of May, 1987.


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. 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, 5th Floor, Seattle, Washington 98104.