

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

In the Matter of the Appeal of

ANN L. BARKER AND NANCY FLAMBURES

FILE NO. M-84-005

from a decision by the Pike Place
Market Historical Commission

Introduction

Appellants, Ann L. Barker and Nancy Flambures, appeal the decision of the Pike Place Market Historical Commission to grant a certificate of approval for the exterior modification of two doors at 1923 First Avenue, second level, Smith Block Building.

This matter was heard before the Hearing Examiner on December 4, 1984.

Parties to the proceedings were: appellants represented by Stewart M. Landefeld, attorney at law; Pike Place Market Historical Commission represented by James E. Fearn, Jr., assistant city attorney; and the applicant, MIC Ltd., represented by Gilbert Levy, attorney at law.

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. MIC Limited applied for a certificate of approval to build a doorway to the second floor on the north side of the building for access from the stairway descending from First Avenue to Post Alley. After various committee recommendations and design revisions the Pike Place Market Historical Commission (Commission) issued a certificate of approval for "design". Appellants appealed this decision.

2. The Smith Block Building is located between First Avenue and Post Alley and Virginia and Stewart Streets. It has three stories above street level but has no opening at its "A" level. Floors A and B have been unused. Equipment has recently been moved in which would indicate that the use of part of the area is for storage.

3. An opening is proposed in floor A to give access to and from a pedestrian stairway between the Smith Block Building and the Livingston Baker Building.

4. The Livingston Baker Building, owned by Market Housing, contains 30 apartment units for the low income elderly and at least one retail use, that of appellant Barker. An entrance to the housing is directly across from the location of the proposed doorway.

5. Initially, the proposal was for four doors to be added. The design committee recommended changes, including reduction in the number. The final amended application was for two doors.

6. The Commission considered the design of the Smith Block Building, the design of the Livingston Baker Building, the design of the passageways, the character of First Avenue and Post Alley, the size of the opening in proportion to the landing onto which it would open, the lighting, other safety factors and other design factors.

7. The Commission discussed the issue of use, the lack of information regarding the future use of the space and whether the use of the space had to be a basis of the design decision. The chair ruled that use was irrelevant to the decision since no use approval was requested or to be given.

8. One page of a warranty deed from the City of Seattle to Market Housing was included with the application for certificate of approval. The page refers to the reservation of an easement by the City of Seattle for "subsequent transfer to the owner(s) of the Smith Block". (Appellant's Exhibit 3) Because the identity of the document and the identity of one of the parties is not part of the excerpt, the Commission and others were left with the impression that the page was an excerpt from the easement document itself.

Conclusions

1. The hearing examiner's review is limited to considering whether:

- A. Such action of the Commission violates terms of this chapter or rules, regulations or guidelines adopted pursuant to the authority of this chapter; or
- B. Such action of the Commission is based upon a recommendation made in violation of the procedures set forth in this chapter or procedures established by rules, regulations or guidelines adopted pursuant to the authority of this chapter and such procedural violation operates unfairly against the applicant.

Section 25.24.080. Appellants allege that the Commission's failure to consider design and use together contravenes Section 25.24.060 and, further, that the design decision that was made was based on a factual error about the existence of the easement. Allegations as to procedural violations were dismissed as the violations, if they occurred, did not operate unfairly against the applicant.

2. Section 25.24.060 provides, in part:

No structure or part thereof shall be erected, altered, extended, or reconstructed, and no structure or lot shall be used or occupied except pursuant to a certificate of approval authorized by the Commission;... The Commission in considering the appropriateness of any alteration...or other modification of any building shall refer to the purpose of this chapter and shall consider among other things the historical and architectural value and significance, architectural style, the general design, arrangement, texture, material, occupancy and use, and color of the building or structure in question or its appurtenant fixtures, including signs, the relationship of such features to similar features of the other buildings within the Historical District and the position of such buildings or structure in relation to the street, public way, or semi-public way and to other buildings or structures.

3. Section 25.24.060 and the Pike Place Market Historical Guidelines (Guidelines) give broad discretion to the Commission in their decisions on changes to structures in the Market. There was no showing that the architectural and historical merits of the proposed change were improperly considered or that the standards set forth in the Guidelines were not properly applied. In fact, the Commission required various changes before approval. Use was "considered" as well. The result of that consideration was that knowledge as to the actual, future use was not necessary to making the design decision. That a better decision could be made with that information does not show that the requirements of the Code were not followed. While not necessarily reflected in the certificate of approval, all parties at hearing agreed that once the use is known, the design approval may be withdrawn if the design and use were found to be incompatible.

4. Appellants urge that a factual error, the misinformation or misunderstanding about the status of the easement, requires reversal of the decision. Applicant has filed Applicant's Motion to Supplement the Record with a transcript of the Commission's hearing to show what information was actually before the Commission. Without reopening the record for consideration of the transcript, it can be concluded that the chapter was violated where the Commission did not, because of misleading information or misunderstanding, consider the relationship or position of the structural change to the public passageway, i.e., access availability. Therefore, the certificate of approval should be modified by the addition of a condition that evidence of legal access be provided the Director prior to issuance of any building permit. In light of the Commission's December 13, 1984, letter to the Director, Department of Construction and Land Use, it is recognized that this additional condition has only the effect of formalizing the Commission's action.


5. No other violation of the Code or Guidelines has been proved.

Decision

The Certificate of Approval is modified by the addition of the following condition:

Evidence of legal access to the proposed doorways from the pedestrian passageway be provided the Director, Department of Construction and Land Use, prior to the issuance of any building permit.

Entered this 18th day of December, 1984.


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. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11). 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.