

RESOLUTION #218

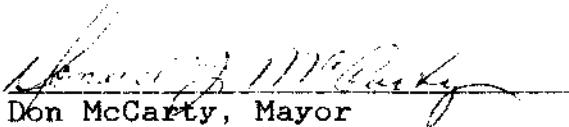
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DENYING THE APPEAL OF PETER DARRAH AND UPHOLDING THE DECISION OF THE HEARING EXAMINER.

WHEREAS, on November 23, 1987, the City Council heard the appeal of Mr. Peter Darrah from the decision of the Hearing Examiner for the City of Gig Harbor dated September 25, 1987 upon the appeal by Mr. Darrah of determinations by the City Building Official and Fire Marshal, and

WHEREAS, having heard argument of the appellant and the City Attorney, considered exhibits presented and having reviewed the record, findings, conclusions and decision of the Hearing Examiner, now, therefore,

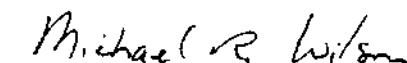
THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES THAT THE ATTACHED DOCUMENT ENTITLED "FINDINGS, CONCLUSIONS AND DECISION OF THE GIG HARBOR CITY COUNCIL IN THE MATTER OF THE DARRAH APPEAL" IS INCORPORATED HEREIN BY THIS REFERENCE AS IF SET FORTH IN FULL AND IS HEREBY ADOPTED AS THE FINDINGS, CONCLUSIONS AND DECISION OF THE CITY COUNCIL IN THIS APPEAL.

RESOLVED THIS 28TH DAY OF DECEMBER, 1987.



Don McCarty, Mayor

ATTEST:



Michael R. Wilson
City Administrator/Clerk

Filed with city clerk: 12/23/87
Passed by city council: 12/28/87

Findings, Conclusions and Decision of the
Gig Harbor City Council in the Matter of the
Darrah Appeal

This matter came before the Gig Harbor City Council on November 23, 1987, upon the appeal of Mr. Peter Darrah from the decision of the Hearing Examiner for the City of Gig Harbor dated November 25, 1987, a copy of which is attached hereto. The Hearing Examiner's decision was made in response to Mr. Darrah's appeal of determinations by the City Building Official and Fire Marshall that violations of the City Building, Fire and Zoning Codes are occurring at Mr. Darrah's business property, 3311 Harbor View Drive in the City of Gig Harbor. Mr. Darrah appeared in person at the appeal and presented written exhibits and oral argument in support of his appeal. The City was represented by Larry Martin of the Office of the City Attorney. Mr. Martin presented oral argument supporting the determinations of the Building Official and Fire Marshall and in response to Mr. Darrah's presentation. The record of the Hearing Examiner's consideration of the appeal, and the findings, conclusions and decision of the Examiner were before the City Council.

Having considered the written exhibits, oral argument and the Hearing Examiner's record, findings, conclusions and decision, the City Council hereby makes the following:

I. FINDINGS AND CONCLUSIONS:

A. This appeal was filed pursuant to Gig Harbor Municipal Code Section 17.10.160. Pursuant to this provision, the decision of the City Council is based upon the Hearing Examiner's record. Evidence or testimony not contained in the record before the Hearing Examiner has not been

considered, provided that, pursuant to Gig Harbor Municipal Code Section 17.10.160B, at the hearing of the appeal the City Council publicly requested that the City Building Official provide additional information concerning Mr. Darrah's contention that other Marinas in the City had not been required to comply with the same regulations which the City has enforced against Mr. Darrah's Marina. Specifically, the Council inquiries concerned Section 3304 (d) of the 1985 UBC and Section 12.104 of the 1985 UFC which prohibit a locked exit door which may not be opened from the marina side without use of a key or special knowledge. The Council also requested clarification concerning any prior determination of the Planning Commission concerning the applicability of these Code sections to marinas. At the City Council meeting of _____, 1987, City staff presented a report in response to this request for information. This report was considered in evaluating Mr. Darrah's claim of unequal application of these laws. This information was sought and considered in order to give the greatest deference to Mr. Darrah's arguments. The information provided did not support these contentions and the decision of the City Council reflected herein is not dependent upon such additional information, or any other evidence outside of the record of the Hearing Examiner.

B. The findings and conclusions of the Hearing Examiner set forth in the attached report dated September 25, 1987 are hereby accepted and adopted as the findings and conclusions of the City Council in support of the Council's decision in this appeal.

C. The appellant has failed to show that an error was committed by the Hearing Examiner. The record of the Hearing Examiner's consideration of Mr. Darrah's appeal fully supports the findings, conclusions and decision of the Examiner, and such decision should be upheld.

II. Decision:

The appeal in this matter is denied. The decision of the Hearing Examiner shall remain in effect and shall be enforced.

CITY OF GIG HARBOR
HEARING EXAMINER
FINDINGS CONCLUSIONS AND DECISION

APPELLANT: Peter Darrah

APPEAL: Mr. Darrah has appealed his being cited for numerous violations of the City of Gig Harbor's Building, Fire and Zoning Codes at his businesses located at 3311 Harborview Drive.

PUBLIC HEARING: The Darrah appeal was opened at 3:03 pm on May 27, 1987 and at 4:47 pm was continued to June 3, 1987. The hearing was reopened at 4:30 pm, on June 3, 1987 and was closed at 6:09 pm. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Planning Department.

FINDINGS CONCLUSIONS AND DECISION:

Having considered the entire record in this matter, the Hearing Examiner now makes and enters the following:

I. FINDINGS:

A. The matters to be considered and decided upon in the appeal are limited to the violations alleged by the City of Gig Harbor. Those violations and the applicable City Regulations are listed in Exhibit A.

B. The decisions of the Building Official/Fire Marshall shall have substantial weight.

C. The burden of proof rests with the appellant, Mr. Peter Darrah.

D. All testimony was taken under oath.

E. There has been a long history of alleged Zoning, Building and Fire Code violations by Mr. Darrah, however, this decision will only address alleged

violations beginning in August 1985 and listed in Exhibit A.

F. The following findings will address each of the specific Building and Fire Code violations alleged by the City of Gig Harbor in the net shed, shop and marina facility:

1. Electrical Hazards:

The City alleged that wiring was taped together without required electrical boxes and covers, proper grounding was lacking and extension cords were used in lieu of permanent wiring.

The appellant, Peter Darrah, testified that an electrical inspection was conducted on May 27, 1987 by a State Electrical Inspector from the Department of Labor and Industries Electrical Section. He submitted the inspection correction report as part of Exhibit B and testified that a lot of work had already been completed and that he was willing to comply with the corrections specified by the State Inspector.

2. Other Hazards:

a. The City alleged that the exit door to the marina did not meet the provisions of Section 3304(d), 1985 UBC and Section 12.104, 1985 UFC.

Mr. Darrah said he saw no connection between a dock and a building, and did not

feel the provisions of the UBC should apply. He also testified that the gate is locked open when people are on the Krestine and he said he felt he was being singled out since none of the other marinas in the City have exits like the City has required of him.

b. The City alleged that the net shed fire extinguishers are in non-compliance with applicable sections of the 1985 UBC.

Mr. Darrah said he was willing to have another Fire Marshall visit the site and he would comply with that Fire Marshall's recommendations.

c. The City alleged that there is flammable liquid improperly stored in the net shed. Photographs were submitted to substantiate the City's allegation.

Mr. Darrah testified that the alleged conditions did not exist at the net shed. Larry Walsh testified on Mr. Darrah's behalf that metal containers are in existence in the net shed and have been properly used. He also wrote a letter to that effect (Part of Exhibit I). Patience Darrah testified that she worked at the site doing cleanup and further testified that she felt no violations existed.

d. The City alleged that guardrails/handrails were not provided on piers, walkways, ramps and stairways as required by the 1985 UBC.

Mr. Darrah said he felt the City is trying to apply house requirements to a dock. He said ramps and stairways should have guard/handrails, but not a dock. He said boat docks should be viewed as loading docks and guardrails/handrails are not required on loading docks.

G. The following findings will address each of the specific Zoning Code violations alleged by the City of Gig Harbor:

1. Marina

The City alleged that the marina has been expanded beyond what has been permitted by state and local permits.

Mr. Darrah contends that the City's control ends at the meander line and beyond that it is up to the Department of Natural Resources and the Corps of Engineers. He also contends that he does not need permits because the fingers which were added to his original dock are not permanently attached to the original dock.

2. Covered Moorage

The City alleged that Mr. Darrah moved a covered moorage into his marina in violation of City Code.

Mr. Darrah said the former building official said to put it in and see what happens.

3. Bed and Breakfast/Marine Lodging

The City alleged that Mr. Darrah provides Bed and Breakfast/Marine Lodging on the Krestine which is tied up to his dock. This is not a permitted use within the W-1 zoning district.

Mr. Darrah testified that he has Nautical Lodging, not a Bed and Breakfast. He said he has a license to rent boats and that is what he is doing. He is renting the Krestine and people stay on it overnight. He said breakfast is not included in the price of staying overnight on the boat and that he has not used the term Bed and Breakfast in any advertising of the Krestine. He also said that if someone wants breakfast on board the boat he charges extra for that. It is not included in the price of a night's lodging as is customary in a Bed and Breakfast. He also testified that he thought he was in compliance, but applied for a permit at the request of the Mayor.

Karen Arneson spoke on Mr. Darrah's behalf and said she felt this should be resolved so Mr. Darrah could continue to provide marine lodging on the Krestine.

Brian Sterns also spoke on Mr. Darrah's behalf and said he saw no problem with overnight lodging on the boat.

4. Krestine Sign

The city alleged that the Krestine sign was not removed as required by Gig Harbor Code.

Mr. Darrah replied that sign should be allowed to stay up until it was determined how the Krestine could be used.

II. CONCLUSIONS:

Conclusions addressing each of the items raised in the appeal hearing follows:

A. Alleged Building and Fire Code Violations.

1. Electrical Hazards

The inspection by the State Electrical Inspector showed some work had been completed at the time of the hearing and other work was in progress. Another inspection by the State Electrical Inspector should be conducted to determine the current degree of compliance. The City should schedule the inspection as soon as is practicable. Penalties should be assessed for violations which have not been brought into compliance by the that inspection date.

2. Other Hazards

a. The exit door to the marina should be modified to meet the provisions of the 1985 UBC and the 1985 UFC as should the exit doors to other marinas in the City if they do not have doors which meet the code as Mr. Darrah contends.

b. The fire extinguishers in the net shed should be re-inspected and the inspection should be conducted by either the City of Gig Harbor Fire Marshall or by a certified inspector, approved by the City and paid for by Mr. Darrah should there be any extra cost. Said inspection should take place within 30 days of the date of this decision. Penalties should be assessed for violations which still exist at the time of that inspection.

c. Conflicting testimony and evidence was presented regarding the storage of flammable liquids in the net shed. An inspection should be conducted within 30 days of the date of this decision to determine the degree of compliance with the City's regulations. Penalties should be assessed for violations which still exist at the time of that inspection.

d. Handrails/guardrails should be in place in accordance with the 1985 UBC on all stairways, ramps, and elevated walkways, however, the Examiner concurs with Mr. Darrah that handrails/guardrails should not be required on the piers.

B. Zoning Code Violations

1. Marina

The Examiner believes the marina expansion cited by the City is in violation of City Code and should be brought into compliance as soon as possible. To begin with, Mr. Darrah should apply for permits for the marina expansion which has already occurred (including the finger piers Mr. Darrah says are temporary, unless he chooses to remove said finger piers within 30 days of the date of this decision).

2. Covered Moorage

The Examiner believes the covered moorage is in violation of City Code and should be removed.

3. Bed and Breakfast/Marine Lodging

The principal issue in this instance is the interpretation of the Gig Harbor Municipal Code as it relates to the use of the Krestine. There is no argument that the Krestine is a boat and should be allowed to be tied up to a dock. The question then, is when does the Krestine become a

"building" as defined by the code. After examining the code at some length it is clear that commercial vessels are allowed within the W-1 district. The code is not as clear on whether or not people are allowed to stay overnight on a boat in Gig Harbor. Furthermore, the code is silent on the issue as to whether or not a person has to own the boat to stay overnight on it.

In general, zoning ordinances are in derogation of the common law and work to deprive a property owner of a potential use of his property which would otherwise be lawful. Ambiguities in the zoning ordinance should therefore be strictly interpreted in favor of the property owner.

The construction or drafting of the ordinance then becomes very important. The draftsman must spell out the prohibited uses and specific regulations with precision and completeness. If it is the belief of the Hearing Examiner that, when interpreting the language of the zoning ordinance to determine the extent of restriction on the use of property, if doubt exists as to the intention of the legislative body, then the language must be interpreted in favor of the property owner and against any implied extension of a restriction. In this case, the stated intent of the W-1 district is

"...to maintain the recreational and water-oriented character of the waterfront, to preserve it as an attraction and resource for the community and its visitors...." It is also believed by the Examiner that by recognizing that the Krestine is a commercial vessel rather than a building then renting the vessel for overnight lodging would be appropriate.

It is therefore believed that no infraction of the zoning ordinance exists with respect to this specific issue.

4. Krestine Sign

The sign should meet all applicable regulations outlined in Chapter 17.80 of the Gig Harbor Municipal Code. Therefore, an application for a sign permit should be submitted to the City for its review within 30 days of the date of this decision.

III. DECISION:

Based upon the foregoing findings of fact and conclusions, the decisions on the subject appeal are as follows:

A. Building and Fire Code Violations

1. Electrical Hazards

An inspection by a Washington State Department of Labor and Industries Electrical Inspector shall be conducted as soon as is practicable.

2. Other Hazards

a. The exit door shall be modified to meet the provisions of the 1985 UBC and the 1985 UFC.

b. The fire extinguishers in the net shed shall be re-inspected and the inspection shall be conducted by either the City of Gig Harbor Fire Marshall or by a certified inspector, approved by the City and paid for by Mr. Darrah should there be any extra cost. Said inspection shall take place within 30 days of the date of this decision.

c. An inspection of the storage of flammable liquids shall be conducted by the City of Gig Harbor Fire Marshall or by a certified inspector, approved by the City and paid for by Mr. Darrah should there be any extra cost. Said inspection shall take place within 30 days of the date of this decision.

d. An inspection of handrails/guardrails on all stairways, ramps and elevated walkways shall be conducted by the City of Gig Harbor Building Inspector or an ICBO certified inspector approved by the city and paid for by Mr. Darrah should there be any extra cost. Said inspection shall be conducted within 30 days of the date of this decision.

B. Zoning Code Violations

1. Marina

Application for all necessary permits shall be made by Mr. Darrah within 30 days of the date of this decision.

2. Covered Moorage

The covered moorage shall be removed within 60 days of the date of this decision.

3. Bed and Breakfast/Marine Lodging

No violation.

4. Krestine Sign

Application for a sign permit shall be made within 30 days of the date of this decision.

C. Failure to comply with any of the above decisions within the time frame stipulated will result in penalties set by Gig Harbor Municipal Code. Each separate violation will be subject to a penalty at the rate of \$50 per day for each Building and Fire Code violation and \$100 per day for each Zoning Code violation.

Dated this 25th day of September, 1987.


Ron McConnell,
Hearing Examiner

RECONSIDERATION:

Any aggrieved person feeling that the decision of the Examiner is based on erroneous procedures, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing, may make a written request for reconsideration by the Examiner within ten (10) days of the date the decision is rendered. This request shall set forth the specific errors or new information relied upon by such appellant, and the Examiner may, after review of the record, take further action as he or she deems proper.

APPEAL OF EXAMINER'S DECISION:

Any party who feels aggrieved by the Examiner's decision may submit an appeal in writing to the Gig Harbor Planning Director within fourteen (14) days from the date the final decision of the Examiner is rendered, requesting a review of such decision.

Such appeal shall be upon the record, established and made at the hearing held by the Examiner. Whenever a decision of the Examiner is reviewed by the City Council pursuant to this section, other parties of record may submit written memoranda in support of their position. In addition, the Council shall allow each side no more than fifteen minutes of oral presentation. However, no new evidence or testimony shall be presented to the Council during such oral presentation. The City Council shall accept, modify or reject any findings or conclusions, or remand the decisions of the Examiner for conclusions, or remand the decisions of the Examiner for further hearing; provided that any decision of the City Council shall be based on the record of the hearing conducted by the Examiner; however, the Council may publicly request additional information of the appellant and the Examiner at its discretion.

Upon such written appeal being filed within the time period allotted and upon payment of fees as required, a review shall be held by the City Council. Such review shall be held in accordance with appeal procedures adopted by the City Council by resolution. If the Examiner has recommended approval of the proposal, such recommendation shall be considered by the City Council at the same time as the consideration of the appeal.

Further action by the Examiner shall be within thirty (30) days of the reconsideration request.

The following exhibits were offered and entered into the file:

- A. Letter from Laura Inveen dated 5/20/87 (with attachments)
- B. Letter from Peter Darrah dated 5/27/87 (with attachments)
- C. Bed and Breakfast Application
- D. Application for Business License or Permit (Renewal) dated 8/21/85
- E. City of Gig Harbor Fire Prevention Requirement dated 2/19/86
- F. Photographs of Uniform Fire Code Violations submitted by Steve Bowman
- G. Photographs of Uniform Fire Code Exitway Violations submitted by Steve Bowman
- H. Photographs of Electrical Code Violations submitted by Steve Bowman
- I. Hearing notes submitted by Peter Darrah on 5/27/87
- J. Letter from Gregory L. Jones, dated 5/13/80
- K. Old photo of subject dock undated
- L. Plan - Floats and Gangways
- M. City of Gig Harbor Fire Prevention Fire Safety Notice
- N. Aerial Photo dated 5/29/84

PARTIES OF RECORD:

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