

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ANNE K. VESSER

FILE NO. MUP-81-098(V)  
APPLICATION NO. 81294-0408

from a decision of the Director of  
the Department of Construction and  
Land Use on a master use permit  
application

#### Introduction

Anne K. Vesser, appellant, appeals the decision of the Director of the Department of Construction and Land Use (Director) to deny variances related to a proposed subdivision of property at 6055-40th Avenue N.E.

The appellant exercised her right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on January 26, 1982.

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. Thomas Walters applied for a master use permit which included variances for property at 6055-40th Avenue N.E. The variances were denied and one of the owners of the property appealed.

2. The subject property is a lot at the southwest corner of N.E. 62nd Street and 40th Avenue N.E. The lot contains approximately 8,741 sq. ft. It is developed with a single family residence and one car garage.

3. The area is zoned Single Family Residence High Density (RS 5000) which requires lots to be at least 5,000 sq. ft. No lot in the same blockfront on 40th Avenue N.E. is smaller than 4,200 sq. ft. and two are 7,000 sq. ft. On the opposing blockfront (east side of 40th N.E.) no lot is smaller than 4,800 sq. ft. and four are as large as 6,750 sq. ft. On the other half of the block and its facing blockfront (both sides of 39th N.E.) there is one lot as small as 3,400 sq. ft. In a ten block square area, between N.E. 55th and 65th Streets and 35th and 45th Avenues N.E., there are 103 lots under 4,000 sq. ft., and another 202 from 4,000-4,999 sq. ft. according to a survey done by the applicant. The subject lot is two times the size of approximately 34 percent of the lots in an area outlined in red on Exhibit 4.

4. The application requests variances that would allow the eventual division of the property into two lots, proposed Parcel A with 3,419.61 sq. ft. on the corner and proposed Parcel B with 5,321 sq. ft. The house would be on Parcel B and have a front yard of 13.6 ft., a north side yard of 6.5 ft. and no south side yard because of the placement of the existing garage.

5. Section 24.20.090 requires a front yard setback of at least 20 ft. and side yard of 5 ft. Section 24.14.020 prohibits the reduction of a required yard below the minimum requirement. Variances from these provisions would be required for Parcel B and a variance for the lot size of Parcel A which would be 68 percent of the minimum size now permitted.

6. No substandard lots have been created in the area since the adoption of the current zoning ordinance in 1957.

#### Conclusions

1. Whether the size of the subject property is sufficiently larger than others to constitute a unique property condition denying it rights enjoyed by other properties in the zone and vicinity is the critical issue in this appeal. If it were twice as large as over 50 percent of the lots in the zone or vicinity, there would appear to be undue hardship from the property condition. In the "vicinity", as defined by the red outline on Exhibit No. 4, it falls well below. That also appears to be true for the larger area defined by appellants although the total number of lots was not provided.

2. To allow the creation of a lot only 68 percent of the size of the minimum requirement of the Code when none has been created since the adoption of the ordinance and the lot's area is not twice as great as even one-half of the other lots, or conversely, to allow the property double the development rights enjoyed by the great majority of the properties, would confer special privilege.

3. The division would require yard variances for the lot with the existing house and though no yard variances would necessarily be required for the other lot, the requirement for the rear yard would be reduced below that of a standard lot. While these reductions in open space are not desirable the record does not show they would be materially detrimental to the public welfare or injurious to other properties. The addition of a building site would be beneficial to the general welfare.


4. The Single Family Residential Policies state general intent to maintain open space through yard requirements. The requested variances from yard requirements would technically conflict since a large front yard would not be maintained but replaced by a structure and a smaller front yard which now exists as a side yard.

5. Since the requirements of Section 24.74.030 have not been met to show unique property conditions that deny property rights enjoyed by others and that special privilege would not be conferred, the Director's decision to deny the variances was not in error.

#### Decision

The Director's decision to deny the variance is AFFIRMED.

Entered this 9th day of February, 1982.

  
M. Margaret Klockars  
Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal 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.