

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

In the Matter of the Appeal of

LEO C. JOHNSTON

FILE NO. MUP-82-043(P)
APPLICATION NO. 82-0234

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

Introduction

Appellant, Leo C. Johnston, appeals the decision of the Director of the Department of Construction and Land Use (Director) to conditionally grant a master use permit for a short subdivision at 11754-8th N.E.

Parties to the proceedings were: appellant, Leo C. Johnston, the applicant, Marjorie J. Creech, and the Director represented by Diane Althaus.

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 August 4, 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. Applicant applied for a master use permit to divide property at 11754-8th N.E. into two lots. The Director conditionally granted that permit and appellant filed this appeal.

2. The property is a corner lot with frontage on N.E. 120th and 8th Avenue N.E. comprising approximately 21,200 sq. ft. It is zoned Single Family Residence Medium Density (SF 7200) and is developed with a single family house on the eastern portion.

3. Applicant proposes to divide the property into two lots, the one with the house containing approximately 14,000 sq. ft. and the other, Parcel A, containing 7,200 sq. ft.

4. A house could be constructed on Parcel A meeting the minimum yard requirements of the code as long as the setback from N.E. 120th is denominated the front yard and that from 8th Avenue N.E. is the side yard.

5. Required yards, according to Section 24.19.090 and 24.62.120, are 20 ft. front, 30 ft. rear, 5 ft. side and 10 ft. side street side.

6. Lot areas in the vicinity are generally 7,200 sq. ft. and larger.

7. The existing house on the subject property is set back approximately 60 ft. from the 8th N.E. right-of-way. Another 20 ft. separates the house from the edge of the roadway.

8. Other houses fronting on 8th N.E. are set similarly for back from the street.

9. Appellant and other neighbors offered the following objections to the decision: the irregular shape of the lot, the deviation from the pattern of deep setbacks, a potential decrease in property values, hazard at the intersection from visual obstruction and non-conformance with the Single Family Residential Areas Policies (SFRAP).

10. The property line between the two new lots would have one 20 ft. wide jog behind the houses.

11. Conflicting opinions were offered about the effect of the division on property values.

12. The "new" zoning code, now in effect, which would govern construction on any new lot created, requires an unobstructed sight triangle to avoid hazard, according to Ms. Althaus.

13. The purpose stated in the Single Family Residential Areas Policies, in part, is "...to preserve and maintain the physical character of Single Family Residential Areas in a way that encourages rehabilitation and provides housing opportunities throughout the City for all residents."

14. The policy intent for bulk and siting in the SFRAP provides for preservation of the streetscape character. Implementation guidelines provide for a 5 ft. side yard setback and front yard setbacks at least as great as the average front yard setback of the adjacent single family residences.

15. Section 23.44.08, in the "new" single family code, requires a front yard either the average of the front yards of the structures on either side or 20 ft., whichever is less.

16. The SFRAP have supplanted the Comprehensive Plan for single family areas.

Conclusions

1. Section 24.84.170, requires that the hearing examiner give substantial weight to the decision of the Director. The burden is on the appellant to overcome that weight by showing clear error.

2. Appellant urges that the Director incorrectly assessed the application's conformance with two of the requirements of Section 24.58.080, i.e.,

1. The proposed lots conform to the comprehensive plan and Zoning Ordinance provisions; and

3. The public use and interests will be served by permitting the proposed division of the land.

3. The record does not show that the proposed division is not in strict compliance with the zoning code.


4. The SFRAP are designed so that the purpose is carried out by individual policies which are more particularly described. The new code, then, implements those policy intents. The policy intent for Bulk and Siting is to "preserve the streetscape character of individual clusters of housing units in City neighborhoods". The implementation guideline relating to front yard setbacks provides for a regulation to require front yard setbacks at least as great as the average of adjacent residences.

The setback on N.E. 120th satisfies both the "old" code's 20 ft. requirement and the new code's implementation of the policy. The setback from 8th N.E. is the source of some dissonance with the policy since it would alter the streetscape. However, because the lot is required to designate only one yard as "front" it is entitled by the code to have a lesser setback on one street. Further, the implementation guideline in the SFRAP itself speaks only of 5 ft. for a side yard. The issue then is whether appellant has proved the Director was clearly wrong when he determined that the public use and interest would be served by the division of this large lot. The record shows only a change in appearance. It is not error for the Director to have determined that, despite this change, the division will serve the public interest. Therefore, the decision must be affirmed.

Decision

The decision of the Director conditionally granting the application is AFFIRMED.

Entered this 13th day of August, 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.