

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

In the Matter of the Appeal of

AURILLA DOERNER

FILE NO. MUP-83-019(P,V)
APPLICATION NO. 82-531

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

Introduction

Applicant proposes to subdivide an existing parcel into two lots and construct a dwelling on one of the newly created lots. The proposal address is 812 West Galer. The Department of Construction and Land Use Director (Director) disallowed required lot area variances and the short subdivision.

The appellant exercised her right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on April 27, 1983.

Parties to the proceedings were: appellant (applicant) pro se and by Don Lassiter, architect; the Director by Diane Althaus.

For purposes of this decision, all section numbers refer to Title 23, Seattle Municipal Code, unless otherwise indicated.

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 proposes to subdivide an existing 7,800 sq. ft. area parcel into two lots. The Director denied short subdivision and lot area variance approval and this appeal followed.

2. The basic facts are not in dispute. The subject property, developed with a residence and a detached garage, is located on the west slope of Queen Anne Hill at 812 West Galer. A detached garage is located in the northeast quadrant of the lot. Lot depth (north-south dimension) is roughly 120 ft. The lot generally has 60 ft. of width, its West Galer Street frontage. West Galer is south adjacent. The existing rear yard is approximately 7 ft. higher than the more southerly portion of the lot on which the present dwelling is located. The lot is in a single family (SF 5000) zone.

3. By the proposal the existing dwelling would remain on proposed Parcel A while a newly constructed two story residence would be located on the more northerly parcel B. A narrow road leading from east adjacent 8th Avenue West completes the unusual "T" shaped configuration of the existing lot, and will serve as access to Parcel A. Access to proposed Parcel B will be via an alley which is west adjacent to the lot.

4. Immediately east of the subject parcel is a two story structure in use as a duplex that its owners intend to eventually convert to a single family dwelling. A triplex is also east adjacent. Both multiplexes are addressed to 8th Avenue West. Both structures also physically resemble large, older single family dwellings.

5. Consistent with remaining development in the immediate area the north adjacent property is developed with a single family residence.

6. Initially, applicant proposed a 3,600 sq. ft. lot area for Parcel B, while Parcel A would measure roughly 4,200 sq. ft. Current plans call for a Parcel B lot area of 3,750 sq. ft. and for Parcel A to measure 4,050 sq. ft. In applicant's view, approval of the subdivision and the ensuing modest construction would be consistent with the City's goals of developing in-city dwellings.

7. Vicinity lot sizes vary. The area bordered by W. Galer, 8th Avenue W., W. Garfield and 9th Avenue W. includes the subject property. Lots within that configuration range from 2,400 to 14,400 sq. ft. in area. Several lots in the vicinity range from 7,200 to 9,600 sq. ft. in area. Director's Exhibit 6.

8. Although there was some community support for the applicant's project the majority of the community response was negative. Some witnesses articulated the view that approval would set a negative precedent for subdividing lots in what is already a developed, congested area. The adjacent property owners and others expressed concern that territorial and other views would be blocked by the proposed new construction. Witnesses also opined that the proposed short subdivision would negatively affect the character of the area and reduce property values. One such comment was made by a correspondent describing herself as a real estate agent. Further concern was expressed with anticipated increased car traffic and exacerbation of an existing on-street parking premium.

9. To reduce the concern of view blockage of the east adjacent property, applicant proposes to restrict the width of the new house to 22 ft. and the area of the house to 900 sq. ft. or less.

10. The Seattle Water Department approved the application for water service and fire hydrant access on the condition of a No Protest Agreement from "the homes listed as 1503, 1505 and 1509-8th Avenue West and from Parcel "B". No objection was received from the Department of Engineering or the Seattle Fire Department. Both agencies reviewed the application on a referral from the Department of Construction and Land Use.

11. In Seattle, a lot below the 5,000 sq. ft. area minimum may be created by short subdivision if the new lot will be at least 75 percent of the minimum required and will be

...at least eighty percent of the mean lot area
of the lots on the same block face within which
the lot will be located and within the same zone.
Section 23.44.10.

12. Applicant's revised plans calls for both Parcels A and B to be at least 75 percent of the 5,000 sq. ft. area minimum, or 3,750 sq. ft.

13. The Director's assessment was that the "80 percent rule" based on sizes of lots in each block face, required Parcel A to have at least 4,440 sq. ft. and Parcel B to have at least 3,960 sq. ft. Applicant, however, took issue with the Director's interpretation and application of the 80 percent rule, admittedly unclear at the time of the initial application for this project. However, no interpretation pursuant to Chapter 23.88 was made. Accordingly, the Director's application is adopted. Applicant's representative did note the cost of the interpretation as a factor.

14. With regard to the State Environmental Policy Act of 1971 (SEPA) and Chapter 25.04, Seattle Municipal Code, the action proposed in this subject application has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC 197-10-170.

Conclusions

1. The Director's decisions on variances carry no special weight at Hearing Examiner appeal hearings. However, decisions on short subdivisions are, by legislative mandate, given substantial weight and the burden of establishing the contrary position rests with the appellant. Section 23.76.36. In both cases, the appellant has the burden of proof. Hearing Examiner Appeal Rule 1.26.

2. Where, without variance relief, unusual property conditions would deprive the owner of comparable development rights and privileges, variances may be sought from the literal provisions or requirements of the Land Use Code. That variance relief may not exceed the minimum necessary for relief and should not prove materially detrimental to the public welfare nor injurious to the property or improvements in the subject zone or vicinity. In addition, the requested variance should be consistent with the spirit and purpose of the Land Use Code and adopted Land Use policies. Section 23.40.20.

3. The shape of the applicant's "T" shaped parcel is unusual. However, the physical attribute at issue is lot size. Applicant is requesting a variance from the minimum lot area required for the zone pursuant to Section 23.44.10. Based on the development pattern the size of the subject's present lot is not unusual. Some lots in the vicinity are smaller, similar in size or larger. The predominant pattern is one of single family development, even on lots of similar and larger lot areas. There has been no history of lot area variances for the vicinity. Therefore, granting this application would afford the applicant special privilege inconsistent with present day limitations upon other vicinity properties. Strict application of the Land Use Code would not deprive the applicant of rights and privileges enjoyed by other vicinity properties. Inasmuch as all of the variance criteria are not met in this instance, as they must be in order for variance relief to issue, the lot size variance relief is properly denied.

4. Short subdivisions are the subject of Chapter 23.24, Seattle Municipal Code. Criteria for approval include conformance to Land Use Policies and Land Use Code provisions; adequacy of access for vehicle utilities, and fire protection; adequacy of drainage, water supply and sanitary sewage disposal; and furtherance of the public use and interest by the proposed division of land. Section 23.24.40.

5. No issue has been raised concerning adequacy of access for vehicles, utilities and fire protection, nor adequacy of drainage, water supply and sanitary sewage disposal. In point of fact, referral departments have stated no objection to the proposal except as stated in the Findings of Fact, above. And, with variance relief the property could well conform with Land Use Code provisions. However, on balance, this proposed division of land would not further the public use and interest although additional in-city housing would result. The topographical difference between proposed Parcel A and B is relatively minor. Thus, it would not detract from an appearance of site overdevelopment. Precedentially, other vicinity lots of similar or larger square footage could be subject to similar efforts at subdivision, adding to balkanization of the area. This precedent would be established regardless of the applicant's wishes to the contrary. The proposed new construction would also have an adverse impact on views from the adjacent multiple dwellings although it is acknowledged that new total site construction might have some negative impact as well. The Director's decision is affirmed.

Decision

The decision of the Director is AFFIRMED.

Entered this 11/4 day of May, 1983.


Leroy McCullough
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.