

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

C.P. HANSON

FILE NO. MUP-83-026(V)
APPLICATION NO. 82-544
FILE NO. MUP-83-047(P)
APPLICATION NO. 83-312

from decisions of the Director
of the Department of Construction
and Land Use on the master use
permit applications

Introduction

Applicant proposes to subdivide an existing parcel into two lots providing less than the minimum provision required lot area. The Director approved the lot area variance but denied the variance needed for alley access as primary access to a lot. Applicant appeals the variance denial and the several conditions proposed on the short subdivision.

The appellant exercised his 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 Friday, September 16, 1983.

Parties to the proceedings were: appellant-applicant by Greg Anderson and C.P. Hanson, pro se, the Director of the Department of Construction and Land Use (Director) by Art Ward.

For purposes of this decision, all section numbers refer to the 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 the appeals.

Findings of Fact

1. Applicant-appellant Greg Anderson proposes to divide a 12,500 sq. ft. area parcel into two 6250 sq. ft. area lots. The property address is 4146 S.W. Frontenac. Its west abutting right-of-way is 15.98 ft. wide.

2. The south adjacent lot, roughly 50 ft. in length, is bounded on its south by S.W. Frontenac and on its west by a right-of-way that was widened to 20 ft. by Ordinance 75595 (1946). That ordinance accepted the deed for an additional 4.02 ft. from the property owner.

3. The subject site is zoned Single Family (SF) 7200. There is Lowrise (L-)3 zoning across the west adjacent right-of-way. SF 5000 properties begin some 150 ft. north of the subject site.

4. An April 18, 1978, Hearing Examiner decision conditionally approved a variance for the subject property "to provide access by means of a 16 ft. wide alley to a building site at 4146 S.W. Frontenac Street." X-78-028. The decision imposed the condition that the applicant, Ron Turner Construction, Inc., hard-surface the alley way for 80 ft. north of S.W. Frontenac.

The parties to this appeal dispute whether the application X-78-028 presupposed construction of more than one residence on site. The application form was not submitted as part of the record.

5. The Director conditionally granted this short subdivision. Application No. 83-312. Applicant contests the requirement of "a turnaround... to be approved by the Department," and the construction standard imposed therefor. The Director's witness testified that the turnaround should be provided on-site to benefit right-of-way traffic pursuant to the spirit and purpose of the Land Use Code, specifically Section 23.54.10.

6. The Director's decision also required that applicant quitclaim 4.02 ft. of the westerly portion of the subject site to the City "so as to provide for a 20 ft. wide right-of-way dedication." Applicant appealed from this condition also, but under some misimpression that this condition invoked additional Seattle Water Department requirements. (If the property is quitclaimed as requested, the resulting lots A and B would each be 6050 sq. ft. in area.)

7. Applicant also appealed from the condition that he "provide for water service to the subject parcels to the satisfaction of the Seattle Water Department..." In hearing, however, applicant clarified the appeal by stating a willingness to comply with Seattle Water Department conditions, as imposed by that Department.

8. Director's Exhibit 6 is a Seattle Water Department "Water Availability Certificate" dated June 27, 1983, for a short plat, Department of Construction and Land Use application No. 83-312. The proposed use stated is "to subdivide 1 parcel into 2 lots." The document requires as a condition of approval construction of 160 ft. of 8 in. watermain to serve the site and installation of standard fire hydrant(s).

9. By water availability certificate dated May 14, 1982, the Seattle Water Department conditionally approved a "building permit inquiry"/application for a single family residence. That certificate No. 82-278 noted that water service would be provided by metered service connection to an existing 8 in. standard size watermain in S.W. Frontenac. The certificate also commented that "if access improvements are required other facilities may be required."

10. The Director also approved a variance to provide less than the minimum required lot area, also on the condition that the "westerly portion of the lots be dedicated to provide for a 20 ft. wide right-of-way." Application No. 82-544. The variance "to provide for alley access to serve as primary access to a lot..." was denied. Applicant testified that he did not apply for the access variance since X-78-028 made such an application unnecessary.

11. A sixteen ft. wide access could not accomodate one vehicle parked alongside and a passing emergency vehicle.

12. Due to topography, some retaining structure is needed on both sides of the access.

Conclusions

1. Appellant opposed the denial of the "alley access" variance and challenges the right-of-way's designation as an alley. No request for an interpretation of the Land Use Code was filed pursuant to Chapter 23.88, however. Such an interpretation could have explained the term "alley access" as it relates to the subject property. The Examiner is therefore restricted to the consideration of the variance as analyzed by the Director.

2. Requested variances must be consistent with the spirit and purpose of the Land Use Code, and should not prove materially

detrimental to public welfare. Section 23.40.20. Conditions imposed on variances should be in accord with the variance criteria.

3. A 16 ft. right-of-way would not be adequate considering the topography and the need for emergency vehicle egress and ingress, particularly where the record is clear that at least two homes (and families) would be dependent on that right-of-way. Therefore, the Director's decision on the variance, requiring a 20 ft. right-of-way, is affirmed.

4. Short plat approvals also require adequacy of access for vehicles and fire protection, and adequate means of drainage, water supply and sewage disposal. Conformance with the public use and interests is also included in the criteria. Section 23.24.40.

5. Again, the record shows that a 20 ft. wide right-of-way would be in the best public interest for means of safety access. And the record shows that appellant is willing to contribute to the establishment of a 20 ft. right-of-way, and to comply with the utility requirements of the Seattle Water Department.

6. The essential dispute then reduces itself to the issue of a turnaround. The short plat provisions of the land use code require adequacy of access for vehicles, utilities and fire protection "as provided in Section 23.54.10." Section 23.24.40 A. 2. Section 23.54.10 concerns access standards for A. streets, B. easements and C. alleys.

7. The proposed right-of-way does not meet the definition of "street." Per the record the access will not include "space for utilities, pedestrian walkways and drainage." Section 23.84.36.03. However, the right-of-way could apparently meet the less demanding definition of an easement or of an alley, Sections 23.84.04.01; 23.84.10.01. By definition a lot must abut upon and be accessible from a "...street" or "...permanent access easement." Section 23.84.24.02.

8. Pursuant to Section 23.54.10 B., easements serving between two and five single family dwelling units shall have a minimum width of 20 ft.; and a surfaced roadway at least 16 ft. wide. Additionally, "a turnaround shall be provided unless the easement extends from street to street." Section 23.54.10. B. 2. d.

9. In the decision on the variance, the Director terms the access as an alley, which pursuant to Chapter 23.54 does not require a turnaround. Should the Director in the short plat decision impose easement standards on the same right-of-way?

10. Clearly the turnaround would inure to the welfare and interests of the motoring public, including emergency vehicles. Further, the Director's decisions on short subdivisions are accorded substantial weight, with the burden on the appellant to establish a contrary position. Section 23.76.36. B. 7. Finally, the development pattern may well require a turnaround, whether the right-of-way is called an "alley" or dubbed an "easement." The Hearing Examiner therefore concludes that the weight accorded the Director's decision has not been overcome and the Director's conditioned approval is affirmed.

Decision

The Director's decisions are affirmed.

Entered this 29th day of September, 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.