

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DWIGHT C. PICKETT

FILE NO. MUP-86-052(P)
APPLICATION NO. 8603395

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

Introduction

Dwight C. Pickett appeals the decision of the Director, Department of Construction and Land Use (DCLU), to deny his master use permit application to short plat property addressed as 14325 - 19th N.E.

The appellant exercised the 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 September 25, 1986.

Parties to the proceedings were: appellant, pro se, and the DCLU Director, represented by Leslie Lloyd.

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 this appeal.

Findings of Fact

1. Applicant proposes to reconfigure two adjoining lots by subdivision to create three lots. Parcel A would have 7203 sq. ft., Parcel B 7208 sq. ft. and Parcel C 11,137 sq. ft. The property is in a Single Family 7200 zone. DCLU denied the subdivision and applicant submitted this appeal.

2. The subject property is located within a rectangle (block) that is bordered on the north by the City limit of N.E. 145th. Northeast 143rd is at the southern edge of the rectangle. Seventeenth and 19th Avenues N.E. are the respective west and east boundaries of the rectangle.

3. The subject rectangle is zoned Single Family 7200 and developed exclusively with single family structures.

4. Applicant's property consists of two lots each of which is developed with a single family dwelling. The lot fronting on 19th Avenue N.E. contains approximately 13,402 sq. ft. The DCLU decision at issue notes that the existing house at 14325 - 19th N.E. would have to be demolished or relocated to avoid a nonconforming front yard for the proposed plat. The second lot fronts on 17th N.E. and contains approximately 12,150 sq. ft. of area. The two lots connect near the center of the above-described rectangle.

5. Applicant proposes a rectangular Parcel A that would commence at 19th Avenue N.E. and terminate at interior Parcel B. The new Parcel B would have access via an easement through Parcel A. Also, Parcel B would have a dog-leg type projection north into Parcel C. Parcel C would extend west from interior Parcel B to 17th Avenue N.E.

6. It is undisputed that adequate provisions are proposed for water, sewage and drainage. However, a City Light easement would be required as a condition of development proposed. No objection to the proposal was received from the Seattle Fire Department.

7. The lot that is west adjacent to applicant's lot measures approximately 6315 sq. ft. Generally, however, the lots within the applicant's rectangle/block are considerably larger, per DCLU's calculation an average of 11,563 sq. ft. One lot within the rectangle approximates 25,399 sq. ft.

8. On the east adjacent block the lots average 14,227 sq. ft. and range in area from 7561 to 34,287 sq. ft.

9. In the larger study area between N.E. 135-145th and 15th and 25th N.E., some lots begin at 4600 sq. ft. in area. The Hearing Examiner finds in accord with applicant's testimony that within this larger area are some 200 lots 7200 sq. ft. or less in area.

10. Vicinity lots are primarily rectangular. Applicant's proposal for interior Parcel B, with dog leg, and Parcel C, with an in-cut from Parcel B is inconsistent with the general platting scheme.

11. DCLU denied the application because of concerns that an "unwelcome precedent" would be established for subdividing other larger lots, and because the proposed development "is not comparable to development on the rest of the block... in terms of size, shape, and access by easement." As explained at the public hearing, these factors showed DCLU that the public use and interests would not be served by the proposed subdivision of land.

12. Applicant countered that his application should be approved since he would meet the 7200 sq. ft. area zoning minimum for the lots; and since precedent has already been established for small, irregular lots. Applicant further submitted that holding property owners to their present dimensioned lots would violate the public use and interest.

13. The one comment letter received objected to the proposal. It stated concerns with visual population (crowding) and noise and other impacts of converting two lots to three as proposed.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.76. Seattle Municipal Code Section 23.76.022(C)(7) provides that on review the Hearing Examiner shall give the DCLU Director's determination on a short plat application substantial weight.

2. The four criteria for short plat approval are at Seattle Municipal Code Section 23.24.040. The applicant has overcome the weight accorded the DCLU decision. The proposal meets all the criteria for approval. The DCLU denial is therefore reversed.

3. It is undisputed that the proposal conforms to the Land Use Code requirement for a minimum of 7200 sq. ft. of area per lot. Seattle Municipal Code Section 23.24.040(A)(1). Nor is it contested that adequate access for vehicles, utilities and fire protection will be provided. Seattle Municipal Code Section 23.24.040(A)(2). A condition imposed below underscores this conclusion as it relates to utilities.

4. No issue is raised with respect to adequacy of drainage, water supply, and sanitary sewage disposal. Seattle Municipal Code Section 23.24.040(A)(3).

5. The dispute is over the impact on the public use and interests. The proposed division of land will serve the public use and interests. The City's housing stock potential would be increased. The proposed lots would offer the necessary access, utilities and drainage. The lot size proposed, while smaller than the majority of vicinity lots, comport with the minimum area requirements and with some existing area lots. There is no Land Use Code requirement for a particular lot configuration, Chapter 23.24, Seattle Municipal Code, and the Hearing Examiner has been directed to no source which would preclude the configurations proposed by applicant. The area already has lots with square footages and shapes similar to those proposed by applicant.

6. Finally, in Carlson v. Beaux Arts Village, 41 Wn. App. 402, 704 P.2d 663 (1985), the Court of Appeals reversed a denial of a short plat. The Court concluded in relevant part as follows:

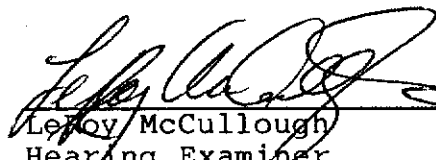
The Carlsons complied with all applicable enacted ordinances in submitting their application for subdivision. The Town Council has pointed to no ordinance which prohibits an irregularly shaped lot...(T)he minimum lot size remains 10,000 sq. ft. The two new lots resulting from the short subdivision will meet the statutory minimum lot size. To allow the Town Council to deny the application based on the "best interests of the Town's Citizens" would put the Carlsons... in the predicament of having no basis for determining how they could comply with the law...

7. The DCLU decision is therefore reversed. This matter is remanded to DCLU for approval. DCLU shall also draft and impose necessary conditions related to adequacy of access, Seattle Municipal Code Section 23.24.040(A)(2), particularly relating to any required City Light access easement. The Hearing Examiner will retain jurisdiction of this proceeding for a period of 7 business days after the DCLU approval with conditions is signed. During this 7-day period, applicant may challenge the condition(s) imposed by submitting a written request for review to the Hearing Examiner. The procedure for resolving any such request for review will be specified subsequent to receipt of the request for review. If no challenge to the DCLU conditions is filed, the DCLU approval with conditions shall constitute the final decision of the Hearing Examiner on this appeal.

Decision

The short plat is approved in accord with Conclusion 7, above.

Entered this 1st day of October 1986.


Leroy McCullough
Hearing Examiner