

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

GREGORY D. BLOUNT

FILE NO. MUP-86-057(V)
APPLICATION NO. 8506472

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

Introduction

Gregory D. Blount appeals the decision of the Director, Department of Construction and Land Use, to grant variances to exceed maximum depth and extend into the required rear yard at 2210 Fairview Avenue East.

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 December 15, 1986.

Parties to the proceedings were: the appellant, Gregory D. Blount, represented by Derrill Bastian, attorney at law; the Director by Jay Laughlin, land use specialist; and the applicant, William R. Matthews, represented by George Kresovich, Hillis, Cairncross, Clark & Martin.

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. William R. Matthews applied for a master use permit to construct two buildings, each with two townhouse units at 2210 Fairview Avenue East. Staff at the Department of Construction and Land Use (DCLU) determined that the proposal required variances for depth and rear yard. The Director granted the variances. Appellant appeals this decision.

2. Since the time of application, the applicant has submitted plans for a revised proposal. The new proposal, which the applicant intends to construct, is for three detached single family residences on the site. The variances would be required for this proposal as well. The DCLU staff has determined that the variances granted would apply to the revised proposal.

3. The subject property comprises two lots. The southern lot is 40 ft. deep and 60 ft. long, the northern lot is 40 ft. deep for the southerly 40 ft. and 60 ft. deep for the northerly 20 ft. The property rises in elevation from west to east with changes up to 13 ft.

4. The site is midblock and fronts on Fairview Avenue East across from floating homes moorage. The southerly two thirds abuts Red Avenue E. on the rear, a 40 ft. wide street or alley. Red Avenue has been vacated for the remainder of the block.

5. The subject property is zoned L-1 RC. The abutting property to the east is L-1 and across Fairview to the west is SF 5000 zoned property. Development includes the floating homes, multi-family development on the east side of Fairview and mixed single and multi-family development on the west side of Minor Avenue E. to the east of the subject site. Appellant's single

family home is immediately east of the subject site.

6. The development proposal on which the appealed decision was based would have buildings with a depth of 33 ft. extending to the rear property line for the portion of the site which is 40 ft. deep.

7. The DCLU staff determined that a variance would be required from Section 23.45.010(B) for the proposed depth which would be 83 percent of the lot depth where 65 percent is permitted and from Section 23.45.014(B)(1) which requires a 10 ft. rear yard.

8. Of 35 multi-family lots along Fairview, only three are as shallow as 40 ft. The remaining are 60-80 ft. deep. Others had also been 40 ft. but depth was added with the vacation of Red Avenue E. Lots in the L-1 zone to the east are 120 ft. deep.

9. The applicant has been unable to obtain the agreement from other property owners to allow the vacation of the remainder of the street.

10. The Director found that the proposed design meets the intent of the L-1 policies to have the appearance of single family attached housing.

11. If the depth and rear yard standards were applied strictly the buildings would be oddly shaped and out of character with the remainder of the neighborhood. The size and design would make selling the structures difficult.

12. The land use specialist found that the requested variances would not affect the total height of the building. The elevation could be different though, since the existing grade rises toward the rear.

13. Appellant calculated that the farthest south building in the revised plans would be 1 ft. 7 in. higher (33 ft. 9 in.) on the up hill side at the south end with the variances than it could be without variances (32 ft. 2 in.). The applicant agreed that appellant's approach to determining the height was correct.

14. Appellant has a panoramic view from the southwest to the northeast from his house. Much of the view would be lost to development of the property. The difference in view loss from the additional height of the building due to the variances was not quantified but should be small. However, small amounts of view can be very important to a resident or property owner.

15. Appellant's house is set back approximately 45 ft. from the rear property line. There would be at least 85 ft. of separation between the closest proposed building and appellant's house.

16. Appellant contends that without variance the 10 ft. rear yard could be used for parking avoiding curb cuts on Fairview which diminish the parking available on the street.

17. The rear yard would not be deep enough for parking spaces and an exception from the development standards would be required to locate parking in the rear yard, according to Jay Laughlin.

18. The Department of Construction and Land Use could not require that access be from the alley (Red Avenue) because topography makes alley access infeasible.

19. The house on the other 40 ft. wide lot extends to within 6 inches of the rear property line.

20. Parking is very difficult in the area. Some floating

home owners are dependent upon on-street parking. New units will increase competition and curb cuts will reduce available on-street parking.

Conclusions

1. Variance relief from provisions of the Land Use Code may be granted when all of the facts or conditions set forth in Section 23.40.020(C) are present.

2. The first is that there be an unusual property condition because of which the strict application of the Code deprives the property of development rights enjoyed by other properties in the zone or vicinity. Section 23.40.020(C) (1). All parties agree that the shallowness of the lots is unusual. While the 65 percent depth standard and 10 ft. setback is sufficient to allow normal development on other lots in the area, it would result in an odd and unmarketable design on this property.

3. The second requirement is that the variance requested not exceed the minimum necessary for relief and not confer special privilege. Section 23.40.020(C)(2). The variances appear to be minimum necessary to allow development similar to that which can be achieved on other lots in the area which have benefited from vacation of the alley while not exceeding any of the other development standards. Since the property is different from others the variance would not be a grant of special privilege.

4. The variance cannot cause material detriment to the public welfare or injury to other properties. Section 23.40.020(C)(3). While the evidence shows that any development, even that meeting all standards, will have an effect on the area, e.g. more parking competition and possible removal of some on-street parking and view obstruction, the development proposed would have less bulk and fewer units than is possible under the zoning. The variances would have no effect on the public welfare. Because the variances may result in some additional view obstruction, the condition proposed by applicant to limit the height of the buildings to that which could be achieved without variance should be imposed to eliminate that potential harm.

5. Undue and unnecessary hardship must result from the literal interpretation and strict application of the code provisions. Section 23.40.020(C)(4). The problems associated with the design of structures of the depth which would be permitted constitute undue and unnecessary hardship not experienced by other properties in the area.

6. Finally, the variances must be consistent with the spirit and purpose of the Land Use Code and the Multi-family Land Use Policies. Section 23.40.020(C)(5). The purpose of the setback and depth provisions is to assure adequate light and air and control bulk. The 40 ft. wide street or alley right-of-way assures greater open space than is required. The overall bulk of the building and its density would be less than that which could be achieved under the L1-RC zone designation, even with the variance, so granting the variances would be consistent with the spirit and purpose of the code and policies.

Decision

The variances are granted subject to the following condition:

The height of any structure on the subject property built pursuant to these variances may not exceed the maximum height which would be permitted under L-1 RC zoning without the two variances.

Entered this 29th day of December, 1986.

M. Margaret Klockars
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Deputy Hearing Examiner

Concerning Further Review of
Hearing Examiner Final Decisions on Master Use Permits

The decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104, (206) 625-4197.