

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DR. DENNIS B. ELROD

FILE NO. MUP-87-023(V)
APPLICATION NO. 8607333

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

Introduction

Applicant-appellant proposes to subdivide a 7389.58 sq. ft. area lot into two substandard lots. Lot area variance relief is therefore requested for the site, addressed as 9006 Evanston Avenue N.

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 July 24, 1987.

Parties to the proceedings were: appellant, pro se, and the Department of Construction and Land Use Director by Arthur Ward, Associate Land Use Specialist.

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. The essential facts are undisputed. Several years ago, appellant purchased the subject site as investment property. His present desire is to subdivide the parcel, addressed as 9006 Evanston Avenue N.

2. In its present configuration, the subject site is a single rectangular - shaped lot with an area of 7389.58 sq. ft.

3. The subdivision would leave Parcel A with 4365.35 sq. ft. of area. "Parcel A" is developed with a two-story four-plex that fronts west to Evanston Avenue N. Applicant has invested approximately \$60,000 into the four-plex.

4. The more easterly Parcel B would have 3024.22 sq. ft. of area. It is developed with a small single-story single family residence which has 49.88 ft. of frontage to the south adjacent N. 90th Street right-of-way. East adjacent is an alley, then a power line right-of-way.

5. It will be easier for applicant to sell the subdivided parcels as proposed. An Account Executive at Williamette Financial Services advised applicant regarding the existing site that

In their present configuration, most residential lenders would not express an interest. On the commercial side, you again have a property that is non conforming and resale would be greatly impaired. If a lender had any interest, he would underwrite the loan much more severely than a conforming 5 plex...

Exhibit 10.

6. Applicant is proposing no modification or intensification of the existing development.

7. At the time of the site's purchase applicant was unaware of financing or subdivision difficulties with the site.

8. The site is within the eastern edge of a large Single Family (SF) 5000 zone. East of the abutting alley is a strip of L-2 (multi-family) zoned properties developed with duplexes.

9. A large majority of the lots in the subject site's SF 5000 zone vary in lot area from 7200 to 8100 sq. ft. The lots fronting on Evanston N. between N. 90th and N. 92nd Street generally exceed 7000 sq. ft. in area, inclusive of applicant's site. At least two of these lots are 5408 and 4866 sq. ft. in area. Exhibit 1.

10. The lots fronting on N. 90th Street, between Fremont and Evanston and inclusive of applicant's present site, exceed 7200 sq. ft. in area.

11. On the corner to the southwest of applicant's site are two lots with areas of 3825 and 4200 sq. ft.

12. Neither applicant nor DCLU is aware of any variance or short plat for substandard lots in the vicinity.

13. One neighbor who opposes the variance was apprehensive that more multi-family development would be heralded by this proposal.

14. With regard to the State Environmental Policy Act of 1971 (SEPA) and Chapter 25.05, 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 Chapter 197-11, WAC.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.76, Seattle Municipal Code.

2. All of the variance criteria at Seattle Municipal Code Section 23.40.20 must be met in order for the DCLU Director or the Hearing Examiner on appeal to grant variance relief. Because all of the criteria are not met in this case, the variance must be denied.

3. The first criterion requires a showing that unusual property conditions that were not created by the owner-applicant would deprive the property of comparable rights and privileges if the Land Use Code was literally construed. Size is included as an example of a property condition.

4. A variance in this case would lead to two lots that are less than 5000 sq. ft. in area. According to a standard reference on zoning and land use

...there is general agreement that a variance may not be granted to the owner of a substandard lot where such lot was created by the deliberate conduct of the applicant.

3 Robert M. Anderson, American Law of Zoning, 18.57 (2d ed. 1977). One of the cases cited for support of this proposition is Lewis v. Medina, 87 Wn. 2d 19, 548 P. 2d 1093 (1976). The State Supreme Court noted in Lewis that since the owners of the land had participated in the sale of the home and tracts, the resulting substandard trapezoid-shaped lot that was left was directly attributable to the owners' actions.

Therefore, the court concluded, the hardship was self-created and variance relief was properly denied.

5. Further, the great majority of vicinity lots are well in excess of the 5000 sq. ft. minimum standard. There is no indication that the small lots that do exist were created by variance. Therefore, denial of the variance to create two small lots would deprive applicant of no rights and privileges enjoyed by other vicinity properties, and the variance relief would constitute a special privilege to applicant. It is noted that the variance requested would be the minimum necessary for applicant to secure the desired relief.

6. Although concern was expressed that the variance approval might somehow exacerbate multi-family use of local properties, the Hearing Examiner is not so persuaded. The variance relief requested would not alter the existing development pattern. Thus, with or without variance, the result will be one four-plex and one single-family residence on the present site.

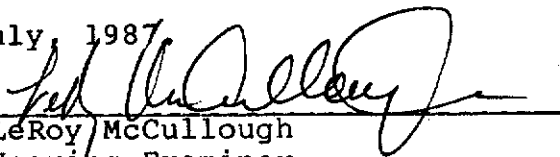
7. Nevertheless, material detriment could obtain by the negative precedent that would be established by approval of the variance requested.

8. Personal financial implications for applicant may not be used to justify variance relief.

Decision

The DCLU denial of the variance is AFFIRMED.

Entered this 28th day of July, 1987


LeRoy McCullough
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) 684-0521.