

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeals of

WILLIAM AND JAN SUTTELL

FILE NO. MUP-87-046(V) and
MUP-87-047(V)

and

APPLICATION NO. 8704891

PHIL CHAPMAN AND JOAN ROBERTS

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

Introduction

William and Jan Suttell, and Phil Chapman and Joan Roberts, appellants, separately appealed the decision by the Director, Department of Construction and Land Use, to grant a variance to allow access to a single-family residence via a substandard easement.

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

Parties to the proceedings were: appellants, by William and Jan Suttell, and Phil Chapman and Joan Roberts; the Director, Department of Construction and Land Use, by Cliff Portman, senior land use specialist; and the property owner, Ed McCullough.

This matter was heard in a combined hearing on October 16, 1987.

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 of law and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Ed McCullough applied for a master use permit to allow the construction of a new single family residence at 4250 West Cramer Street in the Lawtonwood community of northwest Seattle. The Director determined that a variance to allow access to the proposed residence over an easement which measures 16 ft. rather than the required 20 ft. would be required and granted the variance. Two other residents of the Lawtonwood community appealed.

2. The Lawtonwood community abuts Discovery Park to the south and west, Puget Sound to the north and a residential area, zoned SF 5000, to the east. Due to its proximity to Discovery Park, some of the vehicles that use the streets and private easements in Lawtonwood are driven by people coming to the park and nearby beach. Other drivers are visitors and guests of Lawtonwood residents.

3. Lawtonwood is isolated as a result of its proximity to Discovery Park and the only vehicular access for its residents and others is through park land. The entire community is zoned SF 9600, however most existing lots exceed the minimum size and are platted into lots of varying sizes and shapes. The street pattern and rights of way in the neighborhood are irregular and many houses are accessed by easements. About 11 new homes have been constructed in Lawtonwood in the past four years.

4. The lot on which the applicant desires to build a single-family residence is currently undeveloped, is owned by Mrs. Susan Christenson and managed by her guardian and niece, Mrs. Louise Ferber. The applicant has entered into an earnest money agreement to purchase the lot which requires, as a condition of purchase, that the property is buildable. In addition to a nonrefundable earnest money deposit, the applicant paid for designs for the development of the property and paid the fees required with variance applications.

5. The subject lot is located in the eastern part of the Lawtonwood community along with eight other residences. At least two of the eight residences are new and at least one replaced an preexisting home. The lot is rectangular shaped measuring approximately 216 ft. by 100 ft. and has a total area of approximately 21,600 sq. ft. The site slopes gently from east to west, but is almost level. It is covered with mature trees and unmaintained vegetation. The lot was platted in 1932 but has never been developed.

6. Vehicular access to the eastern part of Lawtonwood is provided by an existing substandard 132 foot long, 16 foot wide easement roadway/bridge which traverses a year-round stream that flows into Puget Sound. Although the easement width is 16 ft., the actual paved area of the roadway/bridge measures only 11 ft. 5 inches to 13 ft. at its narrowest widths. The 16 ft. wide substandard easement over the stream is the only vehicular route for access to the eight existing residences. The subject lot is located at the southeast corner of the intersection at the east end of the roadway/bridge.

7. Section 23.54.010B2, requires that vehicle access easements which serve at least five but less than ten single family dwelling units be 20 foot wide. The applicant is requesting a variance to allow legal access to the subject property via the existing substandard 16 foot easement.

8. One letter requesting extension of the public comment period was received during the comment period that ended July 27, 1987. The new deadline for receiving public comments was August 11, 1987.

9. Over 12 public comment letters were received in support of and in opposition to the requested variance. There is considerable dispute about whether: (a) the increased vehicular traffic generated by this proposal would decrease safety for pedestrians and increase hazardous conditions on and at the approaches to the roadway/bridge; (b) granting the variance would set a precedent and lead to other variance and/or short plat applications; and whether (c) due to the number of children using the subject easement, granting this variance would substantially decrease public safety for those children and other residents of Lawtonwood.

10. The probable impacts of this proposal on access by emergency vehicles and on flora and wildlife would not be significant.

11. Only two homeowners besides appellants, Chapman/Roberts, who live in the neighborhood located to the east of the roadway/bridge and in the immediate vicinity of the subject property, opposed the requested variance.

12. Most homeowners who reside in the immediate vicinity of the subject lot support the proposed variance. There is no evidence of an abnormally high rate of automobile or pedestrian accidents in Lawtonwood generally, or in the vicinity of the subject easement.

13. It is the responsibility of those properties benefited by the easement and the residents of Lawtonwood to improve and maintain private access easements in their community. Although speed bumps have been installed on some of the roadways, no speed bumps or other traffic control devices have been installed in the

bumps or other traffic control devices have been installed in the immediate vicinity of the easement and the subject lot. Though opponents of the variance cite many public safety hazards in Lawtonwood, those residents have taken few if any steps other than the installation of speed bumps in other areas of the community, to reduce the public safety risks which they identify.

14. The Lawtonwood Community Club opposes the variance and its representatives testified that no new homes should be built in the vicinity of the subject lot until the roadway/bridge has been widened to a width required by applicable codes. However, the community club does not have a specific plan or time table for addressing safety concerns generally or for widening the 16 foot wide easement over the roadway/bridge so that new homes can be built.

15. Clearing portions of the subject lot adjacent to the easement roadways will improve visibility in the area of the easement and thereby improve public safety for pedestrians and vehicles using the easement.

16. A similar variance was granted for construction of a home located at 5442 45th Avenue West, on property adjacent to the subject lot.

17. If the variance is denied, the owner of the subject lot would be deprived of her right to use the lot for residential purposes until the other property owners decide to improve the easement to a standard which meets applicable land use codes.

18. Although no cost estimates were provided, the expense to the owner or applicant of the subject lot, or any single property owner, of widening the easement and bringing it into conformance with applicable land use codes would be disproportionate to the actual benefit derived from such an improvement by that property owner. The benefits of such an improvement would be enjoyed by the entire Lawtonwood community.

Conclusions

1. The Examiner adopts the conclusions of the Director, Department of Construction and Land Use as fully set forth in the Director's Decision.

2. The location and surroundings of the subject lot, as described in great detail in the Director's Decision and the testimony of the parties, constitute unusual conditions which were not created by the owner or applicant. The only access to the subject property is over the substandard easement. Widening the easement to comply with existing land use regulations could have substantial impacts on environmental quality since the roadway/bridge crosses a stream and is currently built upon the entire width of land across that stream.

3. The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the same vicinity and zone. The subject lot is the only remaining undeveloped lot in the immediate vicinity of and directly served by the easement over the roadway/bridge. Granting the easement would bring the total number of users to nine and any increase in that number would require an easement substantially wider than 20 ft. The sixteen foot easement with narrower travelling surface, though substandard, already provides access to eight other dwellings in the same manner that the applicant desires to have access to property which he is purchasing. A variance was granted for another property in the same vicinity to address similar access-related problems. In addition, other homes were built in the same 1932 plat without any access related variances or restrictions on the use of the only access easement available to the property owners. No restrictions have been placed upon new property owners, including the appellants. Therefore, granting the variance would not constitute a special privilege inconsistent with the limitations

upon other properties in the vicinity and zone.

4. Granting the variance would not be materially detrimental to the public welfare or injurious to property or improvements in the zone or vicinity. Granting the variance would permit the construction of one more single family residence. The property owners and applicant already have a right to use the easement and could do so with or without the variance. The expected increase in traffic volumes from this new residence is no more significant than traffic impacts generated by park and beach visitors and guests of existing residents. The incremental increase in traffic from one new residence would not be detrimental to the public welfare. There is no substantial evidence to support a conclusion that granting the variance would be injurious to nearby property or improvements. To the contrary, granting the variance would add one more resident with financial responsibility for maintaining and improving the property and improvements in the neighborhood, including the easement. Most property owners in the immediate vicinity of the subject lot believe that the variance should be granted and would enhance the overall neighborhood quality because vegetation would be covered in the vicinity of the easement thereby increasing public safety.


5. Literal interpretation and strict application of the applicable provisions or requirements of the land use code would cause undue and unnecessary hardship. This subdivision was platted in 1932. All other lots in the immediate vicinity of and directly benefited by the substandard easement have been developed, except the subject lot. The responsibility for making improvements to private easements, whether for maintenance purposes or to increase public safety, rests with all Lawtonwood residents benefited by the easement. It would be patently unfair to condition the pending sale and purchase of the subject lot and its use for the development of a single family residence upon the completion of substantial improvements to a private easement shared by an entire neighborhood and community such as Lawtonwood.

6. There is no persuasive evidence that granting the variance, under the circumstances of this case, would be inconsistent with the spirit and purpose of the Land Use Code and adopted policies. The public safety and other issues raised by those who oppose the variance can and should be addressed by the community as a whole, including the appellants and the applicants.

Decision

1. For all of the above reasons, the application for variance is granted.

Entered this 2nd day of November, 1987.


Christopher E. Mathews,
Hearing Examiner Pro Tempore

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.