

FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

FRANK A. PRIEN, AGENT, FOR
PETER GRANGER

FILE NO. MUP-88-048(V)
APPLICATION NO. 8708022

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

Introduction

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 August 29, 1988.

Parties to the proceedings were: Frank Prien and Peter Granger, pro se; and the DCLU Director by Arthur Ward, associate land use specialist.

Prior to the hearing the Hearing Examiner received correspondence in opposition to the project approval.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

After due consideration of the evidence of record, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is a rectangular, vacant lot of 21,414 sq. ft. Applicant proposes to divide the existing parcel into three lots of 7138 sq. ft. each. Because the property is zoned for a 7200 sq. ft. area lot minimum, applicant sought variance relief. DCLU denied the variance requested and applicant submitted this appeal.

2. The parcel in question is located on the west side of 20th Avenue N.E. roughly mid-block between N.E. 145th Street to the north and N.E. 143rd Street to the south. To the north, the subject property abuts the southern boundary of a Lowrise 1 (L-1) zone that fronts to N.E. 145th Street.

3. The north adjacent lot (within the L-1 zone) is developed with a single family structure. Applicant describes the structure as dilapidated and subject to demolition and replacement with multi-family use. DCLU perceived the structure as stable. The lot approximates 7492 sq. ft.

4. North adjacent to this 7492 sq. ft. area lot is a corner parcel with frontage on N.E. 145th Street and 20th Avenue N.E. This lot approximates 7085 sq. ft. in area and is developed with a triplex. Directly west of this lot is a 15-unit development that extends south generally to the applicant's north property line. West of the multi-plex development and still within the L-1 zone are two other single family structures, both with frontage to 19th Avenue N.E.

5. Applicant asserts that his lot's proximity to the L-1 zone and development activity tends to devalue the subject property as a large, single family zoned parcel; and secondly, that the proximity constricts the precedential impact of variance

approval.

6. The immediate vicinity has many lots that exceed 7200 sq. ft. in area. The Hearing Examiner finds from the Assessor's map that the "block" bounded by N.E. 145th, N.E. 143rd, 20th N.E. and 19th N.E. consists of single family zoned lots of the following areas: 21,414 (subject lot), 7561, 11,069, 9254, 9254, 12,208, 12,000, 10,290, 13,806, 12,863 and 8460 sq. ft.

Generally, the lots have north-south dimensions of 75 ft. There is roughly 300 ft. between the subject property and the N.E. 143rd Street right-of-way.

7. As noted in finding 4, the L-1 zoned lots within this "block" have lot areas of: 7492, (north adjacent to subject lot) 7085, 11,649, 7630 and 8348 sq. ft.

8. Fronting on the east side of 20th N.E. are lots which have areas, from north to south of: 7604, 7800, 7800, 7800, 7654, 7946, 7800, 7800, 7800 and 7800 sq. ft.

These lots generally extend 130 ft. east from 20th N.E.

9. South, fronting to N.E. 143rd Street between 19th and 20th Avenues N.E., are lots with areas of 6825, 6825 and 4696 sq. ft. South of the two most westerly lots are two lots of 7202 and 6750 sq. ft. The DCLU representative surmised and the Hearing Examiner finds that these lots were configured pursuant to a 1978-79 short plat. East adjacent to these lots is a 10,346 sq. ft. parcel that extends east to the 20th N.E. right-of-way. Continuing southerly within this "block" is a mix of lots approximating 6600, 7200, 7300, 9700 and 9800 in sq. footage.

10. Applicant proposes to divide his lot into three 7138 sq. ft. lots. Each lot would have a 50.4 ft. frontage on 20th Avenue N.E. and a depth of 141.61 ft.

11. DCLU concluded and the Hearing Examiner finds that the variance requested is a minor (1 percent) variance from the minimum lot requirements for the zone.

12. DCLU's opinion is that the subject "vicinity," for purposes of the variance comparative analysis, consists of a portion of the subject Single Family 7200 zone. DCLU's "vicinity" terminates at N.E. 143rd Street; extends 1/2 block east of 20th N.E.; and north to the northern boundary of the SF 7200 zone. Applicant challenges this restrictive definition of the "vicinity."

Conclusions

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

2. Per Seattle Municipal Code Section 23.76.022(C)(7), the Hearing Examiner is to give no deference to the DCLU decision on a variance application. Nevertheless, for variance relief to issue, applicant must show the Hearing Examiner that the applicant would be deprived of comparable development privileges because of a property related hardship not created by the applicant. The details of variance criteria are at Seattle Municipal Code Section 23.40.020.

3. The proposal is to be evaluated against rights and privileges enjoyed by other properties in the "same zone or vicinity." As an initial proposition, the Hearing Examiner cannot adopt the DCLU definition of "vicinity."

4. The Land Use Code contains no definition of "vicinity." Webster's Ninth New Collegiate Dictionary ((c) 1987) defines vicinity as

2. a surrounding area or district: neighborhood

And a functional definition may be gleaned from the Land Use Code. DCLU is required to give notice of a master use permit application generally by a large sign and/or by posted placards and mailed notice to residents "within...300'...of the site." Further, the variance criterion, zone or vicinity, clearly suggests that the evaluation cannot be limited to the subject zone. The foregoing observations suggest that the analytical "zone or vicinity" need not be bound by the L-2 boundary to the north, nor by N.E. 143rd to the south as is suggested by DCLU.

5. The proposed lots would not, at 7138 sq. ft., be inconsistent with the short platted lots directly south of N.E. 143rd nor with the 6825, 6825 and 4696 sq. ft. area lots fronting on N.E. 143rd Street. While oversize lots predominate in the vicinity, there are several lots with less the 7200 minimum sq. footage, including the lots created by a 1978 short plat.

6. Because of the unique siting of the lot, south adjacent to an L-1 zoned smaller lot and in a vicinity of similarly-sized lots, this minor (1 percent) variance approval should be of minimal precedential value and of no material detriment to the public welfare.

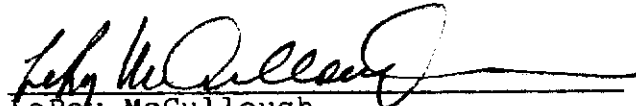
7. Although the variance is minor, the request for the variance is rooted in the applicant's desire to divide his parcel into three substandard lots within this zone. The desire for three lots yields the unusual condition of three 7138 sq. ft.-area lots; however, the condition is created by the applicant. In this connection, no "undue and unnecessary hardship" is occasioned by variance denial. Further, variance relief could, without proper criteria approval, run counter to the spirit and purpose of the Land Use Code. To the degree that no similar variance relief is of record for the vicinity, approval of this variance would constitute a grant of special privilege to applicant.

8. Since all of the variance criteria are not met, the variance is denied.

Decision

The variance is DENIED.

Entered this 7th day of September, 1988.


LeRoy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW

The decision of the Hearing Examiner in this case is the final administrative determination by the City, and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fifteen days of the date of this decision. Should such a request 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. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.