

FINDINGS AND DECISION

FOR THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter to the Appeal of

JIM MILLER FOR
ALVIN MCLENAGHAN

FILE NO. MUP-88-076(P)
APPLICATION NO. 8803119

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

Introduction

Applicant/appellant sought approval to subdivide two parcels into three parcels. The proposal address is 717 N. 66th Street. DCLU denied the application.

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 February 8, 1989.

Parties to the proceedings were: applicant/appellant by Jim Miller and the DCLU Director by Susan Kunimatsu.

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 not in dispute. Applicant proposes to reconfigure two lots, combined square footage of 11,594, into three lots. DCLU denied the short subdivision application and this appeal followed.

2. The proposal site is located one block west of Green Lake in the Single Family 5000 (SF 5000) zone. The street address is 717 North 66th Street, Seattle. The legal description is in the master use permit application of record and is incorporated herein by reference.

3. The two existing lots are rectangular. They front to the north to North 66th Street and on the south to a 16 ft. wide, paved alley. South of this alley are other residentially-zoned lots which extend farther south to North 65th Street.

4. North 66th is a fully developed residential access street that is 25 ft. wide and has sidewalks and curbs. Aurora Avenue North, one block east, is a regional arterial.

5. The more westerly of the two subject lots has the street address of 717 North 66th Street. It is 33.5 ft. wide and roughly 124 ft. deep. Lot development consists of a 1.5 story residence on the north half and a single-car garage in the southwest corner.

6. The more easterly lot, addressed as 719 North 66th Street, is 60 ft. wide and is also 124 ft. deep. This lot has development similar to that of the 717 parcel but has a detached garage in the southeast corner.

7. Petitioner proposes to configure the two lots into lots A, B, and C. Easternmost Lot A would be 30.85 ft. wide and have a lot area of 3825 sq. ft. The 719 North 66th existing garage would be demolished leaving the site vacant.

8. Mid-parcel B would be 31.8 ft. wide and have a lot area of 3943 sq. ft. The existing 719 residence would remain on site and a new parking space would be added in the southeast corner of the lot adjacent to the alley.

9. The westernmost lot, Parcel C, would be 30.85 ft. wide and 3825 sq. ft. in area. It would contain the existing garage and residence at 717 North 66th Street.

10. The "block face" containing the site is bounded on the west by Fremont Avenue North; on the east by Linden Avenue North; and on the north by North 66th Street. Seattle Municipal Code Section 23.84.004(B). The alley is to the south.

11. The "block" between North 66th and North 65th Streets and Fremont and Linden Avenues North is, with one exception, developed with one and two-story single family residences.

12. The exception is the Puget Consumer Co-op at the northwest corner of Fremont North and North 66th Street. Since 1986, this grocery store site has been zoned single family. The use is therefore nonconforming.

13. It is undisputed and the Hearing Examiner finds that the subject block face contains 13 building sites and 64,828 sq. ft. of area. The mean lot area is 4987 sq. ft.

14. DCLU and applicant-appellant further agree that inclusion of the commercially-used parcel means that the proposed lots would not meet the small lot area exception of Seattle Municipal Code Section 23.44.010(B)(1). This is because the referenced code requires that undersized lots, such as those here proposed, be at least 75 percent of the lot area minimum for the zone (in this case 5000 sq. ft.) and 80 percent of the mean area of lots in the same zone and block face. The commercially-used parcel is 7440 sq. ft. in area.

15. From east to west, lot numbers and sizes for the subject block face are as follows:

<u>Lot number</u>	<u>Lot size in sq. ft.</u>
1445	5420
1460	3608
1465	3720
1470	7440
1480	3720
1485	3720
1490	5270
1500	7440
1515	4154
1530	5456
1540	3720
1545	3720

16. The total lot area for the 12 lots, exclusive of the commercially-used site, is 57,388 sq. ft., or a mean of 4782 sq. ft. lot. Eighty percent (80%) of the 4782 sq. ft. is 3825 sq. ft.

17. If the commercially-used area is included, the average lot size is increased to 4987 sq. ft. Eighty percent of this figure is 3989 sq. ft. As noted above, applicant is proposing lots of 3825, 3943 and 3825 sq. ft. No variance is at issue in this appeal.

18. The neighborhood was originally platted into 30 feet

lots. Many 1 and 1.5 lots have since been created, but there are several lots with area less than the 5000 sq. ft. minimum for the zone.

19. Vehicle and fire protection access is available to the site from the alley and from North 66th. There is no dispute regarding availability of water, access for electrical service, or storm and sanitary sewer access.

20. Applicant has no objection to conditions that DCLU would require upon any approval of the short plat application. Included among those are easements for building separations and the requirement for on-site parking "meeting Land Use Code standards.

21. Public comment letters to DCLU generally objected to the possibility of adding another residence, possibly a "skinny house," to the block. Commenters opined that it would detract from the present consistency of architecture and aesthetics and would add adverse shadow, traffic and parking impacts to the vicinity. Correspondents indicated that parking is already evident due to the Co-op customer traffic.

Conclusions

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

2. The Hearing Examiner is required to give "substantial weight" to DCLU decisions on short plat applications. Seattle Municipal Code Section 23.76.022(C)(7). Therefore, to prevail, appellant must show "clear error." Cf. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981). Appellant has not overcome the weight accorded the DCLU decision. It is therefore affirmed.

3. The criteria for short plat approval are located at Seattle Municipal Code Section 23.24.040. Vehicle access, utility, drainage and similar requirements are not, per this record, at issue. The precise question per the appeal is whether the proposed lots conform to the "applicable Land Use Policies and Zoning Code or Land Use Code provisions." Seattle Municipal Code Section 23.24.040(A)(1).

4. The zoning for the proposal site is SF 5000, i.e. the minimum lot size is 5000 sq. ft. absent some special exception. Within the Land Use Code is a provision for substandard lots "created by subdivision or lot boundary adjustment." The lots must be 75 percent of the 5000 sq. ft. lot area

and at least...80%...of the mean lot area of the lots on the same block face and within the same zone in which the lot is located...
(emphasis supplied).

Section 23.44.010(B)(1)(b).

5. In that the proposed lots are 3825, 3943 and 3825 sq. ft., they are at least 75% of the 5000 sq. ft. area minimum of 3750 sq. ft. However, the proposed lots are not 80 percent of the mean area of lots in the subject block face. To be so classified, all lots would need a minimum lot area of 3989 sq. ft.

6. While the Hearing Examiner can join in speculation whether the provisions of Seattle Municipal Code Section 23.44.010(B)(1)(6) were designed to include only "residentially-used" lots in the lot exception computation, the speculation is unwarranted. The code language is clear and unambiguous. "A statute which is plain needs no construction." Stuart v. Coldwell Banker, 109 Wn. 2d 406, at 414, 745 P.2d 1284 (1987), citing King County v. Seattle, 70 Wn. 2d 988, 425 P.2d 887 (1976). The Co-op lot is on the same block face and is within the same zone as the proposed lots. The DCLU decision, which

includes the Co-op parcel in its computation, must therefore be affirmed.

Decision

The DCLU decision is AFFIRMED.

Entered this 21st day of February, 1989.


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.