

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

In the Matter of the Appeal of

WALTER METROPOLIT

FILE NO. S-76-014

from a ruling of the Superintendent
of Buildings

The appeal is GRANTED and the Findings and
Decision of the Superintendent of Buildings are reversed.

Introduction

The appellant, Walter Metropolit, filed an appeal from a written ruling of the Superintendent of Buildings, hereinafter Superintendent, concerning property at 106 and 110 N.E. 62nd Street.

The appellant exercised his right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

The appellant was represented by his attorney, Richard U. Chapin. John T. Swolgaard and William Bryan, residents in the area, were permitted to intervene as parties in the proceeding.

This matter was heard before the Hearing Examiner on May 14, 1976.

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

Findings of Fact

1. The appellant, Walter Metropolit, filed an appeal from a decision of the Superintendent to revoke the following building permits: 561864 and 561865. Notice of the denial was published in the Daily Journal of Commerce on April 22, 1976.

2. The appellant owns two adjacent lots at 106 and 110 N.E. 62nd Street in a Single Family Residence High Density (RS 5000) Zone. Each lot contains about 3,200 square feet. Developed on the two lots was a single-family residence that was located partially on each lot. A dilapidated garage with a small apartment above was also located on one of the lots.

3. On March 2, 1976, the appellant applied for a permit (no. 562488) to demolish the existing structures and for two permits (no. 561864 and 561865) to construct a single-family residence on each of the two lots. See appellant's exhibits 1, 2, and 3. The building permits were issued on March 23, 1976.

4. On March 24, 1976, the appellant was issued a demolition permit and he proceeded to demolish the existing structures.

5. On April 7, 1976, the Superintendent informed the appellant that the two building permits were revoked because they were issued in error.

6. The applicable ordinance provision is Section 22.32 of the Zoning Ordinance which provides in part:

- (a) In any zone, except an M or I Zone, a single-family dwelling may be established on a lot which cannot satisfy the lot area requirements of the zone, provided that all other bulk regulations shall apply, and provided further that the owner of such lot does not own any adjoining vacant property, and that such lot was of public record or under bona fide contract of purchase prior to the effective date of this ordinance. Said exception shall not apply to any lot which was formerly a part of two or more contiguous, vacant lots fronting on the same street and held under common ownership on or after the effective date of this amendatory ordinance.

7. Under the Superintendent's interpretation of Section 22.32 of the Zoning Ordinance only one single-family residence can be constructed on the two lots. According to the Superintendent, the lots became vacant at the time the existing structures were demolished and therefore were "formerly a part of two or more contiguous, vacant lots".

8. The appellant contends that the lots were not vacant at the time the permits were issued. Any subsequent change such as demolition would not constitute grounds for revocation.

Conclusions

1. The purpose of Section 22.32 of the Zoning Ordinance is to provide a lot size exception to those who owned undersized lots of record prior to the adoption of the zoning code.

2. At the time the appellant filed an application for building permits and demolition permit the properties were not vacant. The rights of the appellant vested at this time and any subsequent action such as demolition would not change this fact. Any other interpretation is not supported by the plain meaning of the words contained in the Ordinance.

3. Since the lots were not vacant, the appellant qualifies under the exception contained in Section 22.32 of the Zoning Ordinance. Therefore, one single-family residence can be constructed on each lot.

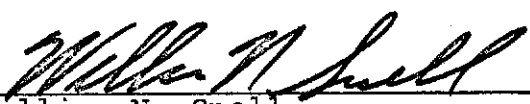
4. If Section 22.32 of the Zoning Ordinance did not use the language vacant lots, then the result would be different. The general lot definition contained in the Zoning Ordinance (Section 3.13) would be applicable and it defines lot as a parcel of land unoccupied or to be occupied. In this case the council clearly intended a more restrictive definition of lot than is contained in the general definitions. See Smith v. Hovey, 338 NYS 2d 259 (1972).

5. The interpretation rendered by the Superintendent could easily be accomplished by an amendment providing that the exception would not apply to any lot which was formerly a part of two or more contiguous, vacant or developed lots.

Decision

The appeal is GRANTED and the Findings and Decision of the Superintendent of Buildings are reversed. The Superintendent is ordered to issue the applicable building permits in conformity with this decision.

Entered this 254 day of May, 1976.



William N. Snell
Hearing Examiner