

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

In the Matter of the Appeal of

J. EMIL ANDERSON

FILE NO. MUP-81-041(V,P)
APPLICATION NOS. X-81-086,
SP-81-031

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

Introduction

Appellant, J. Emil Anderson, appeals the decision of the Director of the Department of Construction and Land Use (Director) to deny a short subdivision and variance for property at 4215 West Semple Street.

The appellant exercised his right to appeal pursuant to the provisions of the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: appellant represented by Carol Ann Kemp, Demco and Zaetsch; and the Director represented by Ed Somers, environmental specialist. Interested persons participating in the hearings were: Lawrence Bergner, Russell Whitehead, David Saunders and W.R. Neill, Jr.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on September 15, 1981, and December 8, 1981, after which the record was held open for additional evidence and closed January 22, 1982, on the receipt of a response from the Director.

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

Findings of Fact

1. The appellant applied for a short subdivision to divide property at 4215 West Semple Street into two lots and for a variance for an easement access exceeding 150 ft. in length and narrower than 20 ft. serving more than two principal uses. The Director denied the application and appellant filed this appeal.

2. The subject property is a lot with approximately 35,573 sq. ft. of area in Lawtonwood. It has water frontage and around 8,300 sq. ft. of its area is bluff and tideland.

3. The lot is zoned Single Family Residence Low Density (RS 9600) and is developed with one single family house. Access to the property is via a private easement roadway from 45th Avenue West.

4. Section 24.08.130 permits access by easement no longer than 150 ft., at least 20 ft. wide and serving no more than two principal uses. The easement serving the subject property is 1,010 ft. long to the property, is 12 ft. wide in some portions and serves eight developed properties, with a potential of two more on vacant properties. Variance was requested to use that easement for the proposed lots.

5. The existing house is proposed to be removed and two new lots created - one around 14,700 sq. ft. (Parcel A) and one around 20,660 sq. ft. (Parcel B) of which about 12,000 sq. ft. would be usable because of the bluff and tidelands.

6. The bluff is 60-75 ft. high and experiences extreme erosion. The appellant proposes to place rock riprap in the bay to provide relief from the problem.

7. The existing lot is similar in size to the other waterfront lots in the area.

8. The roadway has several sharp turns which create blind spots. The road's width requires backing at places if two vehicles meet. The road is privately maintained.

9. The Fire Department initially recommended denial of the application but indicated it would reconsider when plans were submitted showing: 1) an access road capable of supporting 30,000 lb. fire apparatus within 200 ft. of most remote corner of a house; 2) a fire hydrant capable of supplying 1,000 GPM at 20 psi residual pressure within 600 ft. of most remote corner of a house; 3) a fire apparatus turnaround within 1,000 ft. of the most remote corner of a house; 4) access road serving more than two structures at least 20 ft. wide if dead end or 12 ft. for loop road; and 5) requirement that owners keep the minimum width of the access road clear.

10. The Director's decision to deny the application for the short plat was based on inadequate fire access, extreme erosion and topographic conditions, failure to meet code requirements for easement access and existing comparable development rights. The Director's position remains unchanged (January 27, 1982 letter) after review of the evidence presented by appellant at and after the hearing.

11. According to the report of the soils engineer, the sea cliff has been retreating approximately $\frac{1}{2}$ ft. per year and this is expected to continue unless it is stabilized by gunniting. The engineer points out that the setback from the cliff of 30-40 ft. would be adequate to avoid eventual loss of a house but greater would be better. Drainage for yard and surface water would have to be handled by means which would assure it would not appear on the face of the sea cliff.

12. Appellant will dedicate 8 ft. on his easterly property line to increase the easement width to 20 ft. at that point, will provide a turn-around meeting Fire Department specifications on his property and will construct the riprap bulkhead.

13. Because the property is designated as environmentally sensitive an environmental review was undertaken by the Department of Construction and Land Use and a declaration of non-significance pursuant to Chapter 25.04 was issued.

Conclusions

1. In the case of an appeal of a short plat determination the decision of the Director is to be accorded substantial weight by the hearing examiner. Section 24.84.170.

2. Evidence adduced by appellant has not shown any of the facts relied upon by the Director or his conclusions to be in error. Appellant would be unable to meet the access requirements of the Fire Department because he lacks ownership interest in other properties; additional traffic on the narrow, winding road would be harmful; and the proposed lots would be markedly smaller than other waterfront lots. Appellant's burden of overcoming the deference given the decision has not been sustained.

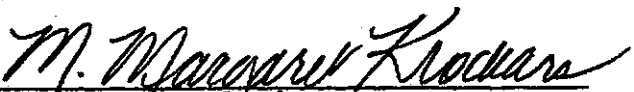
3. As to the variance needed, variance cannot be granted, according to Section 24.74.030A(1), unless the property is deprived of rights and privileges enjoyed by other properties in the vicinity by operation of the code provision. The property enjoys comparable development rights: one single family house on a lot of similar size.

4. The amount of variance requested is great and the potential for material detriment to the public welfare is present. Therefore, the Director's decision was not in error and the appeal should be denied.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 3rd day of February, 1982.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal 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.