

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

LOWELL M. PALMERTON

FILE NO. MUP-81-046(V)
APPLICATION NO. 81135-0042

from a decision of the Director
of the Department of Construction
and Land Use on a Master Use Permit
Application

Introduction

Lowell M. Palmerton, appellant, agent for applicants, Philip Bowman and Robert Phelps, appeals the denial of a variance under the master use permit application for property at 5530-38th Avenue N.E.

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 24, 1981.

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 subject property is a lot containing 8,025 sq. ft. on the east side of 38th Avenue N.E. with a single family residence located on the northern one-half.
2. The lot is in a Single Family Residence High Density (RS 5000) zone developed with houses on lots of markedly varying sizes. Minimum lot size permitted in the RS 5000 zone is 5,000 sq. ft. Section 24.20.080.
3. The applicants propose to divide the lot into two lots, each with 4,012.5 sq. ft. and requested a variance from the lot area requirement. The Director denied this application.
4. The majority of the lots in the University Homes Tracts that were platted with dimensions of 75 by 107 ft. Twenty-four of the 96 lots with that dimension have been subdivided, but only three since the Zoning Ordinance was adopted in 1957 and the last in 1970.
5. An analysis of the lots on the two blockfronts facing 8th Avenue N.E. between N.E. 55th and N.E. 57th using the Kroll map shows that one lot is 3,825 sq. ft., six lots are 4,012.5 sq. ft., one is 4,280 sq. ft., one is 4,494 sq. ft., one is 4,875 sq. ft. and the remaining eleven are larger than 5,000 sq. ft. Five, including the subject lot, are 8,025 sq. ft. The average lot size for the blockfronts is just under 5,660 sq. ft. None of these lots was created since 1957.
6. With regard to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, Chapter 25.04, Seattle Municipal Code, the action proposed in this subject application has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC 197-10-170.

Conclusions

1. The burden is on the one requesting variance to prove that the code's criteria for variance are met. The appellant has not proven that the size of the subject property is such that the applicants suffer undue hardship from being denied property rights others enjoy. The lot size analysis shows that four other properties out of the 21 analyzed are the same size as the subject lot and that over half of the lots are larger than 5,000 sq. ft.

2. No variance for lot size has been granted since the adoption of the current code among these lots so special privilege would be conferred if variance were now granted.

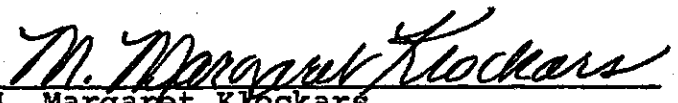
3. The variance would be substantial and where other similarly sized lots exist would go beyond the minimum necessary for relief.

4. The variance should not cause any injury or material detriment to the public welfare and would not be contrary to the Single Family Residential Areas Policies.

Decision

For each of the above reasons, the decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 8th day of October, 1981.


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. 413 (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.