

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CONSTRUCTION AND DEVELOPMENT SERVICES

FILE NO. MUP-82-017(V)
APPLICATION NO. 81363-0514

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

Introduction

Appellant, Construction and Development Services, as agent for the applicant, appeals the decision of the Director of the Department of Construction and Land Use (Director) to deny a variance for property at 8537-8th Avenue N.W.

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

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 April 1, 1982.

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. In conjunction with an application for conditional use to establish a daycare center at 8537-8th Avenue N.W. a variance was requested from a requirement in Section 24.16.040B(3) that the fenced play area be set back at least 15 ft. from adjacent residentially-zoned properties. The Director denied the request. This appeal followed.

2. The subject property is a lot measuring 75 by 120 ft. developed with a single family residence, detached garage structure and a storage shed. The lot is fairly level except for a 6 ft. bank along the west (rear) side and a 4 ft. bank on the south side which decreases in height toward the east. The horizontal distance from the base of the bank to the property line is 7-8 ft. Trees, shrubs and other vegetation cover the bank and are clustered near the northwest and southwest corners.

3. The site is in a Single Family Residence High Density (RS 5000) zone. Single family residences adjoin to the northwest, west and south. The lot directly north is vacant. The nearest house to the west is 50 ft. from the lot line. The house to the west is adjacent to the garage structure on the subject site.

4. The applicant proposes to provide at least the required 15 ft. setback on the north side but on the west and south sides to improve the existing fencing on the property line at the top of the embankment. Variance is requested from Section 24.16.040B(3) for no setback on those sides.

5. An accoustical expert testified for appellant at the hearing. He concluded that because of the topography of the subject site a barrier at the property line would provide greater noise attenuation than a barrier set 15 ft. in from the property line. For instance, assuming the source of the noise is 4 ft. inside the fence which is at the property line the noise reaching the residence 50 ft. away would be reduced by 35 dB by the fence and distance. If the fence were set in 15 ft. the noise would be reduced 28 dB by the fence and distance.

6. A condition of the administrative conditional use imposed by the Director requires that the outdoor play area be screened by a solid noise barrier or fence.

7. Appellant maintains that hardship exists for use of the property when the code requirement to reduce the back yard play area by 40 percent would provide less protection of the adjacent properties than the larger sized play area.

8. The owners and residents of properties abutting upon the subject site do not oppose the variance.

Conclusions

1. The topography of the subject site is such that the code's setback requirement would reduce the outdoor play area by over 40 percent without carrying out the code's intent which, in fact, would be better met by the variance. The denial of use of that area would be unreasonable under that circumstance. The variance would, therefore, be the minimum necessary for relief and not confer special privilege.


2. The fencing, as proposed under the variance, would provide better protection for surrounding residences from noise associated with the center than at the 15 ft. setback line. Activity could occur closer to the adjacent properties resulting in occasional loose balls but the differing elevations, vegetation and solid fence should minimize the effects of such activity. The variance would not, then, cause injury or material detriment to other properties or to the public welfare.

3. The variance would not conflict with the Single Family Residential Policies.

Decision

The decision of the Director is reversed and the variance is GRANTED.

Entered this 14th day of April, 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.