

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

STEVEN LEIGHTY

FILE NO. MUP-84-004  
APPLICATION NO. 83-613

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

#### Introduction

The appellant exercised his 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 22, 1984.

Parties to the proceedings were: applicant-appellant, Steven Leighty; applicant's agent, Paul Edgar; and the Director, Department of Construction and Land Use by Mary Pfender. Malcolm Taran and Jamie Donaldson appeared on behalf of neighbors to the proposed development.

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 subject property, zoned SF 5000, is located at 7212-8th Avenue N.E., legally described as:

##### Legal Description:

That portion of lots 3 and 4, Block 25, Wallingford's Park Division of Green Lake Addition to City of Seattle lying southeasterly of a line drawn parallel with and 60 ft. distance southeasterly of the North 73rd ramp survey line of the primary State Highway No. 1.

2. The subject site is a triangular shaped 3,090 sq. ft. lot that is presently undeveloped. The site's irregular shape and reduced size are a result of a portion of the property being taken for construction of the I-5 Freeway. The front property line now follows the curve of 8th Avenue N.E. as it connects to N.E. 73rd Street.

3. To the east and south are single family residences, to the west is the I-5 Freeway, and to the north is the Lake City/Bothell Way interchange.

4. The appellant proposes to construct a single family residence fitted to the wedged shaped lot with less than the required 15' front and 10' rear yards.

5. The subject site was indicated by the appellant's agent to be a separate building site in 1957 when Zoning Ordinance 86300 was adopted. Said Ordinance established the minimum lot size to be 5000 sq. ft. In 1959 the subject site was purchased by the State of Washington for construction of the I-5 Freeway.

In December 1965 the State, after only utilizing the northwest corner of the subject site for freeway purposes, sold the subject site. Since that time the subject site has been purchased and sold along with the lot abutting the south boundary of the subject site. This abutting south lot was indicated by appellant's agent to have been subdivided as a separate lot in 1932 with 1,990 sq. ft. and is presently developed with a single family residence.

Applicant purchased the subject site and south abutting lot as a single unit in a single transaction five to six months ago.

5. Appellant's agent in testimony found credible by the Hearing Examiner indicated that the block containing the subject site would contain nine residences, proposed development included, at an average lot size of 4350 sq. ft., the smallest lot being 1,990 sq. ft.; that the block immediately to the south contains ten residences at an average lot size of 4,200 sq. ft., the smallest lot being 3,000 sq. ft.; and that the next block south contains ten residences at an average lot size of 4,200, the smallest lot being 3,000 sq. ft.

A residence in the block east of the subject site has a portion of the residence at ten feet from the front property line.

6. Testimony on behalf of the neighbors indicated that both lots are and should be considered as a single unit and that development on the wedged-shaped lot is therefore opposed. The Hearing Examiner is in receipt of approximately one dozen comment letters and approximately three dozen signatures opposing the proposed development.

7. Appellant introduced his last minute survey of the neighbors that had been signed by more than one dozen neighbors who would not oppose the development. The Examiner notes that three of these signatories also signed the earlier petition opposing the development and one of these three is the previous owner of two lots in question.

#### Conclusions

1. Appellant's agent's assertion that the site should be exempted under Section 23.44.10.B. is misplaced. Whether or not the exception is applicable is a matter of interpretation of the Land Use Code per Section 23.88.

2. However, if the Examiner were to analyze the relevant Sections as suggested:

Section 23.44.10.A states as follows:  
"Minimum Lot Area

The minimum lot area shall be:

<u>SF Zone</u>	<u>Minimum Lot Area Required</u>
SF 9600	9600 square feet
SF 7200	7200 square feet
SF 5000	5000 square feet"

3. The minimum lot area in the single family 5,000 zone is

5,000 sq. ft. Section 23.44.10A. Exceptions appear at 23.44.10.B, as follows:

A single-family dwelling unit may be established on a lot which does not satisfy the minimum lot area requirements of its zone, if:

1. The lot was established as a separate building site in the public records of the County or City prior to July 24, 1957, by deed, contract of sale, mortgage, property tax segregation, platting or building permit.
2. The lot area deficit was the result of a dedication or sale of a portion of the lot to the City or State for street or highway purposes and payment was received for only that portion of the lot, and the lot area remaining is at least fifty percent of the minimum required in the zone.
3. A lot below the minimum lot area may be created by short subdivision, subdivision or lot boundary adjustment when the lot to be created will be at least seventy-five percent of the minimum required lot area and be at least eighty percent of the mean lot area of the lots on the same block face within which the lot will be located and within the same zone.

4. The Examiner would probably conclude that exception Section 23.44.10.B.1 requires "the lot" to have been established as a "separate building site" by platting or building permit, etc., prior to July 24, 1957. Application of this Section to this instant proceeding as suggested by applicant's agent would be clearly inappropriate in that the subject site, as presently existing, came into existence at 3,090 sq. ft. after the site was sold by the State of Washington in December 1965.

"The lot" referred to should be reasoned to mean the prior unaltered lot, otherwise, any pre-1957 undersized lot could arguably be a separate building site which clearly is not the intent of the Land Use Code.

5. Exceptions B.2 does not apply. This section addresses the situation when a "portion" of a lot is involved. In this instant proceeding the entire lot was purchased by the State of Washington and, therefore, not subject to this section.

6. Exception B.3 does not apply. This instant proceeding is in regards to an application for variance relief.

7. In regards to the requested variances the appellant is to make the required showing for variance relief. Section 23.40.20.C. And all five (5) requirements for variance relief must be met:

- 1) Because of unusual conditions applicable to the established property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this land Use Code will deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity; and
- 2) The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations

upon other properties in the vicinity and zone in which the subject property is located; and

- 3) The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located; and
- 4) The literal interpretation and strict application of the provisions or requirements of this Land Use Code would cause undue and unnecessary hardship.
- 5) The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan Component, as applicable.

8. In regards to the first requirement, because of its location, size and shape as a result of construction of the I-5 Freeway, the subject site does have unusual conditions. But the question is whether the denial of the variances requested will deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity.

9. The Code does provide for "in-fill" of vacant lots in certain circumstances and the Hearing Examiner does find that the average size of the surrounding lots is less than the 5,000 sq. ft. minimum required and that several lots are smaller than the proposed lot to be developed. However, the Hearing Examiner concludes through the testimony of the Director and neighbors that the granting of the variances would be materially detrimental to the public welfare and injurious to property in the zone or vicinity because the development would create an appearance of crowding and deprive the neighborhood of open space as mandated by the Land Use Code.

The Hearing Examiner does note that the subject site has been an open space and possibly used as a front yard by the previous property owners of the residence on the south abutting lot for the past 18 years.

10. The Hearing Examiner concludes that the granting of the variances would not be consistent with the spirit and purpose of the Land Use Code in that the grant of the lot size variance may set a precedent for development requests on small lots. The Examiner notes that one of the developed small lots referred to was subdivided in 1932 when the neighborhood and circumstances were clearly different than present day.

11. In regards to the front and rear yard variance requests, the appellant must make the necessary showing for all five (5) requirements and the Examiner concludes the granting of said variances would be detrimental to the public welfare and injurious to property in the zone and vicinity because of over crowding and deprivation of open space in the neighborhood.

12. In regards to the question of appellant's hardship and whether it is self-created, the Hearing Examiner concludes the property owner purchased the property with knowledge of the size limitation of the subject site. See Exhibit 8 which lists the subject site at less than the required area for development and 3 Anderson, American Law of Zoning, Section 18.56, pg. 298.

13. That the description of the listing company stated the subject site to be 3,600 sq. ft. rather than the true 3,090 sq. ft. is a matter beyond the jurisdiction of the Hearing Examiner and appellant can seek his remedy in another forum.

Decision

The Director's decision is Affirmed.

Entered this 6 day of March, 1984.

Roger Shimizu  
Roger Shimizu  
Hearing Examiner Pro Tempore

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418(1977); JCR 73 (1981). Should such request 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.