

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CHRIS HANSON, agent for
HERMAN PETZOLDT

FILE NO. MUP-84-075(V)
APPLICATION NO. 8403377

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

Introduction

Applicant contests the denial of lot area variance relief for property addressed as 2268 North 56th Street.

The appellant exercised the 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 November 5, 1984.

Parties to the proceedings were: Herman Petzoldt, pro se, and the DCLU Director by Arthur Ward, land use specialist. John Crull, Construction Development Services, appeared as a witness for applicant.

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 present 6,800 sq. ft. lot is a corner parcel with 80 ft. of frontage along the west side of Kensington Place North and 85 ft. of frontage along the north side of North 56th Street. The lot and surrounding block are basically level. Kensington is a local access route. North 56th is a busy arterial.

2. Appellant, property owner, wishes to divide the present lot into two 3,400 sq. ft. area lots. Without special relief lots in the zone must have a 5,000 sq. ft. minimum lot area. DCLU denied the property owner's request for variance from the 5000 sq. ft. area requirement and the property owner submitted this appeal.

3. According to applicant, his parents purchased the subject property (date unknown), divided it into three equal parts and built two homes in 1940, leaving the corner "third" for applicant. Applicant proposes to complete that proposed division by this application. The most easterly of those "three equal parts" borders Kensington Place. It is 80 ft. long, 42 ft. 6 in. wide and is vacant.

4. The middle portion is also 42 ft. 6 in. wide and 80 ft. long. It is developed with a 940 sq. ft. one-story single family residence which provides a 17 ft. front setback to North 56th Street and presently a 53 ft. east side yard to

Kensington. If appellant's proposal is accepted, however, this dwelling's east side yard will be 10 ft. 6 in.

5. The third of these "equal parts" is a 80 by 40 ft. lot also developed with a single family residence.

6. East of this third portion is a 15 ft. wide alley that connects North 56th and North 57th Streets. An irregularly shaped Neighborhood Business (BN) zone strip begins at this alley but jogs east and south to include a few parcels that generally have some 56th Street frontage. See Exhibit 3. The lots west of the alley generally front on Kirkwood Place North although some have frontage on North 57th and one on North 56th.

7. Vicinity lot sizes vary. Lot area figures, essentially undisputed, were generally derived from DCLU's review of the King County Assessor's Map, Exhibit 3, with some adjustments to that document's figures. The lot west adjacent to the subject site is 3,200 sq. ft. in area. Continuing westerly across the alley, is a 5,625 sq. ft. area lot that falls within the strip of BN zoning. North adjacent to the BN zoned lot the SF 5000 zone resumes with another 5,625 sq. ft. area lot. Continuing northerly, there are two adjacent 7,500 sq. ft. area lots. The Kroll Map copy, Exhibit 2, shows that these four single family zoned lots west of the alley (within Block 69) are each developed with single structures. The more northerly of the two structures that appear on the two 7,500 sq. ft. area lots straddles considerably the lot line that separates the two 30 by 125 ft. segments that make up that parcel.

8. Contiguous to and north of designated Block 69, Exhibit 2, is Block 68, bordered on its north by North 57th Street. Block 68 has three lots that are 6,000, 4,125 and 4,436 sq. ft. in area. The 4,436 sq. ft. area figure is a DCLU adjustment to the Assessor's record for the easternmost portion that is bordered on its east by the alley.

9. Block 71 is east of the alley from Block 68, and also abuts North 57th. The most northerly lots fronting on North 57th Street are 3,850, 3,700 and 3,575 sq. ft. in area, west to east. South of these lots is a 3,850 sq. ft. area lot that fronts on Kensington Place. The 3,850 figure is a DCLU adjusted figure.

10. Abutting Block 71 to the south is Block 70. This block's most northerly lots are each 4,180 sq. ft. in area. The applicant's 6,800 sq. ft. area lot abuts the more southerly of these 4,180 sq. ft. area lots. Continuing south, across North 56th Street, is a 6,640 sq. ft. area lot, to the west of which is the most easterly of the BN zoned segment that lines North 56th Street.

11. The properties abutting the east side of Kensington Place North, but also between North 56th and North 57th Streets, are 6,120, 4,080 and 3,480 sq. ft. in area north to south, respectively.

12. The vicinity is essentially developed with single family structures.

13. The DCLU report and analysis state that excluding the 5,625 sq. ft., BN zoned lot, the average lot size for the "remaining (single family-developed) lots in the block is 4,436 sq. ft...." DCLU obtains the average lot size of 4,588 sq. ft. by including figures of "abutting" single family developed lots to the south and east.

14. The general vicinity platting pattern is 30 ft. wide by 100-125 ft. deep lots.

15. Two nearby 30 by 102 ft. platted lots (3,060 sq. ft.) are each being developed with residential structures pursuant to the lots' establishment as separate building sites prior to July 24, 1957. Seattle Municipal Code 23.44.10(B)(1). No evidence was presented of other lot area variances approvals for the vicinity.

16. Comment letters expressed concerns with the proposal's impact on area liveability and aesthetics; and with density and attendant traffic and parking impacts. One writer, owner of the lot north adjacent to the subject property, withdrew at the hearing his protest to the requested variance.

Conclusions

1. In order for variance relief to issue, all of the criteria of Section 23.40.20 must be met. Paraphrased at page 2 of the Director's report, the criteria require among other things a showing of an unusual property condition which without variance relief would deprive the owner or applicant of comparable vicinity development rights and privileges.

2. The record does show that there are lots within the vicinity that are smaller than those proposed by applicant. The east adjacent lot, for example, measures only 3,200 sq. ft., 200 sq. ft. less in area than those proposed by applicant. Further, many lots are less than 5,000 sq. ft. in area. The two north adjacent lots are 4,180 sq. ft. The parcels north of those lots measure 3,850, 3,575 and 3,850 sq. ft. A 3,480 sq. ft. area lot is located across Kensington Place North.

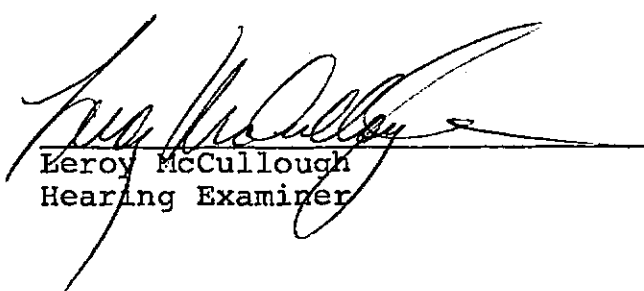
3. The record, however, does not show applicant's existing 6,800 sq. ft. area to be necessarily "unusual." A 6,180 sq. ft. area lot is located along the east side of Kensington Place at North 57th Street. One measuring 6,640 sq. ft. is directly south of the applicant's site, although across the North 56th arterial. Two 7,500 sq. ft. area lots are directly west of the alley, and are proper subjects of consideration for this case since there is no significant topographical separation between the properties east and west of the alley, and since they are within the same "block" and vicinity of the applicant's property.

4. Even if one considers the applicant's 6,800 sq. ft. area lot as unusual, the record does not show that the size deprives applicant of comparable development. The 3,400 sq. ft. lots would be two of the smallest in the vicinity. The two undersized parcels that are under development fall within a codified lot area exception. And no similar lot area variance was shown to have pre-dated this applicant's request. Granting the variance relief under these circumstances would therefore constitute a grant of special privilege to applicant. Since all of the variance criteria are not met, the variance is denied.

Decision

The Director's decision is Affirmed.

Entered this 19th day of November, 1984.


Leroy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW OF
HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

The decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review of the decision must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11); Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73.

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.