

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ROBERT HALE
R/L ASSOCIATES, INC.

FILE NO. MUP-86-050(P)
APPLICATION NO. 8602693

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

Introduction

Robert Hale, president of R/L Associates, Inc., appeals the decision of the Department of Construction and Land Use Director, denying an application to subdivide one parcel into two parcels of property addressed as 1047 N.E. 92nd Street in Seattle.

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 September 18, 1986.

Parties the proceedings were: appellant, pro se; applicant Steven Gilbert; and the Department of Construction and Land Use Director by Clay Leming.

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. Appellant proposed to subdivide an existing 10,657 square foot area level lot into Lot A, containing 5,474 sq. ft. and Lot B, containing 5,183 sq. ft.

2. The subject property is addressed as 1047 N.E. 92nd Street in Seattle. It is located in a single family developed SF 5000 zone.

3. Currently, a house and garage are located on the northern half of the subject property. The site is on the eastern half of the block which adjoins Roosevelt Way N.E. on the west. This portion of the arterial is zoned NC2/40'. Lot A would be adjacent to N.E. 92nd and Lot B would be an interior lot.

4. This SF-zoned area is almost entirely developed with single family residences, an occasional duplex, a triplex and a church. Topography on and around the subject site is essentially level.

5. Access to Lot B would be via a 10 ft. wide easement through the west side of Lot A. The existing garage will be removed; the parking space will be retained but moved eastward.

6. Average lot size on the subject block is 6,582 sq. ft.; only one parcel (part of a corner development) is smaller than the proposed subdivision. On the block to the north, the average lot size is 6,833 sq. ft.

7. Proposed internal Lot B would interrupt the normal platting pattern on this block. No other such plat, with access

via an easement, exists in this immediate area. Almost all of the lots are 145 ft. deep with houses located relatively close to the street.

8. Five letters and a petition containing 21 names of neighbors in the immediate vicinity opposed the application.

9. By decision dated August 11, 1986, the Director denied the application. The reasons for denial stated by the Director were: that the proposed internal lot (Lot B) would interrupt the normal platting pattern on the block; the proposal would set an unwelcome precedent since no other such plat, (with access via an easement) exists in the immediate area and other large lots on this block and surrounding blocks could make similar applications to subdivide; irregular platting can disrupt utility lines; irregular platting could require additional utility easements; the proposal could cause difficulties in addressing or locating internal properties; and due to the small size and internal location of Lot B, the proposed subdivision is not in character with the surrounding development and therefore is not in the public interest.

10. Appellant argued that two parcels within the immediate vicinity had lesser square footage as subdivided property during a 1985 boundary adjustment.

11. Appellant also argued that on a lot situated to the west of the subject property, one house already exists in the back of the lot.

12. Additionally, appellant argued that property to the west of the subject property, owned by the Seattle Housing Authority, constitutes a triplex in a SF 5000 zone, obtained by a variance.

13. Appellant also argued that to the east of the subject property were lots smaller than 5,000 sq. ft.

14. The Director argued that the smaller lots have street frontage and were not internal lots.

15. The Director also argued that the two properties east of the subject property with smaller square footage were originally platted east to west and by a lot boundary adjustment were able to be platted north to south with street frontage. The Director further argued that the three parcels west of the subject property owned by the Seattle Housing Authority were not allowed by variance, but in fact, consisted of a rezoning of the property which was allowed under the Code.

16. The property located to the west of the subject property differs from the subject property in that the house set back in the lot has its own street frontage and is not situated behind another house as the applicant proposed for this subject property.

17. The Engineering Department's sewer map indicates that no similar developments to the subject property exist within the immediate vicinity.

18. Neighbors of the subject property testified that their privacy will be affected by the sub-platting of the lot, water pressure is already low and the proposal would cause an increased burden, the surrounding neighborhood contains large yards which will significantly differ from this proposal, back yard privacy will be diminished by this proposal, and additional parking problems may occur due to this project.

19. Testimony by the Director's representative indicated that disruption of utility lines depends on the type of platting, but specifically, this platting might not disrupt utility lines.

20. The Director's representative further testified that additional easements in this case may not set an undesirable precedent.

21. The Director's representative further testified that there are no perceived difficulties in addressing the two lots.

22. Additionally, the Director's representative testified that although emergency vehicles at times could have problems locating internal properties, such as proposed here, there was no evidence that emergency vehicles would have problems locating this particular property.

23. The Director's representative further testified that although this proposal meets minimum zoning requirements for SF 5000, its small size and internal location is not in character with adjacent lots. Other smaller lots are in a similar platting pattern with street frontage in the immediate vicinity and side-to-side platting exists which differs from the front to back platting as proposed here.

24. The Director's representative defined "public use and interest" as depending on the particular site and surrounding developments, shape, size, relationships of driveways, creation of increased traffic, noise, dust, invasion of privacy of immediately adjacent neighbors and their concerns. Different circumstances for each property will exist due to unique topography and variations from one neighborhood to another. A lot by lot basis determination is necessary due to the uniqueness of each particular site. Specific application varies with the specific property and how it blends with existing development. Apparently, no written interpretation by the Director exists.

25. Applicant presented evidence that there would be four off-street parking spaces for the two proposed single family homes.

26. One driveway is proposed for vehicular traffic to reach Lot B from the street. This driveway is close to a west adjacent neighbor's home and would result in excess noise impacts on this neighbor's residence.

Conclusions

1. The Hearing Examiner has jurisdiction of this proceeding pursuant to Chapter 23.76, reference Chapter 23.24, Seattle Municipal Code.

2. The criteria for short plat approval, found at Section 23.24.040(A), includes conformity with applicable land use or zoning codes and policies; adequacy of fire protection, utility and vehicular access; and service of the public use and interest. The Director's decision on a short plat "shall be given substantial weight". Seattle Municipal Code, Section 23.76.22(C)(7), as amended.

3. "Public use and interest" are terms which are not defined in the Land Use Code.

4. Terms which are not defined in the Seattle Municipal Code and/or Zoning Ordinances will be given their ordinary meaning. Tacoma Federal Credit Union v. Edwards, 94 Wn.2d 666, 669 (1980); Seattle-First National Bank v. Snell, 29 Wn.App. 500, 506 (1981).

5. The term "public" is defined to include the "whole community" and is "not limited or restricted to any particular class of the community". The term "public interest" refers to "something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow...as the interests of the particular localities..." The

term "public use" likewise "means a use concerning the whole community as distinguished from particular individuals". Black's Law Dictionary, West Publishing Co., Minn. (1968) pp. 1393, 1395. Also see, Webster's new Collegiate Dictionary, G and C Merriam Co., MA (1973).

6. The policy intent for Single Family Residential Areas is to provide "housing opportunities throughout the city for all residents". Seattle Municipal Code, Section 23.16.002.

7. The proposed driveway to Lot B would impose excess noise, dust, and invasion of the west adjacent neighbors' privacy if no conditions are required to mitigate the impacts.

8. In all other respects, this proposal meets SF 5000 minimum requirements, is in conformance to applicable Land Use Policies and Code provisions; provides adequacy of access for vehicles, utilities, and fire protection; and provides adequacy of drainage, water supply and sanitary sewage disposal.

9. Due to the small size and internal location of Lot B, the proposed subdivision is not in character with the surrounding development, however, that does not go against public use and interest.

10. Since applicant proposes four off-street parking spaces, public use and interests will be further met by this proposal.

Decision

The decision of the Department of Construction and Land Use Director is REVERSED under the following conditions:

1. The proposed driveway will be constructed in such a manner as to eliminate excess dust, reduce excess noise to the adjoining neighbor's home and provide reasonable privacy to the west adjacent neighbor's property.

2. DCLU, in conjunction with the City's Engineering Department specifications, will provide construction recommendations and enforcement of condition 1 above.

Entered this 1ST day of October, 1986.



Alberto Velarde
Hearing Examiner Pro Tempore

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 party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

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, (206) 625-4197.