

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

AD HOC GROUP TO STOP THE APT.

FILE NO. MUP-86-067(V)
APPLICATION NO. 8506785

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

Introduction

Appellant appeals the decision of the Director, Department of Construction and Land Use to grant side yard variances for property at 5631 Delridge Way S.W.

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 October 23, 1986.

The applicant, Greg Anderson, and the Director, Department of Construction and Land Use represented by Julia Gibb, land use specialist. No member of appellant group appeared at the hearing set for 9:00 a.m. Peter Broto, apparent spokesperson for the group, appeared at 10:00 a.m. due to an error in recording the time on his calendar. Over the objection of the applicant, the record was reopened to admit written materials submitted by appellant at that time.

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.

Finding of Fact

1. The applicant applied for a master use permit to construct a four-unit apartment building. Variances from side yard setback requirements were needed. The Director granted the variances. This appeal followed.

2. The subject property is a 40 ft. wide lot on the west side of Delridge Way S.W. in a Community Business (BC) zone. The rear of the 124 ft. deep lot is on a 16 ft. wide alley. The lot is vacant.

3. The proposed four-unit apartment building with parking off the alley would provide a 6 ft. north side yard and 8 ft. south side yard.

4. The Director has determined that Sections 24.44.140(B), 24.32.120(B) and 24.62.120(B) require an 8 ft. north side yard and 10 ft. south side yard.

5. The subject property is part of a large Neighborhood Commercial 2 40'(NC2) zone along Delridge Way S.W. It was zoned BC at the time of the application.

6. On the property adjoining the north side of the subject property is a duplex. A single family zone developed with single family residences is to the west across the alley. Immediately south of the subject property is a commercial use, B & P Laboratories, Inc.

7. There are similar developments with similar side yards in the area.

8. Under the current zoning no side yard setback would be required for this property, Section 23.47.014, though the Building Code would require 3 ft. If multi-family zoning applied to the site the side yards could be 5 ft.

9. The Directors representative reported five similar variances in the area have been granted.

10. A four-unit building is categorically except from SEPA review and, therefore, from the notice requirement for a large sign. Sections 25.05.800 and 23.76.012.

11. The appeal raised issues such as drainage, access, vegetation, parking, economic parity, sanitation and crime, which are not considerations relevant to a side yard variance.

Conclusions

1. Variance relief may be granted if the facts and conditions set out in Section 23.40.020(B) are found to be present. The first is an unusual condition which would deprive the property of rights enjoyed by other properties. Because of the 40 ft. width of the lot, the strict application of the side yard requirements would prevent development comparable to that on other lots in the zone.

2. The variances may not go beyond the minimum necessary and may not constitute a special privilege. The side yard to be provided is greater than could be required under current zoning and is comparable to that of other development in the area so this requirement is satisfied.

3. The variances may not cause material detriment to the public welfare or injury to other property. No detriment to the public welfare is foreseeable when current zoning would require less setback than is proposed. There is no evidence of potential injury to other property.

4. The fourth condition to be present is that the literal interpretation and strict application of the requirement would cause undue and unnecessary hardship. Hardship is present since current zoning would allow the setbacks proposed.

5. Finally, the variances must be consistent with the spirit and purpose of the Land Use Code and Neighborhood Commercial Policies. Since the setbacks would satisfy current code requirements the variances would be consistent with the spirit and purpose of the code. The setbacks policy for Neighborhood Commercial Areas is to allow flexibility in siting but it does require setbacks from property which is residentially-zoned. p.16.20.47. The variances would not conflict with this policy.

Decision

Variances are granted for a 6 ft. north side yard and 8 ft. south side yard.

Entered this 6th day of ^{December}~~October~~, 1986.

M. Margaret Klockars
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Deputy 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 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.