

FINDINGS AND DECISION  
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

EMMETT J. O'REILLY

FILE NO. MUP-89-015(P)  
APPLICATION NO. 8806089

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

Introduction

Appellant, Emmett J. O'Reilly, appeals the decision of the Director, Department of Construction and Land Use, to conditionally approve a short subdivision of property at 3450 N.W. 59th 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 June 1, 1989.

Parties to the proceedings were: appellant, Emmett J. O'Reilly, pro se, and represented by his neighbor, William A. Francis; the Director, Department of Construction and Land Use, represented by Arthur Lee, associate land use specialist; and the applicant, Holly Allen, pro se and by the purchaser, Douglas Hanson.

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 applicant proposes to subdivide a parcel at 3450 N.W. 59th Street, Lots 21 and 22, Block 2, Brygger's Second Home Addition to the City of Ballard, into two lots. The Director, Department of Construction and Land Use, approved the short plat subject to certain conditions. Appellant filed this appeal of that decision.

2. The parcel, as it is configured prior to the short plat, consists of two platted lots with a north-south orientation having a total area of 10,800 sq. ft. A single family residence is situated on the lot approximately 25 ft. from N.W. 59th Street and 20 ft. from 36th Avenue N.W. The house is set back 18.9 ft. from the east property line and about 58 ft. from the alley on the north side. A garage is located at the northwest corner of the property, 3 ft. from the alley.

3. The street rights-of-way are at least 60 ft. wide. Both streets are paved to a width of 22.5 ft. and have curbs and sidewalks. The alley is paved to 14 ft. and is 16 ft. wide.

4. According to responses to referrals to the Engineering and Water departments, sanitary sewage and water service are available and adequate.

5. Zoning in the area is Single Family 5000 (SF 5000). The area of proposed Lot A (the south parcel) would be 5,799.15 sq. ft. and the area of proposed Lot B (the north parcel) would be

5,000.85 sq. ft.

6. The sizes of lots in the immediate area range from 2,000 sq. ft. to 7,000 sq. ft. Those in the facing block fronts on N.W. 59th are generally 6,000 and 6,400 sq. ft. with one at 5,600 sq. ft. and one at 3,780 sq. ft. in area. In the facing block fronts on 36th Avenue N.W. the sizes are 4,800 sq. ft., 4,000 sq. ft., 2,000 sq. ft., 7,000 sq. ft. and 6,480 sq. ft.

7. The proposed change in orientation of the lots to east-west is necessary because of the placement of the existing house. The new lot line is required to jog twice to allow for adequate setback of the house from the lot line and maintain at least 5,000 sq. ft. of the area in Lot B.

8. Because of public comments about parking congestion, the Director required the applicant to provide a parking study of the area. A consulting firm conducted the parking analysis following Engineering Department standards for parking studies. The average utilization of available parking in the 1.5 block area around the site was 25 percent leaving an average of 157 spaces open for parking.

9. Appellant and his witnesses object to the change in orientation of the lots, the resulting setbacks, possible loss of view, shading, additional traffic, more on-street parked vehicles which can make maneuvering around the corner difficult for large vehicles such as fire and garbage trucks and possible precedent.

10. While a north-south orientation of lots in the area predominates, the subject site faces three lots with east-west orientation across 36th N.W.

11. The proposed lot line provides for the required 5 ft. north side setback for the existing house. That setback is now the rear yard but with the changed orientation would become the side yard. The new front and rear yards would meet code requirements. The dimensions and configuration of proposed Lot B are such that a new house could be constructed which satisfies the setback requirements.

12. The existing garage on proposed Lot B is nonconforming as it is too close to the alley.

13. Mr. O'Reilly has attained some view of water and mountains beyond by adding a second story and/or window. A house constructed on proposed Lot B would interfere with that view if taller than one story. Others enjoy partial views, according to appellant, down or across the alley which may or may not be affected by any development on proposed Lot B. The land use specialist showed that the existing house could be expanded in a manner which might interfere with views even without the short plat.

14. It appears that because of the direction of the sun a house on proposed Lot B would shade Mr. O'Reilly's rear yard only late day in the summer. The alley and perhaps some of the rear yards across the alley could be partially shaded at noon or later at other times of the year.

15. There is no evidence that the street system in the area cannot accommodate the traffic generated by one additional single family residence.

16. The parking study shows that any spillover parking from a new residence can be accommodated on-street. If cars parked close to the intersection create turning problems, the Engineering Department may be approached about placing "no parking" signs to reduce that problem. The response of the Fire Department to the referral did not indicate that any problem exists or is foreseen.

17. The possibility of many other short plats in the immediate area is remote as very few parcels are as large as

10,000 sq. ft. in area, the minimum necessary for subdivision in this zone. Fears of apartment development are unfounded as the zoning will not permit multifamily development.

18. The Director imposed as a condition of approval the requirement that a drainage control plan for stormwater runoff be submitted and approved.

19. The Director found that the addition of single family housing is in the public interest and offsets any detriment from minor view obstruction.

20. The proposal is categorically exempt from SEPA's threshold determination requirements.

#### Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.76.022.

2. The Hearing Examiner is to give the decision of the Director substantial weight and may reverse the decision only if appellant proves the decision to be clearly erroneous. Section 23.76.022.C.7, Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

3. Section 23.24.040.A sets forth the considerations for short plat approval. Appellant did not show that the new lots would not conform to the Land Use Code provisions or the policies. Though the garage is nonconforming that condition would be unaffected by the short plat.

4. The lots must have adequate access for vehicles, utilities and fire protection, Section 23.24.040A.2, and adequate drainage, water supply and sanitary sewage disposal. Section 23.24.040.A.3. Appellant has not shown these requirements are not met by the proposal.

5. Finally, the Director is to consider whether the public use and interests are served by permitting the proposed division of land. Section 23.24.040A.4. Appellant, to prevail, would have to show that the Director's judgment was clearly erroneous, i.e., that the detriment clearly outweighs the benefits to the public interest. The opinion evidence presented was not sufficient to prove that the decision was clearly erroneous.

6. Based on the foregoing, the examiner concludes that the appellant has not carried his burden of proof and the decision must be affirmed.

#### Decision

The decision is affirmed.

Entered this 12<sup>th</sup> day of June, 1989.

  
M. Margaret Klockars  
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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.