

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

In the Matter of the Appeals of

PHILIP L. WOODS
ALICE P. LEE,
GALE WERGELAND,
EDWARD D. LAZOWSKA, AND
L. RAYMOND AND HELEN D. MCKINLEY

FILES NOS.
MUP-89-063(P,V)
MUP-89-065(P,V)
MUP-89-066(P,V)
MUP-89-067(P,V)
MUP-89-068(P,V)

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

Introduction

Philip L. Wood, Alice P. Lee, Gale Wergeland, Edward D. Lazowska and L. Raymond and Helen D. McKinley appeal the decision of the Director, Department of Construction and Land Use, to grant a master use permit to Wilbur Brown (Steve Hitchings, agent) to subdivide a parcel of land at 6723 35th Place N.W. into two parcels and to grant variances to permit an existing structure on one of the parcels to extend into a required front yard and to allow parking in that front yard.

Appellants exercised their rights of appeal pursuant to the Land Use Code, Chapter 23.76, Seattle Municipal Code. The matter was heard before Hearing Examiner Pro Tem Gordon F. Crandall on January 31, 1990.

Alice P. Lee and the McKinleys appeared by their attorney, Robert J. Carpenter. Gale Wergeland and Edward D. Lazowska appeared pro se. Philip L. Wood did not appear. The DCLU Director was represented by Faith L. Lumsden, Land Use Specialist. Wilbur Brown was represented by his attorney, Ross Radley.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC) unless otherwise indicated.

After due consideration of the evidence submitted during the public hearing, the Hearing Examiner makes the following findings of fact, conclusions and decision upon these appeals.

Findings of Fact

1. Wilbur Brown and Agnes Brown, his wife, own a rectangular lot of about 16,360 square feet at 6723 35th Place N.W. in the Sunset Hill area. The lot is a corner lot with 90 feet of frontage on N.W. 68th Street and 185 feet fronting on 35th Place N.W.

2. The lot is developed with a single family residence with a detached carport. The carport is less than five feet from the residence and for purposes of the Land Use Code is part of the principal structure. The residence and carport is located on the southernmost portion of the site. Vehicle access to the residence is from 35th Place N.W. although its front lot line is on N.W. 68th Street.

3. The lot and surrounding vicinity is zoned SF 5000, although most of the homes in the immediate vicinity have lot areas of 6000 square feet or more.

4. Streets in the area are paved, but have no sidewalks or curbs. N.W. 68th Street has a 60 foot right-of-way with a paved roadway between 20 and 35 feet. 35th Place N.W., a dead end street, has a 20 foot right-of-way and a paved roadway of between 11 and 17 feet.

5. The Browns proposed to subdivide (short plat) their lot into two parcels, one parcel fronting on N.W. 68th Street and the other parcel containing the existing residence fronting on 35th Place N.W. The change of frontage for the existing residence changes its front lot line from N.W. 68th Street to 35th Place N.W. This in turn results in two nonconformities: the

carport would now be in the required front yard and neither carports nor the parking of vehicles is permitted in a required front yard. The Browns seek variances from these prohibitions as a part of the short plat application.

6. The Browns originally sought to short plat their lot into three building sites. After considering community opposition to their application, they changed their application so as to create only one new lot.

7. The Director granted the variances, citing the lots long depth, the location of the existing residence and garage and the lot's status as a corner lot as unusual circumstances. The Director concluded that the unusual circumstances were not owner-created, that the requested relief did not go beyond the minimum necessary to afford relief, that the grant of the variances would not be materially detrimental to the public welfare, that strict application of the code if the short plat was approved would require unnecessary relocation of the existing carport which would work a hardship on the Browns, and that the variances were consistent with the spirit and purposes of the Land Use Code and adopted land use policies. Seattle Municipal Code Section 23.40.020C.

8. The Director also granted the short plat application as consistent with the criteria for short plats (SMC 23.24.040) and as being in the public interest. The Director rejected a Engineering Department recommendation that the pavement on 35th Place N.W. be widened and a turnaround provided. In approving the short plat, however, the Director did not approve a specific lot configuration for the two lots, but required only that the new lot contain not less than 5000 square feet. The Director contends that he is without authority to require more lot area than the zoning minimum, under Carlson vs. Beaux Arts Village, 41 Wn. App. 402, 704 P.2d 663 (1985).

9. On their appeals, appellants contend primarily that:

- (a) The unusual conditions for which variances were sought were owner-created; and
- (b) That the failure of the Director to locate the lot line between the new lots left the door open for a subsequent short plat creating a third lot.

10. In response to appellants' concerns, the Browns proposed to locate the lot line between the two lots essentially in accordance with a 1957 survey and indicated that they would accept as a condition of the approval that neither of the resulting lots would equal or exceed 10,000 square feet. The 1957 survey proposed lots of approximately 8,710 and 7,650 square feet.

11. Two appellants, Mr. Lazowska and the McKinleys, indicated that they would be willing to see the short plat approved if there was a covenant against further subdivision, a covenant restricting the height of any new building, and conditions requiring that the building on the new northerly lot to face N.W. 68th Street and prohibiting the averaging of setbacks.

Conclusions

1. The Hearing Examiner's authority to hear the appeal is based upon SMC 23.76.022. The hearing is de novo and not solely upon the record made before the Director. In reviewing a decision to grant a variance, the decision of the Director is given no weight. SMC 23.76.022C.7. In reviewing a decision to grant a short plat, the decision of the Director is entitled to substantial weight. SMC 23.76.022C.7.

2. Appellants are prepared to accept the short plat of the lot if they are assured that one of the resulting lots could not be further subdivided. The Browns are prepared to provide that assurance by agreeing to establish the line between the two lots more or less as shown in the 1957 survey. This location would produce lots of approximately 8,710 and 7,650 square feet, both of which are too small to permit further subdivision.

3. The Director's conclusion that he is not authorized to require more than the zoning minimum lot area is generally correct. However, a greater area may be required as a condition to a variance, where such a condition will mitigate the adverse impacts of granting the variance. This is the case here. Prohibiting the creation of a third lot will mitigate the effect of having the carport in a front yard which is permitted by the variance.

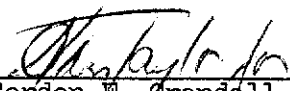
4. Imposition of further conditions suggested by appellants in paragraph 11 of the findings of fact are not justified under the facts and circumstances of this case. Further subdivision of the property is barred for five years by RCW 58.17.060.

5. In view of appellants' position on the short plat, consideration of whether the unusual condition justifying the variance were owner-created is unnecessary.

Decision

The decision of Director is modified to require that the lot line between the two lots created by the approved short plat be located more or less as shown on the survey prepared for Wilbur L. Brown by Morford and Mowray, dated November 15, 1957 and admitted as Exhibit 13. Neither lot created by the short plat shall exceed 9,500 square feet in area. In all other respects the decision of the Director is AFFIRMED.

Entered this 15th day of February, 1990.


Gordon F. Grandall
Hearing Examiner Pro Tempore

CONCERNING FURTHER REVIEW OF HEARING EXAMINER FINAL DECISION 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, 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104.