

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

R/L ASSOCIATES

FILE NO. MUP-90-063(V)  
APPLICATION NO. 8907035

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

#### Introduction

R/L Associates appealed the decision of the Director of the Department of Construction and Land Use (DCLU) to conditionally grant a variance to allow the principal structure to extend into the required side yard setbacks. The appellant appealed the conditions which required the appellant to reduce the height of the structure and restrict the height of any fence or vegetation at the southwest corner of the subject property for the life of the project.

The matter was heard before the Hearing Examiner (Examiner) on October 31, 1990. The record was left open until November 8, 1990 for the appellant to submit documentation to establish that he filed a timely request for an interpretation of the code on whether the subject property is a reversed corner lot as defined in the code, and to allow the Examiner time for a site inspection. The appellant did not submit the proof of a perfected appeal and the record was closed on November 8, 1990, after the site inspection.

Pursuant to Hearing Examiner Rule 1.22, the Examiner reopened the record on November 14, 1990, for the appellant to submit additional evidence and for a Remand to DCLU for a reconsideration of its decision based on the new evidence. The appellant responded to the order through counsel Richard Sanders and contested the Examiner's authority to reopen the record, to require the appellant to supplement the record and to remand the matter to DCLU. Notwithstanding the Examiner's position that a proper analysis could not be conducted without the additional evidence, the appellant declined to submit the additional evidence. Therefore, the record was closed on December 3, 1990.

Parties to the proceeding were: Bob Hale, appellant, pro se; Leigh Francis, land use specialist, for DCLU.

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, including testimony, documents received prior to the close of the record and the site inspection, the following shall constitute the findings of fact, conclusions of law and the decision of the Examiner on this appeal.

Findings of Fact

1. The subject property is a vacant parcel located on the northwest corner of NW 65th and 21st Street. The property is 21 ft. by 102 ft., for a total square foot area of 2,142. The subject property is located in an area zoned Single Family Residential 5000 (SF-5000), requiring a minimum lot size of 5000 square feet.

2. The surrounding area is zoned SF 5000 to the west, east and north. The area to the south is zoned Low Density Transitional (LDT). The parking lot of a church is located across the street from the subject property to the east and a four story apartment building is located across the street to the southeast.

3. The appellant applied for a variance to allow the principal structure to extend into the required side yard setback. The subject property is classified as a reversed corner lot in the land use code. As such, the code requires a 10 ft. side yard setback. The appellant request a 5 ft. side yard setback variance.

4. The appellant contacted DCLU prior to purchasing the subject property and was notified that the subject property might be classified as a reversed corner lot. The appellant purchased the property without requesting a formal interpretation from DCLU of the application of the land use code on the subject property. Since the appellant did not request an interpretation, the issue cannot be raised for the first time in this appeal, and the decision that the subject property is a reversed corner lot is binding on the Examiner.

5. The land use specialist who prepared the decision at issue in this proceeding obtained the building plans that the appellant submitted for a building permit. The DCLU analysis and decision to conditionally grant the variance subject to three conditions was based on the belief that they were analyzing the plans for the structure proposed for the site.

6. The project plans reviewed by DCLU were for a three story structure, 29.5 ft. in height. The structure would be 10.9 ft. wide and 60 ft. in length. DCLU did not conduct a separate analysis of whether the conditions for granting a variance were satisfied before imposing conditions on the structure to be erected on the subject property. Rather, DCLU analyzed the request for a side yard variance based on the proposed structure. In its analysis, DCLU concluded that three of the five required conditions for granting a variance were established as a result of the conditions DCLU imposed on the structure and the surrounding landscaping.

7. DCLU conditionally granted the variance subject to conditions that the appellant reduce the height of the structure from three stories to two stories and that the appellant restrict the height of any fence and or vegetation at the southeast corner of the site to not more than three ft. in height.

8. The appellant contested the DCLU decision because he contends that a decision on the variance should be made independent of consideration of the structure to be built on the site. The appellant argues that if the conditions necessary to authorize a variance are established, DCLU should not impose any conditions that are not specifically provided for in the code. The conditions on reducing the height of the building and surrounding fence and vegetation are not code requirements.

9. The appellant has declined to acknowledge whether the building plans used by DCLU are the proposed building plans for the site and has declined to submit any other building plans or other indications of how he plans to develop the site.

10. The area surrounding the subject property has a mix of residential structures. Most of the single family houses in the immediate area are one and two stories tall and are on the required minimum lot sizes. The neighborhood houses give the appearance of being in proportion to the lots and of meeting the required yard setback requirements.

11. Several neighbors submitted comment letters to DCLU regarding the request for a variance. Six neighbors submitted letters opposing the variance. A petition signed by 54 neighbors opposing the variance was also submitted. The neighbors opposed the project because of the inadequate square footage of the lot, that a structure on the lot would not blend in with the neighborhood, and building and foliage at that corner would create a safety hazard because it would obstruct views of on-coming traffic.

12. The appellant cites another corner lot west of the subject property that he developed with a 5 ft. side yard setback and no restrictions were placed on the project. Although both lots are on a corner there is no evidence of whether the lot is also classified as reverse corner lot.

#### Conclusions

1. Variance decisions of the Director are appealable to the Hearing Examiner pursuant to SMC 23.76.022.

2. Administrative appeals of the Director's decision are de novo. The Director's determination on variances is given no deference.

3. The appellant has raised several issues regarding the methodology used by DCLU in conditionally granting his variance, and imposing conditions that are not specific land use code requirements. It is not necessary for the undersigned to address those concerns because the factual circumstances presented on appeal are significantly different than the facts on which the DCLU decision and analysis was based. DCLU's decision was based on a review of a specific set of building plans. Since the appellant has declined to commit to a particular set of building plans, the requested variance must be analyzed without regard to specific building plans.

4. The appellant has not requested an interpretation of the land use on whether the subject property is a reversed corner lot. The DCLU position that the property is a reversed corner lot is binding on the Examiner.

5. In accordance with SMC 23.40.020, variances from the provisions of the land use code shall be authorized only when all the following facts and conditions are found to exist:

A. Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code Title 24 would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity; and

B. The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located; and

C. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located; and

D. The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code or Title 24 would cause undue and unnecessary hardship; and

E. The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land use Policies or Comprehensive Plan component, as applicable.

6. A. UNUSUAL CONDITIONS - The lot's unusually small size (21 ft. x 102 ft.) is a condition which was not created by the appellant. Because the lot is a reversed corner lot, the buildable width of the lot is only 5 ft. Since there are no other similarly defined properties (i.e., very small reversed corner lots) in the zone or vicinity it is not possible to analyze whether the appellant would be deprived of privileges enjoyed by other property owners, but it is certain that without a variance, the appellant cannot build on the lot.

B. MINIMUM NECESSARY FOR RELIEF - The requested side yard variance does not go beyond the minimum necessary for relief. Five feet is the least the appellant could request that would allow him to build on the lot.

C. DETRIMENTAL/INJURIOUS TO PROPERTY IN THE ZONE - This portion of the analysis is the most difficult because of the limited information available for consideration. The appellant is seeking extraordinary relief from the land use code but refuses to disclose his plans for the subject property if the relief is granted. Thus, from the information available, it cannot be determined whether or not the granting of the variance will be materially detrimental or injurious to the the zone or vicinity or the public welfare. A determination of potential injury or detriment cannot be made in the abstract. In addition, the concerns of the neighbors, though not controlling, are instructive on this issue. The decision to grant a variance is not based on popular vote, but the concerns of the 60 plus neighbors who wrote in or signed a petition opposing the authorization of the variance cannot be ignored. A decision on the material detriment or possible injury to other property in the zone or vicinity must be based on tangible information. Without additional information, the undersigned cannot conclude that the granting of the variance will not be materially detrimental to the public welfare or injurious to the property in the zone.

D. UNNECESSARY HARDSHIP - The strict and literal interpretation of the land use code would substantially limit the appellant's use of the property if he intends to build a structure on the lot that is wider than 5 ft. The code's application does limit buildable space and could possibly create an undue hardship on the appellant. However, it must be noted that the appellant was aware prior to purchasing the property that due to the designation of the lot as a reversed corner lot, he could not comply with the required side yard setbacks.

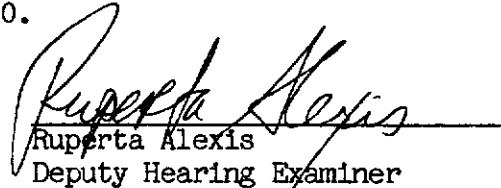
F. CONSISTENCY WITH LAND USE CODE - There are two competing land use policies at issue in this request for a variance. One policy is to encourage increasing housing opportunities. Granting a variance on the side yard setbacks would allow the appellant more building space to construct a residence. On the other hand, there are also important policy considerations relating to maintaining the character of neighborhoods, and maintaining a citywide pattern of open spaces between single family dwellings through side, and rear yard setbacks. The requested variance is not consistent with these policies. It is difficult to speculate on the type of structure that could be built on this long narrow lot that would not adversely affect the streetscape of the neighborhood. Any structure the appellant builds on the site will be uncommonly narrow compared to other residences bordering the subject property.

6. The appellant has not established the existence of all of the facts and conditions necessary for a variance from the requirements of the land use code and his request for a variance must be denied.

Decision

The request for a variance to allow a portion of the principal structure to extend into the required side yard setback is Denied.

Entered this 17th day of December, 1990.

  
Rupert Alexis  
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 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