

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

In the Matter of the Appeal of

E.M. RODOSOVICH

MUP-90-072(P)

APPLICATION NO. 9002936

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

Introduction

The appellant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the undersigned Deputy Hearing Examiner on November 6, 1990. The record was held open until November 9, 1990 to allow time for a site visit by the Examiner.

Parties to the proceeding were: the appellant, E. M. Rodosovich by Paul Sikora, attorney-at-law; and the Director, Department of Construction and Land Use (Director) by Leigh Francis, land use specialist. The project applicant was present in the hearing room, but chose not to testify or to participate in the conduct of the hearing.

After due consideration of the evidence elicited during the public hearing and as a result of the personal inspection of the subject property and surrounding area, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on appeal.

Findings of Fact

1. The subject property is located at 12316 5th Avenue Northeast. The property is located within Lot 2, Block 48, H.E. Orr Park Division No. 4 and is zoned SF 7200, single family with a minimum lot size of 7200 square feet.

2. The property consists of a single rectangularly shaped lot of approximately 13,000 square feet. The property measures 100 feet from north to south and 130 feet from east to west. It is developed with a single family house and a detached garage. The property abuts 5th Avenue N.E., and has access from that street.

3. On the south side of the lot is a 20 x 150 foot parcel that is developed with an access driveway. That driveway serves properties to the east of the subject lot. Both properties served by the driveway are developed with single family homes. Those two properties measure 9,020 and 11,639 square feet. The legal description of each of those properties includes an undivided one-half interest in the driveway lot.

4. To the north of the lot are two more single family lots. The westerly of these two lots is a corner lot and is at the southeast corner of 5th Avenue N.E. and N.E. 124th Street. The easterly lot abuts and takes its access off of N.E. 124th. Both lots measure 5,827 square feet.

5. Proceeding south from the "driveway lot", there are two single family lots before one reaches N.E. 123rd Street. These two lots are each 6,011 square feet.

6. The proposal is to short subdivide the subject site into two lots, Parcel A with 6,399 square feet and Parcel B with 6,631 square feet. Both parcels would abut 5th Avenue N.E., Parcel A with 36 feet of frontage and Parcel B with 64 feet. Parcel B would be the parcel with the existing house and would be a roughly rectangular parcel of 102 x 64 feet. Parcel A would be an "L" shaped parcel that would wrap around Parcel B on the north and east. The only structure currently on Parcel A is the detached garage.

7. The Director's report approved the short subdivision, subject to several conditions. One of those conditions was that Parcel B be provided with a driveway turnaround. No similar condition was imposed on Parcel B, but at hearing, the Department representative agreed with appellant's contention that a turnaround was also needed on that parcel.

8. Pursuant to SMC 23.24.040, no short plat shall be approved unless all the following facts and conditions are found to exist:

1. Conformance to the applicable Land Use Policies and Land Use Code provisions;
2. Adequacy of access for vehicles, utilities, and fire protections, as provided in Section 23.54.010;
3. Adequacy of drainage, water supply and sanitary sewage
4. Whether the public use and interest are served by permitting the proposed division of land.

9. While the lots proposed under this project are less than 7,200 square feet in size, the Director concluded that the lots satisfied one of the exceptions to minimum lot size provisions contained in section 23.44.010.B SMC.

10. Section 23.44.010.B reads in part:

B. Exceptions to Minimum Lot Area. A lot which does not satisfy the minimum lot area requirements of its zone may be developed or redeveloped as a separate building site according to the following:

1. In order to recognize separate building sites established in the public record under previous codes, to allow the consolidation of very small lots into larger lots, to adjust lot lines to permit more orderly development patterns, and to create additional buildable sites out of oversized lots which are compatible with surrounding lots, the following exceptions are permitted if the Director determines that:

. . .

b. The lot is or was created by subdivision or lot boundary adjustment, and is at least seventy-five percent (75%) of the minimum required lot area and is at least eighty percent (80%) of the mean lot area of the lots on the same block face within which the lot will be located and within the same zone (Exhibit 23.44.010A)

This provision is commonly referred to as the 75-80 test or rule.

11. Lot is defined at 23.84.024 as:

a platted or unplatted parcel or parcels of land abutting upon and accessible from a private or public street sufficiently improved for vehicle travel or abutting upon and accessible from an exclusive, unobstructed permanent access easement. A lot may not be divided by a street or alley.

12. The entry for "block face" in section 23.84.004 refers one to the definition of "block front". Block front is defined as

"the frontage of property along one (1) side of a street bound on three (3) sides by the centerline of platted streets and on the fourth side by an alley or rear property lines

13. Seventy-five percent of 7200 sq. ft. is 5400 sq. ft. As both proposed lots exceed 6000 sq. ft., both exceed the square footage required by the first portion of the 75-80 test.

14. The second part of the 75-80 test required calculation of the mean lot size of the lots along the east side of 5th Avenue N.E. between N.E. 123rd and 124th. In his calculation, the Director included the corner lot to the north of the subject property, the two lots to the east of the property, and the two lots south of the "driveway lot". The driveway lot was not included in the calculations, neither as a separate lot, nor as part of any of the other lots. DCLU determined that the total area of the five lots it included was 38,508 square feet. Divided by five, that resulted in a mean lot size in this block of 5th Avenue of 7,701.6 square feet. Eighty percent of that area is 6,161.7 square feet. Both proposed lots are larger than 6161 square feet.

15. Appellant argues that the area of the driveway lot should have been included in the area of one of the two lots to the east of the subject property. If one adds that lot's 3000 square feet to the 38,508 square feet computed by DCLU and then divides by five, the result is a mean lot area of 8,301 square feet. Eighty percent of that area is 6641 square feet, a size not satisfied by either of the proposed lots.

16. Paragraphs A and B of section 23.88.020 read as follows:

A. A decision by the Director as to the meaning, application or intent of any provision of the Title 23, Land Use Code, or Title 24, Zoning and Subdivisions, as it relates to a specific piece of property is known as an "interpretation". An interpretation may be requested in writing by any person or may be initiated by the Director.

B. When public notice is required for a project, a request for an interpretation concerning the project shall be made before the expiration of any applicable appeal period. Notice of the Director's decision as required by SMC 23.76.020 shall include notice of the deadline for requesting Code interpretations. When public notice is not required for a project, a request for an interpretation concerning that project may be made any time, provided that issued permits shall not be affected by subsequent Code interpretations.

17. The notice of decision for this project included notice of the deadline for requesting an interpretation.

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.76, Seattle Municipal Code.
2. The Hearing Examiner must give "substantial weight" to the DCLU Director's decision. Section 23.76.022.C.7. The burden is on an appellant to overcome this weight by proving that the decision is "clearly erroneous." Brown v. Tacoma, 30 Wn. App. 762, 637 P2d 1005 (1981).
3. Under this standard of review, the decision of the Director can be reversed only if the Hearing Examiner is left with the definite and firm conviction that a mistake has been committed. Cougar Mt. Assoc.. v. King County, 111 Wn. 2d 742, 747, 765 P.2d 264 (1988).
4. It is unclear to the Examiner whether the argument regarding the application of the 75-80 provisions of the Land Use Code was properly a part of this appeal. Because that argument called for an examination of the Director's application of the Code to this property, it is at least arguable that in order for the appellant to argue this point, he should have requested an interpretation as provided for in Chapter 23.88. However, as the Department did not challenge appellant's right to raise the issue, and as one of the criteria for short plat approval is compliance with the provisions of the Land Use Code, the issue was considered by the Examiner.
5. As noted above, the Director's decision in this matter is entitled to substantial weight. This is the same standard as applies in the case of Director's interpretations. On the basis of that standard, the Director's application of the 75-80 rule in this case must be upheld. The appellant's argument as to how the rule should be applied in this test is reasonable. However, so is the Director's. Because the "driveway lot" is held in common by the owners of two lots, it was appropriate for the Director to decide that it should not be included in the determining the size of either of those lots individually. Moreover, the Examiner's own visit to the site convinces him that there is a basis in the development pattern for seeing the driveway lot as being distinct from either of the house lots.
6. The Examiner would further note that the apparent policy behind the 75-80 provisions is to allow the creation of lots that are generally compatible with other lots in the immediate area. Here, the two parcels to be created are

actually larger than any of the other lots that have actual frontage on 5th Avenue N.E. They are also comparable or larger than the lots that border N.E. 124th and N.E. 125th. It is only because of these two lots to the east of the proposed lots, which are themselves quite atypical, that the 75-80 calculations are as close to the limit as they are.

7. As noted above, the Department representative stipulated to appellant's argument that both proposed parcels should have on-site vehicle turnarounds. Therefore, the conditions for the short plat are revised in accordance with that stipulation.

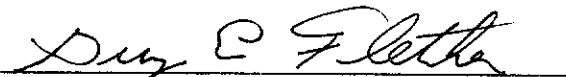
8. A number of other points were raised in the appellant's letter of appeal, including an allegation of adverse possession. However, no evidence or argument was presented on these points at the hearing, so they were not considered by the Examiner.

Decision

The decision of the Director is AFFIRMED with one modification. Condition 5 is modified as follows:

An on-site driveway turnaround shall be provided for both Parcel A and Parcel B.

Entered this 21st day of November, 1990.


Guy E. Fletcher
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 (15) 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, 618 Second Avenue, Seattle,
Washington 98104, (206) 684-0521.