

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

In the Matter of the Appeal of

JAMES GOODING, et al.

FILE NO. S-77-021

from a ruling of the Superintendent
of Buildings.

This matter is remanded to the Superintendent
for further consideration in accordance with
the terms of the decision.

Introduction

The appellants, James Gooding, et al., filed an appeal from a decision of the Superintendent of Buildings to issue a use permit for the construction of a single-family residence on property located at 10317 Bedford Court N.W.

The appellants exercised their right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

This matter was heard before the Hearing Examiner on December 8, 1977.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Mr. & Mrs. Karl Kaldestad, (hereinafter permittee), filed an application for a building/use permit for a single-family residence on October 28, 1977, with the Superintendent of Buildings (hereinafter Superintendent). On November 1, 1977, the Superintendent published notice of a decision to approve the requested permit provided that all applicable codes, regulations and laws were complied with by the permittee. The appellants filed an appeal on November 15, 1977, challenging the decision on various grounds--environmental, (SEPA and Shorelines Management Act), zoning, violation of restrictive covenants, and procedural.

2. The subject property is located at 10317 Bedford St. N.W. in a Single Family Residence Medium Density (RS 7200) zone. The property is vacant.

3. Permittees applied for a variance to allow less than the required front yard and a hearing was held before the Hearing Examiner on November 4, 1977. That variance was allowed subject to certain conditions in a decision dated November 18, 1977. The Superintendent informed the permittees, in a letter dated October 19, 1977, that, based on the block front plan map submitted by permittee, averaging of the distance of setback of the first improved lot on each side would be allowed and no variance would therefore be required.

4. The Findings of Fact of the Findings and Decision of the Hearing Examiner for the City of Seattle, File No. X-77-293, November 18, 1977, are hereby incorporated and shall be further findings in this decision.

5. Superintendent's Ruling 48-76, interpreting Section 26.44.090(a), Ordinance 86300, provides that if 50% or more of the block front is developed and no developed lot has a front yard with the required depth then the required depth of setback for an unimproved lot shall be the average of the setback of the first improved lot on either side. The block front plan as submitted shows two developed lots with the required setback. The Superintendent acknowledges that the plan is inaccurate and that further steps need be taken to determine true distances.

6. The subject site is partially within the shoreline (as defined by Section 21A.16, Zoning Ordinance) but the portion to be developed is without.

7. Inspection by the Superintendent's employee doing the pre-permit site inspection on November 2, 1977, raised questions about adequacy of drainage and the creek. He also found signs of earth movement and testimony showed that a landslide had occurred on the property some years ago.

8. The construction of a single-family residence is categorically exempt from the requirements of the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735 except when on lands covered by water. Because of the creek an environmental checklist has been required of the permittee but the Superintendent has not yet determined whether to make a threshold determination.

9. Superintendent's Ruling 6-77 interpreting Section 21A.16, Shoreline Master Program, to exclude development outside the 200 foot limit from requirements of the act even though a portion of the site (undeveloped) is within, is properly applied to this subject property.

Conclusions

1. The appellants have sustained the burden of showing that the Superintendent's decision to issue a use permit, based on the information and plans now before them, is at best premature. Without accurate measurement and plans it is not possible for the Superintendent to know whether Superintendent's Ruling 48-76 applies or whether the variance subject to conditions must be used which would occasion the submission of new plans.

2. Until a decision as to whether or not a threshold determination (SEPA) will be made any decision to issue a use permit is likewise premature.

3. Consideration of the applicability of private covenants is outside the authority of the Hearing Examiner.

Decision

This matter is remanded to the Superintendent for further consideration in accordance with the terms of the decision.

Entered this 12th day of November, 1977.

Margaret Klockars
Margaret Klockars
Deputy Hearing Examiner

Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination and any further appeal must be made to the courts.