

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

HENRY J. NOVAK

FILE NO. S-78-027

from a ruling of the Superintendent  
of Buildings

The appeal is GRANTED and the Findings and Decision  
of the Superintendent of Buildings are reversed.

Introduction

The appellant, Henry J. Novak, filed an appeal from the issuance of a use permit for property at 4400 48th Avenue South.

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

This matter was heard before the Hearing Examiner on November 22, 1978.

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. The subject property is located at 4400 48th Avenue South in a Single Family Residence High Density (RS 5000) zone. Martin Liebowitz filed an application for a use permit to construct a single family dwelling on October 20, 1978. Notice of the intention to grant the use permit was published on October 24, 1978.

2. A timely appeal was filed by Henry Novak on November 7, 1978. A supplemental appeal was filed on November 8, 1978 by David T. Kirkland, attorney for the appellant.

3. The appellants raised several issues with regard to parking and height of the building but at the hearing withdrew those issues. The only remaining issue is whether or not the subject lot should be classified as a corner lot.

4. The property abuts on South Genessee Street which is located on the north lot line. The west lot line is 48th Avenue South which is not a through street at this point. Forty-eighth Avenue South deadends near the south lot line of the subject property and a barricade is set up to prevent vehicle access.

5. A lot is defined by Section 3.13 as "(A)platted or unplatted parcel of land unoccupied, occupied or to be occupied by a principal use or building and accessory buildings, together with such yards and open spaces as are required by this ordinance and abutting by not less than twenty (20) feet upon a street sufficiently improved for automotive travel..." This property clearly is a legally buildable lot since it meets the above requirements and abuts on Genessee Street by more than 20 feet.

6. A corner lot is defined in Section 3.13 as "(A) lot situated at the intersection of two streets, or bounded on two or more adjacent sides by street lot lines, provided that the angle or intersection of such street lot lines does not exceed 135 degrees."

7. A street is defined in Section 3.13 as "(A) public way thirty (30) feet or more in width permanently open to public use including an avenue, place, drive, boulevard, parkway, highway and any similiar way except an alley."

8. A street lot line is defined in Section 3.13 as "(A) lot line abutting abutting upon a street."

10. When a property is located on a corner lot the owner has the option of choosing which side should be determined to be the front yard. In this case the applicant has chosen 48th Avenue South. Such a choice is advantageous to the applicant in the determination of yards due to the narrow depth of the lot from Genessee.

### Conclusions

1. The issue raised in this appeal turns upon the interpretation of the definitions contained in the Zoning Ordinance with regard to corner lots. It is a basic rule of legislative interpretation the words should be given their plain meaning.

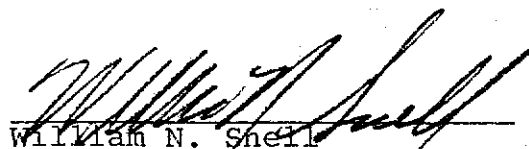
2. The corner lot definition clearly requires that a lot be located at the intersection of two streets or be bounded on two or more adjacent sides by street lot lines. Fortyeighth Avenue South does not meet the definition of a street since it is not permanently open to public use. Although 48th Avenue South may be platted and have a potential for later development it does not come within the plain meaning of street as a thoroughfare open to the public. An unimproved thoroughfare does not have any of the characteristics of a street which in this case is further evidenced by the fact that 48th Avenue South is blocked to vehicular traffic south of the subject property.

3. The legislation should be amended if the Superintendent determines that the subject interpretation will create unnecessary variances. It should be noted that the applicant has the option in this case of applying for a variance.

### Decision

The appeal is GRANTED and the Findings and Decision of the Superintendent of Buildings are reversed.

Entered this 4th day of December 1978.

  
William N. Shell  
Hearing Examiner

### Notice of Right to 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.