

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

In the Matter of the Appeal of

JAMES AND CHARON GOODING, et al.

FILE NO. S-78-006

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 appellants, James and Charon Gooding, et al., filed an appeal from a decision of the Superintendent to issue a use permit for the construction of a single-family residence on property located at 10317 Bedford Court N.W. This is the second appeal, an earlier decision of the Superintendent having been remanded to the Superintendent of Buildings for further consideration.

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 March 27, 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. Mr. & Mrs. Karl Kaldestad applied for a use permit to establish a single-family residence on vacant property at 10317 Bedford Court N.W., October 28, 1977. A variance from the 20 foot front yard requirements was applied for and conditionally granted November 18, 1977. Prior to the variance hearing, the Superintendent published notice of intention to issue a use permit for the proposed development which included a front yard smaller than required based on "block front averaging" rather than the variance. An appeal followed resulting in a remand to the Superintendent for accurate block front measurements and an environmental determination.

2. On February 28, 1978, the Superintendent again published notice of intention to issue a use permit. The appellants herein filed their appeal letter March 13, 1978, instituting this appeal.

3. On remand, the Superintendent had again determined that a variance was not required in that the new dimensions submitted by the applicant, having since been measured by a registered professional land surveyor, showed that all lots on the block front have less than the front yard required for the zone. Relying on those measurements, the Superintendent concluded that Ruling 48-76 would allow the structure to be set back from the front lot line the average of that distance for the existing residences on either side.

4. The Superintendent also determined that development of land on which there is a culverted stream does not constitute construction "undertaken wholly or in part on lands covered by water". Under the SEPA guidelines (WAC 197-10-170(1)) the categorical exemption for single-family residences would not apply if the lands are covered by water. The ordinance does not provide for appeal to the Hearing Examiner of the Superintendent's determination that an action is categorically exempt so a ruling was made at hearing that no consideration of environmental issues will be made.

5. The appellants contend that the Superintendent erred in his determination that block front averaging applies. A survey of the setback of the residence at 10301 Bedford Court N.W., the Billig residence, provided by the appellants, showed a distance of 19.2 feet, but the structure was built in 1975 without variance authorization. The appellants suggested that the builder must have made a mistake in locating the house. The permittees' measurement submitted to the Superintendent was 17.5 feet.

6. The appellants' second assignment of error as to the Superintendent's application of block front averaging is to the exclusion of Lot 26 at 10339 Bedford Court N.W., the Laurent residence. The Superintendent maintains that the portion of the lot upon which the house is located is not within the definition of "block front". Section 3.03, Ordinance 86300, as amended defines "block front" as:

The frontage of private property within a single zone and along one side of a street between intersecting or intercepting platted streets....

7. The Laurent residence is on Lot 26 which has a narrow frontage on Bedford Court N.W. and parallels the other lots on the west side of Bedford Court N.W. Bedford Court N.W. dead ends, however, southerly of Lot 26 and the lot's frontage is on the northwest portion of the street end.

8. The appeal letter assigned error but no evidence was introduced by appellants as to any violation of the required side yard.

9. The Superintendent has ruled (Ruling 6-77) that no shoreline permit is required for development outside the 200 foot limit even though the property is partly within the 200 foot limit. Development in this case is beyond the 200 foot limit.

### Conclusions

1. The resolution of this appeal depends upon whether or not "block front averaging" is allowable in this case to permit the applicant to avoid the code requirement without relying on variance relief. If no property on the blockfront meets the minimum requirement, according to the Superintendent's ruling, averaging may be used. This exception, created by the ruling, has been provided so that the more rigorous criteria for variances do not have to be met on streets where smaller than required yards are the rule, whether nonconforming because they pre-existed the requirement or because of variance authorization. Because the ruling creates an exception to the ordinance it must be applied cautiously to avoid any possibility of unfairness.

2. Both surveys of the Billig property show that the minimum yard requirement was not met, so the discrepancies between them need not be resolved. The reason for the failure to provide the minimum setback is not relevant in determining whether blockfront averaging is appropriate.

3. Taking the definition of "block front" we conclude that the Laurent property, Lot 26, should have been included. It is within that zone, it fronts on Bedford Court N.W. and no street intersects or intercepts Bedford Court N.W. between the subject property and Lot 26. The Superintendent determined that Lot 26 is not on the same side. For the purpose of block front it should not matter precisely in what direction the lot lies from the street or where a line dividing the street between its east and west sides would lie. The characteristics that should be considered are the orientation of the structure and the lot to the street and the lot's relationship to other properties. Lot 26 parallels the lots which have been included in the blockfront. The residence appears to have the same orientation to the street as the other residences on the block front. While the Superintendent's determination is not unreasonable, because the applicant is urging an exception from the normal procedure of a variance from the code requirements, a lot which fits reasonably within the definition of "block front", which Lot 26 does, must be included. Therefore, because Lot 26 provides the required front yard, block front averaging should not be used to allow less than the minimum required front yard for the subject property.

#### Decision

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

Entered this 5th day of April, 1978.

*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.