

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DAVID A. PEPPARD

FILE NO. MUP-86-076(V)(P)
APPLICATION NO. 8601400

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

Introduction

David A. Peppard challenges DCLU's denial of variance and subdivision approval for property addressed as 5556 - 36th N.E.

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

This matter was heard before the Hearing Examiner on November 11, 1986. Appellant appeared pro se, and the DCLU Director was represented by Cheryl Waldman, land use specialist.

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, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is a Single Family 5000-zoned, 7940 sq. ft. area parcel located at the southeast corner of N.E. 57th Street and 36th Avenue N.E. The lot measures 70 ft. along the 36th Avenue N.E. right-of-way (west) and 107 ft. along the N.E. 57th Street right-of-way (north).

2. Present site development consists of a single-family structure that is located approximately 8 ft. from the west lot line (from 36th Avenue N.E.). This 8 ft. setback is considered as the front yard setback. The N.E. 57th Street side street side yard is 12 ft.

3. Applicant David Peppard proposes to subdivide the subject site into a westerly Parcel A with 3750 sq. ft. and into an easterly Parcel B with 3739 sq. ft. of area. Applicant proposes to remove the existing carport, accessed via N.E. 57th Street.

4. Variance relief is required for proposed Parcel B to contain less than the 5000 sq. ft. required for the zone. Variance relief is also required for Parcel A:

(1) to allow the dwelling to extend into a required rear yard and

(2) to allow an existing dwelling to extend into the side street side yard

DCLU denied the variances and the subdivision and applicant submitted this appeal.

5. Except for the 8 ft. front setback (20 ft. is required) the existing residence has conforming rear and side yard setbacks. Under applicant's proposal, the front setback would be to N.E. 57th Street (12 ft.) and the rear yard would be 12.5 ft. Required front and rear setbacks are 20 and 25 ft. respectively. The side street side yard (to 36th N.E.) would be 8 ft. (10 ft. required) and the east side yard would exceed the 5 ft. setback

required. The reorientation would reduce the nonconformity resulting from the proposed subdivision.

6. Directly north, across N.E. 57th Street are two adjacent dwellings which appear to be approximately 8 ft. from their west property lines. Generally, however, the applicant's dwelling rests closer to the (36th N.E.) lot line than the other vicinity properties.

7. The Hearing Examiner finds in accord with the undisputed DCLU presentation that excluding the subject site, "the average lot size on the half block on which the site is located ... is 4,362 sq. ft.;" further that the "smallest lot in the vicinity is located ... one half block west of the proposal site ... (and) contains 2820 sq. ft."

8. The subject site is located in Block 2 of University Home Tracts Addition. Block 9 of that addition is immediately north, across N.E. 57th Street and is also bounded on the west and east by 36th and 37th Avenues N.E., respectively. Block 1 is directly west, across 36th N.E., from Block 2. Block 10 is directly west of Block 9. See Kroll Map Copy, Exhibit 3.

9. The DCLU undisputed finding, adopted herein by the Hearing Examiner, is that the average lot size within the vicinity, i.e. all of Blocks 2 and 9 and the east halves of Blocks 1 and 10, is 5,776 sq. ft. Several of the vicinity lots are equal to or in excess of 8025 sq. ft.

10. According to applicant, the precedent for small lots has already been established. In fact there are lots smaller than applicant's existing and proposed lots. The east adjacent lot is shown, for example, as having 3000 sq. ft. of area.

11. Neighbors generally oppose the proposed action. Several expressed the view that the neighborhood ambience would be damaged. One neighbor testified that in his opinion, the fiscal impact would be devastating on retired homeowners who would suffer a higher tax obligation. Theoretically, investors would rush to subdivide other lots and would raise the value (tax base) of the other vicinity properties.

12. The Hearing Examiner was presented with no record of similar, prior variance approvals for the subject vicinity.

Conclusion

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.76, Seattle Municipal Code.

2. Regarding the application for variance relief, the DCLU determination is given no deference, Seattle Municipal Code Section 23.76. 022 (B)(7); however, DCLU determinations on short subdivisions "shall be given substantial weight" and the burden of establishing clear error rests with the appellant.

3. Applicants for variance relief must show that without variance relief unusual conditions would deprive the applicant of development rights and privileges enjoyed by other vicinity properties. Applicants must also show that the requested relief would not exceed the minimum necessary for relief, constitute a grant of special privilege nor prove materially detrimental to the public welfare. Applicants need further to show that the literal interpretation of the code would cause undue and unnecessary hardship. Finally, applicants must show the requested variance to be consistent with the spirit and purpose of the Land Use Code and adopted policies. All of the requirements must be met before variance relief may issue.

4. Concerning the variance for lot area (proposed Parcel B) applicant has shown that smaller lots do exist in the vicinity.

However, applicant has failed to prove that variance relief is necessary to afford him comparable development. In fact, lots that are larger than proposed Parcel B also exist in the vicinity; and there is no record that any of the smaller lots were approved by variance. Thus, the Hearing Examiner is not persuaded that applicant would be deprived of comparable development privileges. Further, the Hearing Examiner acknowledges that a small lot size exception is already included within the Land Use Code, Seattle Municipal Code Section 23.44.10B. This suggests that the spirit and purpose of the Land Use Code would be violated by further erosion of the minimum lot area requirement.

5. Nor are the conjunctive criteria met for the Parcel A rear and side street side yard variances. The variance requests stem from the desire to subdivide the present parcel. Thus the variance requests are not based on conditions related to the property.

6. The proposed division therefore fails to conform to applicable Land Use Code provisions, e.g. for minimum lot area. In addition, applicant failed to show that the public use and interests would in fact be served by the proposed subdivision. While more in-fill housing may result, a stark deviation from the lot area established norm would result. Further, particularly Parcel B would be inconsistent with the average area of vicinity lots extant. With respect to the subdivision request, the substantial weight accorded the DCLU decision has not been overcome.

Decision

The DCLU decision is AFFIRMED.

Entered this 2nd day of December, 1986.


Leroy McCullough
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 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, 400 Yesler Building, Seattle, Washington 98104, (206) 625-4197.