

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

THOMAS W. MALONE for
MR. and MRS. KWANG H. BAEK, et al.

FILE NO. MUP-81-045(V)
APPLICATION NO. X-81-089

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

Introduction

Appellant exercised his right to appeal pursuant to
Chapter 24.84, Seattle Municipal Code.

Parties represented at the public hearing were as follows:
appellant by Janet E. Quimby, Evans, Quimby, Hall and Holman,
Inc., P.S.; the project applicant by James M. Eeckhoudt,
Castelda and Eeckhoudt, Inc., P.S.; the Department of Construction
and Land Use (DCLU) by Assistant City Attorney, Darcy Goodman.

For purposes of this decision, all section numbers refer
to Title 24, Seattle Municipal Code, as amended, (Ordinance
86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on
October 1, 1981.

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 by the Hearing Examiner
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 landlocked parcel located
approximately 200 ft. south of N.E. 135th Street and 450 ft.
east of 39th Avenue N.E. It consists of an undeveloped tri-
angular shaped piece of land that applicant-owner McIlwain
intends to sell to a builder. Applicant purchased the property
in approximately 1979.

2. Access to the applicant's site is proposed via an
existing access approximately 208 ft. long from N.E. 135th
Street. That access currently serves six other vicinity
residences, including one property south of the applicant's
lot.

3. In its analysis DCLU considers the easement width as
14 ft. In fact, the recorded easement is approximately 10 ft.
in width although the actual paved access is roughly 14 ft.

4. Because the proposed access easement exceeds 150 ft.
in length, is less than 30 ft. wide and will serve more than
two principal uses, Section 24.08.130"L", applicant sought
variance relief from the literal provisions of the Seattle
Municipal Code definition of a lot.

5. DCLU granted the requested variance on the following
conditions:

1. No parking shall be allowed along the proposed easement.
2. The future access plan and its design shall be approved by the City Engineering Department and the Department of Construction and Land Use.
3. A soils engineer shall be present during all excavation and backfill.
4. The future building foundation and retaining structure shall be designed by a licensed soils engineer.
5. Any structural designs shall be done by a licensed structural engineer.
6. Future roof and foundation drainage designs shall be done by a licensed soils engineer.

6. Appellant appealed the variance grant alleging inter alia the Director's inadequate consideration of parking, easement maintenance and environmental changes. Appellant also urged that DCLU should have required and considered a master site plan to have included all anticipated variances for the development of the subject property. As those items were not sufficiently addressed, appellant represented, the matter should at minimum be remanded to DCLU for further consideration.

7. The site of the proposed development slopes northward.

8. Abutting property owners are generally responsible for the upkeep for the access-easement. That access-easement is asphalt blacktop, some parts of which are "quite sound". DCLU provided the Department of Engineering with a copy of the plot plan of the subject proposal. That plot plan shows that the recorded easement is 10 ft. and that the paved access is 14 ft. The Engineering Department's Office for Planning had no objection to the proposed variance.

9. At the public hearing the Hearing Examiner ruled that development specifics were tangential to the subject variance. The record will reflect, however, that opponents generally disfavored development of the subject parcel. Since the subject lot slopes northward with an average grade of approximately 18 percent the owners of the lot south expressed concerns with erosion, damage water run-off and other items resulting from development of that lot. Appellant's Exhibit #3, a sketch of the subject lot, outlines it's creator's view of the relatively minimal flat area of the subject's lot, suggesting to certain opponents of the variance and of the project that the approval of the subject variance and the concomitant development of the lot could only lead to disruption of adjacent areas while construction progressed and to continuing trespass for purposes of access to that developed lot.

10. The feasibility of adequate on-site parking for residents of the subject site and their guests was also a major concern. Since the lot is approximately 200 ft. south of 135th Street, guests of the site once developed would tend to park along the access-easement, disrupting adjacent lifeforms and impacting emergency access, opponents urged. Opponents also were apprehensive about damage that would result from trucks or other vehicles that would be involved in the development of the subject site.

11. At the hearing applicant requested the removal of DCLU imposed conditions 3 through 6 which pertain to development of the lot. In applicant's view, those conditions were improperly imposed, inasmuch as the variance request was for the easement and since applicant was without a specific building proposal.

12. With regard to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, Chapter 25.04, Seattle Municipal Code, the action proposed in this subject application has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC 197-10-170.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

2. Applicant filed no appeal from the DCLU imposition of conditions on the subject variance approval. Accordingly, the Hearing Examiner declines to remove those conditions by way of the forum engaged by persons in opposition to the variance.

3. Appellant urges that applicant should have been required to submit a development plan, and as well, apply for all variances at one time pursuant to the thrust of the master use permit ordinance, Chapter 24.84, Seattle Municipal Code.

4. The purpose of the Master Use Permit ordinance is to:

...authorize procedures which ensure informed public participation in discretionary land use decisions, eliminate redundancy in application submittal requirements, and reduce delay in appeals of land use decisions.
Section 24.84.020.

5. In the instant case, the applicant contemplates sale as opposed to personal development of the subject property. In the development of that property any successor's-in-interest variance applications will be subject to "informed public participation". Were the applicant required to project building particulars at this stage with consideration of same by the Hearing Examiner, the potential is presented that the ultimate plan by the successor-in-interest will be required to minimally or substantially vary. Such would frustrate the purpose of the master use permit ordinance. Accordingly this applicant is not required at this stage to present a site development plan with all potential variances.

6. Similarly, while related to but not an integral part of the subject variance request, the concerns with specific future development will be subject to Seattle Municipal Code building, drainage and other Code provisions. In the imposition of the conditions, DCLU has attempted to address specific lot concerns by stipulations relating to excavation, foundation, retention, structural, roof and drainage designs. The somewhat unusual topographical features of the lot will of necessity be considered by the builder.

7. Concerning the variance analysis, the landlocked nature of the subject site is a unique property condition which would without the variance relief requested deny the applicant development privileges enjoyed by other properties in the vicinity. Vicinity properties specifically are served by the subject easement-access. Although the recorded easement is 10 ft. as opposed to 14 ft. its use by adjacent property owners is not affected. The issue of trespass beyond that 10 ft. of easement

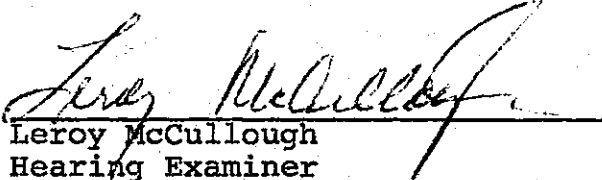
should be addressed by the parties affected in a more proper forum. No remand on that point for Department of Engineering consideration is deemed advisable inasmuch as that Department was presented with the plot plan which reflected the "legal" easement. The variance requested would not amount to a special privilege to the applicant. The variance would not conflict with the Comprehensive Plan/Single Family Policies.

8. The matter of construction-related damage to the existing easement is one which affects the question of injury to properties in the subject vicinity. Accordingly, the Director's decision is affirmed subject to the additional condition that applicant secure a performance bond or similar device in a form and amount to be approved by the Department of Construction and Land Use. DCLU shall consult with the City Attorney on this matter.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED subject to the additional condition found in Conclusion 8.

Entered this 15th day of October, 1981.


Leroy McCullough
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.