

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

In the Matter of the Appeal of

DWIGHT PICKETT

FILE NO. MUP-84-008(P)
APPLICATION NO. 83-625

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

Introduction

Appellant, Dwight Pickett, appeals the decision by the Director, Department of Construction and Land Use, to deny a short subdivision of property at 13334 - 31st Avenue N.E.

The appellant exercised his 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 February 23, 1984.

Parties to the proceedings were: appellant by C.P. Hanson, Construction and Development Services, Inc., agent, and the Director by Rosemary Horwood, 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. Dwight Pickett applied for a master use permit to subdivide a parcel at 13334-31st Avenue N.E. into three lots. The Director denied the application. The applicant appealed the denial.

2. The subject property has frontage on 31st Avenue N.E. in the SF 7200 zone and its eastern portion in the interior of the block is zoned General Commercial (CG). The property is 100 ft. wide and approximately 300 ft. deep.

3. The CG zone fronts on Lake City Way and extends west to the 31st Avenue N.E. right-of-way at the north end of the block in which the subject property is located and then the zone line jogs east around two lots, cuts through the subject lot and just inside the lot lines of the next two lots and to the east of two lots at the south end of the block.

4. The most northerly property is used for accessory parking or storage for an automobile dealership on Lake City Way. Other lots fronting on 31st are in residential use or vacant.

5. The 31st Avenue N.E. right-of-way is 30 ft. wide at the southern end of the block and widens to 60 ft. at the south end of the subject property, narrowing to 30 ft. again for the north 90 ft. of the block. The improved street ends approximately 50 ft. north of the subject property.

6. The applicant proposes to divide the property to create two residential lots, each 6,060 sq. ft., and one commercial lot in the interior of the block. He would dedicate a 20 ft. wide street ending in a cul-de-sac to gain access from 31st Avenue N.E. to the interior lot.

7. The Analysis and Decision of the Director found that the residential lots would not meet the requirements of Section 23.44.10 in that the mean residential lot area is 8,337.5 sq. ft. and 80% of that is 7,070 sq. ft. At hearing the Director's representative agreed that the calculation used included lots that should not have been included given the Director's interpretation of that provision and that the proposed lots possibly do meet lot area requirements.

8. The Engineering Department advised the Director that the minimum width for a street right-of-way is 50 ft. and that streets providing commercial access must be at least 60 ft. wide. The authority for those requirements were not cited.

9. The Director found that the proposed division should be denied. Because of its access it would not conform to Land Use Policies nor serve the public use and interest. The access also would not be legally adequate.

10. The policies which the Director found to be in conflict with the proposal are from Section 23.16.02:

Area Designation Policy: Policy Intent: It is the responsibility of the City to preserve and protect areas which are currently in predominantly single family residential use.... The purpose is to limit the potential location or expansion of incompatible uses in Single Family Residential areas. Likewise the edges of Single Family Residential areas should be protected from similar intrusions of non-single family residential uses nearby.

Use Policies: Edges: Implementation Guideline 1: The edges... of Single Family Residential areas shall be protected from encroachment by other uses. No special provisions for higher intensity use on the edges of Single Family Residential areas shall be allowed except for residential uses which are physically compatible with the adjacent single family areas.

11. In the blocks to the north and south higher density residential zones separate the single family and commercial zones providing a "transition" or "buffer" zone.

12. Dedication of a 50 ft. wide street would reduce the available SF zoned lot area below the minimum necessary for two lots.

13. Appellant's representative urges that conditions on the use of the property be imposed to avoid the problems foreseen by the Director. No particular use is proposed at this time.

14. A very wide range of uses is permitted in the CG zone.

15. No conclusive evidence was provided as to whether access to the CG zoned portion of the lot could be obtained over CG zoned property. Appellant's representative believes attempts had been made and failed however this was disputed by another.

16. Depending upon the type of commercial use, traffic to and from it could be harmful to a residential neighborhood.

Conclusions

1. The decision of the Director is to be accorded substantial weight. Section 23.76.36(B)(7). The appellant must prove the decision to be clearly erroneous to overcome that weight. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981). The Director is to use the criteria set forth in Section 23.24.40 in his consideration of the proposed short plat.
2. Appellant did not contest the Director's finding that vehicular access is not adequate as proposed. His position is that it can be altered to meet the Director's requirements. It was not error to deny the division as proposed, however. Moreover, if 31st Avenue N.E. must also be 50 or 60 ft. wide, it is unlikely that appellant will be able to provide adequate access.
3. The Director has two other bases for his decision, both relating to vehicular access. One is that the proposal does not conform to the Land Use Policies. The policies cited, however, are for use in determining the appropriate zoning for an area and in deciding what uses should be permitted under a residential classification. The Council has recently determined where the zone line should be drawn and left a portion of the subject property commercial. No policy cited directly addresses protecting residential properties from commercial traffic.
4. The question of whether the public interest would be served by the proposed division of land involves a broader perspective than that regarding conformance with land use policies. While it would serve the public interest to make use of unused land, it is not in the public interest to do it in a way which is harmful to other properties. Even appellant seems to acknowledge that commercial traffic could be harmful. Where there is no showing that absolutely no other means of access is available, the Director is correct that the public interest would not be served by permitting a division providing for the sole access to commercial property through residential streets. A condition specific enough to assure that traffic impact will not be unduly harmful but broad enough to allow reasonable use of the land under CG zoning where no particular use is proposed would be difficult to tailor. For use as zoned, the property should gain access through similarly zoned properties.

Decision

The Director's decision denying the short plat as proposed is Affirmed.

Entered this 8th day of March, 1984.


M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Section 23.76.36(B)(11). Should such request 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.