

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

In the Matter of the Appeal of

W. SPENCER MARQUIS

FILE NO. MUP-84-062(P)
APPLICATION NO. 8401885

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

Introduction

Project applicant contests the imposition of two conditions on the short subdivision of a parcel addressed as 12271 Corliss Avenue N.

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 September 5, 1984, but the record extended to September 18, 1984.

Parties to the proceedings were: applicant by Randall Marquis for property owner and by Howard Dong, agent; and the DCLU Director by Jim Barnes. Rolfe Eckmann appeared as an interested neighbor.

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 consists of a long narrow parcel located in the Single Family 7200 zone addressed as 12271 Corliss Avenue N. The subject property, Lot 18, abuts a southeast portion of Haller Lake.

2. The 27,925 sq. ft. area lot is two lots west of Corliss Avenue N. Access to the subject lot is by a 250 ft. easement roadway to Corliss Avenue that presently serves three residences. One of those residences is south of the easement.

3. The subject property owner submitted a master use permit application to divide subject Lot 18 into two parcels. The submitted plot plan, Director's Exhibit 3, shows Parcel B as abutting Haller Lake and as retaining an existing house that is some 12-15 ft. from the proposed Parcels' dividing line. A detached 18 ft. by 18 ft. garage straddles the proposed lot line. Parcel B's lot area would be approximately 20,636 sq. ft. The plot plan also shows a vehicle turnaround in Parcel B.

4. Proposed Parcel A is approximately 7289 sq. ft. in area. Its existing development consists of a 9 ft. by 18 ft. greenhouse near the north central portion of the lot. Access to both parcels would be by way of the existing easement roadway. New construction on Parcel A would bring to four the number of residences served by the easement. There is an additional, undeveloped property south of the easement with frontage on Corliss that also has easement access rights to the roadway.

5. The DCLU Director approved the requested short subdivision but imposed 10 conditions thereon, two of which were appealed on behalf of the property owner:

Conditions of approval prior to recording:

... 3. A vehicle turnaround according to the attached design, Exhibit "X," shall be shown on the plat submitted for final approval and included in the easement description. Access to the turnaround must be a minimum of 20 ft. wide.

... 6. The existing garage shall be removed per an approved demolition permit, and an off-street parking space meeting Land Use Code standards shall be provided for the existing house on Parcel B.

No appeal was submitted opposing the short subdivision.

6. The letter of appeal to the Office of Hearing Examiner included challenges to easement improvement cost allocations and to the destruction of the garage prior to the sale of Parcel A. The appeal letter also included a hammerhead turnaround design alternative to DCLU's Exhibit X. In hearing, applicant's representative took the position that if the turnaround could not be waived, the Seattle Engineering Department response to applicant's proposal (Exhibit 2) was acceptable, except that applicant contested the provision prohibiting "vertical constructions over 1 ft. in height" for a 3 and 8 ft. area extending north and west respectively of the turnaround. No SED witness was present to explain the design or the "vertical construction" provision. Neither was the DCLU witness familiar with the reason for the construction limitation. Applicant's agent and applicant did offer theories relating to overhang or bumper clearance for sanitation and emergency vehicles.

7. Following the Examiner's request to DCLU for additional information on the vertical limit, DCLU responded on September 11, 1984, with the following information:

The City Engineering Department advises that the 8 foot setback (adjacent to the end of the hammerhead) and the 3 foot setback (along the inside radius of the hammerhead), are necessary to accommodate Fire Department equipment overhangs.

8. Applicant's period to respond to the September 11, DCLU submittal extended to 5:00 p.m., September 18, 1984. The Office of Hearing Examiner received no response by said date.

9. With regard to the State Environmental Policy Act of 1971 and 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 criteria for short subdivision approval are at Section 23.24.40:

- conformance to applicable Land Use Policies, and Zoning Code or Land Use Code provisions.
- adequate access 'for vehicles, utilities, and fire protection as provided in Section 23.54.10.'

- adequate drainage, water supply and sewage disposal.
- service of the public's use and interests.

2. The DCLU Director's decision on a short subdivision is subject to the "further review procedures established under the master use permit process, Chapter 23.76." Pursuant to Chapter 23.76, the Director's decisions on short subdivisions are to be given substantial weight. Section 23.76.36(B)(7).

3. Section 23.54.10(B)(2) provides that easements approved by the DCLU Director and serving 2-5 single family dwelling units shall be at least 20 ft. in width and have a surfaced roadway at least 16 ft. wide. Further, "a turnaround shall be provided unless the easement extends from street to street." The master use permit application did not include any request for variance relief from the turnaround requirements of the code. The Examiner is therefore without authority in this instance to consider waiving the turnaround requirement. The Examiner does acknowledge the critical point interjected by applicant's agent that had applicant been provided notice of variance relief possibility, a more complete master use permit application would have been submitted.

4. Regarding the garage structure, the DCLU position is affirmed. Short subdivisions must conform to land use policies and provisions and serve the public use and interests. Approval of a lot configuration allowing a structure to straddle the dividing lot line does not comport with the above requirements for short subdivisions. Chapter 25.24, Seattle Municipal Code. Section 23.44.16(C)(1) provides that "(E)xcept as otherwise provided in this subsection, accessory parking shall be located on the same lot as the principal use." Parking on a lot other than the lot of the principal use may be established accessory to a single family structure existing on June 11, 1982, if six specific conditions are met, including "...no vehicular access to permissible parking areas on the lot" and

- (f) the accessory parking shall be tied to the lot of the principal use by a covenant or other document recorded with the King County Department of Records and Elections.

The thrust of Section 23.44.16(D) is that parking should be located within the principal structure or within particular areas of the lot. Finally, Implementation Guideline 1 of the Single Family Use Policies affirms that "Residential use by one household...is affirmed and encouraged as the principal use in Single Family Residential Areas." Read together, the foregoing suggests that absent extraordinary circumstances a lot's principal and accessory uses should be confined to the one lot. To create a violation of that policy by subdivision in the present case is not deemed appropriate.

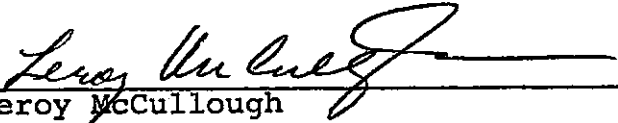
5. The major issue of the turnaround design/waiver, is resolved by Conclusion 3 above. Remaining is the question of the 3 and 8 ft. setback required by the Engineering Department design, Exhibit 2.

6. Applicant submits that it is an unwarranted encroachment. However, that general assertion is insufficient to overcome the uncontroverted statement that emergency vehicle overhangs require the setbacks. Therefore, the Director's decision is affirmed.

Decision

The decision of the DCLU Director is Affirmed.

Entered this 24th day of September, 1984.


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 request for judicial review of the decision must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11); Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73.

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.