

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

In the Matter of the Appeal of

CARL GOULD

FILE NO. MUP-83-048(V)
APPLICATION NO. 83-323

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

Introduction

Carl Gould, appellant, appeals the denial of a variance for property at 2541-39th Avenue East.

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 15, 1983.

Parties to the proceedings were: appellant, represented by William Rives, and the Director, Department of Construction and Land Use, represented by Mary Pfender, environmental analyst.

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 appellant applied for a variance on a master use permit from the minimum required rear yard for property at 2541-39th Avenue East. The Director denied the variance and appellant filed the instant appeal.

2. The subject property is zoned SF 5000 and is 300 ft. long with 70 ft. of waterfront. The site is relatively level and is undeveloped.

3. Access to the property is gained via 39th East which ends 20 ft. north of the property's southern boundary.

4. The appellant plans to construct a single family residence on the property located approximately 22 ft. from the south property line (according to actual measurement of the plot plan), 9.5 ft. from the west property line and 21.5 ft. from the east property line.

5. Section 23.44.14 B requires a minimum rear yard of 14 ft. The Director has determined that the western yard would be the rear yard so a variance would be required.

6. The proposed house would contain an inner courtyard to provide privacy and quiet.

7. The Evergreen Point Floating Bridge crosses the bay in front of the property.

8. Single family homes are located to the west and south of the subject site. A large parcel to the east is undeveloped. All surrounding properties are zoned SF 5000.

9. Appellant plans to apply for a short plat to divide the subject property into three lots. A similar house is proposed for the next lot north of the one which is the subject of this variance. Appellant desires to keep the waterfront lot undeveloped to be used for water access for various properties he owns in the area.

10. Access for any lots created from the subject property would require easement across the most southerly lot on which the house for which the variance is requested is located. If three lots are created Section 23.54.10 B requires an access easement of at least 20 ft. width. If two lots are created the access easement could be 10 ft. wide.

11. Appellant requests the rear yard variance to allow room for a 20 ft. wide access easement to the east of the house and to accommodate the house as designed with its interior courtyard.

12. Lots to the west of the subject lot have access by a private easement road and are irregularly shaped. Lots immediately south of the subject lot have access from 39th Avenue East.

13. The lot immediately west of the subject site has an 8 ft. side yard on the east side, next to appellant's property line. The proposed house would be east of that lot's open area south of the house. Appellant's second proposed house could be located closer to that house.

14. The lot adjoining appellant's on the south is oriented so that its 5 ft. side yard is on the west which would correspond to appellant's rear yard.

15. Another property in the area received a variance to allow a reversal of yards, i.e. front and rear yards to be treated as side yards and vice versa, according to appellant. The conditions of that property and its surroundings were not described.

16. If a second lot were created and a house were constructed, the yard orientation would be allowed to be different from the first so a 9.5 ft. westerly yard would be approved as a side yard, according to appellant.

17. There are lots as large and larger than appellant's lot in the vicinity of the subject property north of East McGilvra Street. Lots south of McGilvra are generally smaller than the subject property.

Conclusions

1. The burden is upon the appellant/applicant to make the showing required by Section 23.40.20 C for a variance. Satisfaction of the first requirement is the decisive issue in this case, i.e., are there unusual conditions of this property because of which the strict application of the Land Use Code would deprive it of rights and privileges enjoyed by other properties in the same zone or vicinity? Appellant contends that the available access and shape of the lot are conditions which warrant variance relief if he is to subdivide it into three lots.

2. It is clear that the property can easily accommodate a residence with required yards as the lot is presently constituted. It would appear that the lot could easily be divided into two lots and accommodate two houses with required yards. Appellant desires to create three lots, which may or may not be possible because of special shoreline requirements, and asks that it be assumed that he

is entitled to divide the lot into three. Appellant's case is one requiring speculation about future events. At the present time the property suffers from no hardship requiring relief. Further, he has not shown that he has not created his own hardship by the design proffered for his proposed house. Other development in the vicinity would suffer as well from bridge noise and there is no evidence that this property is unusual in that respect. The urged need for a special design to provide privacy from multi-family use on adjacent property is also unsupported by any fact since the adjacent property is presently zoned for single family development.

3. If the facts were today what appellant urges they will be, this might be considered the "classic" case for variance, as urged by appellant. Variance relief may be granted only when actual hardship is proved, however. Providing the relief in advance of need could subvert the land use policies, if the expected events do not occur, and would confer special privilege.

Decision

The variance is denied.

Entered this 29th day of September, 1983.


M. Margaret Lockars
Deputy 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.