

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

GREG H. ANDERSON

FILE NO. MUP-85-081(P)
APPLICATION NO. 8505516

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

Introduction

Greg H. Anderson, project applicant, appeals the decision of the Department of Construction and Land Use (DCLU) Director, to impose conditions on the short subdivision of property addressed as 9216 32nd Avenue S.W.

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

After postponed hearing dates of January 23, 1986, and February 14, 1986, this matter was heard before the Hearing Examiner on February 25, 1986.

Parties to the proceedings were appellant, pro se and the Department of Construction and Land Use Director by Arthur Ward, land use specialist. James Ansdén, a neighbor, appeared pro se and participated in the hearing.

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. Applicant proposes to subdivide an existing 10,300 square foot area level lot into Lot A, containing 5,300 square feet and Lot B, containing 5,000 square feet.

2. The subject property is addressed as 9216 32nd Avenue S. W. It is located in a single family developed SF 5000 zone.

3. The long, rectangular lot has approximately 52 feet of moderately curved frontage to 32nd Avenue S. W. The lot extends easterly for a depth of approximately 200 feet along its northern boundary and 214 feet along its southern boundary.

4. A single family structure is located approximately at mid-site and straddles the proposed Lot A/B dividing line.

5. By decision dated December 9, 1985, the Department of Construction and Land Use approved the short subdivision subject to four Conditions of Approval Prior to Recording. Applicant appealed the imposition of Condition 2 which required the removal of "the single family residence based upon issuance of a demolition permit." In hearing, DCLU and applicant agreed to modification of the wording so that the substituted condition allows the existing residence to be either demolished or moved.

6. Applicant also appealed one of the two Conditions of Approval After Recording which states:

Prior to final OK for construction of a single family residence on Parcel A and/or B, restore the existing curb cut and construct a new curb to provide access to the southerly 10 feet of the subject lots which is to serve both lots.

7. According to the Department of Construction and Land Use testimony, the reference to a "southerly" access was in response to a submittal by applicant; and further, since Seattle Municipal Code 23.54.30(E)(1)(a) states that lots of 80 feet or less frontage may have only one ten-foot wide curb cut, applicant's challenge is more appropriate in the "variance" or "code interpretation" context. DCLU did submit that the issue, whether the curb cut limitation was designed to apply to the short plat process, is under review by the Department of Construction and Land Use. Finally, DCLU suggested that the short plat condition in dispute could be modified to permit deletion if subsequently determined by Code amendment or Director's rule to be unnecessary.

8. Applicant's position on the curb cut requirement, as stated in his letter of appeal, is that:

A single 10 foot curb cut to serve both building sites makes it impossible to have a conforming front yard set-back and a typical building design for Lot A.

9. Further, applicant views the curb cut condition as an arbitrary one that has no place as a condition of the short plat. Additionally, according to applicant, the neighborhood does not presently conform to the pattern of a curb cut every 80 feet. He therefore would ultimately like the flexibility of having one curb cut per lot; something akin to a 16-foot wide curb from the south boundary line to serve both lots; or, if an access condition to the short plat must remain, to have the condition allow applicant the opportunity to build to code at the time of building permit issuance.

10. One community resident expressed his concern that the present dearth of on-street parking would be exacerbated by any additional curb cuts, i.e., less curbside area would be left for vehicular parking. Parking is presently allowed only on the east side of 32nd Avenue S. W.

Conclusions

1. The Hearing Examiner has jurisdiction of this proceeding pursuant to Chapter 23.76, reference Chapter 23.24, Seattle Municipal Code.

2. The criteria for short plat approval, found at Section 23.24.040(A), includes conformity with applicable land use or zoning codes and policies; adequacy of fire protection, utility and vehicular access; and service of the public use and interests. The Department of Construction and Land Use Director's decision on a short plat, inclusive of conditions attached, "shall be given substantial weight." Seattle Municipal Code, Section 23.76.22(C)(7), as amended.

3. Given the substantial weight to be accorded the Department of Construction and Land Use decision, the Hearing Examiner concludes that the public use and interest would be best served by requiring defined access to Parcels A and B as a condition of short plat approval. This would provide additional incentive for applicant or the successor-in-interest to develop Lot A in such a manner that facilitates reasonable access to the more interior Parcel B.

4. Although the present Department of Construction and Land Use Condition does not require a specific curb cut location, it does require "access to the southerly 10 feet of the subject lots..." (emphasis added). Since the siting of the existing structures is unresolved, as is the siting of the new structure, it appears premature to dictate where either the curb cut or access route should be placed. The Hearing Examiner acknowledges DCLU's position that the southerly access was in response to a submittal by applicant.

5. In conclusion, the second Condition of Approval After Recording should be reflective of the Code but should read as follows:

Prior to final approval for construction or siting of a single family residence on Parcel A and/or B, restore the existing curb cut and construct one new curb cut designed to provide access to both lots unless at the time a Land Use Code amendment or published Director's Ruling authorizes alternative action, in which case the the access for both parcels may be done to then current Director's or Code specifications.

6. The Hearing Examiner concludes that no further restriction is warranted on the number of curb cuts.


7. Finally, as to the initial Department of Construction and Land Use demolition requirement, the public use and interest would be better served by providing applicant the opportunity to relocate or demolish the existing structure so that it does not straddle the common property line. The Hearing Examiner therefore deletes Condition 2, Prior to Recording, in accord with the stipulated language of record and adds as a third category a new condition as follows:

Prior to Issuance of a Construction Permit On Parcel A and/or Parcel B, the existing residence straddling Parcels A and B is either demolished or moved in compliance with the Land Use Code and issuance of all applicable permits.

Decision

The decision of the Department of Construction and Land use Director is MODIFIED as per Conclusions 5 and 7 above.

Entered this 3rd day of March, 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 request for judicial review of the decision must be filed in King County Superior Court within fifteen 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.