

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

In the Matter of the Appeal of

DOROTHY PERLMAN ET AL.

MUP-84-039 (P)
APPLICATION NO. 8401138

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

Introduction

Appellants appeal the decision of the Director, Department of Construction and Land Use, to conditionally approve a short subdivision for property at 5025-46th Avenue N.E.

The appellants exercised their 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 June 27, 1984.

Parties to the proceedings were: appellants, Dorothy and Michael Perlman, Jerry B. Schneider, Arthur J. and Edith A. Klassen, Chang-Chio and Lee Hwa Tien, Michael and Joan Kelly, Dale and Arlene Swanson and Denise and Sonny Sixkiller, represented chiefly by Dorothy Perlman; the Director represented by Rosemary Horwood, land use specialist; and the applicant, Jean Goggio represented by Tom Lambrecht, Forum Development Company.

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 applicant applied for a master use permit to subdivide the lot at 5025-46th Avenue N.E. into two lots. The Director granted the short subdivision subject to several conditions. Appellants filed the instant appeal.

2. The subject property is a 75 ft. wide lot reaching 230 ft. from 45th N.E. to 46th N.E. in the northwest corner of Laurelhurst. The lot is relatively level.

3. The subject site is zoned SF 5000. It is surrounded on three sides by single family zoning and development. On the west, one-half of the width abuts SF 5000 and one-half abuts an L-3 zone.

4. A single family house with detached garage is located on the western half of the lot. It has vehicular access via a driveway from 46th N.E.

5. The street on the west side, 45th N.E., has a 30 ft. wide right-of-way from N.E. 50th, approximately 185 ft. south of the subject lot, to the north of the subject lot, approximately 140 ft. beyond. The roadway is only about 15 ft. wide at N.E.

50th going down to 10-12 ft. wide, however, and ends, except for a foot path, at the north edge of the subject lot.

6. The eastern part of the street right-of-way forms a bank up to the beginning of the subject property. The bank is heavily vegetated.

7. Across to the west is a slope down, and to the north the right-of-way is part of a steep bank which drops down to the L-3 zoned property.

8. Most lots in the area are 5,000-6,000 sq. ft. in size. Three houses on the west side of 45th N.E. use the narrow street for access and have no on-site parking.

9. The street is gravelled, pot-holed and maintained, to the extent it is, by adjacent property owners.

10. The applicant proposes to divide the lot into two, leaving the existing house on Lot A, the westerly lot. Access for Lot A would be from 45th N.E. and for Lot B from 46th N.E. Lot A would be 8,990 sq. ft. in size and Lot B, 8,260 sq. ft.

11. The applicant initially proposed access to both lots from 46th N.E. with an easement over B for A. At the direction of the City, that proposal was changed.

12. The Director determined that the proposed action is categorically exempt so no SEPA threshold determination was made.

13. The Director approved the application subject to conditions including the dedication of 20 ft. of Parcel A to the City for street purposes and provision of 230 ft. of 8 in. watermain to serve the site.

14. Pedestrians use 45th N.E., which has no sidewalks and one street light, as a route to a number of destinations.

15. The intersection of 45th N.E. with N.E. 50th occurs on a steep hill.

16. Traffic on N.E. 50th is expected to increase with the development of several approved projects, e.g., the Sacred Heart Villa development.

17. The land use specialist who prepared the decision visited the site and was aware of the roadway and property conditions.

18. The proposed lot is large enough for a turnaround so that cars would not have to back down a driveway from the lot.

19. The traffic generated by one additional house can be accommodated on 45th N.E.

20. The addition of water supply to 45th N.E. should improve fire safety for the area.

21. After installation of the watermain in the right-of-way, the pathway will be restored, according to Tom Lambrecht.

Conclusions

1. The decision by the Director is to be given substantial weight by the hearing examiner on review. Section 23.76.36 B(7). That means that it may be reversed only if appellants prove it to be clearly erroneous. Brown v. Tacoma, 20 Wn.App. 762, 637 P.2d 1005 (1981).

2. The Director's representative, indicated that access directly to the street on which the lot fronts is required by Section 23.54.10.A(2). That section states:

When new lots are created or new easements are proposed, access by a street may be required by the Director when one or more of the following conditions exist:

- a. Where access by easement would compromise the goals of the Land Use Code to provide for adequate light, air, and usable open space between structures.
- b. If the improvements of a dedicated street is necessary or desirable to facilitate adequate water supply for domestic water purposes or for fire protection, or to facilitate adequate storm drainage.
- c. If improvement of a dedicated street is necessary or desirable in order to provide on-street parking for overflow conditions.
- d. Where it is demonstrated that potential safety hazards would result from multiple access points between existing and future developments onto a roadway without curbs and with limited sight lines.
- e. If the dedication and improvement of a street would provide better and/or more identifiable access for the public and for emergency vehicles.
- f. Where a potential exists for extending the street system.

The representative did not state which of the conditions apply and none appears to be applicable, especially since no street improvement is contemplated. Here, the short plat considered proposed direct street access, albeit at the direction of the department, so the consideration is not whether it is required but whether it is acceptable.

3. Appellants do not oppose the division of the subject property but urge that access for both lots be from 46th Avenue N.E. to avoid increasing the use of 45th Avenue N.E. Appellants, to succeed in their request for different access, must prove either that the Director erred in determining that the proposed lots would have adequate access or in determining that the public use and interests would be served. Appellants did show that the situation is not ideal. While the street improvement is substandard, appellants did not prove that the determination that it would be "adequate" was in error, given the small addition to the use of the roadway.

4. The Director's consideration of whether the public's use and interests would be served by the division encompassed more than use of the street. One reason, emphasized by the Director's representative, for accepting the additional use of the street as appropriate, is that the existing lot may now get its access from 45th N.E. if the owner chose to do so. Therefore, the use of the street should not be considered an issue of public interest since the right already exists.

5. Though appellants showed the street situation is not ideal, they did not prove that access is inadequate nor did they prove that it is bad enough to offset the benefit of an additional building site, especially where that access could now be used. Therefore, the decision must be affirmed.

Decision

The Director's decision is affirmed.

Entered this 11th day of July, 1984.


M. Margaret Klockars
Deputy Hearing Examiner

APPEAL NOTICE FOR 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. 2 Am. Jur. 2d., Admin. Law 2d Section 524. 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.