

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MAURICE BENSON et al.

FILE NO. MUP-83-051 (V)  
APPLICATION NO. 83-327

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

#### Introduction

Appellants, neighbors to proposed development, contest the conditional approval of variance relief which permits access to lots not abutting a street or easement. The proposal address is 8029 1st Avenue N.E.

Appellants exercised the 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 23, 1983.

Parties to the proceedings were: appellants by Derrill T. Bastian, attorney-at-law; the developer, R/L Associates, Inc., by Robert Hale and Larry Cobb, pro se; the Department of Construction and Land Use Director (Director) by Mary Pfender, 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. R/L Associates, Inc. proposes to construct three single family residences on a triangularly shaped site at 8029 1st Avenue N.E.
2. The subject property is zoned single family (SF) 5000, and is bordered by single family residences to the south, and across a west adjacent 16 ft. wide alley. To the north and northeast is a buffer of pine trees, a limited access road and the I-5 freeway.
3. The I-5 development served to truncate or cut off seven lots comprising the subject site such that the lots, basically 30 ft. wide, have increased in depth as they proceed southerly from lots 4 through 10. Lot depth ranges from 40 to 110 ft.
4. Across the west adjacent alley are four homes that front on Sunnyside Avenue North. Two of these were recently constructed by the proponent.
5. The northernmost of these four dwellings is located near the northeast corner of Sunnyside Avenue North and North 82nd Street. North 82nd terminates near this residence and further vehicle access is via the alley. Sunnyside Avenue deadends north of 82nd Avenue. The vacant land east of this portion of Sunnyside is used by neighborhood children as a play area.

6. From Sunnyside Avenue the alley access begins with a moderate easterly incline. There is an almost 90° turn south as the access continues upgrade to a short area beyond the applicant's most southerly lot, where, for all functional purposes, the access terminates. A rockery is located at the southeast junction of the 90° elbow. For the most part, the alley is not lighted, and is bordered on its north, northeast by a fence.

7. On street parking is difficult to find along Sunnyside Avenue, and the topography separating the residences from the street is steep. Consequently, some residents use the alley for vehicle as well as pedestrian access.

8. The access-alley experiences some speeding traffic from 82nd, and some "near collisions." The theory is that vehicles accelerate to ascend the 82nd Street hill and are caught off-guard by the sudden turn to the alley. Persons who may be simultaneously exiting via the alley are then forced to the right, where their vehicles are confronted by the adjacent fence.

9. Applicant proposes to develop three new single family homes on site, to be located some 20 ft. east of the alley. The homes would be 2 bedroom, 2 story (split-level) structures with 2 car garages. Applicant plans to comply with Seattle Engineering Department recommendations for developing a vehicle turnaround. Thus, the original plan to use facing lots eight and 33 has been superseded by the current proposal to use the more northerly lot six for a turnaround with adequate radii and development to accommodate, garbage, fire and other emergency vehicles.

10. Proceeding southerly, applicant's lots 4 and 5 are proposed for no development; lot 6 for the turnaround; lots 7 and 8 for one dwelling; lot 9 for a dwelling; and lot 10 for the third dwelling.

11. The applicant's proposal site abuts no street or easement. The Director approved the variance relief from Sections 23.54.10.A. and 10.B., allowing applicant to "provide access to lots not abutting a street or easement," on conditions pertaining to access paving and drainage, and a service vehicle turnaround per Engineering Department specifications.

12. Concerned that three new homes would generate more vehicles eager to travel the newly improved access way, some neighbors, the appellants herein, submitted this appeal.

13. In hearing and by post-hearing memoranda, appellants urged that the legality of the building sites should be considered by the Hearing Examiner in the subject variance appeal. The previous Hearing Examiner ruling adverse to that position is hereby ratified and affirmed.

#### Conclusions

1. The criteria for variance relief from the provisions of the Land Use Code are delineated in Seattle Municipal Code Chapter 23.40. An unusual real property condition must be shown which, without variance relief, would deprive the property owner of comparable development rights and privileges to the owner's undue or unnecessary hardship. The alleged unusual condition, e.g. "size, shape, topography, location or surroundings" must not have been created by the owner or applicant. In addition, the relief should not exceed the minimum necessary nor prove "materially detrimental to the public welfare or injurious" to vicinity properties. Finally, the variance must be "consistent with the spirit and

purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan component, as applicable." Section 23.40.20.C.

2. The landlocked location and surrounding of the subject parcel constitute unusual property conditions justifying variance relief. Although applicant may have purchased the parcel in its "as is" and "truncated" state, applicant did not create the land use circumstance. Such culprit as exists is the entity that developed the freeway. The record indicates that this project applicant did not join with that entity, presumably the State Department of Transportation, to create the unusual property condition. Applicant is thus on a different footing than the non-prevailing party in Lewis v. Medina, 87 Wn. 2d 19 (1976), offered by appellants.

3. Nor is the Hearing Examiner persuaded that mere purchase of a parcel with knowledge of its unusual characteristics should deprive the owner of the ability to seek or secure variance relief. According to 3 R. Anderson, American Law of Zoning, (2d Ed. 1977), purchase with knowledge of the zoning restrictions is most frequently applied to bar variance relief, when persons acquired land for a purpose or use outlawed by zoning regulations. Section 18.43, and cases cited. In the instant case, the use proposed, single family, is permitted. Further, the more recent cases "seem clearly to say that the right to a variance is not affected by a sale of land." Op cit, at 18.42. Thus, an applicant's purchase with knowledge is no absolute bar to variance relief.

4. The Hearing Examiner concludes that the relief here sought is the minimum necessary to avoid non-development, which constitutes an undue and unnecessary hardship.

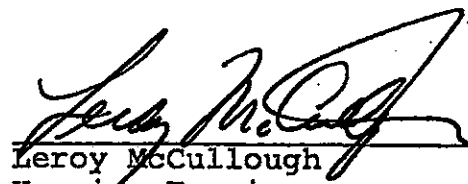
5. Regarding detriment to the vicinity, the applicant proposes to construct two bedroom single family structures with on-site parking for two cars. Thus the concern with extensive alley-use for new residential parking is significantly decreased, although some increase in alley traffic is reasonably anticipated. The new homes will be sufficiently separated from the alley and of such scale that the existing pattern, including rear privacy of developments across the alley, will not be prohibitively affected. Such detriment as may result from the development will not constitute "material" detriment.

6. In light of evidence of record, however, some precautionary measures should be investigated to address the issue of vehicle alley speed. The Director's decision is therefore affirmed, with the following modification: applicant shall comply with Seattle Engineering Department recommendations on development of alley speed and traffic control devices, e.g. speed bumps.

#### Decision

The Director's decision is affirmed as modified herein.

Entered this 7th day of October, 1983.

  
Leroy McCullough  
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. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). 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.