

REVISED

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

**FILE NO. MUP-90-028(P,V)
APPLICATION NO. 8901475**

CECIL AND DICK MC CANN

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

Introduction

This matter concerns property at 12536 Riviera Place N.E.

Appellant, Cecil and Dick McCann, appeal the decision of the Director, Department of Construction and Land Use, for a master use permit application approving a short plat with a variance to allow access via a substandard easement.

The 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 July 19, 1990, and the record was held open until July 31, 1990 to allow for site inspection by the Hearing Examiner. The Hearing Examiner's Findings and Decision issued on August 14, 1990, contained an unclear reference in the Decision section and this Revised Findings and Decision is issued to clarify the ruling.

Parties to the proceedings were: appellants, Cecil and Dick McCann, pro se; the Director, Department of Construction and Land Use (DCLU), represented by Faith Lumsden, senior land use specialist; and the applicant/respondent Carolyn Houger by her attorney Melody B. McCutcheon.

For the purpose 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 and as a result of the personal inspection of the subject property and the surrounding area by the Hearing Examiner, the following shall constitute the findings of fact, conclusions, and decision of the Hearing Examiner on this appeal.

With regard to the Environmental Policy Act of 1971 (SEPA) and Chapter 25.05, Seattle Municipal Code, the action proposed in this subject application has been determined to be categorically exempt pursuant to the provisions of Chp. 197-11.

FINDINGS OF FACT

1. Carolyn Houger, applicant/respondent applied for a master use permit to subdivide (short plat) one lot into two (Lot 10 to be divided into Parcel A and Parcel B) and for a variance to the minimum pavement width requirement for the easement roadway which would provide access to the subject lots from 42nd Avenue N.E. The applicant also sought to establish vehicular access to adjacent Lot 11 in order to make future development feasible.

2. The decisions made by the Director in this matter were to: (1) grant the short plat of Lot 10 (into proposed Parcel A and proposed Parcel B) with conditions; and (2) grant a variance (with conditions) to the minimum width standard for the easement roadway for proposed Parcel A and Lot 11.

3. In order to grant a variance all the facts or conditions listed in Section 23.40.020.C must be found to exist:

Because of unusual conditions of the property (e.g., size, shape, topography, etc.) not created by the applicant, strict application of the code would deprive the property of rights and privileges enjoyed by others in the zone or vicinity;

The variance requested does not go beyond the minimum necessary to provide relief and does not constitute a grant of special privilege;

The variance will not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity;

Strict application of the code would cause undue and unnecessary hardship; and,

The variance would be consistent with adopted land use policies.

4. The conditions of the Director's approval of the short plat include requirements to: demolish that portion of the existing residence on Lot 10 which extends into Lot 11; obtain Park's Department permit to use the right-of-way for access to the lots from the existing easement roadway; document the access easement for proposed Parcel A and Lot 11 from 42nd Avenue N.E.; and include a 10-ft. wide easement across proposed Parcels A and B to serve Lot 11.

5. The variance was also conditionally granted. The conditions of the variance include signs, speed bumps, and construction parking limitations in addition to the requirements for a Parks Department permit and the partial demolition which were attached to the grant of the short plat approval.
6. At the hearing, appellants clarified that they don't appeal the Director's approval of the short plat, but only appeal the granting of the variance requested. The appellants indicated that they want the complete widening of the road for safety purposes and oppose allowing access via a road of lesser width by permit or variance.
7. Currently the subject properties are landlocked; that is, they do not have at least ten feet abutting a public street or access easement. Section 23.54.010.A.1.a.
8. The Code standard for easements serving two to nine dwelling units has a 20 ft. minimum width, with a surfaced roadway of "at least sixteen(16) feet". Section 23.54.010.B.2 and 3.
9. There two parts to the access at issue here. One part is the existing private easement roadway which extends down the hill from 42nd Avenue N.E. to the Parks Department right-of-way for the Burke Gilman Trail near Lake Washington at the base of the hill. This easement crosses private property addressed as 12544 42nd Avenue N.E. and 12548 42nd Avenue N.E. (the Allred and Newell residences respectively) and the easement roadway provides access to the Allred and Newell residences, and to the McCann residence (address: 12554 42nd Avenue N.E.) at the base of the hill on the Lake Washington side of the Burke Gilman Trail.
10. The existing easement roadway from 42nd Avenue N.E. is approximately 500 feet in length, ranges in width from 10 to 15 feet, is steep and has several curves which significantly affect sight distance. Because the existing roadway surface is less than the required 16 ft. minimum, a variance was requested.
11. The narrowest part of the existing roadway easement is the easternmost approximately 100 feet of the roadway where the pavement is only 10 wide. Although relatively straight, this part of the road is quite steep. (Exhibit 11, a plot plan drawn by the applicant/respondent's architect, indicates the roadway rising about 25 feet in 100 feet of distance.) There are no turnouts or widened areas provided to allow two vehicles to pass one another in this part of the roadway. If two vehicles meet in this part of the roadway, the upslope vehicle would have to back up the hill to the parking area near the Allred residence, or the downslope vehicle would have to back down the roadway, across the Burke Gimman Trail, to the paved area in the eastern portion of the Trail right-of-way (in front of the McCann residence).

12. The required 20 ft. wide easement is provided. However, the pavement width is less pavement width requirement (i.e., 16 ft. minimum) for existing easement roadway (i.e., 10 ft to 15 ft.).

13. An easement roadway from the terminus of N.E. 125th Street to the south would likely require over-water construction involving environmental impacts in the shoreline.

14. Applicant/respondent indicates that she was unable to obtain access from the north along Riviera Place N.E. Two property owners to the north (Blattman and Goodwin) declined to grant easements.

15. The second access at issue here is the easement roadway which is proposed by the applicant/respondent to run parallel to and just east of the Burke Gilman Trail. This easement would extend from the terminus of the existing easement roadway described in *6 above, over Park Department right-of-way in front of the McCann residence, then across Parcel A and across Parcel B to the northern boundary line of Lot 11. This roadway would be generally level, approximately 200 feet in length, and 12 feet wide.

16. The access proposed to be achieved through permit from the Parks Department should be 20 feet wide, with a paved surface of at least 16 feet. The Parks Department has only allowed a 12 ft. wide easement and paved surface, so applicant/respondent requested a variance from the standard.

17. Credible evidence indicates that when Lot 10 was developed there was no requirement for access. The current residence on Lot 10 (proposed Parcel B) is a nonconforming structure.

18. DCLU considers the proposed easement to be serving only one single family residence (i.e., Lot 11) because proposed Parcel B was determined not to require any access (see *17 above). Consequently, DCLU maintains that the proposed easement across proposed Parcel B need only be 10 feet wide to meet the requirements of Section 23.54.010.B.1.

19. Mr. Houger, husband of the applicant/respondent, testified that to reach their residence on Parcel B, they park approximately 500 feet away (N.E. 125 Street) and walk to the property via the Burke Gilman Trail. Previous occupants were said to have parked in the paved area near the front of the McCann residence. Mr. Houger further testified that the access roadway to Lot 11 would run behind the existing house on Parcel B but stated that they did not have plans for parking on Parcel B nor do they know "when, where, or if" access to that residence can be achieved. The Hougurs only have access for two residences, Parcel A on Lot 10 and Lot 11.

20. Mr. Houger testified, consistent with the application, the Director's decision, and other evidence, that three residences are intended (one on Parcel A of Lot 10, the existing house on Parcel B of Lot 10, and one on Lot 11).

21. The easements granted by the Newell and Allred properties for access from 42nd Avenue to the Burke Gilman Trail is only for two residences. (See Exhibit 3.). The easements also provide that the Hougurs shall pay a proportional amount of any joint maintenance of the roadway and must pay for all costs associated with improvements or expansions required for the road in connection with constructing new dwellings.

22. Applicant/respondent believes that some sort of legal recourse would be available to stop or prevent residents of the third house (i.e., the one lacking legal access), from using the easement roadway.

23. Credible testimony of the appellants indicates that the narrow and steep roadway is sometimes problematic for the existing traffic.

24. Approximately 10 vehicle trips per day on average are anticipated to be generated each single family residence.

25. The traffic engineer called by the applicant/respondent, testified that in his judgment, the existing easement roadway from 42nd Avenue N.E. to the Burke Gilman Trail is not unusually hazardous. This witness indicated that, in his judgment, adding the traffic associated with two or three houses would not be a significant safety hazard.

26. The traffic engineer characterized the chances of two cars meeting on the roadway to be "relatively small" based on the assumption that trips would occur at a rate of 5 trips per hour. No rate of frequency of this occurrence (of two cars meeting on the roadway) or statistical analyses were prepared or offered.

27. The traffic engineer indicated that a convex mirror (like those frequently used in parking structures) could increase visibility and decrease the safety problem caused by the extreme curve at the top of the easement roadway where it intersects with 42nd Avenue N.E.

28. Credible testimony was presented that the increased traffic crossing the Burke Gilman Trail can be properly controlled by DCLU's conditions (signs, speed bumps) to adequately address the safety concerns regarding potential auto/bicycle conflicts.

29. The existing easement roadway was recently rebuilt in its current location and configuration. Parking areas are provided (two near the upper part of the roadway near the Newell residence and three in the middle by the Allred residence. When not fully occupied by parked vehicles, these areas can be used for cars to pull over to allow

passage of another car.

30. From the Allreds' residence down to the bike trail, where the roadway is both very steep and at its narrowest, there are no parking areas provide nor even places paved wide enough for one car move over to allow another to pass.

31. Visual inspection reveals through most of the lower 100 to 140 feet there is room along one or both sides of the existing roadway to provide for a wider surface which could accommodate safe passage of two vehicles.

CONCLUSIONS

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

2. The Hearing Examiner is to give no deference to the DCLU's Director's decision on variance appeals. 23.76.022.C.7.

3. The appellant has not challenged the Director's approval of the short plat (Lot 10 divided into Parcel A and Parcel B) thus, the propriety of that decision is not reviewed here.

4. The alternate route for an easement roadway from the south connecting to N.E. 125th Street is not a reasonable approach.

5. Access from the north along Riviera Place does not present physical/environmental difficulties but the picture of who holds what rights to access and how the applicant/respondent might go about obtaining the necessary easements is sufficiently muddled to conclude on this record, that this route is also untenable.

6. Given that the Parks Department will not allow a wider easement, that there will be some room to maneuver on each property, and that proposed roadway will be relatively flat, a variance for the proposed easement from the Burke Gilman Trail across Parcels A and B to Lot 11 meets the criteria of the code.

8. It strains credulity beyond the breaking point to expect that the residents of the house on Parcel B will not use the the existing and proposed roadways once the proposed roadway is constructed through their property. It is equally unreaistic that there is some practical and/or effective means to prevent such use. Perhaps it is useful, and even technically correct for some purpose(s), to disregard this residence when counting the number of properties that are required to have access. However, the Hearing Examiner declines to participate in the fiction that the traffic associated with the existing house shouldn't be considered as a part of the anticipated effect of granting this existing house

shouldn't be considered as a part of the anticipated effect of granting this variance.

9. Three residences (Newell, Allred, and McCann) currently use the existing easement roadway. The variance could facilitate the addition of traffic from three additional residences (one each on Parcel A, Parcel B, and Lot 11), doubling the amount of traffic currently using the road. The amount of traffic using the steep and very narrow portion of the roadway at the bottom of the hill, could go from one household to four. The likelihood of cars meeting in this section of the roadway would be similarly increased.

10. Site inspection by the Hearing Examiner was persuasive to the conclusion that cars meeting on the steep and narrow bottom portion of the roadway can produce difficult and unsafe situations. The visibility is not good. Drivers cannot see all the way up and down this bottom segment before they commit to drive it, and it would not be unexpected that cars will meet. Such meetings, especially during bad weather, could result in accidents that could be avoided by the reasonable improvement of the width of the roadway.

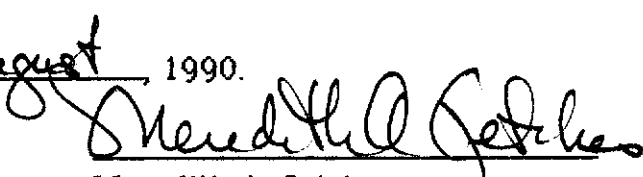
11. The site inspection was also persuasive to the conclusion that additional width could be provided (it need not be 16 feet throughout nor necessarily 16 feet wide at any place) to allow for vehicles to pull over sufficiently to allow another to pass. Much of the 20 ft. easement width appears to have been involved in the recent roadway rebuilding or in the landscaping along the roadway or both. These activities do not appear to have been detrimental in terms of slope or soil.

12. A variance from the 16 ft. wide roadway surface requirement would be appropriate here except that the applicant asks for more than the minimum necessary to grant relief. Applicant seeks to make no improvement, to add no margin for safe passage in that part of the roadway which where she would quadruple the number of vehicle trips. The minimum necessary to provide relief could allow for a lesser roadway width than 16 feet for the whole length with the addition of sufficient width at strategic locations along the bottom segment so that a vehicle could move out of the way to allow another to pass. Adding a convex mirror at the top of the roadway at 42nd Avenue N.E. to improve visibility there, would also be a reasonable improvement.

DECISION

The Director's decision to approve the variance from the minimum easement roadway width is **REVERSED**.

Entered this 15th day of August, 1990.


Meredith A. Getches
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 party's request for judicial review of the decision must be by application to the King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code 23.76.022. C.12.c.

If the Superior Court orders 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, Room 1320 Alaska Building, 618 Second Avenue, Seattle 98104, (206) 684-0521.