

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

In the Matter of the Appeal of

WILLIAM A. DeLaVERGNE, ET AL.

FILE NO. MUP-82-038(V)

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

Introduction

Appellants, William A. DeLaVergne, et al., appeal the decision of the Director of the Department of Construction and Land Use (Director) to conditionally grant variances for property at 6806 Seward Park Avenue South.

The appellants exercised their right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: Appellants represented by Mr. DeLaVergne, the Director represented by Diane Althaus, and the applicant.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on June 29, 1982.

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 variances to establish as a buildable lot one created after 1952 with less than 5000 sq.ft. and to provide less than the required front yard. The Director granted the first variance and one for a 7 ft. front yard. Appellants appealed.

2. The subject property is a triangular parcel bounded by Seward Park Avenue South on the west and 55th Avenue South on the east. Question was raised at hearing about whether the property actually abuts on the 55th Avenue South street right of way. The parcel is vacant, slopes steeply down to the east and contains 1655 sq.ft.

3. The subject property is located in a Single Family Residence Medium Density (RS 7200) zone. The minimum lot size permitted by Section 24.18.080 for the zone is 7200 sq.ft. The front yard setback required by Section 24.18.090 is 20 ft.

4. Section 24.62.060A provides an exception for lots which cannot satisfy the lot area requirement but were of public record as of 1952, according to the Director's interpretation and application of that provision. Since the subject lot was created by deed in 1953 or 1954 it does not come within this exception and a variance is required for the lot created after that date with 1655 sq.ft.

5. The lot was rezoned from Single family Residence Low Density (RS 9600) with a minimum lot size of 9600 sq.ft. to RS 7200 in 1960 but, according to the Director's representative, required a minimum of 5000 sq.ft. in 1952.

6. The applicant proposes a 2 ft. front yard setback from Seward Park Avenue South. The applicant supplied the Director figures representing front yard setbacks of other houses on the block front taken from the Kroll maps which are not accurate for setbacks. Based on those figures the Director granted the variance for 7 ft. which is the least provided on the blockfront.

7. The lots in the block bounded by Seward Park, 55th South and South Willow range in size from 4800 to 10,000 sq.ft., excluding the subject lot. To the northeast, on Holly Street and 56th South, are five substandard lots in the RS 5000 zone with 2690 to 4500 sq.ft.

8. Various measurements of front yard setbacks were provided. The most likely to be accurate were produced by Mr. DeLaVergne. The four houses on the block front have setbacks of approximately 13 ft., 13.5 ft., 12.5 ft. and 12.75 ft.

9. No front yard variances have been granted in this RS 7200 zone.

10. Section 24.62.110B provides for a reduction of the front yard requirement for the slope along the centerline of the lot in excess of 35%. Because the subject lot is triangular the centerline is drawn to result in a slope of 35-38% instead of the 53% the applicant measures on a line drawn directly from 55th to Seward Park Avenue.

11. The applicant asserts that a 7 ft. front yard setback would leave 18 ft. 8 in. which does not provide the minimum required length for a parking space. A 20 ft. setback would allow a house approximately 6 ft. deep.

12. The red lines on p. 1, Exhibit 19, do not accurately represent the stated setbacks.

13. The applicant did not offer evidence of any offer to sell his lot to the adjoining property owner and refusal by that owner or others to buy.

14. Numerous examples of variances for front yards, lot area and other bulk requirements, many on substandard lots, were cited by the applicant. None of the 16 properties were in the zone or vicinity of the subject property. The following are distinguishable from the requested front yard variance in that the 2.5 ft. front yard at 1612 Grand resulted from an existing house; the 0 ft. front yard at 2303 Perkins Lane West would be created by an open parking platform; the 5 ft. front yard at 1425 Sunset S.W. was increased to 9 ft. on appeal; the 10 ft. front yard was for 15 ft. of a 70 ft. wide lot and from a neargrade deck; the 8 ft. 7 in. front yard at 5004 Nicklas Place N.E. was an increase in the setback from the existing 4 ft. 4 in.; the 5 ft. at 2540-37th East was to offset the required shoreline setback in the rear; the 2.5 ft. yard at 2340 Halleck S.W. was from an existing house; and the variance for 15 ft. at 3613-33rd S.W. was denied. As to lot area variances cited by the applicant, the areas involved were 4190 sq.ft. in an RS 5000 zone at 9341-48th Avenue South; 4680 sq.ft. in an RS 5000 zone at 6219-48th South; 3750 sq.ft. at 8022-10th N.W. in an RS 5000 zone; and 4380.6 sq.ft. at 725 South Sullivan in an RD 5000 zone.

15. A neighboring property to the east of the subject site experiences problems caused by drainage from the hillside.

16. The Director imposed conditions on the granting of the variance to diminish runoff or seepage from the subject site.

17. The Director imposed a condition prohibiting any roof top deck to protect views and privacy.

18. The lot is now overgrown with vegetation. A tree or trees on the site interferes with some views of Lake Washington. A structure on the lot may eliminate the view now available from at least one residence.

19. Landscaping conditions were imposed to "provide a minimally compatible amount of open space."

Conclusions

1. Because the lot was created without regard to the minimum lot size required by the Zoning Code it is now denied the right to be a legal building site without variance. Other conforming lots and old non-conforming lots in the zone and vicinity have the rights associated with the status of legal building sites. Subject to question is whether a lot only 23% of the required minimum size is entitled to the same rights as a 7200 sq.ft. lot. If it is, the variance for lot size is the minimum necessary for relief.

2. A variance must not confer special privilege. Since no variances have been granted which would allow this degree of disparity in lot size it would appear that granting the variance would give special privilege to this property. The applicant urges that an unconstitutional "taking" would be the result of variance denial yet some of the cases cited in applicant's Exhibit 14 for that proposition and others require a showing that the property has no reasonable or beneficial use and the existence of economic loss. See Craig v. Zoning Board of Appeals, 41 NY2d 832, 393 NYS 2d 394, 361 NE2d 1042(1977); Goslin v. Zoning Board of Appeals, 40 Ill.App.3d 40, 351 NE2d 299(1976). The applicant has not shown, for instance, that there is no neighbor willing to buy his property for open space, which showing would appear to be necessary for a case of deprivation of property without compensation. Further, many cases hold that a purchaser with knowledge of the limitations on development of the property are not entitled to variance relief. See Swift v. Zoning Hearing Board, 382 A.2d 150 (Pa. 1978); Goslin v. Zoning Board of Appeals, supra; Abel v. City of Norwalk, 172 Conn. 286, 374 A.2d 227(1977); Craig v. Zoning Board of Appeals, supra.

3. The small lot with its lack of open space is a sharp departure from the character of the remainder of the RS 7200 zone constituting detriment. The reduction in view from the house to the west represents a diminution in value of that house and must be considered an injury to property.

4. The size variance does not directly conflict with a policy stated in the Single Family Residential Policies and, in fact, it appears that the lot would be permitted in the new code which reflects those policies.

5. The two variances are being considered separately although it is recognized that the front yard variance has no utility unless the lot is legally buildable. If the lot were made a legal building lot either by variance or by application under the new code, its size and shape would

constitute a condition warranting variance relief from the required 20 ft. front yard setback.

6. The applicant is entitled only to the minimum necessary for relief. To provide a standard car sized parking space the greatest front yard setback the lot could accommodate would be 6 ft. Under the new code, however, the lot legally may have a compact car space which could be provided on the lot with an 8 ft. setback. That, then, is the minimum necessary for relief.

7. An 8 ft. setback, while greater than the others on the block front, is not such a deviation as to be materially detrimental.

8. The Single Family Residential Areas Policies provide for maintaining the streetscape by averaging. The variance would be a deviation from that but warranted by the extremely small size and unusual shape.

Decision

The variance for lot size is DENIED. The variance for a front yard setback of 8 ft. is GRANTED.

Entered this 9th day of July, 1982.

M. Margaret Klockars
M. Margaret Klockars
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.

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7/14/82 w/ Sarah v. Reath ne DeBallerne