

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

In the Matter of the Appeal of

DON C. SNOW

FILE NO. S-77-003

from a ruling of the Superintendent
of Buildings

The appeal is GRANTED and the decision of
the Superintendent of Buildings is reversed.

Introduction

The appellant, Don C. Snow, filed an appeal from an interpretation of the Superintendent of Buildings which determined that the property located 737 N. 76th Street is not a legal building site.

The appellant exercised his right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

This matter was heard before the Hearing Examiner on March 14, 1977.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. On January 31, 1977, the Superintendent of Buildings (hereinafter Superintendent) issued a written interpretation which ruled that property located at 737 N. 76th Street is not a legal building site. The appellant filed an appeal with the Hearing Examiner on February 14, 1977.
2. The subject property, which is Lot 9, Block 10, Kaufman's Addition, is located in an RS 5000 zone which permits the development of a single-family residence on a lot containing a minimum lot area of 5,000 square feet.
3. The subject property contains a lot area of 3,000 square feet as does the adjoining lot, Lot 10. Both lots are under common ownership, but Lot 10 is developed with a single-family residence. Lot 9 is vacant at the present time with the exception of an insignificant encroachment of a movable porch which is used in conjunction with the residence on Lot 10.
4. The subject property and the adjoining Lot 10 were platted on June 3, 1903, and it appears that this platting was recorded, although this fact is not clearly established by the evidence in this case.
5. Although the subject property contains substantially less than the minimum 5,000 square feet required for the construction of a single-family residence, the lot would nonetheless be a buildable site if the conditions of Section 22.32(a), Ordinance 86300, as amended, are complied with. This section requires, in part, that all other bulk regulations

be complied with by the applicant, that the owner of the subject property does not own any adjoining vacant property and that the lot in question was of a public record on the effective date of the zoning ordinance.

6. The Superintendent, in determining that the subject property is not a buildable site, looked beyond whether the subject property was platted and whether such plat was recorded and looked further to the Building Department records. The Superintendent concluded that Lots 9 and 10 have always been under common ownership, have been utilized as one lot by the prior owners and therefore Lot 9 does not qualify as a lot of record.

Conclusions

1. The subject property is in compliance with the provisions of Section 22.32(a) of the aforementioned zoning ordinance in all respects so that the property is a legal building site, notwithstanding its substandard lot area. There is no indication that the appellant does not intend to comply with all of the relevant bulk regulations in the zoning code and the adjoining property, Lot 10, is not a vacant parcel. Additionally, Lot 9 is a lot of public record in that it was platted and presumably recorded prior to the effective date of the zoning ordinance.

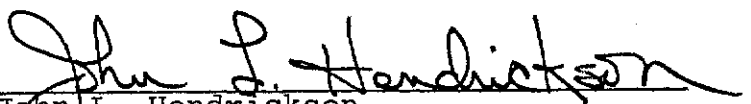
2. Although the Seattle zoning code does not define the term "lot of record", other jurisdictions which have defined the term have clearly indicated that it applies where the plat of a lot has been recorded in an office of the Register of Deeds or the deed to the parcel has been recorded. Curry v. Young, 173 N.W. 2d 410 (Minn. 1969). In this case the court emphasized the fact that the subject lot had been severed and the deed to the severed lot had been recorded. It additionally pointed out the fact that even though both parts of the severed parcel have returned to common ownership, the properties are not reunited into a single lot. Another court defined a lot of record as a lot which is designated as a lot on a recorded plat or a subdivision. Emerald Home Builders, Inc. v. Kolton, 298 N.E. 2d 275 (Ill. 1973). Consequently, since the subject property has been platted and presumably recorded, it qualifies as a lot of record. Therefore if the Superintendent is satisfied that the platting of Lot 9 has been duly recorded, there is no alternative other than to conclude that the subject property is a buildable site.

3. There is no provision in the zoning code which authorizes the Superintendent to take into consideration the actual use of a lot or the historical issuance of permits for that lot in determining whether the property is a lot of record. This is a factor which could be easily included in the zoning code by the introduction and passing of an amending ordinance to the zoning code.

Decision

The appeal is GRANTED and the decision of the Superintendent of Buildings is reversed.

Entered this 23rd day of March, 1977.


John L. Hendrickson
Deputy Hearing Examiner