

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

EDNA MARK

FILE NO. MUP-81-080(V)
APPLICATION NO. 81229-0269

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

Introduction

Edna Mark, appellant, filed an appeal of the decision of the Director of the Department of Construction and Land Use (Director) to deny a rear yard variance for property at 12021 North Park Avenue North.

Parties to the proceedings were: W.J. Mark representing his mother, Edna Mark, and Hermia Ip representing the Director.

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 December 22, 1981.

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 subject lot at 12021 North Park Avenue North was created by appellant by a short plat in 1980. Lot size variances and a rear yard variance for the existing house on one of the proposed lots were granted to permit the division into two lots.

2. The subject lot is ⁷²74 ft. 3 inches deep and has 80 ft. of frontage on the street.

3. An agent for appellant applied for a master use permit for a house that would provide a rear yard of 16 ft. 3 inches. Section 24.18.090 requires a 30 ft. rear yard in a Single Family Residence Medium Density (RS 7200) zone.

4. The Director denied the variance. Appellant appealed.

5. A structure 24 by 68 ft. could be built on the site without variance. According to the Director's representative this would be a residence of reasonable size.

6. Except that for the other lot created from the same parcel, no similar variances have been granted in the vicinity. Some of the residences to the north of the subject site which were built before the present zoning code appear to provide less than 30 ft. rear yards.

7. The building configuration which could be used would be different from other houses to the north. According to the real estate agent involved in the sale of the lot such a house could not be sold for the price that should be obtained and may lower the value of other properties.

8. Mr. Mark contends that the location of the lot is a condition which warrants variance since it is adjacent to a kind of development to the north that should be continued.

9. Residences to the south are older and apparently provide more variety in size and design.

Conclusions

1. The size or shape of the subject property may not be relied upon as the unique property condition because of which the yard requirement operates to deny the property comparable development since appellant's short plat created that size and shape. Variances were granted from the code's requirements to permit that short plat. To now use the size and shape permitted only by variance as justification for further variances would confer special privilege on this piece of property. The location makes similar building style desirable but is not a hardship condition.

2. While the chosen building configuration could not be used on this property without variance, the evidence shows that a reasonable structure could be constructed so the request goes beyond the minimum necessary for relief.

3. Neither injury to other properties nor material detriment to the public welfare is likely to accrue from this variance. The denial, if it results in a less attractive residence, may be more harmful than the variance.


4. The Single Family Residential Areas Policies speak of a minimum 25 ft. rear yard setback so the requested variance would not be consistent with that part of the Comprehensive Plan.

5. The applicant must show that the application and property meets all the criteria of Section 24.74.030. The evidence fails to reflect the facts necessary.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 4th day of January, 1982.


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.