

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

In the Matter of the Appeal of

MELVYN J. SIMBURG, et al.

FILE NO. MUP-82-002(V)
APPLICATION NO. 81327-0456

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

Introduction

Appellants, Melvyn J. Simburg, et al., appeal the decision of the Director of the Department of Construction and Land Use (Director) to grant a lot coverage variance for property at 3333 East Terrace Street.

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

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 February 11, 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, Gerald E. Soltis, applied for a master use permit to construct a house at 3333 E. Terrace Street. The Director determined that variance from the front yard requirement and lot coverage maximum would be needed. After notice, the Director determined that the exception allowed by Section 24.62.110B applied and no front yard variance would be necessary. Appellants appeal the Director's appealable decision, i.e., the granting of the variance, and disagree with the determination as to the front yard.

2. The subject site is a lot in a Single Family Residence High Density (RS 5000) zone with 3,216 sq. ft. of area and an average depth of about 48 ft. The lot slopes down toward the Aldine Drive right of way which is at the base of a ravine.

3. The applicant proposes development which would cover 44.98 percent of the lot. Section 24.20.100 restricts lot coverage to 35 percent or less.

4. The subject lot has been determined by the Director to be a legal building site under Section 24.62.060, having been a separate lot of record since 1909.

5. The lot shows evidence of "earthslide movement and potential of further movement" unless special conditions for design and construction are imposed, according to Dave Walton, a senior structural plans engineer for the City. A soils report commissioned by the applicant also recommends design and construction precautions.

6. The City has records of slides occurring in the vicinity but none on the subject site.

7. The house, as proposed, would cover 1,350 sq. ft. of the lot as indicated by the figures on the plot plan. It would be two stories in height.

8. A house at 3450 East Alder has 860 sq. ft. of lot coverage with a total floor area, including garage, basement and loft, of some 1,544 sq. ft. Another house on East Alder covers 680 sq. ft. of its lot.

9. It would be economically feasible to build a house on this lot restricted to 35 percent lot coverage.

10. Several undeveloped lots, much smaller than 5,000 sq. ft., are in the immediate vicinity.

Conclusions

1. The record does not reflect that the size of the lot, or any other characteristic of it, with the lot coverage restriction, denies the lot rights enjoyed by other properties in the zone or vicinity. The only other properties described have smaller areas than here proposed. Without a showing of greater enjoyment of development rights a lot coverage variance would go beyond the minimum necessary for relief and would confer special privilege.


2. While slope stability appears to be a justifiable concern, the design and construction requirements of the Department of Construction and Land Use should lower any risk to an acceptable level. Detriment from excessive lot coverage would be a possible result if the other substandard sloping lots were similarly developed in light of the allowed reduction of required front and rear yards which would normally provide some further limitation on bulk.

3. The Single Family Residential Policies provide for allowance of lot coverage greater than 35 percent on a sliding basis up to 42 percent on undersized lots. While greater lot coverage might be permitted under those Policies, the current code treats the land use policies (Comprehensive Plan) as just one of the criteria to be met for a variance. Without a showing that the others are met, a variance is not justified. According to the Director's representative, greater lot coverage would be permitted when the new code is effective. The examiner must continue to follow the provisions of the existing code until that time. If greater lot coverage is to be permitted by the new code the applicant may wish to await its effective date.

Decision

The decision of the Director is REVERSED and the application for lot coverage variance is DENIED.

Entered this 25th day of February, 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.