

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

In the Matter of the Appeal of

NICHOLAS J. AND PHYLLIS I. SOLDANO

FILE NO. MUP-82-009(V)
APPLICATION NO. 81259-0337

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

Introduction

Appellants, Nicholas J. and Phyllis I. Soldano, appeal the decision of the Director of the Department of Construction and Land Use (Director) to deny variances for property at 9529 Sand Point Way N.E. A hearing in this matter was held on February 24, 1982, at which appellants did not appear and a decision was entered. That decision was vacated after it was determined that appellants did not receive notice of the hearing. A supplemental hearing for appellants was held June 8, 1982.

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

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

Findings of Fact

1. Appellants applied for a master use permit to allow the future short subdivision of property at 9529 Sand Point Way N.E. The Director determined that certain variances would be required and denied those components of the master use permit application. Applicants then appealed.

2. The subject property is a 14,400 sq. ft. lot developed with house and attached garage in a Single Family Residence Medium Density (RS 7200) zone.

3. Appellants propose to divide the property into two lots, one rectangular and one L-shaped. Parcel A would contain the house and would have lot coverage of 39.02 percent, a 5.96 ft. rear yard and no side yard at the least point. Parcel B would be behind Parcel A and have access to Sand Point Way via a 12 ft. wide "leg". Access to the garage on Parcel A would be by easement over the "leg" of Parcel B.

4. Section 24.18.090 requires a minimum 30 ft. setback for the rear yard and a 5 ft. minimum setback for the side yard.

5. Section 24.18.100 limits lot coverage to a maximum of 35 percent.

6. Section 24.08.130 requires that the width of an access easement be at least 20 ft.

7. A garage with deck on top and the covered walkway, which connects the garage with the house, are the cause of needed yard and lot coverage variances. Appellants built the residence in 1952 and 1953. A swimming pool was added in 1970-71 and a deck was constructed around the pool with the garage underneath in 1976. The walkway from the house along the pool to the garage was enclosed by appellants to provide privacy from the adjacent property which has been rented to a series of tenants who have exhibited anti-social behavior.

8. Because of financial distress, appellants propose to divide the lot, sell proposed Parcel A and build their home in back on Parcel B. At the time the deck and garage structure was added appellants did not anticipate any future division of the property.

9. The owner of the lot adjoining the south side of the subject lot will grant an easement for access along the property line so the variance for easement width will not be needed.

10. The subject property abuts upon the 46th Avenue N.E. right-of-way in the rear. While the street cannot be opened to the south because of Thornton Creek and its flood plain, it can be opened from the north to the subject property. Appellants had 46th N.E. graded at one time so now it could be opened by clearing the vegetation and paving. That access would not change the need for variances.

11. Lots to the south are the same size as the subject property. Lots to the north, where 46th N.E. is open, are half the size. In one case there are two residences on one lot. At the northwest corner of the block there are two 3,600 sq. ft. lots.

12. Two other short subdivisions have been approved in the area meeting all zoning code requirements. Two other properties in the area have received variances because of property conditions but those variances were not associated with the subdivision of those properties.

13. Removal of the enclosure or covering of the walkway would make the garage "detached" for purposes of the rear yard requirement but would not sufficiently reduce lot coverage to avoid need for that variance and other variances could be necessary.

14. The Single Family Residential Areas Policies provide for a 25 ft. rear yard setback and maximum 35 percent lot coverage for a standard-sized lot.

Conclusions

1. The excess lot coverage and location of the structure which create the need for variances result from appellants' past actions. The property has use similar to many other properties in the area so it has comparable development rights. The economic hardship now suffered by appellants is not cognizable as a basis for variance relief, only property-related conditions not caused by the applicants. Since none exist, the variances cannot be granted.

2. Granting variances in this case would confer special privilege.

3. No injury to other property or material detriment to the public welfare would result from the requested variances.

4. As there are not special property conditions the variances would conflict with the Single Family Residential Areas Policies.

Decision

The decision of the Director to deny the variances is AFFIRMED.

Entered this 21st day of June, 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.

BEFORE THE HEARING EXAMINER

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ORDER VACATING FINDINGS
AND DECISION

A Motion to Vacate Order and Reopen Hearing in the above-entitled matter was filed by Nicholas J. and Phyllis I. Soldano, appellants, by their attorneys, Paul V. Rieke, Quigley, Hatch, Loveridge and Leslie.

Based on appellants affidavit and the nature of the appeal, i.e., from a decision to deny their application, the hearing examiner finds that appellants did not receive the mailed notice of the hearing held on February 24, 1982. Due process thereby having been denied appellants who are the property owners/applicants/appellants, the Findings and Decision entered on March 10, 1982, is hereby vacated.

Notice of the date of the new hearing will be provided pursuant to Section 24.84.150, Seattle Municipal Code.

Entered this 6th day of May, 1982.


M. Margaret Klockars
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