

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

GILBERT MANDEVILLE

FILE NO. MUP-82-064(P)
APPLICATION NO. 82-0335

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

Introduction

The appellant filed an appeal from a short plat conditional approval by the Director of the Department of Construction and Land Use (DCLU), concerning property at 13055-42nd Avenue Northeast.

The appellant exercised his right to appeal pursuant to Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: appellant, pro se; project applicant Scott Baltzell, pro se; and the DCLU Director by Arthur Ward, environmental specialist.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23, unless otherwise indicated.

This matter was heard before the Hearing Examiner on November 4, 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 subject property is legally described as Lot 7, Block 1, Cedar Park Number Three Addition to the City of Seattle. The street address is 13055-42nd Avenue N.E.

2. The site, 42,181 sq. ft. in area and vacant, is zoned Single Family 9600 (SF 9600). Although the general area has some steeply sloping areas, up to 50 percent, the subject site is relatively level, and is not an environmentally sensitive area. See topographic base map, Director's Exhibit 1. The subject property has experienced no slides. The soil is of a sandy, as opposed to a clay-like quality.

3. The east property line of the parcel is adjacent to 42nd Avenue N.E., a street that the record shows has not been paved for approximately 30 years. The section by the subject property is without catchbasins or sidewalks. However, the adjacent street portion is sufficient for two-lane vehicle travel unless cars are parked on the street, reducing the number of passable lanes to one.

4. By application submitted July 18, 1982, applicant proposes to subdivide the existing parcel into four lots. From the westernmost of the segments to the easternmost, bordering 42nd Avenue N.E., the lots would be designated A-D, respectively. Construction of individual homes on lots A, B, C and D is anticipated.

5. Parcel A would have a width (north-south dimension) of 100.02 ft. and a depth (east-west dimension) of 132.43-134.69 ft. Parcels B and C would both have widths of 100.02 ft. and depths of 96 ft. Parcel D would have a 102.79 frontage on 42nd Avenue N.E., and a depth of 84.33 ft. to 108 ft., depending on the angle of the adjoining right-of-way.

6. Applicant proposes use of the northern 20 ft. of parcels B, C and D for vehicle and utility access. Proposed for the northeast approximate quarter of Parcel A is a turn-around terminus.
7. On September 24, 1982, the DCLU Director entered interpretation No. 82-004 that, inter alia, an access easement may be properly considered as a part of a lot.
8. Appellant appealed the interpretation, which appeal was consolidated for purpose of public hearing with this appellant's challenge to the short subdivision conditionally approved by DCLU.
9. As revealed in the hearing, a primary emphasis of the interpretation appeal, taken to all of the Director's conclusions, was that the Director should exclude from lot calculations the areas of the proposed lot designated as easements since proposed lots A, B, C and D do not abut, i.e., border upon, the easement portions of those lots. In S-82-007, the Hearing Examiner affirmed the Director's interpretation.
10. Inclusive of the easement areas, proposed lot A will have 13,309 sq. ft. of area; lot B, 9,602 sq. ft.; lot C, 9,602 sq. ft. and lot D, 9,618 sq. ft.
11. In preparing for construction, project applicant removed standing vegetation, to the horror and dismay of appellant and other neighbors. The trees removed, however, were primarily shallow-rooted alders. Other, substitution landscaping is proposed.
12. Given the street condition and limited access route, appellant challenged the advisability of allowing construction of four additional units, to be priced in the \$200,000 range, with the certain adverse consequence of at least two cars, a motorcycle, a recreational vehicle and other vehicles per home. Appellant opined that any benefit to the general housing stock would be a "trickle". The effect of guest parking on the street was also raised as a negative consequence of the development, since, in appellant's view, on-street parking was already a problem.
13. For each of the proposed dwelling units, applicant proposes a double garage and at least one additional landscaped on-site parking space.
14. The proposed dwelling units will be two and three story structures. The construction on proposed Lot D has begun and does contrast in styling to many of the nearby neighborhood homes. One complaining witness considers the new structure to exhibit a stark, uncomplimentary relationship to area landscape and vegetation. Additionally, appellant and witnesses urge that allowing four houses on the subject parcel would clearly conflict with the open space, inobtrusive character of neighborhood development.
15. One complaining witness, resident of 13201-42nd N.E., estimated his lot size as 2/3 acre, or roughly 29,040 sq. ft. in area; another testified that in the original 1944 purchase her parcel approximated 1 1/8 acre, but that the "back 2/3" of the property was sold in 1957. Appellant presented, and we find that the history and present character of the subject addition is generally one of large lots developed with one or two dwelling structures. However, some six or seven lots in the area are less than 9,600 sq. ft. in area. Director's Exhibit 2.
16. Applicant's proposed Lots A and B, uphill, may require pumps for their water supply. Concerning provisions for sewer service, applicant proposes to cut in at one place, per utility easement rights, and service the proposed four units from that stub.
17. A fire hydrant is located directly across 42nd Avenue N.E. from the subject property. The proposal has been approved for fire protection by the Seattle Fire Department.

18. The access easement will approximate a 13 percent grade; the maximum grade permissible by City standards is 20 percent. The 20 ft. width of the proposed access easement satisfies that portion of Seattle Fire Department criteria.

19. On-site development is required to comply with the drainage ordinance provisions, such that on-site water retention is provided for controlled dispersal.

20. DCLU approved the application for subdivision on several conditions, including the following to be satisfied "Prior to Recording":

provide (DCLU) with a joint use and maintenance agreement for the access roadway to be made applicable to Parcels B, C and D, through the medium of the deeds from the platter and common grantor to the purchaser of parcels to use said roadway, which agreements shall be so worded as to constitute covenants running with the land...

DCLU also required as a condition notification on the face of the plat that a water pump system may be required for Parcels A and B. Thirdly, DCLU imposed a condition, to precede final approval on a building permit, that the vehicle turnaround and minimum 16 ft. width of the easement roadway be surfaced with "a minimum of 2 ins. of asphalt over 6 ins. of compacted aggregate or an equivalent surfacing..."

Conclusions

1. The Director's decisions on short subdivision applications shall be afforded substantial weight. Section 23.76.36(B)(7). Criteria for short plat approval are found in Title 23, Seattle Municipal Code.

2. The criteria for short plat approval include a provision that the proposal must conform to applicable land use policy and code provisions. The four lots proposed comply with land use code provisions for minimum area in this Single Family 9600 zone. The smallest lots proposed are 9,602 sq. ft. See S-82-007.

3. Section 23.02.20, Land Use Code "Purpose", states that code provisions are designed, among other things, to maintain a compatible scale within an area. Additionally, the stated purpose of the adopted Single Family Residential Areas Policies is to maintain the physical character of Single Family Residential Areas "in a way that...provides housing opportunities throughout the City for all residents."

4. Reference to a stated legislative purpose is most useful when the meaning of a particular code provision is unclear. In this case, the legislation makes 9,600 sq. ft. the minimum size for lots in the subject zone. The present case is not one of variance from this minimum lot area requirement. Thus, while the history, topography (affecting access) and pattern suggest less intensive development than proposed, the proposal is not prohibitively incompatible with the scale within the subject area. It is noted that a minority of lots in the area are less than 9,600 sq. ft. in area. The development will not change the "single family" character of the neighborhood.

5. Appellant acknowledges that although the proposed dwelling units will not be within typical low income accessibility, there may be some slightly positive effect on the housing stock.

5. Concerning precedent, it is noted that the general area is one of extreme topography, some soil instability and access problems. It would appear reasonable that these factors will continue to serve as limits on vicinity short plat or other development.

7. However, in view of the landscape-vegetation relationship of existing development, a condition is here added that any construction on lots C, B and A be pursuant to a landscape plan, approved by DCLU, and authored by a landscape architect, which maximizes the privacy and open space concept of immediately adjacent properties.

8. Concerning parking and traffic, applicant is proposing minimum double garages on each site. Appellant's worst case projection of campers, etc. notwithstanding, the proposal will not impact traffic or parking to the degree that the application should be denied.

9. Provisions for adequate water supply and sanitary sewer will be made. On the subject of drainage, the soil is of a sandy type, which allows for greater absorption than does a clay type soil. The site is not an environmentally sensitive site. It is relatively level. Any runoff increase due to the increase in the amount of impervious surface area is required to be accommodated by a retention system per the drainage ordinance compliance.


10. Adequate access is proposed for vehicles, fire protection and utilities. A dust free (asphalt) surface is required of the easement.

11. In view of the evidence presented and the substantial weight required to be given the Director's decision, as modified herein the conditional short plat approval is affirmed. The public use and interest will be served by the approval.

Decision

The decision of the Director is AFFIRMED subject to the additional condition of conclusion 7, above.

Entered this 18th day of November, 1982.


Leroy McCullough
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, instruction 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.