

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

In the Matter of the Appeal of

PAO LIN BALL

FILE NO. MUP-83-005(V)
APPLICATION NO. 82-585

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

Introduction

Appellant, Pao Lin Ball, appeals the denial of a lot area variance by the Director of the Department of Construction and Land Use (Director) for property at 2362 S. Angeline Street.

The appellant exercised her right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: appellant by Wayne Seminoff and the Director by Diane Althaus.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on March 8, 1983.

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. Appellant applied for a variance to legally establish her property at 2362 South Angeline Street as a legal building site. The Director denied the variance and appellant filed the instant appeal.
2. The subject lot was created by deed in 1961. It is 3,478 sq. ft. in area and triangular in shape.
3. The site lies in an SF 5000 zone and is bounded by the Jefferson Golf Course greenbelt on the north and unopened, 20 ft. wide South Angeline Street on the south.
4. Appellant did not create the lot.
5. Section 23.44.10A requires a minimum lot size in the zone of 5000 sq. ft. except in three instances. The subject property meets none of the exceptions to this requirement.
6. In the immediate area lots range in size from approximately 2,350 sq. ft. to 18,000 sq. ft. Eight of 25 lots are smaller than 5,000 sq. ft. Seven of those eight contain approximately 4,800 sq. ft.
7. The owners of the adjoining property do not wish to purchase the subject property and they have refused to sell the needed area to appellant.

8. No lot area variances have been granted in the immediate area bounded by S. Alaska, Beacon Avenue S. and Columbian Way. One was granted in 1962 across Columbian Way, approximately one block south of the subject property. The amount and circumstance of that variance are not known and the lot may not have actually been created as it does not appear on appellant's exhibits.

9. The Angeline Street right-of-way adjacent to the subject property has been considered an alley but is now defined as a street. Some abutting property owners have placed fences on or landscaped the right-of-way.

10. The subject property is at the end of S. Angeline Street. Properties on its south side abut upon S. Columbian Way and gain access from that street.

11. A front yard variance has been granted by the Director due to the lot's small size and shape.

Conclusions

1. The record does not show the creation of any other sub-standard lots in the vicinity since the enactment of the current zoning ordinance. Other lots smaller than 5,000 sq. ft. exist, mostly larger than the proposed lot, but it must be presumed that they were created prior to the 5,000 sq. ft. requirement. Though the subject property is unusual in its small size, a variance is not warranted by that fact alone where no other property has been granted the right to avoid the lot area requirement.

2. Washington has no case law directly on the issue of whether the buyer's knowledge of the law's restrictions on her property precludes her from obtaining a variance. Case law in other jurisdictions seems to follow two lines, i.e., hardship is self-imposed since she bought with implied knowledge of the restrictions or knowledge is relatively unimportant if the property has no use without the variance. As a policy matter, to reward a buyer for being uninformed would be unfortunate and could encourage the unscrupulous to make property divisions not meeting zoning requirements and transfer the property to the unwary, defeating the intent of the zoning laws.

3. In this case, to grant the lot area variance based only on the economic plight of the uninformed buyer would be to confer special privilege.

4. The property is situated in a way that its small size would be unlikely to cause crowding so the size alone would not cause material detriment or injury.


5. The variance would be inconsistent with the spirit and purpose of the Land Use Policies and the Code in that it would conflict with the policy to preserve and maintain the character of the area and the property meets none of the Code's specified exceptions from the size requirement.

6. Since variance may be granted only if all of the criteria stated in Section 23.40.20C are met and this application does not satisfy subsections 2 and 5, the variance must be denied.

Decision

The decision of the Director to deny the lot area variance is AFFIRMED.

Entered this 22nd day of March, 1983.


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.