

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

In the Matter of the Appeal of

HENRY BOUDREAU

FILE NO. MUP-83-025(V)  
APPLICATION NO. 83-089

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

Introduction

The applicant sought variance relief to allow for the future subdivision of an existing parcel into two lots at 3004 N.E. 94th Street. Applicant here appeals the denial of those variances by the Director of the Department of Construction and Land Use.

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

This matter was heard before the Hearing Examiner on May 24, 1983.

Parties to the proceedings were: appellant, pro se; and the Director by Cliff Portman.

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

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 parcel is located at the northeast corner of N.E. 94th Street and 30th Avenue N.E. It has approximately 136 ft. of frontage along west abutting 30th Avenue N.E. and approximately 73 ft. of frontage (or width) along south abutting N.E. 94th Street.

2. The 10,183 sq. ft. area lot is single family (SF) 7200 zoned as are properties immediately north, east south and west.

3. The subject site is in an area of lots greater than 7,200 sq. ft. in area. Some of the lots have been subdivided. Among the oversized lots that are not subdivided are the three lots immediately east adjacent of the subject property. However, the adjacent lot north of the subject parcel has been divided into two lots of 5,440 sq. ft. of area each. The average lot size of the subject site's block face is 9,492 sq. ft.

4. Several other lots have been divided; however, since 1967, a DCLU zoning code turning point, new lots platted have been at least 75 percent of the minimum required and at least 80 percent of the mean lot area of the lots on the same block. Applicant agrees that some of the subdivision resulting in the lots less than 7,200 sq. ft. in area occurred prior to 1957.

5. Applicant's lot is currently developed with a frame house oriented to N.E. 94th Street. Applicant's estimates the floor area of 700 sq. ft. and less than 30 percent lot coverage; the Director's representative, based on the plot plan of record, considered that the floor area was approximately 1,100 sq. ft., generally comparable with other vicinity residents.

6. Applicant proposes to construct a bedroom addition to the north end (rear) of the existing dwelling and subdivide the existing parcel such that the proposed rear lot line would be 5 ft. from the proposed addition. The more northerly Parcel A would contain 5,023.92 sq. ft. of area while Parcel B would contain 5,160.13 sq. ft. of area.

7. Topographically, the front portion of the applicant's lot is basically level but begins to decline at approximately the mid-lot area. Twenty to thirty feet south of the existing rear lot line is a 10-12 ft. drop in the elevation. This is the site of a former garage, destroyed because of its fire hazard. The recess is now in use as a neighborhood refuse dump. Applicant proposes the short subdivision and ensuing construction on Lot A as a practical means to utilize and beautify that area. Applicant assessed that the east adjacent neighbors also experienced a topographical drop toward the north of their properties but that the breaks were less severe.

8. Comment letters both pro and con to the proposal were received. Submitted into the record at the hearing was a petition of neighbors expressing approval of the subject master use permit application.

### Conclusions

1. Applicant is proposing to provide less than the 7,200 sq. ft. minimum lot area required by Section 23.44.10.A. Additionally, applicant proposes to provide less than the minimum required rear yard for Parcel B of 13.9 ft. and is instead proposing a 5 ft. minimum rear yard setback. Section 23.44.14.B. In order for variance relief to be granted unusual conditions must be shown which, without the requested variance relief, would deprive the property of comparable development rights and privileges. The conjunctive requirements for variance relief also include or would require consistency with the spirit and purpose of the Land Use Code and adopted land use policies; a showing that the variance would not exceed the minimum necessary for relief; a finding that the variance would not be materially detrimental to the public welfare and a conclusion that the literal interpretation and strict application of the Land Use Code provisions would cause an undue and unnecessary hardship. Section 23.40.20.C.

2. It would appear that alternative work to the proposal would be of an extreme, expensive nature. However, all the criteria of Section 23.40.20 must be met. Several properties east adjacent to applicant are of similar size, are undivided and have similar, though less dramatic, topographical features. In addition, other properties in the immediate area are in excess of the 7,200 sq. ft. area minimum. Some lots of less than 7,200 sq. ft. predated 1967 and in some instances, 1957. Since 1967, new platted lots have been much closer in dimension to the block front mean lot area and to the minimum 7,200 sq. ft. area. Under the circumstances, approval of this variance would appear as a grant of special privilege to the applicant, to the detriment of the public welfare.

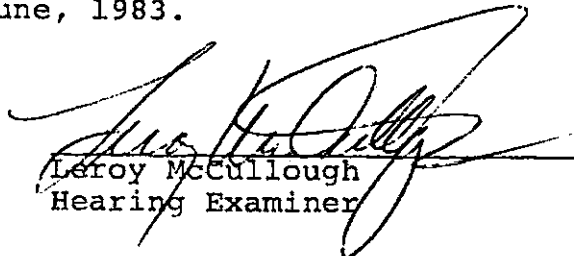
3. Section 23.44.10.B.3 does provide that a lot below minimum lot area may be created by short subdivision when the lot to be created "will be at least seventy five percent of the minimum required lot area and...at least eighty percent of the mean lot area of the lots on the same block face within which the lot will be located and within the same zone". Thus, were the proposed lots at least 75 percent of the 7,200 sq. ft. area minimum (5,400 sq. ft.) and 80 percent of the mean 9,492 sq. ft. (7,594 sq. ft.) no variance relief would be required. Instead, the applicant is proposing lot areas of 5,160 sq. ft. and 5,024 sq. ft. At issue is a more than insubstantial disparity between what the applicant proposes; the exception provided in the Code; the 7,200 sq. ft. area minimum and the development pattern.

4. As to the rear yard setback variance request, under certain circumstances the location of the existing dwelling on site might be one supporting factor. However, in the instant case, the appellant has not met the burden of showing that the proposed addition is necessary in order for the subject dwelling to be of comparable size nor that the proposed minimum 5 ft. rear yard setback is the minimum necessary to afford the relief requested. Accordingly, variance relief is denied.

Decision

The decision of the Director is AFFIRMED.

Entered this 7th day of June, 1983.

  
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, 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.