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FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MEYRING AND ASSOCIATES

FILE NO. MUP-83-088(V)
APPLICATION NO. 83-577

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

Introduction

Appellant, Meyring and Associates, Inc., appeals the denial of a lot area variance and a condition of a short plat approval by the Director, Department of Construction and Land Use, for property at 9738 - 49th Avenue N.E.

The appellant exercised its 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 January 25, 1984.

Parties to the proceedings were: Appellant, by Jim Conner; and the Director, by Leslie Durkee.

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

Afer 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 made a master use permit application to subdivide property at 9738-49th Avenue N.E. into five lots. The Director denied a requested lot area variance and approved the short plat subject to various conditions including a restriction to four parcels. The applicant appealed these decisions.

2. The subject site is zoned SF 7200 and contains 35,994.7 sq. ft. It is developed with four single family residences, one over a garage. The structures are in poor condition.

3. The application proposes dividing the property into five lots, four less than 7,200 sq. ft. in area, i.e., 7,198.5, 7,198.3, 7,198.9 and 7,199 sq. ft. A 20 ft. wide private road with a turn-around would provide access to the three lots which would not have street frontage. One of the residences would be moved from its location at the center of the property to one of the parcels and one would be demolished.

4. The increase in density, in terms of number of dwelling units, from the proposed division would be one.

5. Section 23.44.10(B)(3) permits lot sizes less than the minimum required for the zone where the lot will be at least 75% of the minimum required lot area and at least 80% of the mean lot area of the lots on the same block front.

6. The mean lot area of the lots on the east side of 49th N.E. in the block with the subject property is approximately 14,547 sq. ft. The smallest is approximately 7,642 sq. ft. Lots on the facing block front average approximately 11,018 sq. ft.

7. Seven lots in the same block, all fronting on N.E. 97th, are less than 7,200 sq. ft. in area, averaging approximately 5,751 sq. ft. No variances for lot area in a subdivision have been granted within the last 20 years, however. Apparently none has been requested.

8. The Director found that the situation met none of the criteria for variance relief.

9. As to the short subdivision, the Director found that the creation of lots which are smaller than most lots in the area would not be in the public interest and so limited the division to four lots.

10. The purpose of the Single Family Residential Areas Policies is "to preserve and maintain the physical character of Single Family Residential Areas in a way that encourages rehabilitation and provides housing opportunities throughout the City for all residents." Section 23.16.02.

11. The streets in area are narrow and have no sidewalks or curbs. Cars parked on the street are part way in the lanes of traffic.

12. Private easement roadways are included in the calculation of lot area. Therefore, a 7,200 sq. ft. lot on a private roadway would give the appearance of being smaller than one on a public street and would have less usable area.

13. There are other properties in the subject block which could be subdivided if lot area requirements were not strictly enforced.

14. The Director found the proposed action to be categorically exempt from the application of SEPA.

Conclusions

1. In reviewing the Director's decision on the variance component of the master use permit the Hearing Examiner is not to give deference to that decision. Section 23.76.36(B)(7). Therefore, the appellant/applicant must show that he has satisfied the factual conditions for variance relief but does not have to overcome the substantial weight given to other types of decisions.

2. The property has an unusual condition, i.e., it is but 5 sq. ft. of meeting the minimum requirement for five lots. Denial of the variance would deprive the property of rights enjoyed by seven other lots in the same block.

3. The variance requested is the minimum necessary for relief. While no other such variances have been granted in the area for a long time, there is no indication that any has been requested. This very small variance should not be considered special privilege.

4. The lot area variance, which amounts to just over 1 sq. ft. per lot, in itself, would not cause material detriment to the public welfare or injure other properties in that it is unlikely that the shortage would be perceptible.

5. Given the magnitude of the variance, strict application of the code would cause undue hardship.

6. Since the Code has a provision to specifically deal with subsize lots and the proposed lots do not meet the specifications for that special handling, variance approval would seem to be in conflict with the Code. However, the variance provision is in the Code to address the unusual case such as this. Where the amount of variance is negligible, any conflict with the purpose is also negligible. The spirit of the code and policies also would not be offended where the variance is almost too small to be noticed legally or physically. Therefore, the variance should be granted.

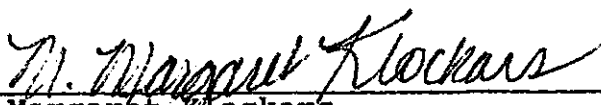
7. In reviewing the Director's decision on the short plat component of a master use permit application the Hearing Examiner is required to give this decision substantial weight. Section 23.76.36(B)(7). To overcome that weight the appellant must prove that the decision is clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

8. The condition limiting the number of lots to four reflects the Director's judgment that the public use and interests would not be served by permitting division into five lots but would be served if four were created. The reason for this judgment, that the proposed lots would be substantially smaller actually and even more in usable area than most of the lots in the area, was not shown by the appellant to be clearly erroneous. While there is a public interest in creating new in-city building sites which may countervail that of preserving neighborhood character, the examiner is not permitted to substitute her judgment for that of the Director. Therefore, the decision of the Director to approve the short plat conditioned upon only four parcels being created must be affirmed.

Decision

The lot area variance is granted and the Director's decision limiting the short subdivision to four parcels is affirmed.

Entered this 8th day of February, 1984.


M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Section 23.76.36(B)(11). Should such request 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.