

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JOEL W. HALL

FILE NO. MUP-84-044(P)
APPLICATION NO. 3401976

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

Introduction

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 July 31, 1984.

Parties to the proceedings were: Joel W. Hall applicant/appellant, and the Director of the Seattle Department of Construction and Land Use by Arthur Ward.

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. With regard to the State Environmental Policy Act of 1971 (SEPA) and Chapter 25.04, Seattle Municipal Code, the action proposed in this subject application has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC 197-10-170.

2. The subject property is located at what is now known as 11500 35th Avenue N.E. The lot contains 15,300 sq. ft. and it is located in an SF 7200 zone.

3. Applicant desires to subdivide the lot into two parcels. The Seattle Department of Construction and Land Use denied the application because the proposed subdivision would create a "dog leg" configuration with respect to the easternmost proposed lot, Parcel B.

4. A single family house is located in the middle of the existing lot, and it prevents division of the property along the midline. A large shed is located on the eastern side of the lot in what would be Parcel B. This shed measures about 20 ft. by 50 ft. in size.

5. The proposed Parcel B, which will adjoin an alley, to the east, will have a "dog leg" 11 ft. 9 in. in width and about 74 ft. in length along the northern part of the existing lot. With the "dog leg", both lots will contain at least 7200 sq. ft. The main part of the proposed Parcel B will measure 108 ft. 3 in. in depth and about 52 ft. 6 in. in width.

6. DCLU opposes the application only on the following grounds:

1. as a matter of policy it does not want to create Gerrymandered short plats i.e., steplines.
2. the department's analysts believe that applicant should properly have applied for a variance rather than a Master Use Permit.

These factors, it is argued, are contrary to the public use and interest criterion required for approval by Seattle Municipal Code Section 23.24.40.(A)(4). DCLU has no written rule or policy disfavoring "dog leg" short plats.

Conclusions

1. The subject decision of the Director, Seattle Department of Construction and Land Use, is to be given substantial weight. Seattle Municipal Code Section 23.76.36.(A)(7). No deference would be accorded a variance decision of the Director.

2. The contention that the variance procedures of Title 23 govern this case is without merit. Applicant sought a short plat approval and went through that process within the Master Use Permit Ordinance guidelines. The application was processed accordingly and was not denied by DCLU on the basis of failure to obtain a variance.


3. The argument by DCLU regarding the public interest would be more persuasive if the existing lot was not encumbered by a single family house located in the middle. The likely cost of applicant moving the home or destroying it leads the Hearing Examiner to believe that the cost of housing to be provided on the property would be increased or that an opportunity to provide for additional single family housing on the subject property could be missed. This outweighs the general interest asserted by DCLU in preserving more or less regular lot lines. The proposed short plat would better serve the public use and interests.

4. DCLU suggested at the hearing that if the application is approved that it be conditioned upon the removal of the existing structure on the proposed Parcel B. This comports with the plans of applicant as is evident by Exhibit 1. Nevertheless, it is a reasonable condition for approval of the short plat. Therefore, it shall be the decision of the Hearing Examiner that before any short plat is recorded that the existing structure on what is proposed to Parcel B be removed in an orderly and neat fashion.

Decision

The decision of DCLU denying the permit is reversed; before any short plat is recorded the existing structure on what is proposed as Parcel B shall be removed in an orderly and neat fashion.

Entered this 3th day of August, 1984.


Kelby Fletcher
Hearing Examiner Pro Tempore

CONCERNING FURTHER REVIEW OF
HEARING EXAMINER FINAL DECISION ON MASTER USE PERMITS

The decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. 2 Am. Jur. 2d, Admin. Law Section 524. Any request for judicial review of the decision must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11); Akada v. Park 12-01 Corporation, 27 Wn. App. 221 (1984); JCR 73.

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.