

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

GUY S. SPENCER

FILE NO. MUP-84-067(V)
APPLICATION NO. 8402157

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

Introduction

Appellant, Guy Spencer, appeals the decision of the Director, Department of Construction and Land Use, to deny two yard variances at 2214 50th Southwest.

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 September 27, 1984.

Parties to the proceedings were: appellant and the Director by Art Ward, land use specialist.

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, following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The appellant proposes a single family residence on an undeveloped parcel comprising three platted lots. The subject site has frontage on unopened S.W. College Street and on the 50th Avenue S.W. right-of-way. That street is improved to the property line where it dead-ends.

2. Developed lots in the area generally have frontage on opened, improved streets. There are undeveloped lots without improved street frontage on the south side of College and the west side of 50th, opposite the subject site.

3. The subject site drops steeply down a slope toward College Street and is part of an area designated by the City as environmentally sensitive.

4. College Street is at the bottom of a wooded ravine. The street right-of-way is largely free of trees and has been improved with storm drain and sewers. The slopes down to that street are 50 percent or greater.

5. Appellant proposes vehicle access to a new residence on the lot by way of a bridge from 50th. The bridge deck would be 20 ft. long and 17 ft. 4 in. wide and would require a retaining wall.

6. The Director has determined that the rear yard setback requirement for this lot, pursuant to Section 23.44.14.B, is 16 ft. and the minimum side yard required is 5 ft. according to Section 23.44.14.C.

7. The access bridge would encroach on the required yards, 75 sq. ft. in the rear yard leaving no setback and 14 sq. ft. in the side yard with no setback again. Variances are requested for these encroachments.

8. Vehicular access to the bottom of the lot would require roadway improvement of the College Street right-of-way plus some 500-800 ft. of 8 in. water main and hydrants. The cost of these improvements, probably in excess of \$100,000, would make the development of one residence infeasible. Earlier the owner of other vacant property determined that even with the development of eight or nine houses the cost would be prohibitive.

9. Other vacant property to the south and west face similar access problems. Those to the west abut 50th and also a 20 ft. wide alley. To the south the only street frontage is on College except for the easternmost lot which abuts S.W. Niesz Court, according to Exhibit 2. Properties at the east end of College Street are much closer to an improved street, 47th Avenue S.W., and may be under common ownership with developed lots adjoining on their north side.

10. Parking, beyond that available on the deck, would have to occur on 50th S.W.

11. The parcel was purchased by the current owner for \$5,000 in 1982. Art Ward opines that the low purchase price reflects the assumed high cost of development.

12. According to the testimony of Art Ward, the department does not require that access to parking be gained from an alley unless that alley is already improved because Implementation Guideline 4, under Parking in the Single Family Residential Areas Policies, "In new development, surfaced alleys shall be provided when physically feasible", Section 16.02.09, was not implemented in the Code. Therefore, he represents that the unimproved property west of 50th would be required to use College Street for access rather than the alley.

13. No reason was shown why the alley could not be improved by the abutting owner to avoid cost of street improvements.

14. While other unimproved lots could gain access via easements over an adjoining property, Art Ward testified that the Director would require access by street pursuant to his authority under Section 23.54.10.A.

15. Appellant testified that the exceptions in 23.54.10.A.3.b (4) and (5), have been applied in the area in the past.

16. Appellant did not explore the possibility of establishing a local improvement district for the water and road improvements.

17. Neighboring property owners expressed concerns about increased slide potential from construction at the top of the slope. There is some evidence of soil movement along the ravine.

18. The closest neighbor objects to his loss of privacy if a house is added at the upper part of the lot.

19. The larger trees on the lot are located on the upper part and would be removed to allow the development.

20. The property at 2239 Sunset Avenue S.W., which has frontage on College Street a block west of the subject site, was developed in 1980 with vehicular access to Sunset via a driveway some 160 ft. long. That development preceded the current code and may not have required any discretionary decision.


Conclusions

1. The subject property has an unusual condition, i.e., it fronts on two undeveloped streets. There are at least six others with the same conditions in the immediate area but the five of the other parcels are already developed and have obtained vehicular access in some way other than full improvement of an abutting street. One parcel is undeveloped but has frontage on an alley as well. Another unusual condition is the steepness of the lot itself which requires use of the bridge if access is to be obtained from 50th S.W.
2. The Director found that the two variances exceeded the minimum necessary for relief because access could be obtained by developing the street below thereby obviating the need for any variance. That alternative does exist. The issue is then the reasonableness of that alternative. The \$100,000, or greater, cost is clearly prohibitive for one lot even if the purchase price was low. A local improvement district could be used to spread the cost, however that would be dependent upon the willingness of the other property owners to go along which is problematic. It would be unfair to deny the property relief because there are alternatives: one unreasonable and one outside the control of the property owner.
3. The yard variances would not be materially detrimental to the public welfare nor does the record show they would injure any other property. It must be assumed, for the purpose of the variance analysis, that the lot will be developed. Neighbors suggested that building higher on the slope would create a higher risk of earth movement than lower. Since the site is part of an area designated as environmentally sensitive, soils analysis will be required before construction permits and appropriate conditions to ensure stability will be imposed. Further, there is no evidence that guest parking in the street in this area would be injurious.
4. The facts of this case clearly show that the literal interpretation of the yard requirements would create hardship, i.e., the property could not be developed without agreement of other property owners to a local improvement district.
5. The granting of the variances must be consistent with the spirit and purpose of the Land Use Code and Land Use Policies. Appellant points to the purpose to "achieve an efficient use of the land without major disruption of the natural environment", which he feels the variances would do, while the Director's representative cites the remainder of that sentence regarding directing development to sites with adequate services and amenities. Section 23.02.20. The policies attempt to preserve physical character while providing housing opportunities. Section 23.16.02. Given purposes which cannot all be met on one site, the consistency with some is all that can be required. The development with the requested variances offers a more efficient use of the land without major disruption and provides for one new residence. Therefore, that criterion is satisfied.

Decision

The requested variances are GRANTED.

Entered this 17th day of October, 1984.


M. Margaret Stockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW OF
HEARING EXAMINER FINAL DECISIONS 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. 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, 37 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.