

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JAMES HARTMAN

FILE NO. MUP-87-026(V)
APPLICATION NO. 8606906

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

Introduction

Appellant, James Hartman, appeals the denial of variances needed to construct an apartment building on property addressed as 6218 Seaview Avenue N.W.

The appellant exercised the 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 29, 1987.

Parties to the proceedings were: appellant, James Hartman, pro se, and the Director, Department of Construction and Land Use, by Art Ward, associate 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, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Appellant proposes to develop property known as 6218 Seaview Avenue N.W. with a 4-story, 6-unit apartment building. Six basement parking spaces are proposed to be accessed by a 20 ft. driveway to be located in the center of the structure.

2. The subject site lies within a triangle formed by the westerly angle of the east adjacent Burlington Northern right-of-way with west adjacent Seaview Avenue N.W. The depths (east-west dimensions) of the lots along this strip therefore decrease as one proceeds north from N.W. 61st. Applicant's site is roughly mid-way north of N.W. 61st.

3. The subject site is 2948 sq. ft. in area and has 84.5 ft. frontage on Seaview Avenue N.W. Consistent with other vicinity lots, the subject lot broadens slightly as it proceeds from north to south. Lot depth at the northern lot line is 30.2 ft. At the southern lot line the east-west dimension is 38 ft.

4. While most of the properties on the east side of Seaview are deeper than the subject site the subject site is one of the widest. With the exception of excavations made during the removal of two single family residences, the lot is level. The subject site is vacant.

5. As indicated, Seaview Avenue abuts the subject site on the west and is a 100 ft. right-of-way. Continuing to the west is the body of Shilshole Bay.

6. Included within the east abutting Burlington Northern right-of-way is a spur track and a main railway line. Continuing to the east are single-family residences that are approximately 50-60 ft. higher in elevation than the subject site.

These homes have sweeping, overhead views to Shilshole Bay that will not be significantly affected by the proposed development.

7. The Burlington Northern property and the single-family homes to the east are zoned Single Family 5000. The subject site is zoned Commercial 1/40 (40 ft. height limit).

8. Properties north and south of the subject site are developed with a mix of uses. Exhibit 1 shows that beginning north of the site is a yacht sale operation, a hamburger stand, single-family housing and another yacht sale operation. The south adjacent use is single-family. Continuing south are single-family, duplex, single-family, yacht sales and boat supply uses.

9. Applicant proposes to compensate for the lot's shallow depth by building a structure that will offer a varying rear setback. Near the southeasterly portion the rear yard would be 10 ft. At the southeasterly portion the rear yard would be 1 ft. The northeasterly corner of the parking area extends 3 ft. from the rear lot line and the abutting SF 5000 zoned lot.

10. The proposed structure height is 37 ft. to the roof and 46 ft. 3 in. to the stair roof. The proposed width of 82.5 ft. would leave 1 ft. side yards. Contrary to original public notice, no side yard setback or variance therefor is required for the development. The proposed front setback would be 5 ft. "except for balconies which would extend to the front lot line."

11. Variance relief is required to provide the 1 ft. rear setback proposed. Based on proposed building height a 10 ft. rear setback is the minimum required. DCLU further indicated that a variance is also required to allow the parking to be located within the 5 ft. required setback that abuts a single-family zone.

12. In applicant's opinion, residential development would be more positive for the area than commercial. The Hearing Examiner finds in accord with applicant's testimony that the client has sought without success to acquire the south adjacent property, and further that a redesign would likely encourage a structure with blank facades and contorted interiors.

13. Applicant also argued that although the subject lot is wider than other lots, it is not as deep. This depth, per applicant, is the critical dimension. Further, rebutted applicant, the prospect of one unit per floor could address some of the concerns but would not be cost effective in light of the lack of view amenity.

14. Appellant provided no record of similar variances or development in the vicinity.

15. DCLU concluded that since the abutting SF 5000 zoned property is "developed with railroads which need no light and air protection..." variance approval would not be materially detrimental to the public welfare or injurious to the zone's property or improvements.

16. Based on the factor of 1.5 spaces per unit, the projected parking demand would be 9 spaces. With six on-site spaces proposed, DCLU projects a spillover demand for 3 spaces that can be met by the on-street supply. Included within the assessment is the conclusion that the timing of the residential parking demand would not coincide with that of the commercial demand.

17. One comment letter complained of the proposed building height and of the present traffic congestion "weekdays and evenings."

The Hearing Examiner finds in accord with the more detailed information in the DCLU report that traffic impacts would not be significantly negative.

Conclusions

1. All of the variance criteria of Seattle Municipal Code Section 23.40.20 must be met in order for applicant to be afforded variance relief.

2. The requested variance relief would not be materially detrimental or injurious to vicinity property development. Although the height of the building is not the subject of variance relief, it is noted nevertheless that the private views from the east would not be significantly affected. Further, the Burlington Northern right-of-way provides ample screening between the subject site and the other single-family zoned properties farther east and above. And the proposed apartment use would not be incompatible with the variety of residential and other uses present along the subject Seaview Avenue right-of-way.

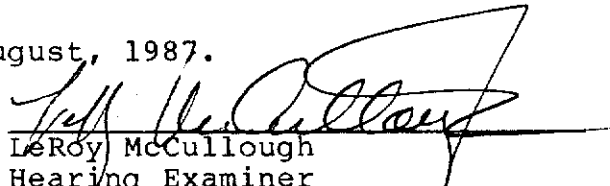
3. In that the City's housing stock would be complemented without material detriment to the subject community, the variance could facilitate harmony with the spirit and purpose of the Land Use Code and adopted policies.

4. The size and shape of the lot are unusual property conditions that were not created by the owner or applicant. However, applicant must also show that these property conditions operate to deprive him of comparable development privileges. This applicant has failed to do. The Hearing Examiner was provided with no record of other developments similarly situated which obtained relief similar to that requested. Further, there is no dispute that an alternative, though potentially less rewarding, alternative is feasible. The variance must therefore be denied.

Decision

The DCLU denial of variance is AFFIRMED.

Entered this 54th day of August, 1987.


Leroy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW

The decision of the Hearing Examiner in this case is the final administrative determination by the City, 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 must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fifteen days of the date of this decision. Should such a 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. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.