

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

KEN WATSON

FILE NO. MUP-88-063(V)  
APPLICATION NO. 8800241

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

#### Introduction

Appellant, Ken Watson, appeals the decision of the Director, Department of Construction and Land Use, to deny a variance from the minimum lot area requirement for property at 134 N.W. 101st Street.

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 October 17, 1988.

Parties to the proceedings were: appellant, Ken Watson, and the Director, Department of Construction and Land Use, by Jim Barnes, 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. A master use permit application was filed by Ken Watson requesting a variance from the minimum lot area requirement for property at 134 N.W. 101st Street. The Director, Department of Construction and Land Use (Director), denied the variance. Appellant filed a timely appeal of that decision.

2. The zoning of the subject site is divided between SF 5000 on the southerly 100 ft. and Lowrise 3 for the northerly 30 ft. The Director determined that the more restrictive lot area requirement, that of the SF 5000 zone, applies to the property so the applicable minimum lot area is 5000 sq. ft.

3. The subject site is comprised of two tax lots, each about 15 ft. by 130 ft., for a total area of about 3,902 sq. ft.

4. The subject site is owned in common with the lot to the east at 126 N.W. 101st Street which is developed with a single family residence. The total lot area of the three tax lots is 9,293 sq. ft.

5. The Director determined that the westerly of the small tax lots had been held in common with the lot to its west until 1958 and the other has been held in common with the lot to its east and has provided vehicular access to the garage at the rear of that property. All three lots came into common ownership in 1974 when the owner of the easterly two tax lots acquired the westerly tax lot.

6. Because of exceptions in the code to the minimum lot area requirement, a variance would not be required for lot area

if the lot had been established as a separate building site prior to 1957 or was created by subdivision or boundary adjustment before that time and has an area of at least 75 percent of the minimum required lot area and at least 80 percent of the mean lot area of the lots on the same block face in the same zone. Section 23.44.010. The proposed lot does not meet the requirements for the exception so a variance is required.

7. The land use specialist calculated the mean lot area for the block face and found it to be 9,484 sq. ft. The proposed lot would be 41 percent of the mean.

8. The smallest lot on the same block face, i.e., fronting on the north side of that street and in the SF 5000 zone is 5,240 sq. ft. in area, according to the land use specialist's calculations. There is a slightly smaller lot in the L3 zone but that zone has no minimum lot area standard.

9. Each lot on the block face has been developed with one principal use. The applicant had believed some to have been developed with more than one use in "cluster" developments but the land use specialist determined that the properties had actually been short platted.

10. Most lots on the north block face contain single family residences. One is developed with a duplex and one with a triplex. Each developed lot on the north side of N.W. 101st Street is a separate tax lot.

11. There is one lot, which has no street frontage, lying north of the lot in the block face, with lot area of only 3,300 sq. ft. According to appellant, that lot is developed separately from any other lot.

12. Lots on the south side of N.W. 101st Street are much smaller than on the north side, generally about 5,500 sq. ft. Several blocks to the south where the platting pattern is 25 ft. by 127 ft. lots, at least two of the platted lots are combined for the building sites. The lots in the area south of N.W. 101st Street are generally smaller than those on the north but are still much greater in size than the proposed lot.

13. The requested variance would allow the construction of a house, 15 ft. wide, on the site. A 5 ft. easement would be granted along the easterly property line for vehicular access to the rear of the adjoining property. An existing rockery and large maple tree would be removed for the new driveway and a new rockery would be erected.

#### Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.76.022.

2. A variance may be granted only if the facts and conditions set forth in Section 23.40.020C are found to be present.

3. The first requirement is that there be present an unusual condition applicable to the property because of which the code provision (here, the minimum lot area requirement) deprives it of rights enjoyed by other properties in the same zone and vicinity. Section 23.76.022C.1. Appellant asserts that the existence of three separate tax lots causes the minimum lot area requirement to operate unfairly against this property since all other tax lots on the same side of the street are developed independently. The examiner does not find this argument persuasive since no special burdens attached to separate tax lots were shown and the total area of three lots is comparable to that of most of the other lots on the same block face. While the total area of the three tax lots is greater than the area of the majority of lots in the zone, the proposed lot would be substantially smaller so it would not be comparable to other developed lots.

4. The second requirement is that the requested variance be the minimum necessary for relief and not confer a grant of special privilege. Section 23.76.022.C.2. If relief were warranted for creation of a lot made up of the two tax lots, the requested variance would be the minimum necessary. It is not possible to tell from the evidence presented whether any additional lot area could be obtained from the third lot to reduce the amount of variance. As proposed, however, granting of the requested variance would confer special privilege on this property since few, if any, lots of such a small size have been created in the zone.

5. The variance may not be materially detrimental to the public welfare or injurious to other properties. Section 23.40.020C.3. No material detriment to the public welfare can be reasonably foreseen from the creation of the lot. While the lot would require development different from the existing character, no injury of the type cognizable under this criterion is foreseen.

6. The literal interpretation and strict application of the code provision requiring 5,000 sq. ft. of lot area must cause undue and unnecessary hardship. Section 23.40.020C.4. There is no indication that the minimum lot area requirement has changed since acquisition by the current owner of the two tax lots or that there is any other condition that would amount to undue hardship. The total property has development rights comparable to that of the other similarly-sized lots.

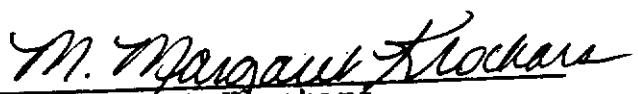
7. Finally, the variance must be consistent with the spirit and purpose of the Land Use Code and the policies. Section 23.40.020C.5. The code's exceptions to the minimum lot area show intent to allow lots smaller than 5,000 sq. ft. to be created if they would not be such a departure in size that they alter the character of the neighborhood. Since the proposed lot is substantially smaller than provided for by the exceptions, the variance would not be consistent with the code's intent. While lot area is not specifically addressed in the Single Family Residential Areas Policies, by resolution the City Council clarified its intent that the smaller lots created under the code exceptions are to allow building sites which are compatible with surrounding lots to provide for additional housing opportunities while maintaining the neighborhood character.

8. Since the facts and conditions required for variance approval are not all present, the variance must be denied.

Decision

The variance is denied.

Entered this 28<sup>th</sup> day of October, 1988.

  
M. Margaret Klockars  
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 party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

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, (206) 684-0521.