

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ADELAIDE C. DYSON, ET AL.,

FILE NO. MUP-88-068(P)
APPLICATION NO. 8804703

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

Introduction

Adelaide C. Dyson, et al., appeal the decision of the Director, Department of Construction and Land Use, to approve a short subdivision of property at 5757 N.E. 62nd Street.

The appellants 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 November 9, 1988.

Parties to the proceedings were: appellants by their attorney, Howard Pruzan, Miracle, Pruzan & Morrow, the Director, Department of Construction and Land Use, by Malli Anderson, land use specialist, and the applicants, Robert and Carol Randolph, by their attorney, Allison Moss.

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. Bob Randolph filed a master use permit application to subdivide a parcel of land at 5757 N.E. 62nd Street into two lots. The Director, Department of Construction and Land Use, approved the application with certain conditions. Appellants filed a timely appeal.

2. The property, subject of the application, is located one block east of Sand Point Way N.E. adjacent to the Sand Point Elementary School. Its northerly frontage is on N.E. 62nd Street where it curves into 60th Avenue N.E. and its southerly frontage is on the unimproved dead end of 60th Avenue N.E.

3. The subject property contains 10,391.74 sq. ft., (misrepresented on the assessor's records as 9,600 sq. ft.) and is developed with a single family house on the eastern half of the site.

4. The subject property is in an SF 5000 zone. The single family-zoned portion of the facing block faces on N.E. 62nd is developed with single family residences, except for a parking lot at the east end, on lots of around 5,000 sq. ft. with a median market value of around \$68,000. Most are occupied by long term residents.

5. The applicant proposes to divide the parcel creating a second lot for a second single family residence.

6. The decision of the Director requires that the proposed lot line between the new lots be moved to provide 17.67 ft. of street frontage for Lot B, the more easterly lot. Lot A would

then have an area of 5,004.07 sq. ft. and Lot B, 5,387.68 sq. ft.

7. The additional street frontage for Lot B would allow direct access to the street where an easement had been proposed. Condition 6, imposed by the Director, is superfluous with the required street frontage.

8. The driveway access to Lot A would be at the westerly edge of the lot and the driveway to Lot B at the westerly edge of that lot. The two driveways would be approximately 24 ft. apart.

9. As planned, Lot A would provide one off-street parking space and Lot B would provide two.

10. The N.E. 62nd Street right-of-way is 50 ft. wide with sidewalks, curbs and pavement width of 30 to 32 ft. The Engineering Department standards for residential access streets establish 25 ft. as the minimum pavement width for a single family zone.

11. Northeast 62nd Street is used for access to the elementary school. There is considerable school bus traffic, both to pick up and deliver students at that school and for a number of other city schools, and traffic from parents picking up and dropping off children. A parking lot is located directly across N.E. 62nd Street from the school and the subject property which handles 20 or more cars, chiefly teachers and staff.

12. Metro bus route No. 41 is scheduled to terminate with a turnaround at N.E. 63rd Street though witnesses testified to seeing those buses on N.E. 62nd on occasion.

13. A delicatessen and grocery is located at Sand Point Way and N.E. 63rd. Three to seven deliveries are made per day to the store. Because of the median in Sand Point Way, the trucks turn east on N.E. 63rd, south on 60th N.E. and west on N.E. 62nd to return southbound on Sand Point Way.

14. Because of the school, N.E. 62nd Street is more heavily traveled than most residential streets. No traffic counts were adduced.

15. The Sand Point Elementary School is on the the school district's list for closure. During the period of closure school traffic on N.E. 62nd would be reduced but the buses picking up and returning children for other schools would not necessarily change.

16. Parking spaces on the street are heavily utilized during the day. No actual survey was undertaken but a letter carrier who lives on the block reported that on occasion he must park on Sand Point Way or on N.E. 63rd to deliver mail to houses on the street.

17. A section of the street near the subject site is posted as a loading zone from 8:00 a.m. to 5:00 p.m.

18. There has been one reported accident in the area in the last five years. According to residents, there have been a number of other accidents which were not reported.

19. The crest of the hill on N.E. 62nd Street is approximately 300 ft. from Lot A with a one percent grade from the crest to the subject property. The grade on 60th N.E. is seven percent from N.E. 63rd.

20. While drivers approaching N.E. 62nd on 60th N.E. may not be able to see cars or pedestrians around the corner on N.E. 62nd and vice versa, the sight distance to and from the proposed driveways in both directions is adequate for safety. To the west on N.E. 62nd, the sight distance is 300 ft. and 340 ft. respectively for the Lot A and B driveways and on 60th N.E., 175 ft. and 240 ft.

21. The average traffic generated by one single family residence is ten trips per day.

22. The Director consulted with the Engineering Department about the access to the two lots. The Engineering Department advised that the access would be adequate.

23. The Director found that Lot A, with the existing house, would meet development standards of the Land Use Code and that any development on Lot B would be required to meet development standards.

24. Water and sewer are available on the proposed lot. Drainage detention will be required, according to Malli Anderson.

25. The Engineering Department and the Director found the access to be adequate.

Conclusions

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

2. The Director is required by Section 23.24.040 to consider whether the proposed short subdivision of the land conforms to applicable land use policies and Land Use Code provisions; whether it has adequate access for vehicles, utilities and fire protection; whether it has adequate drainage, water supply and sanitary sewage disposal; and whether the public use and interest would be served.

3. The decision of the Director is to be given substantial weight by the Hearing Examiner on review. Section 23.76.022C.7. Appellants bear the burden, then, of proving that the decision was clearly erroneous. Brown v. Tacoma, 30 Wn.App. 762, 637 P.2d 1005 (1981).

4. No evidence was presented showing that the proposed short plat would not conform to the Single Family Residential Areas Land Use Policies or the Land Use Code. The one question of conformance raised was as to Section 23.54.010, access standards. Since, with the condition imposed by the Director, each lot would have at least 10 ft. of frontage on the street, those requirements are met.

5. The adequacy of the vehicular access was challenged by appellants who attempted to show potential traffic hazard from the addition of a driveway at the curve of a residential street carrying considerable school traffic. Appellants' evidence as to the type of traffic and street configuration was not sufficient to overcome the evidence that the Director relied upon Engineering Department expertise and its expert judgment that the access was adequate and the fact of adequate sight distance to and from the driveways.

6. There was no evidence adduced as to inadequacy of utilities, drainage, water supply and sanitary sewage disposal.

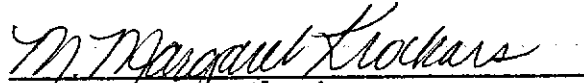
7. While appellants have shown that the on-street parking is heavily utilized during the day, they have failed to show that there would not be on-street parking available in the evening, the period of peak demand for a single family residence. They also have not shown that parking for the additional residence would require any on-street parking.

8. Appellants addressed the public use and interest in their argument that the legislative purpose for subdivision legislation would not be served by the proposed division. The specific criteria for approval in the city's short subdivision ordinance have been met. Unless actual detriment to the public welfare is shown there is no ground for denying the short subdivision.

Decision

The decision of the Director is affirmed.

Entered this 23rd day of Novemeber, 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.