

FINDINGS AND DECISION  
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

RANDALL SPAAN

FILE NO. MUP-90-040(V)  
APPLICATION NO. 8905152

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

Introduction

This matter concerns property located at 3915 - 14th Avenue S.

The appellant/applicant applied to DCLU for a short plat to create five lots. In connection with this application, he sought a variance to allow creation of lots less than the minimum lot size. DCLU denied both the variance and the short plat.

The appellant exercised the right of appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code (SMC).

This matter was heard before the undersigned Deputy Hearing Examiner on September 19, 1990. The record was left open until September 26 to allow time for a site visit by the Examiner.

Parties to the proceeding were appellant/applicant Randall Spaan, pro se, and the Director, Department of Construction and Land Use (DCLU), represented by Corbitt Loch, associate land use specialist.

For the purpose 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, and after having visited the site, the following shall constitute the findings of fact, conclusions, and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The property subject to this application is located at 3915 14th Avenue South. The property is legally addressed as Lots 2-6, Block 73, J. J. Moss' Addition to South Seattle. The property is zoned SF 5000, Single Family with a minimum lot size of 5000 square feet. The property can be found on Kroll map page 57E.

2. Each of the platted lots comprising this property measures 40 x 120, or 4800 square feet. The overwhelming majority of platted lots in this area were created at that size.

3. An existing house sits on Lot 3. Approximately two feet of that

house intrude into Lot 4. Because the house goes over the line, DCLU considers Lots 3 and 4 as comprising one building site of 9600 square feet. Lots 2, 5 and 6 are undeveloped and are considered separate legal building sites pursuant to 23.44.010.B.3. That section provides that lots created prior to 1957 can be considered legal building sites even if they are less than the minimum lot size in the zone. That section also provides that such an undersized lot cannot be freed up for purposes of the exception through demolition. For that reason, Lots 3 and 4 cannot qualify for the pre-1957 exception, even if the existing house were to be removed.

4. The site, taken as a whole, has 200.12 feet of frontage on 14th Avenue South and is 120 feet deep. A partially developed alley runs behind the lots, parallel to 14th Avenue. The existing house referred to above sits on the western portion of the property. The site is covered with trees and unmaintained vegetation and slopes moderately to steeply down from west to east. The western edge of the property is at elevation 286, the eastern edge at 254.

5. The area across 14th Avenue to the east of the site is zoned Lowrise 2 (L2) and is developed with duplexes.

6. The applicant proposes to divide the site into five oddly shaped lots, all of which would be 4800 square feet in size. The existing house would sit on a new parcel A. That parcel, and new parcel B, would not abut the street and would obtain access to parking off alley. Parcel C, D, and E would abut the street.

7. While parcels A and B would not abut the street, the houses proposed by the appellant are spaced so that the houses on those parcels would not be directly behind the houses proposed on parcels C, D and E.

8. The property is bordered on the north by unopened Bradford Street.

9. Andover Street has been vacated where it abuts 14th Avenue South. Thus, the block on which the subject property is located runs from unopened Bradford Street on the north to Dakota Street on the south. The vacated portion of Andover measures 80 x 120 and is developed with a single family house.

10. As well as the exception for pre - 1957 lots referred to above, there is another exception to minimum lot size requirements commonly referred to as the 75-80 rule. That exception, found in 23.46.010.B.1, allows creation of an undersized lot if it is at least 75 percent of the minimum lot size in the zone and 80 percent of the average lot size on its block. At 4800 square feet, the proposed lots meet the first half of this test, but do not meet the second part. This is because the homes at the corner of Dakota and 14th and the home at 4005 14th Avenue S. are each built on two platted lots resulting in 9600 square feet building lots and boosting the average building lot size to 6720 square feet. Had Andover Street not been vacated, the proposed 4800 square feet lots could have been created without variance under this exception.

11. In the Single Family zoned areas between Nevada on the south, Charlestown on the north, 12th Avenue to the west, and 15th Avenue to the

east, there are 134 building lots. Of these, 90 are lots of 4800 square feet or less.

12. Homes on 14th Avenue S. north of Bradford tend to be located toward the front (eastern edge) of the lots. Homes between Bradford and Dakota tend to sit more on the western portion of their lots. Appellant argued that his proposed site plan, by staggering the location of the houses, would provide a transition between these two patterns.

13. Variances from provisions or requirements of the Land Use Code are authorized only when all of the following facts and conditions are found to exist:

1. Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code or Title 24 would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity; and
2. The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located; and
3. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located; and
4. The literal interpretation and strict application of the applicable provisions or requirements of this Land use Code or Title 24 would cause undue and unnecessary hardship; and
5. The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan component, as applicable.

14. Section 23.16.002 of the residential areas policies provides the following statement under purpose:

The purpose of these policies is to preserve and maintain the physical character of single family residential areas in a way that encourages rehabilitation and provides housing opportunities throughout the city for all residents.

15. The Bulk and Siting section states the following:

Policy intent: Zoning Code bulk and siting regulations shall recognize and preserve the streetscape character of individual clusters of housing units in City neighborhoods. The city-wide pattern of open spaces between single family residential structures in single family residential areas shall be maintained by requiring minimum side and rear yard setbacks (see Definitions). Height regulations shall encourage sloped roofs. The height and front yard

setbacks of existing adjacent single family residences shall be used to determine bulk and siting patterns for future construction. In cases where there are steep slopes or winding streets, the Superintendent of Buildings (Department of Construction and Land Use) shall determine which adjacent residences should be considered. When adjacent existing single family residences set the pattern for bulk and siting requirements of construction the following guidelines shall apply:...

16. DCLU relied on both of the above policy statements in deciding to deny the requested variance. Their report concluded that the variance would be detrimental because the proposal would change the established platting pattern and result in lots with less open space than provided on other lots in the neighborhood.

17. The appellant in this case has developed a number of other projects, including the Greystone development in the 4600 block of 47th Avenue South. That development too is composed of irregularly shaped lots located on a moderately steep slope.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code.

2. Under the terms of Section 23.76.022.C.7, the Department's decision on the granting of the short plat is entitled to substantial weight, but its decision on the variance is entitled to no deference.

#### Variance

3. The application satisfies the requirement that there be a showing of an unusual condition. The vast majority of the houses in the area are built on one 4800 sq. ft. platted lot. Here, but for two circumstances, the applicant would be able to have five lots without pursuing a variance. The most important of these is that the existing house on the property was built just over a lot line, thereby combining Lots 3 and 4 into one building site. However, even with the intrusion, the applicant would be permitted five lots outright under the 75-80 rule were it not for the vacation of Andover Street in this area. It is those lots south of Andover that raise the mean lot size beyond the point that 75-80 rule will work.

4. Granting of the variance also does not constitute a grant of special privilege. As noted in the Findings, some two thirds of the legal building sites in the area are 4800 sq. ft. or less in size. The DCLU report is at best misleading when it states that "there are many instances where two lots have been combined to create one development site with 9600 sq. ft. of lot area." As pointed out by the applicant, in the 23 surrounding blocks there are only seven instances of such sites, this out of a total of 201 building sites.

5. The DCLU analysis on detriment is unenlightening, centering more on the shapes of the proposed lots than on the variance itself. With the variance, the applicant can build four new houses for a total of five on the

site; without it, he can build only three new houses for a total of four. This is the nub of the variance, and the report includes nothing to suggest why this will be detrimental. The report does state that the variance and short plat will create lots with less open space "than is provided on other lots in the area," but this is true only if one compares the proposed lots to those unusual lots in the area that are on lots of more than 4800 sq. ft. Moreover, it is worth remembering that in the absence of this application, Lots 2, 5 and 6, each of which is 4800 sq. ft., could be developed to the same standards as the proposed lots. Only Lots 3 and 4, tied together by the existing house, would provide additional open space.

6. Contrary to the conclusion of the DCLU report, failure to grant the variance would result in undue and unnecessary hardship. The site consists of five platted lots of 4800 sq. ft. each, and the applicant is simply asking for the ability to develop five lots of that size. In saying this, the Examiner does not accept the notion that platted lots are somehow sacred, that once a lot is created by platting, the owner has some eternal right to develop it as a separate parcel. In this case, however, the lots requested by the applicant are a mere 200 sq. ft. short of the minimum lot size, and are the same size as 75 percent of the building lots in the area. In this context, it is unduly harsh to say that because the existing house goes two feet over a platted line, the right to use the property as five lots is forever lost.

7. Finally, the Examiner rejects the notion that approval of this variance is somehow hostile to the City's Land Use Policies. The applicant is proposing single family houses meeting all access and setback standards on lots the same size as the majority in the neighborhood. Provision of housing is encouraged by City policy, and the granting of this variance allows creation of an additional home without apparent detriment. In short, DCLU erred in denying the variance.

#### Short Subdivision

8. At hearing, the DCLU representative indicated that the Department's denial of the short plat was based primarily on its denial of the variance and that if the Examiner saw fit to grant the variance, that DCLU had no other serious objection to the short plat. A number of points should, however, be set forth.

9. The first criterion for short plat approval is conformance to Land Use Policies and Code provisions. The issue of lot size is addressed above, and the lots meet all other code requirements. In terms from the development by virtue of the fact that the most southerly house of this development will be on the forward part of the lot while the next house to the north is the existing home which is more than 40 ft. from the house on Lot 1.

10. The next criterion is adequacy of access for vehicular, utilities, and fire protection. There is apparently no particular dispute between DCLU and the applicant on this point. The Engineering Department has required that the alley be paved to a width of 12 ft., and City Light has requested easements, and the applicant has no objection. There is one apparent ambiguity in the record: the DCLU report indicates that Engineering is requiring that the alley be developed with a turnaround; applicant's appeal states that Engineering has made no such requirement. Because this is a

matter of zoning compliance, the matter need not be and is not resolved here, but it needs to be resolved prior to filing of the short subdivision.

11. The next criterion involves the adequacy of drainage, water supply and sanitary sewer disposal. There is no dispute here between the parties. The proposal will have to comply with the provisions of the Grading and Drainage Ordinance.


12. The final issue is whether the public use and interests are served by permitting the proposed division of land. The Examiner believes it will. As well as providing additional single family housing opportunities, the proposal will result in the paving of the alley and in the construction of a development that will tie together the single family blocks to the north and south and single family and multifamily neighborhoods to the east and west.

#### Decision

The decisions of the Department regarding the variance and short plat are REVERSED. The variance is GRANTED. The short plat is GRANTED with the following conditions:

- 1) Easements required by City Light must be added to the recording papers.
- 2) The alley must be paved to a width of 12 ft. in width prior to the issuance of any building permit.
- 3) Pedestrian access easements for the two lots not abutting the street must be drafted and recorded with the short plat.
- 4) Development on the property must comply with the provisions of the Grading and Drainage Ordinance. A drainage control plan is required for building permit applications and should include direct discharge through the curb.

Entered this 11<sup>th</sup> day of October, 1990.

  
Guy E. Fletcher  
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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.