



July 9, 1997



Mr. and Mrs. James Amphlett
8936 North Mercer Way
Mercer Island, WA 98040

SUBJECT: Variance from the minimum lot size of 9600 square feet in the single family R-9.6 zoning district

Dear Mr. and Mrs. Amphlett:

This Hearing Examiner held a public hearing on your application for a variance. Based on the criteria for granting a variance (MICC Section 19.04.140), the variance is approved with the following conditions set forth in the Findings, Conclusions and Decision, Conclusion 3:

"3. The findings herein support a conclusion that this application satisfies the criteria for issuance of a variance, if the following conditions are imposed and met:

- (1) Residential development shall be accomplished within the setback and lot coverage requirements of the R-9.6 zone.
- (2) Appropriate easements for access and utilities shall be granted for the lot across the parcel located at 3434 97th Avenue Southeast.

The Hearing Examiner notes that it has held a public hearing on the variance only under the City's criteria for variances. The Hearing Examiner's approval of the variance under the City criteria does not include review of private covenants, conditions and restrictions that may otherwise limit the ability to construct new single family residence. Compliance with any applicable covenants, conditions and restrictions is the responsibility of the applicant. Violation of applicable

covenants, conditions and restrictions may result in private legal action against the applicant by other parties to the covenants, conditions and restrictions.

The basis for the decision is described in the attached, "Findings Conclusions and Decision".

If I can be of any other assistance to you, please do not hesitate to call me.

Sincerely,


Sue Israel

City of Mercer Island
9611 Southeast 36th Street
Mercer Island, WA 98040
(206) 236-5300

cc: Building Official
Permit Coordinator

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF MERCER ISLAND**

FINDINGS, CONCLUSIONS AND DECISION

- Applicants:** James and Virginia Amphlett
8936 North Mercer Way
Mercer Island, WA 98040-3139
- Request:** A variance from the minimum lot size of 9600 square feet in the Single Family, R-9.6 Zoning District.
- Location:** The site is a 9,100 square foot lot located 100 feet east of 3434 97th Avenue Southeast.
- Proposal:** Applicants seek to construct a single family residence on a somewhat undersized lot created as a result of the construction of the Interstate-90 Freeway. The lot is presently landlocked and access is proposed through the granting of easements across adjacent property owned Mrs. Amphlett.
- Public Hearing:** After reviewing the report of the Development Services Group and upon due notice, the Hearing Examiner conducted a public hearing on June 26, 1997, at the City Council Chambers in the Mercer Island City Hall.
- Decision:** The requested variance is granted, subject to conditions.

I. PROCEDURAL BACKGROUND

James and Virginia Amphlett made application for a variance on May 27, 1997. The Development Service Group gave notice of public hearing and prepared and forwarded to the Hearing Examiner a report containing the Staff's analysis and recommendation. Included were seven exhibits.

The hearing was held, in compliance with the notice, on June 26, 1997. The record contained no written statements of opposition. At the hearing the Staff Report was presented by Sue Israel. The Staff recommended approval. James and Virginia Amphlett testified on behalf of the application. No members of the public appeared.

II. THE RECORD

The record considered by the Hearing Examiner in this matter consists of the Staff Report and the exhibits which accompanied it. They are:

1. Variance Application with Criteria Sheet
2. Site Plan
3. Letter from Applicants dated May 27, 1997
4. Site Survey
5. Map Packet --three maps showing relationship of subject property to adjacent lots and freeway; one map showing other undersized lots in the vicinity.
6. Public Notice regarding the application
7. Permit Information Bulletin

III. FINDINGS OF FACT

1. James and Virginia Amphlett (applicants) seek a variance to allow the construction of a single family residence on a 9,100 square foot lot located 100 feet east of 3434 97th Avenue SE within a Single Family R-9.6 Zoning District. The minimum lot size for the district is 9,600 square feet.

2. The lot in question was created as a result of the construction of the Interstate-90 Freeway. Prior to the building of I-90, the subject lot was part of an L-shaped piece of

property containing about 52,000 square feet. Land acquired by the Washington State Department of Transportation (DOT) in connection with the freeway project included the area of the subject lot. After the project was completed, DOT sold the lot at auction to the applicants. It constitutes a separate tax parcel.

3. The freeway construction eliminated direct access to the subject lot. Currently 97th Avenue SE terminates in front of the parcel immediately to the west. The house on the subject lot would be reached by easement across this neighboring parcel, located either along its northerly or its southerly boundary. The site plans submitted show that this access is feasible, but may require some alteration of existing structures on the neighboring parcel.

4. The neighboring parcel (3434 97th Avenue SE) was inherited by Mrs. Amphlett. There is an existing residence on this parcel which is currently occupied by renters. Mrs. Amphlett proposes to grant a driveway easement to the subject lot across her property to the west at a location to be identified. Utility easements will also be granted. The driveway easement will measure at least 10' by 100' per Fire Department approval. There is a fire hydrant in front of the parcel at 3434 97th Avenue SE.

5. The property to the east of the subject lot is largely owned by the DOT which has refused to grant access from that direction. To the south is a bike path and then the freeway. To the north is undeveloped property. There is nothing in the record to indicate that the development of the subject property would cause any problems for the owners of the surrounding lots.

6. The subject lot is essentially rectangular in shape. Development of a residence there could be accomplished within the existing lot coverage and setback requirements for the zone.

7. Construction of the residence would constitute infill development adding new single family residential housing stock to the City consistent with the growth objectives of the Comprehensive Plan.

8. There are seven undersized lots in the general area, ranging in size from 3,865 square feet to 9,392 square feet. The subject lot at 9,100 square feet is only slightly smaller than the 9,600 square foot standard for the zone.

9. Based on the entire record, the Examiner finds that the lot in question was created by extraordinary circumstances related to the construction of the I-90 Freeway. Allowing a residence to be built there would neither alter the character of the neighborhood nor impair the use or development adjacent property. Except for a modest deviation in lot size, development of the site would be consistent with the requirements for the zone. The development would not impair the public welfare and would not injure other property or improvements in the zone. The development would further the general purposes and objectives of the Comprehensive Plan.

10. Any conclusion herein which may be deemed a finding is hereby adopted as such.

IV. CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the parties and subject matter of this proceeding.

2. Mercer Island Code (MIC) 9..04.140 calls for satisfaction of the following criteria before a variance can be granted:

(1) That there are special circumstances applicable to the particular lot or tract, such as size, shape, topography, location or surroundings, trees or ground cover or other physical conditions, installation of a solar energy system or the orientation of a building for the purposes of providing solar access;

(2) That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity or zone in which the property is situated.

(3) That the granting of the variance will not alter the character of the neighborhood, nor impair the appropriate use or development of adjacent property; and

(4) That the granting of the variance will not conflict with the general purposes and objectives of the Comprehensive Plan.

3. The findings herein support a conclusion that this application satisfies the criteria for issuance of a variance, if the following conditions are imposed and met:

(1) Residential development shall be accomplished within the setback and lot coverage requirements of the R-9.6 zone.

(2) Appropriate easements for access and utilities shall be granted for the subject lot across the parcel located at 3434 97th Avenue South.

4. Any finding herein which may be deemed a conclusion is hereby adopted as such.

V. DECISION

The application for a variance is granted, subject to the conditions set forth in Conclusion 3 above.

DATED this 9th day of July, 1997.



Wick Dufford, Hearing Examiner