

HEARING EXAMINER



STAFF REPORT

APPLICANT: J. L. SMOCK

LOCATION: 8440 BENOTHO PLACE

ZONING: R-8.4

APPLICABLE SECTIONS  
OF CODE: ZONING CODE, SECTION 4.04 & 18.02

EXHIBITS: PLOT PLAN, VICINITY MAP, MEMO FROM CITY  
ENGINEER, CORRESPONDENCE

HEARING DATE: AUGUST 5, 1983

RESPONSIBLE STAFF: DAVID P. GUILLEN, PRINCIPAL PLANNER

REQUEST: A VARIANCE OF 1,940 SQUARE FEET AND 1,600  
SQUARE FEET FROM THE REQUIRED 8,400  
SQUARE FOOT MINIMUM LOT SIZE

SEPA COMPLIANCE: Variance requests are categorically exempt from the State Environmental Policy Act of 1971, as amended by RCW 42.21C and WAC 197-10-170.

STAFF SUMMARY:

1. Property Description.

The subject property is composed of Lots 19 and 20 of the Benotho Beach unrecorded plat. A single family residence is located on Lot 19 and a garage which serves the existing residence is located on Lot 20. The subject property is accessed by way of East Mercer Way to 85th Ave. S.E. and then Benotho Place. The subject property is bounded on the east by Lake Washington.

2. Request.

The applicant request variance relief in order to subdivide the subject property into two building sites. The City of Mercer Island Zoning Code requires that in the R-8.4 zone, each lot contain at least 8,400 square feet in minimum lot size. The definition of lot in the Zoning Code requires that any lots in contiguous ownership which do not conform to the requirements of the Zoning Code must be combined to make the property more conforming. So in this case, the City of Mercer

Island regards Lots 19 and 20 as one lot. Prior to 1960 and incorporation of the City, King County allowed each of these pre-existing lots to exist independent of each other and would have issued a building permit for a single family residence on Lot 19 and Lot 20. This is the reason that Lots 15, 16, and 28 in the Benotho Beach unrecorded plat were issued building permits without the benefit of 8,400 square feet. Today, the City of Mercer Island would consider these lots which do not conform to be grandfathered with the right to secure a building permit if only there was no contiguous ownership to make the lot more conforming.

ZONING CODE CRITERIA:

Before any variance shall be granted it shall be shown that the request meets each of the following criteria:

1. Special circumstances.

Comment: Staff can find no special circumstances applicable to this lot or tract which would lead to a recommendation for a variance. The applicant states that Lot 20 is the only undeveloped lot in the Benotho Beach plat. This may be the case, but this is not reason enough to be granted variance relief. The subject property is, in fact, being utilized as one unit with the house on the subject property being primarily on Lot 19, and the garage serving the house being on Lot 20. The balance of the subject property is utilized as yard space.

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

Comment: Staff believes that there is no compelling reason to grant the subject request, especially when one views the subject property in relation to the balance of the Benotho Beach neighborhood. The subject is not unique; it is similar in many respects to property in the vicinity. This raises the issue of precedent. Staff is fully aware that the Examiner must view each application on a case by case basis. However, in this case, the similarity of the subject property to properties in the vicinity requires Staff to raise the issue. If the subject request were to be granted, the Examiner could entertain as many as three additional requests along the waterfront of Benotho Place where single family residences have been constructed on two lots in the Benotho plat. It has become increasingly frequent that well maintained and substantial waterfront homes have been modified and/or demolished in order to subdivide to increase the value of the property. If

the subject request was to be granted, that possibility is very real in Benotho Place.

If the Examiner were to approve the proposed variance for Lots 19 and 20, what circumstances would need to exist for the Examiner to deny a similar request for a division of property for Lots 17 and 18, 24 and 25, and 26, and 27? If this were to take place, then the character of the Benotho Place neighborhood would be substantially altered by increasing the density of the area by potentially 30 percent.

3. The granting of the variance will not alter the character of the neighborhood nor impair the appropriate use or development of adjacent property.

Comment: As mentioned above, precedent is an important issue in this case. The granting of the subject variance would essentially be, in Staff's opinion, a reclassification of the neighborhood to a less restrictive zone with respect to square footage. Currently, the 8,400 square foot minimum lot size is the least restrictive on the Island. Approval of the subject variance request would substantially reduce the minimum lot size in this vicinity. The increases in density in the particular neighborhood would have negative effects upon the use of Benotho Place and the waterfrontage.

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

Comment: One of the major components of the Comprehensive Plan is the preservation of neighborhood character and enhancement of individual neighborhoods. Staff believes that the granting of the subject variance would not help implement this policy of the Comprehensive Plan nor any other element of the Comprehensive Plan. In fact, it may conflict with the policy which states that there shall not be an "overcrowding of the land." The City Council has determined that the 8,400 square foot minimum lot size is the minimum lot size that a single family lot should have on the Island, and a granting of this variance would essentially change the minimum to a lesser requirement if the request is granted.

#### STAFF ANALYSIS:

The Planning Commission and City Council have traditionally decided unfavorably upon variances from required square foot minimums. In recent years, two cases on appeal have been reviewed by the City Council for relief from these square footage requirements of the zone. In one instance (the Alkire variance) variance relief was sought because a person who owned a nonconforming lot with a single family residence upon it pur-

chased his neighbor's property with a house upon it, which was also nonconforming. The act of purchasing adjoining nonconforming property required the two properties to be considered as one, and the proponent could not transfer ownership of the acquired property to a new purchaser. The City Council on appeal, granted the variance citing the ownership and the two houses as special circumstances which warranted variance relief.

In another instance reviewed by the City Council, (the Bank's variance) the Council denied a variance request for approximately 400 square feet to allow a subdivision of waterfront property on North Mercer Way. The subject property was inadequate with respect to square footage, and also was inadequate with respect to 10 feet of required lot width in an R-12 zone. The City Council found no special circumstances applicable to the subject property which would warrant variance relief.

STAFF RECOMMENDATION:

Staff finds that the subject request meets none of the required showings for variance relief. There are no special circumstances, the request could substantially alter neighborhood character and be detrimental to property in the vicinity, and it conflicts with policy in the Comprehensive Plan. For these reasons, Staff will recommend that the proposed variance for John L. Smock be denied.