



CITY OF MERCER ISLAND  
VARIANCE HEARING EXAMINER  
FINDINGS CONCLUSIONS AND DECISION

APPLICANT: Helene Bender

APPLICATION: Variance of 1,200 square feet in order to subdivide a 15,600 square foot lot into two lots, one of which would be 7,200 square feet in area (1,200 square feet less than the minimum required lot area).

SUMMARY OF RECOMMENDATION AND DECISION:

Department Community Development: Deny

Variance Hearing Examiner: Deny

PUBLIC HEARING:

After reviewing the official file which included the Department of Planning and Community Development Advisory Report; and after visiting the site, the Hearing Examiner conducted a public hearing on the application. The hearing on the Bender application was opened at 1:30 pm, April 13, 1989, and was immediately continued to April 26, 1989. The hearing was reopened at 1:36 pm on April 26, 1989, and was closed at 2:01 pm. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Department Community Development.

FINDINGS CONCLUSIONS AND DECISION:

Have considered the entire record in this matter, the Hearing Examiner now makes and enters the following:

I. FINDINGS:

A. The findings of fact recommended on pages 1 through 4 of the Department of Community Development Advisory Report (Hearing Examiner Exhibit A) are found by the Hearing Examiner to be supported by the evidence presented during the hearing, and by this reference are adopted as part of the Hearing Examiner's findings of fact. A copy of said report is attached hereto as Exhibit A.

B. Twelve letters of opposition and two photographs were received on this application. Concerns and objections included the following:

1. There are no special circumstances that preclude a reasonable use of the existing lot.
2. Approval of the application would set a precedent for additional undersized lots in the neighborhood.
3. The proposed driveway would have a detrimental impact on Calkins Landing. It would reduce the size of the park, and would reduce the amount of parking which is now available.
4. The request is in conflict with the comprehensive plan and is not in the best interest of the general public.  
(Exhibits C through K and M through O.)

C. A petition which represented 103 persons opposed to the application was submitted at the hearing (Exhibit P).

D. Two neighbors testified in opposition to the application at the hearing.

E. One neighbor testified in support of the variance, but only if another access to the proposed vacant lot could be achieved. She did not want the new lot to gain access across Calkins Landing.

F. The applicant testified that she is flexible as to how the lot could be created. She said she was willing to move the access further to the east. She also said there already are other non-conforming lots on the west side of 60th, so this would not set a precedent.

## II. CONCLUSIONS:

A. The conclusions recommended by the Department of Community Development as set forth on pages 5 of 6 the Department's report accurately set forth the conclusions of the Hearing Examiner and by this reference, are adopted as a portion of the Hearing Examiner's conclusions. A copy of said report is attached hereto as Exhibit A.

B. Special circumstances which justify the grant of a variance must be circumstances pertaining to the property itself. The applicant has the burden to show that special circumstances exist. She has referred to a non-conforming unrecorded short plat and the large lawn as special circumstances. She has not met the burden of proof which is to show that she is denied a reasonable use of the subject property and that she has

a problem which is unique to her property, and is not shared by others in the area.

C. The photographs which were submitted as part of Exhibit O graphically indicate how approval of the application would result in a detrimental impact on Calkins Landing.

D. The granting of the request would impair the use of Calkins Landing.

E. The granting of the variance would conflict with the purposes and objectives of the Mercer Island Comprehensive Plan and Shoreline Management Master Program. For example, it is the stated purpose of the Mercer Island Shoreline Master Program to provide for maximum public use and enjoyment of the shorelines of the City. Approval of the subject application would be in conflict with that stated purpose.

### III. DECISION:

Based upon the foregoing findings of fact and conclusions, the requested variance is Denied.

Entered this 3rd day of May, 1989, pursuant to authority granted under 19.04.1404 (A) of the City Zoning Code, Ordinance # A-47 as amended.



Ron McConnell  
Variance Hearing Examiner

**NOTICE OF RIGHT TO REQUEST RECONSIDERATION OR TO APPEAL:**

1. **Request for Reconsideration.** Pursuant to Section 19.04.1404 (A) (9) of the City Zoning Code, any party to the proceeding who is aggrieved by the decision of the Examiner may submit a written request with the City Clerk within ten (10) calendar days of the date of the Examiner's written decision. Such request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner, which is the basis for the request.
2. **Appeal.** Pursuant to Section 19.04.1404 (A) (10) of the City Zoning Code, any party to the proceeding who is aggrieved by the decision of the Examiner may submit a written appeal to the City Council by filing the appeal with the City Clerk within ten (10) calendar days of the date of the Examiner's written decision. Such appeal shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner, which is the basis for the request.
3. Any request for Reconsideration by the Variance Hearing Examiner or Appeal to the City Council shall be filed with:

City Clerk  
City of Mercer Island  
3505 88th Avenue S.E.  
Mercer Island, WA 98040

**NOTICE OF TIME LIMITATION UPON APPROVAL OF VARIANCE:**

Pursuant to Section 19.04.1404 (A) (8) of the City Zoning Code, a variance authorized by the Examiner shall become void after the expiration of one (1) year from the date of the decision less:

1. A building permit application conforming to the approved variance is filed with the City; or
2. A subdivision application conforming to the approved variance is filed with the City; or
3. The approved variance specifically provides for a greater authorization period.

MINUTES OF THE APRIL 26, 1989

VARIANCE HEARING ON THE  
BENDER APPLICATION

Ronald L. McConnell was the Hearing Examiner for this matter. Participating in the hearing were: Shannon Hart, representing the Department of Community Development; and Helene Bender, the applicant; and neighboring property owners Christopher Soeling, Ida Alkire, Lorraine Buhrman.

The following exhibits were offered and entered into the record:

- A. Department of Community Development Advisory Report.
- B. Letter from Helene Bender, received 4/10/89.
- C. Letter from James Hale, dated 4/7/89.
- D. Letter from Ida and Dennis Alkire, dated 4/10/89.
- E. Letter from Margaret Wolff, dated 4/6/89.
- F. Letter from W.J. McIntyre, dated 4/6/89.
- G. Letter from Charles Flake, received 4/21/89.
- H. Letter from Thomas Winter, received 4/17/89.
- I. Letter from Donald and Chris Bennett, dated 4/14/89.
- J. Letter from A.R. Reeck, received 4/20/89.
- K. Letter from Thomas and Diane Odell, dated 4/18/89.
- L. Letter from J. Tayloe Washburn, dated 4/11/89.
- M. Letter from James Aitken, received 4/26/89.
- N. Letter from Ernest Kevin, dated 4/19/89.
- O. Letter from Wayne and Kathie McFall, and Donald and Chris Bennett, with photographs, dated 4/24/89.
- P. Petition representing 103 persons in opposition to the application.

PARTIES OF RECORD:

Helene Bender  
2765 60th Ave. SE  
Mercer Island, WA 98040

James Hale  
2425 62nd Ave. SE  
Mercer Island, WA 98040

Ida and Dennis Alkire  
2704 63rd Ave. SE  
Mercer Island, WA 98040

Margaret Wolff  
2822 60th Ave. SE  
Mercer Island, WA 98040

W.J. McIntyre  
2822 60th Ave. SE  
Mercer Island, WA 98040

Charles Flake  
2834 60th Ave. SE  
Mercer Island, WA 98040

James Aitken  
2735 69th Ave. SE  
Mercer Island, WA 98040

Thomas Winter, Jr.  
2725 60th Ave SE  
Mercer Island, WA 98040

Donald and Chris Bennett  
2749 60th Ave. SE  
Mercer Island, WA 98040

A.R. Reeck  
2731 60th Ave. SE  
Mercer Island, WA 98040

Thomas and Diane Odell  
6215 SE 30th St.  
Mercer Island, WA 98040

J. Tayloe Washburn  
Foster Pepper and Shefelman  
1111 Third Ave.  
Seattle, WA 98040

Wayne and Kathie McFall  
2750 60th Ave. SE  
Mercer Island, WA 98040

Donald and Chris Bennett  
2749 60th Ave. SE  
Mercer Island, WA 98040

Christopher Soeling  
2760 60th Ave. SE  
Mercer Island, WA 98040

Lorraine Buhrman  
2755 60th Ave. SE  
Mercer Island, WA 98040

Ernest Kevin  
2728 60th Ave. SE  
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