

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

In the Matter of the Appeal of

DAVID L. MCCRANEY

FILE NO. S-77-004

for a ruling of the Superintendent
of Buildings

The appeal is DENIED and the decision of
the Superintendent of Buildings is affirmed.

Introduction

The appellant, David L. McCraney, filed an appeal from a decision of the Superintendent of Buildings to grant a use permit for the development of a single-family residence on property located at 2346 N.W. 98th Street (AKA 9804 24th Avenue N.W.).

The appellant exercised his right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

This matter was heard before the Hearing Examiner on March 15, 1977.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. On February 8, 1977, the Superintendent of Buildings (hereinafter Superintendent) published notice of a decision to grant a use permit for the construction of a single-family residence on property located at 2346 N.W. 98th Street. The appellant filed an appeal with the Hearing Examiner on February 22, 1977.

2. The subject property is situated in an area where pleasant marine and mountain views are available to the west. The appellant's property directly abuts to the east of the subject property. It is apparent that any development of the subject property may obstruct the appellant's view to some degree.

3. Subsequent to the filing of the instant appeal, the Superintendent required the permittee, Allan Hester, to file a revised plot plan. Taking into consideration the factors raised by the appellant, in the revised plot plan the permittee altered the east side yard setback and the amount of roof overhang on the proposed residence.

4. The original plot plan submitted by the permittee showed that a porch on the east side of the proposed structure would extend to within 1 foot 6 inches of the east side lot line. This proposed setback was in variance with section 22.42(b) of Ordinance 86300, as amended. The revised plot plan submitted by the permittee now shows a proposed setback of 3 feet, which is in conformance with the zoning code requirements.

5. The original plot plan included a roof overhang which extended beyond the permitted maximum into the required front yard. This aspect has been altered in the revised plot plan so that the location of the roof overhang is now in conformance with the zoning code requirements.

6. The proposed setback for the rear deck from the rear lot line, the intended lot coverage and the proposed height of the structure are all in conformance with zoning code requirements. No evidence has been presented into the record to indicate that the lot measurements as shown on the plot plan submitted by the permittee are improper or inaccurate in any way.

7. The purpose of the zoning code is set forth at an early stage in the zoning code, Section 2.1 of Ordinance 86300, as amended and contains broad statements regarding the promotion of public health, safety, morals, general welfare, in addition to economic stability of land use. These provisions are, however, more fully developed by specific zoning code provisions which more distinctly implements the intended purpose of the code.

Conclusions

1. The construction of a single-family residence on the subject property in accordance with the revised plot plan submitted by the permittee would be in conformance with all bulk requirements of the zoning code. The applicant has not met his burden of proof of demonstrating that the Superintendent has committed any error or omission in determining that the bulk requirements have been satisfied by the proposal. Additionally, the Superintendent has no discretion to deny a use permit when all bulk provisions have been complied with in spite of the fact that the proposed construction may have an adverse effect on a nearby property owner.

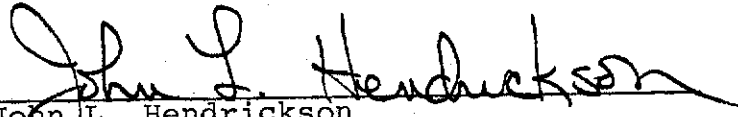
2. There is no provision in the zoning code that gives the Superintendent authority to deny a use permit for the sole reason that the proposed construction would obstruct the view of a nearby property owner or otherwise adversely affect surrounding persons or property. The Superintendent is concerned only with a permit applicant's compliance with the zoning code provisions and has no discretion to alter or expand upon those provisions as enacted into law by ordinance. Only the City Council has the authority to expand upon the zoning code by authorizing additional legislation.

3. The applicant is entitled to a refund of the filing fee required for appeals of this nature due to the fact that he prevailed on several issues as originally raised in his appeal. These factors were, however, remedied by the permittee prior to the hearing and the appellant has failed to prevail on the remaining issues in dispute.

Decision

The appeal is DENIED and the decision of the Superintendent of Buildings is affirmed.

Entered this 23rd day of March, 1977.


John L. Hendrickson
Deputy Hearing Examiner

Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination. Any appeal must be made to the courts. Section 12, Ordinance 102228, the Administrative Code, sets forth the procedure for staying enforcement of an administrative order or decision pending judicial review.