

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DAVID L. McINTYRE

FILE NO. MUP-81-082(V)  
APPLICATION NO. 81232-0281

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

#### Introduction

Appellant, David L. McIntyre, appeals the decision of the Director of the Department of Construction and Land Use (Director) to deny a side yard variance under a master use permit application for property at 1370 Alki Avenue S.W.

The appellant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: appellant and the Director by Diane Althaus, environmental specialist.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on December 21, 1981.

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

#### Findings of Fact

1. A permit was issued appellant in 1978 which allowed the raising of the existing house to construct a new foundation and add stairs. The plans approved provided for a 5.5 ft. front yard setback which was approved based on a 4 ft. requirement and side yards of 3 and 4 ft. Another permit was issued in 1980 to complete that work. In 1981, the work was stopped when it was determined that the house, as constructed, did not conform to zoning code bulk requirements.

2. The appellant applied for variances under a master use permit application for the front and side yards to allow for the expansion of a building nonconforming as to bulk. The Director granted variances for the front yard and expansion and denied the variance for the side yard. Appellant filed the instant appeal from that denial.

3. The subject property is a lot measuring 29 by 120 ft. The lot contained a very old house which appellant started to renovate and remodel. That house provided a side yard on one side of approximately 3 ft. with overhangs of 18-24 inches. The contractor placed the new foundation between points established by dropping a line from the four corners of the raised, old structure. Since the old structure was not square or square on the lot, that side yard varied in width from 37 inches in the front to 25.5 inches at the rear.

4. Sections 24.32.120 and 24.62.130 require a minimum side yard of 3 ft. in the Multiple Residence High Density (RMH 350) zone in which the subject property lies. Variance from those provisions would be necessary for the side yard provided.

5. The house on the lot adjacent on one side, at 1374 Alki, is set approximately 30 inches from the common lot line. The house on the adjacent lot on the other side, at 1368 Alki, has a side yard varying between approximately 21 and 31 inches with an overhang extending to the property line at the back part of the structure and within a few inches at the front. The plans for construction permits in the records of the Department show a 3 ft. side yard for that house but construction resulted in less.

6. The renovated structure has no eave overhangs.

7. Many structures in the area provide side yards which are now nonconforming. Variances have been granted for side yards in the area.

8. The residence on the subject property could be moved closer to the opposite property line but that would bring it closer to the structure with the eaves at that property line creating increased hazard and crowding.

#### Conclusions

1. The narrowness of the lot and the width and shape of the existing building under which the new foundation was placed are conditions which make meeting the strict requirements of the code an undue hardship since other structures in the area do not meet those requirements.

2. Variance for 11 inches at the point of greatest deviation is the minimum necessary for relief given the configuration of the old building. Since side yard variances have been granted in the area and in other cases structures are that close without variance, the granting of the requested variance would not confer special privilege.

3. The variance would not cause material detriment nor injury to other properties. Without eave overhangs the renovated structure is farther from the adjacent structures than was the outermost part of the eaves on the pre-renovation structure, therefore the situation could be regarded as better. Further, the wall will have to meet special building code requirements for a wall closer than 3 ft. to reduce any fire hazard.

4. While the Multi-Family Land Use Policies provide for 5 ft. side yard, variance is appropriate from code and policy recommendations to accommodate nonconforming structures.

#### Decision

The decision of the Director of the Department of Construction and Land Use is REVERSED and the variance is GRANTED.

Entered this 4th day of January, 1982.

  
M. Margaret Klockars  
Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.