

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

LESLIE HAMMOND

FILE NO. MUP-82-029(V)
APPLICATION NO. 81338-0474

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

Introduction

Appellant, Leslie Hammond, appeals the decision of the Director of the Department of Construction and Land Use (Director) to deny a variance to expand a nonconforming use at 1702-31st Avenue South.

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

Parties to the proceedings were: appellant represented by Ron J. Perey, attorney at law; and the Director represented by Leslie Durkee.

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

This matter was heard before the Hearing Examiner on May 20, 1982.

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. Appellant applied for a master use permit to construct deck additions to a nonconforming duplex at 1702-31st Avenue S. The Director determined that a variance would be required from Section 24.14.060 to allow the expansion of a building nonconforming as to use. The variance was denied. Appellant filed the instant appeal.

2. The subject property is a lot in a Single Family Residence High Density (RS 5000) zone developed with a duplex residence. The duplex has been determined by the Director to be legally nonconforming. That determination is not a subject of the appeal of the the master use permit decision.

3. The development in the area around the subject property is mixed single family, duplex and triplex. A Duplex Residence High Density (RD 5000) zone begins approximately one-half block to the north. Duplexes also occur in the RS 5000 zone. The record does not reflect whether they are legally nonconforming or illegal uses.

4. Appellant has renovated a derelict building which had suffered fire damage. She has been permitted to add a proposed lower platform without variance because the Director has determined that decks less than 18 in. above grade are exempt from permit requirements. The Director considers construction which requires a permit an expansion or alteration which comes within the prohibition of Section 24.14.060.

5. The deck for which variance is requested would be at the rear of the house at the first floor level which would be approximately 8.5 ft. above grade. The lot drops off steeply approximately 10 ft. beyond the rear of the house.

6. The subject property, and others in the area, have sweeping views of Lake Washington and the Cascade mountains. Most residences have decks for the enjoyment of those views. The platform at ground level does not afford the lake view because of trees.

7. The duplex residence has the appearance of a single family house and has the same size and character as many nearby single family residences.

8. With one exception the owners and residents of the surrounding single family homes support appellant's effort to add a deck.

9. The proposed deck would not diminish anyone's lake view.

10. The Single Family Residential Areas Policies provide that structures in legal higher density residential use may be improved, renovated and structurally altered but not expanded except for access for the elderly and handicapped.

11. There is some evidence, based upon the observations of a neighboring property owner and the architect, that a deck was attached to the house at one time.

Conclusions

1. The steep drop-off behind the house makes outdoor enjoyment of the view impossible without the deck. Appellant's property is denied the enjoyment of a view deck that nearly all other properties in the area have because of the type of residential development of her property. The deck addition would not contribute to a more intensive use of the property but would allow a facet of use which is common to the single family residences. The evidence of the prior existence of a deck adds to the possibility of undue hardship which would be experienced by this property if the operation of the code provision prevents the deck addition.

2. The variance requested would be the minimum necessary for relief and would not convey special privilege since most other residences with views do have decks.

3. No physical detriment or injury to other properties would accrue from the variance allowing the deck addition. The addition would in no way change the character of the neighborhood.

4. The variance would conflict with the Single Family Residential Areas Policies if the bulk of the structure were, in fact, expanded. That is problematic, however, since there is some evidence of a earlier deck which had been removed prior to the current renovation. Allowance of the deck in that case should not be treated as an expansion of the bulk and it has been shown that it would not intensify the use of the structure. Therefore, it does not conflict with those policies.

Decision

The decision of the Director is reversed and the variance is GRANTED.

Entered this 3rd day of June, 1982.

M. Margaret Klockars
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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.