

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

In the Matter of the Appeal of

PEGGY E. GAYNOR

FILE NO. MUP-82-035(V)
APPLICATION NO. 82-0134

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

Introduction

Applicant replaced the porch, balcony and steps at a single family residence located at 1308 N.W. 83rd Street. An appeal was taken from the Department of Construction and Land Use (DCLU) denial of requested variances to allow for the expansion of a building nonconforming as to bulk and to provide less than the minimum required front yard.

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, pro se; the Director of the Department of Construction and Land Use by Daniel Farber.

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 June 9, 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. The subject property is located in the Single Family Residence High Density (RS 5000) zone at 1308 N.W. 83rd Street. The lot is 48 ft. wide and 50 ft. deep for a total lot area of 2,400 sq. ft.

2. Topographically, the lot is similar to other vicinity lots in that it rises slightly from the sidewalk before leveling to its principal elevation.

3. The subject lot is developed with an older, single family residence with balcony fronting on N.W. 83rd, a street roughly 60 ft. wide. A 16 ft. wide paved alley abuts the property to the west. North of the subject property is a garage.

4. Property in the vicinity consists of small single family residences on lots larger than 5,000 sq. ft., some with less than the minimum 20 ft. front setback required for the zone. East adjacent is a single family residence fronting on 13th Avenue N.W. with an estimated front yard setback (to the entry stairs) of approximately 5 ft.

5. As noted in her application attachment, applicant wanted to upgrade the subject "dilapidated, structurally unsafe and ugly structure". The work was undertaken and completed without permit.

6. As part of the project new wrap-around steps were constructed. Unlike the previous steps, the new ones comply with building code rise and run specifications. The porch was enclosed and the unsafe balcony replaced and extended approximately 2½ ft. towards the front so that the overhang serves as a cover for the lower level landing.

7. Whereas the setback from the bottom entry step to the front lot line was approximately 7 ft. 9 in. the current distance is 4 ft. 9 in. The Department report noted that the previous nonconforming front yard setback was 11 ft., which was the approximate distance from the porch and second level balcony to the front lot line, and that a 6 ft. front yard setback is proposed. Project applicant's plot plan of the previous porch shows a 9 ft. 9 in. setback to the step with a height of 18 in. or greater while the plot plan of the current development shows the setback from steps with height 18 in. or more as 7 ft. 3 in.

8. The completed project is considered aesthetically pleasing and functional by applicant and by a large number of neighbors, many of whom were in attendance at the public hearing and testified on behalf of the applicant. The general neighborhood sentiment is that the project represents a marked improvement to the neighborhood.

9. Because the property originally provided less than the required 20 ft. setback, the property was nonconforming as to bulk. Variances were accordingly sought from the 20 ft. minimum front yard setback requirement and from the prohibition against expanding a building nonconforming as to bulk. DCLU denied the subject variances and the applicant took this appeal.

10. A witness for the variances questioned whether based on unspecified architectural exception provisions, variances were in fact needed for the subject proposal.

11. With regard to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, Chapter 25.04, Seattle Municipal Code, the action proposed in this subject application has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC 197-10-170.

Conclusions

1. Where unique property conditions such as size, shape or topography would operate to deprive the property owner of comparable development rights and privileges, variance from the strict requirements of the zoning code may be approved so long as the grant of variances does not exceed the minimum necessary for relief; is not materially detrimental to the public welfare or injurious to vicinity property; and so long as the relief does not adversely affect the Comprehensive Plan. Section 24.74.030.

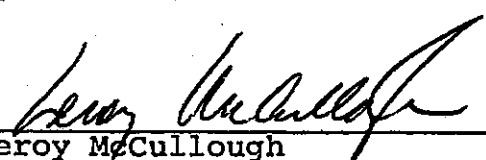
2. The topography and the small size of the subject lot are unique property conditions justifying some relief from the strict requirement of a minimum 20 ft. front yard setback and from the prohibition against expanding the bulk of a nonconforming property. The frontward expansion of the steps is a reasonable response to the building code specifications and the site topography. The spirit and purpose of the single family policies would not be violated by the approved variance relief. Other vicinity properties enjoy less than 20 ft. front yard setback, so that no special privilege would inure to the applicant by the relief herein approved.

3. However, neither the southward expansion of the balcony nor the wrap-around expansion of the steps was proved necessary to afford the applicant comparable development. As constructed these items exceed the minimum necessary for relief, and variance relief for them is denied, aesthetics notwithstanding. This decision is entered without prejudice to an interpretation, pursuant to Section 24.10.030, regarding the need for variance relief.

Decision

The Director's decision is modified. Variance relief to expand the steps and provide less than the minimum front yard, not to exceed the width of the previous entry steps, is GRANTED. Except for this item, the Director's determination is AFFIRMED.

Entered this 23rd day of June, 1982.


Leroy McCullough
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.