

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

ROBERT L. SANDER

FILE NO. MUP-82-037(V)

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

APPLICATION NO. 82-0130

#### Introduction

Appellant proposes to construct a living addition and an off-street parking facility at 489-39th Avenue East.

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, pro se; the Director of the Department of Construction and Land Use (DCLU) 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 29, 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 Medium Density (RS 7200) zone at 489-39th Avenue East. South adjacent is a vacant, steeply sloping through-lot. Single family residences are to the north and west. West parallel McGilvra Boulevard and 39th East run in a north-south direction. The lot, of parallelogram shape with lot lines angled to the street, measures roughly 52 ft. wide and 75 ft. deep and has a lot area of 3892 sq.ft. Topographically, the lot slopes steeply to the front at a 30% grade and north to south at a 15% grade. Other vicinity lots are of similar topography and responsive variances have been approved, including the north adjacent property which was allowed a 1.5 ft. front setback for a carport addition.

2. The subject lot is developed with a two-story single family residence. Applicant, the appellant, initially proposed to construct a carport addition which would reduce the front yard setback from 13.1 ft. (a minimum 20 ft. setback is required in the zone) to .25 ft.; and family room-bedroom additions to the southwest corner of the dwelling. The family room addition would reduce the rear yard setback from 19.6 ft. to 8.0 ft. and the side yard from 5.0 ft. to 3.2 ft. Lot coverage under the proposal would increase from present 34% to 47%.

3. DCLU issued a decision on the application for variances to exceed the maximum permitted lot coverage; to provide less than the minimum required rear, side and front

yards; and to allow for the expansion of a building nonconforming as to bulk. That decision, recognizing "steep topography, small lot size, and existing nonconformance as to bulk" was to grant front and rear yard variances so long as total lot coverage did not exceed 1750 sq.ft., but the decision denied the side yard variance as uncharacteristic of vicinity development and unnecessary for comparable development. Applicant appealed the side yard variance denial and indicated his intent and willingness to reduce the front deck/parking area 4-5 ft. so that total lot area would not, with the room addition proposal intact, exceed 1750 sq.ft.

4. A variance was granted by the Hearing Examiner in 1978 for the subject property for legalization of a deck built by a previous owner. The deck provided less than the minimum required side yard. Part of that deck is located in what DCLU now considers the front yard. X-78-231. The August, 1978, Seattle Department of Community Development recommendation to the Hearing Examiner noted topographical conditions and placement of the existing structure on site as conditions creating undue hardship; and that

Numerous variances for front and side yards have been granted in this area...414-39th Avenue East, front and side yards, 3-8-68; 539 McGilvra, side yard, X-76-188; 454 McGilvra, side yard, 5-23-58; 457-39th Avenue East, (deck in) front yard, 4-24-64. Thus the subject request would not result in special privilege...

The variance for property at 539 McGilvra Boulevard East was for a 3 ft. side yard. X-76-188.

5. In response to a spring and drainage from the (west) hillside, a c. 1927 retaining wall is maintained. The wall is immediately north of the area proposed as the northernmost point of the proposed room addition. In the applicant's view, reducing the south side yard extension would mean a reduction in the size of the room to the point it would be non-functional, architecturally inconsistent and unsuitable for living space since further northern setback is restrained by the retaining wall, since construction will be above the retaining wall. Tearing out the existing wall for construction and later replacement; or placing additional weight on that retaining wall is considered risky and expensive by the applicant.

6. Due to topography the addition would not block views. Letters of record from neighbors support the variance application.

7. 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 19710170.

#### Conclusions

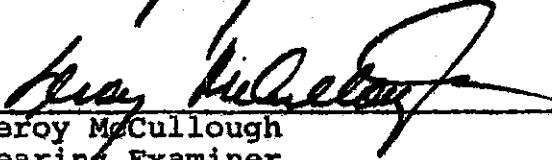
1. The location of the subject dwelling on this sloping, small and angled lot is a unique property condition justifying some variance relief. The hardship was not owner created. Section 24.74.030. Without variance relief, applicant would be denied comparable development privilege. Accordingly, it appears that the Director's decision to approve the variances is appropriate. As conditioned by the Director's decision the proposal will be consistent with the Comprehensive Plan as modified by the Single Family Residential Area Policies, presently codified in the Land Use Code.

2. However, the Director's decision denying the side yard variance is reversed. The rear retaining wall, spring and drainage system also operate as unique property conditions requiring more southerly construction of the proposed addition. Requiring applicant to destroy and substitute or build upon the existing vintage retaining wall would constitute an undue and unnecessary hardship. The relief sought does not exceed the minimum necessary for relief, and would not constitute a grant of special privilege as designated side yard variance relief was granted for vicinity properties at 454 and 539 McGilvra Boulevard East. Due to the topography of the subject and other vicinity properties the addition will not prove visually obtrusive and will not prove materially detrimental to the public welfare, as suggested by the support letters of record. The spirit of the Comprehensive Plan and successor will not be harmed by this proposal.

#### Decision

The Director's decision to deny the side yard variance is REVERSED.

Entered this 12th day of July, 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.