

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

In the Matter of the Appeal of

DAVID A. NYGREN

FILE NO. MUP-83-013(V)  
APPLICATION NO. 83-035

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

Introduction

Appellant, David Nygren, appeals the decision of the Director of the Department of the Department of Construction and Land Use to deny two variances and partially grant a third for property at 330 N.W. 89th.

The appellant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on April 14, 1983.

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 a lot with 4,800 sq. ft. of area at 330 N.W. 89th developed with a two story house. The house has a 3.5 ft. setback on the east side (after removal of the stairs) and 20 ft. on the west side.

2. Appellant applied for variances which the Director determined were necessary to allow decks in the front and side yards and for parking in the required front yard.

3. Section 23.44.14.C and D requires a minimum side yard of 3.5 ft. Appellant needs a variance to allow the deck to extend to the property line. Stairs leading to a second story porch and entry were removed when they became deteriorated. Appellant constructed a deck in their place to provide access to that entry and to allow access to the rear yard from that side which was not available before.

4. The deck, as constructed, would not be permitted by the Building Code so the variance was considered to have no value and denied. Appellant believes, after talking with that division's personnel, that there may be a way to conform to the requirements of that Code.

5. The way the house is situated gives it the narrowest side yard in the area. The second story entry is also unusual for the area.

6. The front entrance to the house is also at the second story. A variance from Section 23.44.14A is requested to allow an 8 ft. wide deck across the front of the house. The required front yard setback is 17 ft., determined through averaging. The deck would leave a 10 ft. front yard setback.

7. The Director determined that the second story deck would serve as the principal entrance to the house so variance is warranted to the extent needed for that purpose. As the existing deck is 4 ft. wide the variance was granted to allow a 4 ft. wide deck across the front of the house.

8. The deck with supports and railings is actually 4.5 ft. wide.

9. An 18 ft. wide strip of street right-of-way along the north side of N.W. 89th is undeveloped.

10. Appellant proposes to park in the driveway, partially under the deck, in the required front yard, at least until he can develop parking in the side yard. The basement garage was too small to be used and was enclosed. A driveway leads to the former garage.

11. The side yard, where parking could be provided, is the lowest spot in the vicinity and is described by appellant as boggy. Fill and concrete would be used eventually to make a useable parking space there.

12. Residents of other houses in the area are parking in required front yards. One lot, across the street from the subject property has a paved front yard.

### Conclusions

1. Due to the unusual conditions of the siting of the house so near to the side lot line and the second story entrance, the property would be denied a right enjoyed by other properties, i.e., secondary access, if the Code's side yard setback requirement were strictly enforced. The variance to provide access would not go beyond the minimum necessary nor would it confer special privilege. As long as building code specifications are met by any structure constructed, the variance would not be materially detrimental nor injure any property. Such variance would be consistent with the spirit and purpose of the Land Use Code.

2. The unusual siting and design of the house also create hardship in abiding by the front yard setback requirement since any reasonable provision for entrance would intrude into the required yard. As concluded by the Director, the 7 ft. intrusion by an 8 ft. wide deck would go beyond the minimum necessary to provide an entrance. A deck 4.5 ft. wide would be adequate. No special privilege would be conferred and no material detriment or injury is reasonably foreseeable. The variance would not conflict with the spirit and purpose of the Land Use Code since the existing streetscape would be virtually unchanged.

3. In assessing rights other properties are enjoying to compare them to the restrictions on the subject property due to unusual conditions, those enjoyed "illegally" may not be considered. The parking in other front yards is not done pursuant to variances and must be, therefore, illegal. The lot has adequate space for legal parking, though improvement would be required, so the relief requested goes beyond the minimum necessary.

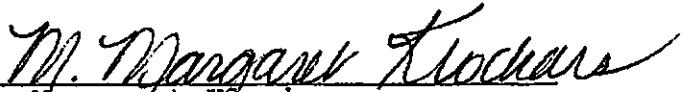
4. Front yard parking has been, in the past, regarded as detrimental to the appearance of a neighborhood. The widespread use of front yards for parking in this neighborhood suggests that it is not objectionable to a good portion of the residents. Also the new provision in Title 23 allowing parking in a required front yard in driveways leading to a required parking space indicates that such parking is held by the Code in less disfavor than in the past.

5. While the application does not satisfy the requirements for variance from the parking restriction, the conditions are such that the Director is encouraged to allow a generous period for compliance so that a new, conforming space can be created in the side yard.

Decision

The side yard variance is GRANTED; the front yard variance is GRANTED for a deck, 4.5 ft. wide, across the front of the house and any stairway necessary to reach the deck; the variance for parking in the required front yard is DENIED.

Entered this 27th day of April, 1983.

  
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.