

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

EVVIAN WILLIS for
DAN HATHAWAY

FILE NO. MUP-84-002
APPLICATION NO. 83-580

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

Introduction

The Director of the Department of Construction and Land Use (DCLU) denied a variance requested by applicant to provide less than the minimum required front yard at 6614 39th Avenue S.W. This appeal followed.

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

This matter was heard before the Hearing Examiner on February 3, 1984.

Parties to the hearing proceedings were: applicant Dan Hathaway by Evvian Willis; and the DCLU Director by Mary Pfender.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

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 on the east side of 39th Avenue S.W. It is zoned Single Family (SF) 5000 and is addressed 6614 39th Avenue S.W.

2. The lot is roughly 50 ft. wide and 126 ft. deep. It is developed with a single family residence that currently provides a 65 ft. 4 inch rear yard, a 15 ft. 6 inch north side yard, a 6 ft. south side yard and a 25 ft. front (west) setback. Topographically the property rests above street level with the first floor of the residence approximately 8 feet above the street.

3. The garage is located underneath the southern portion of the principal dwelling. The dining room is above the garage while the living room is along the north portion of the dwelling. A daylight basement is underneath the living room.

4. Applicant proposes to add a deck to the front of the house that would extend 10 ft. from the front wall of the dwelling. The deck would extend 17 ft. 6 inches across. The purpose of the addition is to accommodate the most desirable means, considering the floor plan, to enjoy dining on deck. The proposed deck is to be supported by eight ft. pylons over the driveway and would project five feet into the required 20 ft. front yard setback. The DCLU Director denied the required front yard variance and the applicant submitted this appeal.

5. Several homes in the vicinity appear to have front decks, but within the required front yard setback. An exception is located two houses south at 6622 39th Avenue S.W. where the cantilevered front

deck projects to within eight ft. of the property line. DCLU has no record of variance for this deck, constructed in the early 1940's and renovated in 1982.

6. In 1983, the property at 6622 39th Avenue S.W. was denied variance relief, which denial was upheld by the Hearing Examiner, to provide less than minimum required front yard and to allow for the expansion of a structure nonconforming as to (front yard setback) development standards.

7. Also, the block front plan, Director's Exhibit 4, shows that a terraced garage is built to the front lot line at 6610 39th Avenue S.W., which property is north adjacent to the subject property.

8. Appellant acknowledges that a five ft. wide deck could be built without variance relief. However, he indicates that a deck of that size would only be sufficient for a sitting area whereas a dining area is desired. Further, the alternative of building the deck around to the north would require a change in the entry and would deprive the daylight basement under the living room of certain daylight.

9. With regard to the State Environmental Policy Act of 1971 (SEPA) and 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. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code.

2. Section 23.44.14.A requires a minimum front yard setback of 20 ft. Variance approval is needed in order for applicant to provide less.

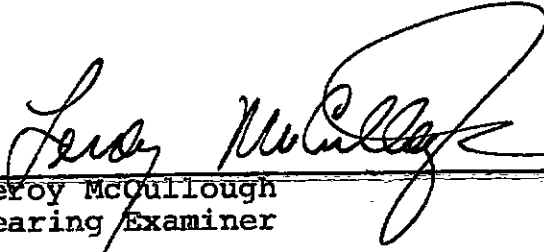
3. Variance relief from the requirements of the Land Use Code may be authorized only when unusual conditions applicable to the subject property would deprive the property of rights or privileges enjoyed by other properties in the same zone or vicinity, which conditions were not created by the owner or applicant. Further the requested variance should not exceed the minimum necessary for relief nor prove materially detrimental to the public welfare or injurious to the zone or vicinity property or improvements. The requested variance must be consistent with the spirit and purpose of the Land Use Code and adopted Land Use Policies. And it must be shown that the literal interpretation and strict application of the Land Use Code would cause undue and unnecessary hardship.

4. Except in a precedential sense the granting of this variance would not be materially detrimental to the zone or vicinity. However, not all of the required conditions for variance have been shown. Therefore the variance must be denied. The record does not reflect that other properties in the subject zone and vicinity enjoy front yard decks at the expense of compliance with the front yard setback requirements. The exception at 6622 39th Avenue S.W. has not been shown to result from variance approval; rather it appears to be a legal nonconforming use. When efforts were made to extend the nonconformity, they were unsuccessful. Appellant has alleged no real property conditions which suggest that the deck is required for comparable development privileges.

Decision

The decision of the DCLU Director is Affirmed.

Entered this 17th day of February, 1984.



Leroy McCullough
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418(1977); JCR 73 (1981). Should such request 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 successful in court.