

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

BRUCE P. BABBITT

FILE NO. MUP-84-070(V)
APPLICATION NO. 8403631

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

Introduction

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 October 12, 1984.

Parties to the proceedings were: attorney Bruce P. Babbitt, pro se; the Director of the Department of Construction and Land Use represented by Patrick Doherty, land use specialist.

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 in a single family zoned area of Seattle at 3716 47th Place N.E.

2. The subject irregularly shaped lot is found on the east side of 47th Place N.E. The lot has 60 ft. of frontage along 47th; an 83 ft. south lot line that fans out to the south; a 69 ft. rear (east) lot line; and a 100 ft. north lot line. Lot area is 5826 sq. ft.

3. The lot is developed with a 2-story, essentially square single family dwelling with side walls 33 and 31.5 ft. in length, and front and rear walls of 32 ft. 8 in. The structure is built closer to the north lot line so that while the north setback decreases as you progress to the rear, the south sideyard setback correspondingly increases from a distance of 16 ft. 10 in.

4. The minimum rear yard setback is 18.8 ft. Section 23.44.14(B).

5. The rear yard area is basically level. Much of this rear area is concrete (patio) block, especially the southeast portion. The north, northeast area of the rear yard is developed with plantings.

6. Applicants propose to add to the rear of the dwelling a 200 sq. ft. (10 ft. x 20 ft.) family room kitchen area which would open into a 60 sq. ft. enclosed porch (mud room). DCLU approved variance relief for the 1 ft. encroachment of the family room into the minimum required rear yard, but denied the request for the enclosed porch to extend 6 ft. into the required rear yard. Applicants submitted this appeal from the denial of the variance.

7. The subject lot's depth is some 25 ft. less and the lot's area some 1400 sq. smaller than the majority of the lots on the block face.

8. DCLU assessed that most other lots would accommodate the same size addition as proposed on their properties without variances.

9. Applicants consider the present proposed siting as the one of least impact. A non-variance addition to the north would mean more architectural problems, such as roofline retention, and impact the planting area. Shifting the addition locale south would "impact the useable portion of the rear yard" and the rear wall leaded windows and window wells.

10. In effect a minimum rear yard setback of 10 ft. would result by approval of the proposal as presented.

11. In DCLU's opinion reasonable, non-variance alternatives exist, such as a 18" or lower deck; or placing the addition along the south side of the dwelling. Further, according to the DCLU decision, the enclosed porch as proposed would be inconsistent with the Single Family Residential Areas policy objective of maintaining open space between adjacent property developments.

12. Appellants countered in argument that a deck is no way comparable to a "mud room" in terms of security, energy efficiency or protection from the elements.

13. 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 criteria for variance relief appear at Section 23.40.20 and are paraphrased in the DCLU decision here at issue.

2. One criterion requires a showing that unusual property conditions such as size or shape would deprive applicant of comparable privileges and relief absent variance relief. In granting the 1 ft. variance, DCLU has acknowledged the size and shape of the subject parcel as unusual conditions supportive of the variance grant. That grant of variance was not appealed, so that the Examiner is not required to reassess the 1 ft. variance. The Examiner would nevertheless note that some relief is afforded the subject property by operation of Section 23.44.14 (B).

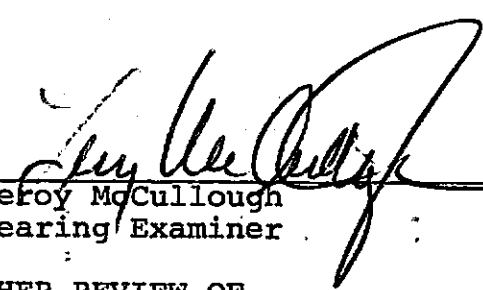
3. Assuming that the lot size and shape are qualifying property conditions, the Examiner remains unpersuaded that the addition, as proposed, constitutes the minimum necessary for relief. Nor is the Examiner persuaded that an undue and unnecessary hardship would result by denial of the variance, although some discomfort and inconvenience is certainly expected. Since all of the criteria are not met, the requested relief is denied.

4. In the previous Hearing Examiner decisions provided this Examiner, the common theme is that the proffered solution was the minimum necessary for relief. In the instant case, applicants wish to retain planting areas as well as the southeast (backyard) area, and exercise the option of encroaching into the rear yard area and provide an effective 10 ft. setback. The problems associated with the potential alternatives are not of the degree that variance relief is appropriate. The Director's decision is affirmed.

Decision

The Director's decision is affirmed.

Entered this 26th day of October, 1984.


Leroy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW OF
HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

The decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review of the decision must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11); Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73.

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.