

## FINDINGS OF DECISION

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

In the Matter of the Appeal of

GARY S. PLANO

FILE NO. MUP-88-070(V)  
APPLICATION NO. 8804241

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

#### Introduction

The appellant exercised the 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 November 17, 1988.

Parties to the proceedings were: appellant Gary S. Plano, pro se; and the Director, Department of Construction and Land Use by Jim Barnes, 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, and following a visit to the site and vicinity, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

#### Findings of Fact

1. The essential facts are not in dispute. The subject property is located on North Queen Anne Hill at 2606 Queen Anne Avenue North. The interior lot has 40 ft. of frontage along west abutting Queen Anne Avenue North and is approximately 80 ft. deep for a lot area of roughly 3200 sq. ft.

2. The subject lot, one of several "undersized" lots in this vicinity, is developed with a 1.5 story single-family residence. Applicant's dwelling has a 7' 6" north side yard and a 6 ft. south side yard. To the rear (east) of the structure, a concrete wall marks the south and east property lines. The wall varies in height from 50 inches to 68 inches. The structure is generally located 23 ft. forward (west) of the rear lot line.

3. Although there are many undersized (less than 5000 sq. ft.-area) lots in the vicinity, there are also several standard sized and larger lots. The siting of these lots is, in most cases, irregular.

4. Applicant's lot extends east for 80 ft. South and southeast adjacent to this lot are three lots that have frontage to Raye Street.

5. Topographically, the subject area slopes steeply to the north and east. This affords some territorial views from area decks and rear yards.

6. Applicant has constructed a multi-level deck addition that extends from the dwelling to the south side and rear property line indicators (i.e. to the walls). The deck is from 2-4 ft. above grade. (Portions of a deck more than 18 in. in height and attached to the principal residence are defined as part of the principal structure.)

7. There is approximately 80 sq. ft. of the deck in the side setback area and roughly 338 sq. ft. in the required 16 ft.

rear yard. These figures include the decking in excess of 18 inches in height.

8. Included within what is the 16 ft. rear yard setback are stepped portions of the deck which lead to a self-contained hot tub. The hot tub is surrounded by the decking and is lower in elevation, close to the east (rear) wall and roughly centered.

9. The applicant also proposes to construct a 5 ft. wide trellis above the deck along the south (side) and east (rear) property lines.

10. The maximum rear yard coverage allowed, without variance, is 40 percent. The 338 sq. ft. of deck in the 16 ft. rear yard brings lot coverage to 53 percent and would allow no rear yard setback.

11. DCLU determined that three variances were required. The variance "to allow portion of principal structure in the required side yard" of 5 ft. was granted and no appeal therefrom was filed.

12. DCLU denied the remaining two variances "to allow portion of principal structure to exceed maximum rear yard coverage (40 percent allowed, 53 percent proposed);" and "to allow portion of principal structure in the required rear yard (required 16 ft., proposed is 0 ft.)." DCLU also denied the variance relief required for the trellis. Applicant submitted this appeal from the variance denials.

13. A 225 sq. ft. area deck could be built to the rear of the residence without variance. If covered, the deck could extend an additional 4 ft. from the dwelling for a total of some 11.5 ft.

14. The Hearing Examiner finds that much of the grade beneath the rear deck is relatively flat. The grade beyond is deck construction is not extreme but is moderately sloping. Photo Exhibits 7, 7A.

15. The existing decking and proposed trellis are improvements over a previous, fiberglass covered outdoor area.

16. The south adjacent dwelling, addressed as 8 Raye Street, is high and imposing. From its kitchen window, there is presently an unobstructed view of the applicant's deck (sans trellis) and a territorial view across the applicant's property. Photo Exhibit 17.

17. Community sentiment is in favor of the proposal.

18. Applicant submitted photo and other examples of lot coverage in excess of 35 percent and where there were, from appearances, minimum or nonexistent side or rear yard setbacks, e.g. Exhibit 1. One such illustration is that of 2516 1st North, the site covered by a January 15, 1965 building permit. This 4000 sq. ft. area site was approved, per the evidence, to have a deck above the garage 9 1/2 ft. from center of the alley. Photo Exhibit 14.

19. A second illustration from applicant is for 2914 Queen Anne North. That lot, per applicant's uncontroverted testimony, was approved for a 1962 side yard and total lot coverage variance.

20. A third example submitted by applicant was that of 14 West Raye Street. In 1979, property was accorded variance relief for a rear yard carport and deck addition. The then-Hearing Examiner observed that the limited depth of the lot (65 ft.) and the small size of the lot (2600 sq. ft.) compared to other sites justified variance relief. Exhibit 1M (File No. X-78-49).

21. A fourth example was that regarding a deck addition approved for 2626 Queen Anne North. The variance to allow 5 ft.

instead of the 11 ft. rear yard was granted in March 1965 and the building permit issued in April 1965. Exhibit 11.

22. Applicant was unable, for practical reasons recognized by this Examiner, to verify the precise setbacks and lot coverages for the several illustrations submitted. Also, no recent variances were submitted.

23. Applicant's lot is sited between Queen Anne and 1st Avenues North and between Newell and Raye Streets. This rectangle is applicant's study area #1. The applicant submitted that this area's average lot size was 3750 sq. ft. North of Newell the "block" average lot size is 5000 sq. ft.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code.

2. The variance criteria are delineated at Seattle Municipal Code Section 23.40.20. All of the criteria must be met before variance relief may be authorized.

3. As the Hearing Examiner understands it, applicant's proposal is to modify the rear yard by decking so that the rear yard may be used for stable setting of chairs and tables. The trellis would add to the privacy and ambiance of the (decked) rear yard.

4. The rear yard shows some sloping. It is bordered by a concrete wall. However, the rear yard and overall lot characteristics are not "unusual conditions" which support variance relief. At 3200 sq. ft. the lot is smaller than the technically standard 5000 sq. ft. area lot. In practical application, however, the Hearing Examiner notes that the average lot size for applicant's "block" is only 3750 sq. ft. Also, there are other small lots within the vicinity. Further, the Seattle Municipal Code provides footprint development allowances and other compensations for undersized lots. The lot's size does not justify variance relief.

5. The lot's topography is sloping but is not dysfunctional without the variance relief requested. Further, other lots of varying sizes and dimensions in this vicinity are required to respond to similar topographical features.

6. Denial of the rear yard setback and the lot coverage variance would constrict the use of the site but would not deprive the property of comparable development privileges. A deck could extend up to approximately 12 ft. from the dwelling without variance relief. This amount of area was not shown to be less than required for reasonable or comparable use.

7. The variances submitted for comparison essentially predate present Land Use Code provisions, and the approved, resulting setback and lot coverage dimensions are generally not of the record. Third, the illustrations have many distinguishing features, such as access to any alley (2516 - 1st North). In the 1979 example, 14 West Raye Street, the lot was only 65 ft. deep and 2600 sq. ft. in area. Applicant's lot is 80 ft. deep and 3200 sq. ft. in area.

8. In sum, there is no size, topography or other unusual property condition which, without variance relief, would deprive applicant of comparable rights and privileges.

9. The foregoing conclusion also applies to the request for the trellis. To the extent that lack of privacy is at issue, the proposal exceeds the minimum necessary to afford relief i.e. applicant can pursue vegetative or other screening which would not add to the "build-up" perspective of the small lot.

10. To the extent that there is an insufficient basis for variance approval, the variance approval could be considered

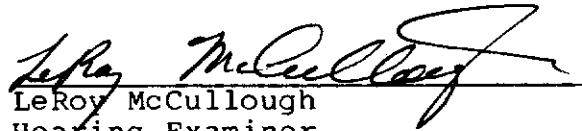
detrimental and violative of the Land Use Code spirit and purpose. On the other hand, the community sentiment is supportive of the project.

11. Since reasonable side yard and (reduced) rear yard decking is appropriate, variance denial for a larger deck would cause no "undue and unnecessary hardship." Further, the requested rear yard is not shown to be topographically dysfunctional.

Decision

The DCLU decision is AFFIRMED.

Entered this 1<sup>st</sup> day of December, 1988.

  
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 party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

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, (206) 684-0521.