

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DAVID AND MARY DAHEIM

FILE NO. MUP-90-029(V)
APPLICATION NO. 9000502

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

Introduction

Appellants, David and Mary Daheim, appeal the decision of the Director of the Department of Construction and Land Use to grant variances allowing construction of a second story addition in a required rear yard at 2637 2nd Avenue North.

The appellants exercised their 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 July 23, 1990. The record was held open until July 30 to allow for a site visit by the Examiner.

Parties to the proceeding were David Daheim, pro se, and the Director, Department of Construction and Land Use, by Arthur Ward, associate land use specialist. Dale Johnson, the architect for the project and the applicant for the variance, testified at the hearing.

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 the site visit, the following shall constitute the findings of fact, conclusions of law, and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is located at 2637 2nd Avenue North, on the north slope of Queen Anne Hill.

2. The property is legally described as Lot 3, Block 15, Mayfair Addition, less the west 60 feet, and is zoned Single Family 5000 (SF 5000).

3. The property is 40 feet in width and averages approximately 51 feet in depth, for an overall size of roughly 2,040 square feet.

4. The existing house on the property measures 34 feet (north-south) by 29 feet 2 inches (east-west). The eastern 5 feet of the first level of the house is a covered porch, so the interior square footage of the first floor is 821 square feet. The residence sets back 3-feet from the side property lines, 3-1/2 feet from the rear property line, and between 15 feet 1 inch on the south margin to approximately 25 feet on the north margin from the front property line. The property slopes upward from east to west, and from north to south.

5. Going north from Raye Street to Newell Street, 2nd Avenue North descends from 230 feet above sea level to 170 feet.

6. The applicant's block is characterized by older residences, most of which appear to have been constructed in the 1920's or before. Of the 16 lots in the subject block, 10 lots are very small, but comparable in lot area to the subject lot (between about 2000 sq. ft. and 2600 sq. ft.). Three lots in this block have areas of approximately 3900 sq. ft. to 4200 sq. ft. and one lot contains a lot area of about 6200 sq. ft. The lots in the block front located east of the subject block are 4000 sq. ft. or larger and average about 5600 sq. ft.

7. Section 23.44.014 provides that single family lots are required to have rear yards of 25 feet or 20 percent of lot depth, whichever is less, but in no case less than 10 feet. The subject property, therefore, is required to have a rear yard of 10.2 feet in depth ($.20 \times 51' = 10.2'$). On this basis, the existing house extends 6.7' into the required rear yard. As such, the house is considered a nonconforming structure.

8. The variance applicant (the architect for the property owner) proposes to construct a second story addition. The addition is proposed directly above the first floor, in line with the existing foundation and bearing walls and extends over the existing covered porch.

9. Section 23.44.014(D)(3) reads as follows:

3. Certain Additions. Certain additions may extend into a required yard when the existing single-family structure is already nonconforming with respect to that yard. The presently nonconforming portion must be at least sixty percent (60%) of the total width of the respective facade of the structure prior to the addition. The line formed by the nonconforming wall of the structure shall be

the limit to which any additions may be built. They may extend up to the height limit and may include basement additions. New additions to the nonconforming wall or walls shall comply with the following requirements (Exhibit 23.44.014 A):

a. Side yard: When it is a side wall, it is at least three feet (3') from the side property line;

b. Rear yard: When it is a rear wall, it is at least twenty feet (20') from the rear property line or centerline of an alley abutting the rear property line;

c. Front yard: When it is a front wall, it is at least fifteen feet (15') from the front property line.

10. Section 23.44.082(A) and (C) provides as follows:

A. A nonconforming structure may be maintained, renovated, repaired or structurally altered but shall be prohibited from expanding or extending in any manner which increases the extent of nonconformity, except as otherwise required by law, as necessary to improve access for the elderly and disabled or as specifically permitted for nonconforming uses and nonconforming structures elsewhere in this Code.

C. A nonconforming accessory structure or nonconforming part of a principal structure located in a yard which is required by the development standards of the zone may be rebuilt or replaced but may not be expanded or extended beyond its former dimensions except as permitted by Section 23.44.014D3.

11. While the proposed addition would place additional bulk in the required side yard, this portion of the addition is allowed under the terms of Section 23.44.014(D)(3) and 23.44.082(C). However, the exceptions provided by those sections do not apply to allow that portion of the addition that would be located in the rear yard.

12. Because the addition would place additional bulk in the rear yard, a variance from the Code's yard provisions is required. A variance approval is also required from the terms of 23.44.082A to expand a nonconforming structure.

13. Under the terms of 23.40.020(c), variances from the provisions or requirements of the Land Use Code shall be authorized only when all the following facts and conditions are found to exist:

1. Because of unusual conditions applicable to the subject property including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code or Title 24 would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity; and
2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located; and
3. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located; and
4. The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code or Title 24 would cause undue and unnecessary hardship; and
5. The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan component, as applicable.

14. The three single family residences abutting to the north, west and south of the subject lot have rear yards with no development on them.

15. The Department of Construction and Land Use (Department) granted a 2 ft. 5 in. front yard variance (13 ft. 11 in. required, 11 ft. 6 in. proposed) on October 19, 1989, MUP #8905226, for 2621 Second Avenue North (the third lot south of the subject lot). This variance was to construct a second story, 757 sq. ft. addition over an existing residence with a first floor area of 825 sq. ft. In 1981, variances were conditionally granted the residence at 2612 Warren Avenue North, (application #81285-0387), to construct a 6 ft. wide by 12 ft. 10 in. long deck in the required (10.5 ft.) rear yard (proposed 5 ft. rear yard - existing rear yard of 13.5 ft.).

16. The adopted single policies of the City of Seattle are found at 23.16.002.

17. At hearing, the applicant submitted revised drawings (Exhibit 8) that substantially decreased the bulk of the addition from what was on the plans considered by DCLU.

18. The Department recommended that the variances requested be granted.

Conclusions

1. Variance decisions of the Director are appealable to the Hearing Examiner pursuant to Section 23.76.022. Under the terms of that section, the Director's determination on variances is given no deference.

2. The first variance criterion which must be satisfied is that of property related hardship. In this case that condition appears to be the configuration of the existing house. To add a second story to a house is structurally difficult if one cannot extend the existing structural facades. This difficulty is recognized in the Land Use Code by the inclusion of exceptions to yard requirements allowing the extension of facades. (23.44.014).

3. With a height limit in single family zones of 30 feet, the Land Use Code plainly envisions homes of two and even three stories. In the area of the subject property, numerous homes appear to have full second floors, though a good many homes are either single story or single story with upper rooms in an attic. On balance, the Examiner concludes that a second floor is a "right or privilege" enjoyed by other properties in the vicinity and that there is a hardship that enables one to look at the other variance criteria.

4. Because the very nature of the hardship is the need to continue the existing facade, a request to build the second story within 3 1/2 feet of the rear property line does not go beyond the minimum necessary to provide relief. However, the design initially submitted to DCLU placed more bulk in the rear yard than is necessary.

5. The question of bulk and minimum necessary ties in directly in this case with the question of detriment to the public welfare. The Code language is important. Section 23.40.020(B)(3) states that the variance should be neither "materially detrimental to the public welfare" or "injurious to the property or improvements" in the vicinity. The idea of public welfare would seem to refer one to policies adopted by the city for governance of residential neighborhoods as a whole, as well as more basic fire and life safety questions. In this regard, it is significant that there is no city policy for the protection of private views. There is, however, language in the single family policies that deals with the protection of light and air, considerations of bulk and scale, and protection of neighborhood stability.

6. On the question of injury to property in the vicinity, the two aspects of injury highlighted at the hearing were blockage of light (especially on the Dankers property immediately to the west of the subject site) and blockage of views, particularly from the Daheim and Davis properties at 2630 and 2634 Warren Avenue. On both these scores, it is not clear how much better off these other properties would be if the second story were kept entirely out of the rear yard. Any second floor addition on the subject property (including those possible without a variance), would block light to the Dankers property and block the views of the residents at 2630 and 2634 Warren. However, on the plans originally submitted to DCLU represented an unwarranted amount of injury to other properties, especially to the property to the west. Construction in accord with those plans would place a large facade and roof line along that property's eastern side that would be intrusive and block any light from the east.

7. As noted above, because of the structural problems entailed in setting the second story back some 6.7 feet from the rear facade, strict application of the Code would result in undue hardship in this case to the applicant. While the applicant states that an addition will be constructed with or without the variance, inability to utilize the rear facade would make the addition more difficult and expensive, as well as substantially reducing its square footage.

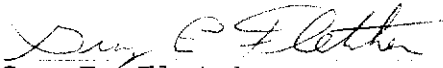
8. Finally, city policies in this case run in two directions. On the one hand, they favor the improvement of existing housing, even nonconforming housing. On the other, they seek to protect neighborhoods and to set standards that protect the rights of adjoining properties to light and air.

9. On the basis of all of the above, the Examiner believes the variances requested should be granted, but, pursuant to 23.40.020D, that they should carry a condition that the second story expansion not exceed the exterior dimensions shown on Exhibit 8, the revised plans submitted by the applicant at the hearing. The reduced bulk of the roof will substantially decrease the level of intrusion and light blockage represented by the original application.

Decision

The variances from the provisions of 23.44.014 and 23.44.082 requested by the applicant are GRANTED subject to the condition that the expansion of the house is limited to the dimensions shown on Exhibit 8.

Entered this 14th day of August, 1990.


Guy E. Fletcher
Deputy 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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.