

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

In the Matter of the Appeal of

WALTER & BETTY JEAN BENDER

FILE NO. S-78-014

from a ruling by the Superintendent  
of Buildings

The appeal is DENIED and the Superintendent's ruling  
is affirmed.

Introduction

The appellants, Walter and Betty Jean Bender, filed an appeal from an interpretation by the Superintendent of Buildings relating to property at 821 West Blaine Street.

The appellants exercised their right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

Parties to the proceeding were: Walter and Betty Jean Bender, represented by George A. Kresovich, Hillis Phillips, Cairncross, Clark and Martin, P.S.; the Superintendent represented by Joyce C. Kling, zoning administrator; William S. Bailey, attorney-at-law, intervenor.

This matter was heard before the Hearing Examiner on June 12, 1978.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The appellants are owners of property at 821 West Blaine Street. A building permit was issued December 14, 1977, "to construct two story addition and alter existing I-OFD per plan with decks." Construction was begun. A subsequent review of the plans indicated that a portion of the upper story was being built within the required side yard.

2. Appellants requested a formal interpretation of Section 5.32, Ordinance 86300, as amended which states:

"Any building conforming as to use but which is a building non-conforming as to bulk as of the effective date of this Ordinance may be altered, repaired or extended; provided that such alteration, repair or extension does not cause such building to further exceed the bulk provisions of this Ordinance."

3. The Superintendent rendered his interpretation dated May 8, 1978, which was published May 9, 1978. The Superintendent decided that "construction of a portion of upper story closer to the property line than 5 feet is construction in the required side yard and causes a building nonconforming as to bulk to further exceed bulk provisions of the Zoning Ordinance in violation of Section 5.32 of that Ordinance."

4. The appellants filed their appeal from this interpretation May 23, 1978. It is their contention that the ordinance section allows alteration or extension of a nonconforming building as long as the alteration does not cause the building to further exceed the bulk provisions of the ordinance.

5. The building as it existed prior to the beginning of construction, had one story which was set back 3 feet 4 inches from the south lot line. An enclosed porch, approximately 3 feet wide, 10 feet long and 12 feet high, extended into the 3 foot 4 inch side yard almost to the lot line. The "porch" was plumbed and wired and used as a room of the house. Its removal was included in the plans submitted with the application for a building permit.

6. The new construction does not extend farther into the setback area on the south side than the original first story. The building extends upward approximately 8 feet adding additional bulk of approximately 54 cubic feet within the 1 foot 8 inch encroachment. The removal of the porch reduced the encroachment of the building into the required side yard by approximately 300 to 360 cubic feet.

7. The Superintendent's position is that any addition to the nonconforming portion of the building would cause the building to further exceed the bulk provisions of the ordinance despite any net reduction resulting from the removal of a nonconforming part.

#### Conclusions

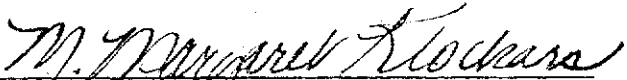
1. The appellants have propounded a construction of the nonconforming building section of the ordinance which they suggest resolves an ambiguity. The trade off proposal, where one can exchange a large nonconformity for a new but smaller violation, has some equitable attractiveness. The results would, however, lead to increased difficulty in administration and enforcement and a lessening of the ordinance's encouragement to bring development into full conformity with its provisions.

2. With those policy considerations in mind, the Superintendent's interpretation must be considered correct. The extension of the building upward in the required yard does cause the building to further exceed the bulk provision as to the side yard setback. The removal of a further nonconforming part cannot be used to offset planned new excess bulk but the equities involved may be raised as an issue in the variance consideration.

#### Decision

The appeal is DENIED and the Superintendent's ruling is affirmed.

Entered this 20th day of June, 1978.

  
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 and any further appeal must be made to the courts.