

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

In the Matter of the Appeal of

JOE McVEY JR.

FILE NO. MUP-81-078(V)
APPLICATION NO. 81236-0288

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

Introduction

The applicant appealed the imposition of conditions on the grants of variances to construct a deck/carport addition to an existing single family residence at 2433-36th Avenue West.

The appellant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: appellant, pro se; the Director of the Department of Construction and Land Use (DCLU) by Cliff Portman.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on December 17, 1981.

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 the Single Family Residence High Density (RS 5000) zone in the Magnolia community at 2433-36th Avenue W.

2. The 6,731 sq. ft. area irregularly shaped lot is located on the west side of 36th Avenue and slopes steeply to the east. It is developed with a single family dwelling located to the rear of the lot in response to the steep front yard area, approximately 60 percent rockery. A 15.5 ft. rear yard is provided. However, of this area only a 11 by 17 ft. approximate area is flat and the remainder is a rockery.

3. Attached to the south side of the residence is a carport with a deck and railings above. The total height of the deck plus railings is approximately 11-12 ft. above the existing parking pad. Stairs to the 295 sq. ft. area deck are located on the east side of the addition.

4. Several block properties have carport structures with access similar to that proposed by the applicant from Eyres Place W., the street west adjacent to the subject property.

5. Because of the topography, the property to the subject property's rear has an overview of the subject deck. As described by applicant the rear property's basement is equal in height to the applicant's roof.

6. Applicant sought relief from the provisions of the code so that applicant could provide less than the minimum 5 ft. required side yard, 25 ft. rear yard and in order to expand the building which is nonconforming as to bulk. Sections 24.20.090, 24.24.090, reference 24.62.150, and 24.14.040. Proposed are the .2 ft. side and the 8 ft. rear yards already provided.

7. DCLU approved the variance request on the conditions that

- a. A one hour fire-resistive wall be constructed along the south side of the carport.
- b. The stair, deck and railing be removed.

The first condition was imposed, according to the DCLU representative since the applicant's carport is located closer than 3 ft. from the south property line, and the second condition because, among other things, the use of the carport top deck would encroach views east, would amount to a special privilege to the applicant and would be detrimental to vicinity property owners.

8. Applicant appealed the conditions since

- a. The south adjacent carport is, according to applicant, cement with a fire retardant roof, and
- b. since in applicant's view, vicinity properties have decks similar in construction and location to that proposed.

No neighbors' letters in support of or in opposition to the variance request were submitted into the hearing record.

9. A variance for a front yard carport/deck was approved in File No. X-77-099 for property approximately one block south of the subject site at 2333 Evers Place W.

10. With regard to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, 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.

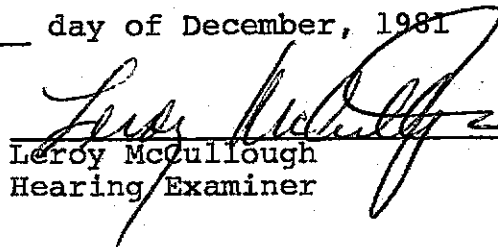
Conclusion

1. The subject property's topography is a real property condition which affects the utility of the yard space and which supports the requested variance relief. As other properties have automobile access from Evers Place and since a front yard variance for a carport/deck was approved for a property approximately one block south, no inconsistent grant of special privilege would be afforded applicant by the conditional relief requested. Because of the topography, the deck does not present as obtrusive. The carport deck, railing and south wall, however, are subject to the building code restrictions regarding fire resistive construction.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED, subject to the modification in Conclusion 1, above.

Entered this 30th day of December, 1981


Leroy McCullough
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal 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 the appellant is successful in court.