

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

HARTLEY PERRETT

FILE NO. MUP-82-069(V)
APPLICATION NO. 82-0350

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

Introduction

Applicants sought and received variance approval to add to property located at 915 Taylor Avenue North, and the owner of an adjacent property appealed.

The appellant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: appellant by Janet Quimby, Evans, Quimby, Hall, Holman and Noble, Inc., P.S.; applicants pro se; and the Director, Department of Construction and Land Use, by Ed Somers.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on January 13, 1983. The record was to be closed on Monday, January 17, 1983. However, the Department of Construction and Land Use submittal of January 18, 1983, was received.

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 Queen Anne area at 915 Taylor Avenue N.

2. The site, with a lot area of 1,419 sq. ft., has 33 ft. of frontage along east adjacent Taylor Avenue N. Lot depth is 43 ft.

3. The site is developed with a one story single family residence of 885.6 sq. ft. of area, exclusive of the basement. It provides a 10 in. setback to the front (east) lot line; and 6 ft. 2 in. setback to the rear lot line; a 7 ft. 6 in. setback to the north lot line; and a 1 ft. setback to the south lot line. The dwelling has a basement garage and an unfinished daylight basement.

4. The subject property is zoned Lowrise 3 (L3). At the time of this subject application the property was zoned RM 800.

5. Surrounding development includes single family residences and apartments to the north, south, east and west. Approximately 12 ft. away and north adjacent to the subject site is a dwelling similar in construction and size to the applicant's structure. An alley is south adjacent to applicant's lot. Immediately south of the alley is an apartment structure.

6. Applicant originally proposed to increase the living area of the subject dwelling from 885.6 sq. ft. to approximately 1,614 sq. ft., by adding a second story addition immediately above the existing structure. Current plans call for indenting four corners of the second level so that construction will not be directly above existing perimeter walls. See Director's Exhibit 4. One of the excised corners spaces will be in use as a deck.

7. The proposed height to the pitch of the roof is 25 ft. With the proposed new addition the height will be 32 ft.

8. According to architect for applicant, the pitched roof will provide a consistent look; and the cut away corners will minimize the impact of the sun shadows on neighboring properties.

9. There will be some increase in the shadow effect on the appellant's property, but the resultant is not substantial.

10. Utilizing the new Land Use Code criteria, the Director approved the necessary variances from the required minimum rear, front and side yards; and also approved the variance to allow for the expansion of a structure nonconforming as to development standards. Appellant, owner and landlord of the north adjacent dwelling, filed this appeal.

11. We adopt as a finding that pertaining to single family development the applicant's lot is one of the smallest within a one block radius; that the average lot size is 4,306 sq. ft.; and that the average house in the neighborhood has roughly 1,346 sq. ft. of living area; although some houses are substantially larger. Some 44 percent of the "neighborhood" houses have 1½ or 2 stories.

Conclusions

1. The Director applied the new Land Use Code criteria to the application at issue. Applicant did not contest. Neither applicant nor appellant requested a Director's interpretation concerning whether Title 23 versus Title 24 analysis was appropriate. Accordingly, the Hearing Examiner's decision will be based upon Title 23.

2. Nonconforming structures, such as the applicants', are generally "prohibited from expanding in any manner which increases the extent of nonconformity or creates additional nonconformity" except under circumstances not applicable to the subject fact pattern. Section 23.45.190.

3. Section 23.45.190 is found in Subtitle IV, Part 2 of the Land Use Code. Setback requirements for the L3 zone are also included in Subtitle IV, Part 2. Section 23.40.20, Variances, provides that variances

...may be sought from the provisions of Title 24
or the provisions of Subtitle IV, Parts 2 and 3
of this Land Use Code....

Accordingly, variance relief from the applicable code provisions may be sought by applicants in the instant case. Cf. Coughlin v. Seattle, 18 Wn.App. 285 (1977).

4. The criteria for relief from the literal requirements of the Land Use Code are delineated at Section 23.40.20.C., and are met by applicants' proposal.

5. The relatively small size of the lot (1,419 sq. ft.) and the location of the dwelling thereon, providing minimal front, rear and south setback are unusual conditions not created by the subject applicants that circumscribe development alternatives for increased the living space.

6. The average house in the neighborhood has living area of 1,346 sq. ft.; although some houses are larger. The applicant's proposal is a practical way to increase development parity. Thus, no "special privilege" is afforded, by the variance relief, as the phrase is meant by the Land Use Code. The rather extensive lot coverage is not a benefit or special privilege to the applicants such as would prohibit the requested variance relief.

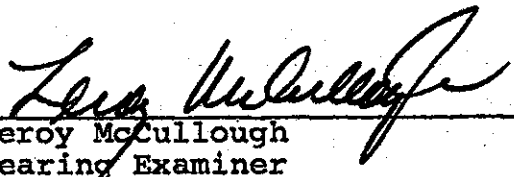
7. The expected increase in shadow effect is expected to be minor, and does not rise to the level of "material" detriment. Neither will the impacts on view, sunlight and air, cumulatively or individually be material. Denying this variance would subject the applicants to undue and unnecessary development restrictions and hardship.

8. It is noted that the proposal is for alteration to an existing structure. However, the proposed addition will be "modulated". The spirit and purpose of the Land Use Code, e.g., to maintain a compatible scale within an area, will not be harmed by the subject proposal. Section 23.02.20. The Director's decision is affirmed.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 31st day of January, 1983.


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.