

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

In the Matter of the Appeal of

CHARLES A. AND JANE K. HEFFERNAN

FILE NO. MUP-83-015(V)
APPLICATION NO. 83-038

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

Introduction

The Director of the Department of Construction and Land Use (Director) denied variance relief for an addition to a dwelling located at 5716 Greenwood Avenue North. The property owners submitted this appeal.

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

Parties to the proceedings were: appellants, pro se and by Mark Drexler, pro se; and the Director by Jim Barnes.

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 April 14, 1983.

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 at the southeast corner of Greenwood Avenue N. and N. 58th Street and is addressed 5716 Greenwood Avenue N.

2. The 3,500 sq. ft. area lot is developed with a two story single family residence oriented to west adjacent Greenwood Avenue N. There is a driveway entrance from north adjacent N. 58th, leading to a rear yard 12 ft. by 18 ft. carport and paved area.

3. The dwelling structure provides less than a conforming front yard setback.

4. Applicants wish to expand the living area of the roughly 1,300 sq. ft. area dwelling by an addition to the southeast corner of the dwelling. The added space will facilitate the pursuit of applicants' choreography and related artistic interests, and also provide additional living space for the potentially growing family. Variance relief is requested that a 10 ft. rear yard setback might be provided since a 14 ft. minimum setback is required. Section 23.44.14.B, Seattle Municipal Code. Variance relief to exceed the 40 percent maximum rear yard coverage by .3 percent is also requested as is relief to allow for the expansion of a structure nonconforming as to development standards. Chapter 23.44, Seattle Municipal Code.

5. When applicants purchased the property some five years ago, the east (rear) adjacent property was developed with a single family dwelling. A 14 ft. high property line hedge separated the neighboring properties. In 1979, a four story condominium was erected on that east adjacent property. Applicants describe the new structure as 24 ft. 10 in. from their rear property line. A 4 ft. high fence is provided. Applicants suggest that the attendant decline in rear yard privacy can and should be compensated by additional closed in living space to the rear of their dwelling as proposed.

6. Expanding the dwelling upward is a much costlier alternative and would also have some negative impact on the westward views from the neighboring condominium.

7. The south adjacent neighboring single family dwelling provides an 11 ft. rear yard setback. Because of the greater easterly extension, this neighboring dwelling structure is generally considered as providing more floor space than the applicants' dwelling.

8. A single family dwelling across N. 58th to the north also has a condominium directly to its rear. In applicants' view that condominium is visually less imposing on its west neighbor.

9. The pattern of the subject block's single family development-zoning in the block's western 70 ft. and multifamily development-zoning (L3) in the easterly one hundred feet is similar to block development north and south.

Conclusions

1. Where an unusual condition would, without variance relief, deprive a property owner of comparable development, variance relief may be sought from the strict application of Land Use Code provisions pursuant to the provisions of Section 23.40.20. The relief must not exceed the minimum necessary for relief, and should prove neither materially detrimental to the public welfare nor injurious to other vicinity properties.

2. Although the Director's decision on variance applications is given no deference, the appellant has the burden of proof. Hearing Examiner Appeal Rule 1.26(a).

3. The request for variance relief rests in some part on the applicants' desire to accommodate their artistic interests. However, unusual property circumstances must be shown in order for variance relief to issue.

4. The record does not show the applicants' property conditions to be unusual. The pattern of more intense zoning and development to the east of single family development is consistent with north and south vicinity blocks. In point of fact, a north neighbor has a condominium directly to its rear as well. The differences noted between the properties are not determinative per the criteria of Chapter 23.40.

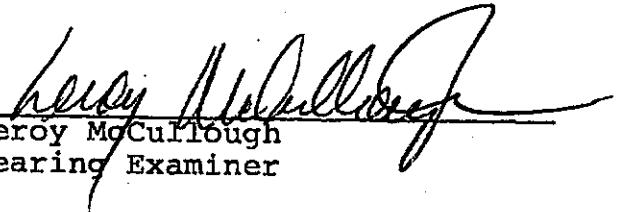
5. Further, an additional enclosed living area to encroach into the already reduced rear yard setback in response to lack of privacy would appear as an overreaction which would operate as a negative precedent to the material detriment of the public welfare.

6. The Director's denial of the variance relief is affirmed.

Decision

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

Entered this 18th day of April, 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.