

## OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JENNIFER JAMES

FILE NO. MUP-83-073(V)  
APPLICATION NO. 83-416

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

Introduction

Jennifer James, appellant, appeals from the grant of conditioned variances for property at 530 Wellington Street.

The appellant exercised her 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 November 21, 1983.

Parties to the proceedings were: appellant, Jennifer James, and appellant's architect, Mike Shoffner; and the Director, Department of Construction and Land Use, by Mary Pfender, representative.

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

Findings of Fact

1. The appellant applied for variances on a master use permit from the minimum required front and side yards for property at 530 Wellington Street. The Director conditionally granted said variances in that the proposed addition, trellis and trellis supports for the carport were to be constructed no closer than 3 feet to the front property line, and no closer than 1 foot to the southernmost property line. Also, any structural support and framing members within 3 feet of the side property line had to be treated with fire retardant to meet Building Code specifications.

2. The subject property is in a SF 5000 zone, on a large, irregularly shaped lot that has approximately 55' feet of frontage on Wellington Avenue and 90' feet along James Street. Wellington Street curves at the subject site and the residence, a 2-story home with a detached garage, is situated at an angle to the curving front property line. The slope of the site is stated to be moderate to steep by both the Department of Construction and Land Use and appellant's architect and evidence introduced by appellant's architect, found credible by the Hearing Examiner, is that the slope precludes expansion of the main floor except as that as proposed by appellant.

3. The appellant's proposal would join the home and garage and increases floor area by approximately 8%. Appellant's proposal also adds a trellised roof over the driveway which would extend from the garage to a fence which would be constructed at a lower height than present along the front property line.

4. The steep topography in the vicinity and location of the home have been found by the Department of Construction and Land Use to be of an unusual condition as to afford variance relief and that granting of relief would not constitute a grant of special privilege. However, the Department of Construction and Land Use, indicates that granting the proposed 1' foot front yard and 0' feet side yard would be beyond the minimum for relief and that granting said proposals would be a grant of special privileges.

5. This decision will not address the need for the side yard variance as the homeowner has modified her proposal for the carport to conform to the Director's decision.

6. The existing residence is stated to be a nonconforming structure in that the present front yard is 3' feet and the side yard is 1' foot where the minimum required is 5.93' front yard and 5' side yard. See Sections 23.44.14A and 23.44.14C.

7. Appellant points out that the pattern in the neighborhood is to build to the property line because of the unusable front yards. The home at 726 - 39th is built to 2' of the sidewalk. The Director, however, stated that this home is not the pattern of development in the neighborhood but permitted. The home at 606 Wellington was stated to have less than the required front and side yards. The home at 524 Wellington has a garage constructed 1' foot from the front property line.

8. Appellant states in her application that her proposal will enhance the neighborhood aesthetically in that the existing lines, angles and footprint of the construction will be identical to the existing structures. Appellant indicates that the proposal was planned with a thought of a more inviting circumstance in the vicinity. No blockage of view is expected with the construction and the appellant states that the proposal will be consistent with comparable development in the neighborhood.

9. The Examiner is in receipt of a petition in support of appellant's proposal signed by 14 neighbors. Appellant indicated she could provide more than 100 neighbors who would not oppose her proposal. The examiner is in receipt of one letter from a neighbor who indicates appellant's front yard "full" now.

10. With respect to State Environmental Policy Act of 1971 (SEPA) and 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 provision of WAC 197-10-170.

#### Conclusions

1. The burden is upon the appellant to make the showing required for a variance. Section 23.40.20 C. Section 23.44.82C prohibits expansion of a structure already nonconforming as to development standards if the nonconformity would be increased. The question is whether the application of the Land Use Code and Director's decision will deprive the homeowner of rights and privileges enjoyed by other property owners in the vicinity or zone.

2. The unusual property conditions of size, steep topography, irregularly shaped lot, curving front property line, angle of placement of the home on the site were not created by the present homeowners. Said unique conditions are found by the examiner to preclude expansion of the home except as proposed. Strict application of the Code would prevent any reasonable addition to the home causing hardship to the present homeowners. Therefore, the variance relief for the addition shall be granted unconditionally. However, the trellis roof and supports as proposed have not been shown to be

of comparable development and the present required 3' front yard must be provided.

4. Granting of said relief is consistent with spirit and purpose of Land Use Code and Policies.

#### Decision

The Director's decision is affirmed as modified.

Entered this 5th day of December, 1983.

Roger Shimizu  
Roger Shimizu  
Hearing Examiner Pro Tempore

#### Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should such request 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.