

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

In the Matter of the Appeal of

RICHARD L. MERRELL

FILE NO. MUP-86-044(V)  
APPLICATION NO. 8602275

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

Introduction

Rich and Beverly Merrell propose to expand their dwelling addressed as 4541 - 51st Avenue N.E. DCLU denied the rear yard variance requested and appellant submitted this appeal.

The appellant exercised the 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 September 12, 1986.

Parties to the proceedings were: appellant pro se, and by architect John Gresseth; and the Department of Construction and Land Use Director by Clay Leming, land use specialist.

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 subject property is located in a Single Family 5000 zone at 4541 - 51st Avenue N.E.

2. The 5600 sq. ft. area lot is developed with a two-story single family dwelling of 1640 sq. ft. Lot coverage is 20.6%.

3. The subject property has the following setbacks: south side yard, 18 ft.; north side yard, 5 ft.; front yard, 30 ft. 9 in.; and rear yard (west), 42 ft.

4. Applicants propose a 20 ft. x 26 ft. addition to the rear of the existing structure which would provide a 520 sq. ft. breakfast nook/family room area on the first floor, and a 260 sq. ft. bedroom/bath area on the second floor. Applicant arrived at the desired family room dimension by approximating the square footage necessary to seat 8 people and to have a game table.

5. Because the proposed addition would extend 26 ft. from the rear of the existing residence, the new rear yard setback would be 16 ft. 3 in., less than the 20 ft. minimum rear setback required by the Land Use Code.

6. DCLU denied the requested variance and applicant submitted this appeal.

7. Other lots in the vicinity are larger and are more intensely developed than applicants'. In other words, the subject property has comparatively less living area than similar properties. Applicant's credible testimony is that the average home in this area of 51st Avenue N.E. is 2174 sq. ft. in area, considerably less than applicants' present 1640 sq. ft.

8. DCLU submitted that variance relief would be improper because the lot provides space for expansion without variance.

9. Applicant countered that as proposed, the addition would preserve the view from a west facing window; would preserve the south side yard as a sun trap (trees are at the west border); and serve as the best separation between the subject dwelling and the south neighbor.

10. One alternative design that would not require the rear yard variance extends the family room to the south instead of into the west rear yard. This design would leave a side yard of 1000 sq. ft. more or less while the applicants' preferred proposal would leave some 1500 sq. ft. of south yard area. The disadvantages to this design are summarized on appellant's Exhibit 2:

1. poorer use of interior space
2. destruction of most desirable yard
3. loss of windows/interior spaces
4. more of a "block-house" appearance

11. With regard to the State Environmental Policy Act of 1971 (SEPA) and Chapter 25.05, 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 197-11-800.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.76, Seattle Municipal Code.

2. Seattle Municipal Code Section 23.76.022(C)(7) provides that the Hearing Examiner shall give no deference to the DCLU Director's decision on a variance application.

3. Although applicants need not overcome any weight automatically given the DCLU decision, all applicants for a variance must show that all of the variance criteria of Seattle Municipal Code Section 23.40.20 are met. Because all of the criteria are not met in this case the variance is denied and the DCLU decision is affirmed.

4. Assuming for the sake of analysis that applicants are not responsible for the size or development of the lot, the strict application of the Land Use Code requirements for rear yard setback do not deprive the subject property of comparable development privileges. Seattle Municipal Code Section 23.40.20(C).

5. Applicants can increase their living area without variance by extending south or by decreasing the amount of the westward expansion. Thus, adherence to the rear yard setback requirement does not deprive applicants of comparable development. It is the applicants' design that presents the issue. The record further fails to reflect that other developments have reserved southern areas of exposure or similar square footage added by variance for recreational living purposes. Under the circumstances approval of this variance would be contrary to the the Land Use Code spirit and purpose and would be an inconsistent grant of special privilege to applicants.

Decision

The variance is DENIED.

Entered this 25th day of September, 1986.

  
LeRoy McCullough  
Hearing Examiner

Concerning Further Review of  
Hearing Examiner Final Decisions on Master Use Permits

The decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104, (206) 625-4197.