

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JOHN A. BENNETT

FILE NO. MUP-87-008(V)
APPLICATION NO. 8605049

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

Introduction

Applicant-appellant proposes to expand the dwelling addressed as 2472 - 55th Avenue S.W. DCLU denied the variance relief requested related to the front setback 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 March 24, 1987.

Parties to the proceedings were: appellant pro se; and the Department of Construction and Land Use Director by Jim Barnes, associate 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. Applicant's site is located within the southwestern jog of the Duwamish Head Greenbelt. The subject site is zoned Single Family 7200, and is addressed as 2472 - 55th Avenue S.W.

2. The existing dwelling is located near the north end of the property, at the most level area of this 46,952 sq. ft. area site. The structure was built and sited in approximately 1919. The lot coverage of 1,344 sq. ft. constitutes roughly 2.8 percent. There are no structures immediately adjacent to the subject site.

3. The project area is characterized by steep wooded slopes.

4. The front (west) property line follows the westerly angle of the abutting 55th Avenue right-of-way. Consequently, the northwestern corner of the structure is 8 ft. + from the front property line while the more southerly facade is some 13 ft. +.

5. It was undisputed that a 15 ft. front setback is required, and that the line of the 15 ft. setback is parallel to the abutting portion of the 55th Avenue right-of-way. This means that a northwest triangle of the existing structure lies in the front setback area and is "in variance."

6. Applicant proposes to repair, remodel and expand the existing residence. A portion of the existing second story is within the front setback area. Applicant proposes to add to the second floor and to raise the side walls to support a new third story (penthouse).

7. The construction is designed to take advantage of existing wall support.

8. Construction of the additions was begun in 1986 without a building permit. A Stop Work order was issued.

9. Principal to the challenged variance, the second floor addition includes a 12 ft. by 28' 8 in. master bedroom. A wedge-shaped portion of the northwest section of the second-floor bedroom and a similar portion of the third-floor penthouse fall within the required front setback.

10. A basement and first floor addition on the south side of the building does not require variance relief. And DCLU conditionally granted the variance needed to "allow expansion of portion of roof to exceed maximum permitted height..." This variance was not appealed.

11. The height variance approval noted that the penthouse provides views to the north, and that homes in the area are often built or expanded to take advantage of the views. DCLU Decision, p.4.

12. Although a triangular-wedge of the proposed second - and third-stories could be excised to avoid variance relief, it is also possible that deletion of a rectangular portion could obviate the need for variance relief. The latter option would cut into the proposed stairways.

13. According to applicant, the construction is merely straight up "within the original line." Applicant continued that modification to the present design could mean addition of a support beam for that western wall, whether angled or straight. The support beam would extend vertically through the living room area.

14. Many of the houses in the general vicinity are set within 5 ft. of property lines.

15. The DCLU Analysis and Decision reports three letters in opposition to the variances, two letters in support, and a petition of 15 signatures in support of the application.

Conclusions

1. The variance criteria appear at Seattle Municipal Code Section 23.40.20.

2. The site has two unusual property conditions that are intertwined which support the requested variance relief. The c. 1919 siting of the present structure is an apparent response to the severe topography of the lot; and the existing support structure the same. These conditions were not created by the owner-applicant.

3. Applicant is requesting to expand the existing structure vertically according to the foundation lines previously established. Further, the proposed expansion facilitates appreciation of the north views that other residents enjoy. Based on the unusual property conditions, and on the fact that other structures are within 5 ft. of lot lines, the variance grant would not constitute an inconsistent grant of special privilege.

4. The variance would not be materially detrimental to the public welfare. The immediate area is one of steeply, wooded slopes. There are no adjacent neighboring structures that would be directly, adversely impacted. An 8 ft. + setback is proposed. Based on the special circumstances of the case, neither the public welfare nor the vicinity properties would be injured by the variance approval. For similar reasons, the proposal would not contravene the spirit and purpose of the Land Use Code.

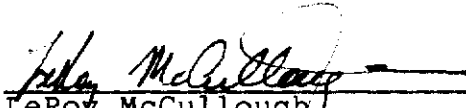
5. Restricting construction to the south for basement and first-floor additions would diminish the amenity of northerly views. Further, adjustment to the proposal necessitated by variance denial would likely require substantial aberration from the present foundation pattern, and would likely require installation of special support through the present living area. The strict application of the setback would therefore cause an undue and unnecessary hardship.

6. This decision on the variance should not be read in any way to endorse construction of any project without proper, advance approval.

Decision

The variance relief to allow a portion of the principal structure to extend into the required front yard, and to allow a nonconforming structure to exceed yard requirements is granted on the condition that the addition maintain the existing amount (8 ft. ±) of front setback.

Entered this 31st day of March, 1987.



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, 5th Floor, Seattle, Washington 98104, (206) 625-4197.