

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

In the Matter of the Appeal of

ANEVA FREEMAN, ET AL.

FILE NO. S-83-002  
INT. NO. 83-002

from an interpretation of the Director,  
Department of Construction and Land Use

Introduction

Appellants contest the Director's interpretation concerning a structure's height and lot location at 3025 N.W. 95th Street.

The appellants exercised the right to appeal pursuant to Chapter 23.88, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on May 18 and 24, 1983. The record remained open to June 8, 1983, for closing comments and arguments.

Parties to the proceedings were: appellants by Eugene Fagerberg, pro se, and by attorney Ross Radley; project applicant by attorney Christopher L. Otorowski; and the Director of the Department of Construction and Land Use (Director) by attorney Joyce Kling.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23, as amended.

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 3025 N.W. 95th Street and is zoned single family (SF) 7200. The site is legally described as Lot 2, Block 7, Golden View.
2. The property slopes uphill from the approximate north-east corner elevation of 70 ft. to the southwest corner elevation of approximately 100 ft.
3. The east lot line measures 119.66 ft. north-south. The parallel but lengthier west lot line extends roughly 135.86 ft.
4. The lot's north lot line runs 101.30 ft. east to west while the south lot line's east-west dimension is 100 ft.
5. A 20 ft. wide easement abuts the south property line. The north lot line abuts 31st Avenue N.W. The dead end of N.W. 95th Street abuts the west of the subject lot for approximately 30 ft. North of this abutment, proposed for egress, a house is located west adjacent to the site.
6. On December 15, 1982, the Department of Construction and Land Use issued a permit to construct a single family residence on site. The dwelling was then located in the southeast section of the lot.
7. Neighbor Aneva Freeman observed construction underway and on or about February 22, 1983, requested an interpretation of Seattle Municipal Code Title 23 concerning the structure's height and location. On April 6, 1983, the Director issued an interpretation concluding that

...the height of the structure which was authorized is permitted by the Land Use Code, and the structure's location on the lot conforms to the yard requirements even though the yards are inaccurately shown.

8. The subject interpretation was published April 12, 1983, and appellants Aneva Freeman, et al. (other neighboring property owners) submitted this appeal. Appellants requested reversal of the interpretation and suspension of the permit. A hearing before the Hearing Examiner was held May 18 and May 24, 1983. The record remained open to June 8, 1983, for closing comments and arguments.

9. The general height limit for a single family zoned residential structure is 30 ft. However, the ridge of a pitched roof may extend "up to five feet above the 30 foot height limit". Section 23.44.12. As opposed to a shed roof, defined as having only "one sloping plane" a pitched roof is defined as "any non-horizontal roof". Chapter 23.84.

10. In design the northern and southern facades of applicant's structure meet at near mid-structure and form a "V". The attached garage is the principal part of the southern portion. Appellant's contended, inter alia, that the roof was not "pitched", i.e., that the height exception for pitched roofs did not apply. The Hearing Examiner ruled against this position in hearing.

11. Appellants' remaining principal contentions concerned the height measurement/limit of the structure and the rear yard "intrusion" of the garage. It was clear from the neighbors' testimony and letters of record that the neighbors view the resulting structure as violative of the policy and spirit of the Land Use Code and of the scale and sensitivity of the neighborhood.

12. The highest point of the dwelling structure is 39 ft. above grade. The ridge of the roof along the northern facade, location of the highest point, is at an elevation of 121 ft.; the southern facade 117 ft.

13. The uncorrected plot plans show a rear yard of 25 ft. to north adjacent 31st Avenue N.W. and a 20 ft. front yard from the south property line which abuts the easement. Exhibit 6X, October, 1982.

14. Revised site plans show a 20 ft. front yard set back from the north property line and a 25 ft. rear yard set back from the south property line.

#### Conclusions

1. This decision is to be made on the same basis "as was required of the Director". Also, the Director's interpretation "shall be given substantial weight, and the burden of establishing the contrary shall be upon appellant". Section 23.88.20.E.4.

2. Section 23.44.12, Height Limits, provides that a ridge of a pitched roof may extend up to 5 ft. above the 30 ft. height limit, A.1.; and that additional height is permitted for sloped lots "at the rate of one foot for each six percent of slope". A.2.

3. Section 23.44.14.B provides that the rear yard shall be 25 ft. When the required rear yard

...abuts upon an alley along a lot line, the center line of the alley between the side lot lines extended shall be assumed to be a lot line for purposes of the rear yard provisions, provided that at no point shall the principal structure be closer than five feet to the alley.

4. Project applicant urges that the south abutting easement can and should be considered as an alley.

5. Applicant's lot, "other than a corner lot," is an interior lot. Section 23.84.24.02, Exhibit 84.24A; 23.84.24.04. For an interior lot, the "front lot line" is the lot line "separating the lot from the street". Section 23.84.24.03. The rear lot line is opposite and most distant from the front lot line.

6. The front yard is defined as an area

...unobstructed by structures from the ground upward between the side lot lines of a lot, extending from the front lot line to a line on the lot parallel to the front lot line, the horizontal depth of which is specified for each zone. Section 23.84.46 (Emphasis supplied.)

7. Thus, the front yard designation of the south lot line set back was erroneous, as the south lot line separates no "street" from the lot. Appellants request a "retroactive" rejection of the erroneous site plan on which the Director's permit approval was based; and further a remand for a "determination and explanation" of why the front and rear yards were reversed". However, such a remand would yield no significant additional information relative to the questions here at issue, and the request for same is denied. The applicant does have an option of selecting the preferred orientation (read designation) where the property abuts more than one street segment.

8. Section 23.86.10.C.1 provides that the rear yard shall be measured horizontally from the rear lot line

when the lot has a rear lot line which is essentially parallel to the front lot line for its entire length. (Emphasis supplied.)

9. The term "essentially parallel" is not defined in the Land Use Code. The plain and ordinary meaning thus applies. Webster's New Collegiate Dictionary defines essential as "inherent" (c) 1973; the adjectival form parallel as "extending in the same direction, everywhere equidistant, and not meeting."

10. The Director considered that since the eastern lot line was approximately 16 ft. longer than the western property line, the northern and southern lot lines were not "essentially parallel". Hearing evidence was to the effect that 31st N.W./the north property line was 9-10 ft. off parallel from the easement/south property line.

11. The appellants urged that the Director's conclusion was unreasonable, arbitrary and contrary to the 15 degree parallel standard included in the definition of "through lot". However, in light of the weight accorded the Director's decision, the ordinary meaning of the term, the more than insubstantial degree of variation between the northern and southern lot lines, and the configuration of the lot, the Hearing Examiner concludes that it is not improper to consider the north and south lot lines as essentially not parallel.

12. Section 23.86.10.C.3 provides that

On a lot with a rear property line, part of which is not essentially parallel to any part of the front lot line, the rear yard shall be measured from a line or lines drawn from side lot line(s) to side lot line(s) at least ten feet in length, parallel to and at a maximum distance from the front lot line....

13. The Director's interpretation of the proper technique is illustrated in Applicant's Exhibit 8. There, a 25 ft. setback begins from an east-west, 10 ft. line which connects the west lot line to the south lot line.

14. The Hearing Examiner concludes, however, that the Director's interpretation is not supported by the language of the Land Use Code. Such a creative interpretation of Section 23.86.10.C.3, such as was suggested by the Director, should be made only if the Code language is ambiguous; it is not. Section 23.86.10.C.3 requires that the rear yard be measured from lines drawn from side lot line to side lot line at least ten feet in length. There is no prohibition against the fictional line's extending 12, 20 or 100 ft. A side lot line is "any lot line not a front lot line or rear lot line". The Code does not say that in the case of an irregular lot, the rear lot line may be or shall be mystically considered the side lot line beyond 10 ft. Former Section 24.08.130(11) included in the definition of rear lot line a "line ten feet in length within the lot" where the lot was irregular. While it could be argued that the previous legislation evinced a desired technique, the stronger argument is that having expressed the point once the legislators could have made similar provisions in the new code. Their failure to do so, coupled with an apparent absence of published, clarifying Director's rulings, militates against applicant's position. The plain meaning controls. Applicant urges as an additional ground that the south adjacent easement is an alley, such that to "one half the width shall be considered part of the lot" for establishing the southerly line from which a 25 ft. depth is to be measured. Although in hearing the Director responded negatively to this proposition, the Hearing Examiner concludes that insufficient notice of this critical issue was provided all parties. This matter is therefore remanded for the Director to interpret whether the south easement is an alley, and secondly, to apply the rear yard measurement technique per this decision.

15. As to structure height, the roof is a pitched roof, the ridge of which may extend up to 5 ft. above the 30 ft. height limit. Section 23.44.12.B.1. The pitch rate is in consonance with Code limitations.

16. Section 23.44.12.B.2 further provides that

...additional height shall be permitted for sloped lots, at the rate of one foot for each six percent of slope...

17. Section 23.86.06.A.1, height measurement technique, provides that the height measurement

...shall be taken at each exterior wall from the existing grade to a plan essentially parallel to the existing grade....The vertical distance between the existing grade and the parallel plane above it shall not exceed the maximum height of the zone.

18. Section 23.86.06.C.1, additional height on sloped lots, provides that

...additional height is permitted on sloped lots at the rate of one foot for each six percent of slope...the slope shall be measured from the exterior wall with the greatest average elevation at existing grade, to the exterior wall with the lowest average elevation at existing grade. The slope shall be the difference between the existing grade average elevations of the two walls, expressed as a percentage of the horizontal distance between the two walls.

19. Section 23.86.06.C.3 notes that structures on sloped lots "shall also be eligible for the pitched roof bonus provisions", supra.

20. Appellants did not contest the method employed to arrive at the slope bonus results, viz., the difference between the wall with the greatest average elevation and the wall with the lowest average elevation divided by horizontal distance times 100 equals the percentage of slope. For each six percent of slope an additional height of 1 ft. is allowed. See Exhibit 4. The method, employed in Appellant's Exhibit 13 and 14, was also approved by the Director's witnesses.

21. Appellants also noted no specific disagreement with the conclusion that the best evidence of the pre-grading slope was the survey done by applicant's architect. Appellants had suggested that the topographical display was altered to benefit project applicant. The aerial topographical map offered by appellants is less direct on measurements and is accorded less weight.

22. Based on the survey, Exhibit 8, the average height of the highest wall is

$$\frac{93.5 + 98.0}{2} \text{ (Wall B); the lowest } \frac{91.0 + 82.0}{2} \text{ (Wall F) or } 86.5$$

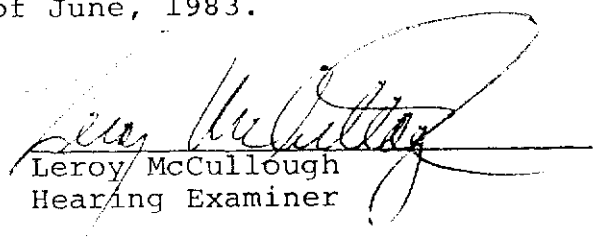
See Exhibit 13. The stated distance between the midpoints of walls B and F is 43.25 is reasonable. See scale of Exhibit 8, 1 in. = 8 ft. Proceeding through the computation, the resulting slope bonus is 4 ft. See Exhibit 14. The burden of establishing error or a contrary computation was not met. Accordingly, as to the height measurement, the Director's decision is affirmed. It is of interesting but insubstantial legal consequence that different figures were used in arriving at the consistent, final answer.

23. As to other matters raised in the various closing memoranda, the Hearing Examiner considers that the interpretation request and appeal were timely. Section 23.88.20.B. The Director and applicant also correctly point out that a building permit issued in violation of law confers no rights that permittee can claim to have "vested".

#### Decision

The Director's determination as to permittee's compliance with Land Use Code height provisions is AFFIRMED. The matter concerning structure location on the lot is REMANDED for the Director's analysis of (a) whether the south abutting easement is an "alley"; (b) whether the structure is properly located and provides sufficient rear yard setback. Following the Director's reevaluation, appellants and applicant may request reconsideration of same by written briefs to the Hearing Examiner to be submitted by 5:00 p.m. of the 14th Day following the receipt of the Director's reassessment, which shall be mailed return receipt requested or hand delivered. Jurisdiction is retained by the Office of Hearing Examiner.

Entered this 22nd day of June, 1983.

  
Leroy McCullough  
Hearing Examiner

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

In the Matter of the Appeal of

ANEVA FREEMAN, ET AL.

FILE NO. S-83-002  
INT. NO. 83-002

from an interpretation of the Director,  
Department of Construction and Land Use

ORDER RESULTING  
FROM REMAND

Findings of Fact

1. The subject property is located in the Single Family 7200 zone at 3025 N.W. 95th Street.
2. Appellants contested an April 6, 1983, interpretation by the Director of Construction and Land Use (DCLU) approving the subject structure's height and lot placement.
3. The further findings of the June 22, 1983, decision by the Hearing Examiner are incorporated herein by reference.
4. By decision entered June 22, 1983, the Hearing Examiner affirmed the interpretation as to height and remanded it as to structure location - rear yard setback.
5. On November 23, 1983, the DCLU Director submitted to the Office of Hearing Examiner a Re-evaluation and Request for Reconsideration. Said material presented that the easement abutting the subject property's south property line could not be considered as an "alley"; and that reconsideration of the Examiner's decision as to technique for rear yard measurement was required or "absurd consequences" could result. By selected case law, analysis and illustration DCLU urged that the intent of the legislation should control over the "express but inept wording" of Section 23.86.10.C.3, citing Alderwood Water District v. Pope and Talbot, Inc., 62 Wn.2d 319, 321, 382 P.2d (1963).
6. Appellants' reply brief was submitted to the Office of Hearing Examiner January 6, 1984. It agreed with the DCLU position that the south abutting easement could not be considered an alley. It took specific issue with the propriety of the Director's request for reconsideration, but nevertheless urged by selected analysis and case law support that the rear yard measurement technique required by the June 22, 1983, decision was correct.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.88, Seattle Municipal Code. The conclusions and Hearing Examiner decision, S-83-002, are incorporated herein by reference.
2. The Hearing Examiner agrees with the DCLU Director that the Land Use Code, "access standards for single family zones", provides that vehicular access to off-street parking may be by either alley, improved street or easement. The three alternatives are separately defined in the Code. The easement at issue was a specific grant, and the intent for general use by abutting property owners was not proved. Since the easement is not an alley, the required rear yard setback may not be initiated from the easement's midpoint; rather, the setback must be from the rear lot line.

3. The Director's request for reconsideration of the June, 1983, decision, November 23, 1983, is denied. Notwithstanding the timeliness question the DCLU submittal does not require modification of the June, 1983, decision. Section 23.86.10.C.3. requires rear yard measurement from a line "drawn from side lot line to side lot line..." A side lot line is defined as "any lot line not a front lot line or a rear lot line (emphasis added)". Section 23.84.24.A. The Code is clear and unambiguous on this point. Compliance with DCLU's wish to substantially change the language suggests an unauthorized invasion into the legislative prerogative. Former Section 24.08.130(11) included a provision for irregular lots in its definition of rear lot line. The fact that current code provisions do not also operate against the Director's position.

4. The Director alleges that since the Examiner's interpretation could yield "absurd consequences" in some fact patterns, the Director's interpretation of Section 23.86.10.C.3 should be affirmed. However, no party has shown how in the case of the property at 3024 N.W. 95th Street, an absurd result is required as a result of the Examiner's ruling.

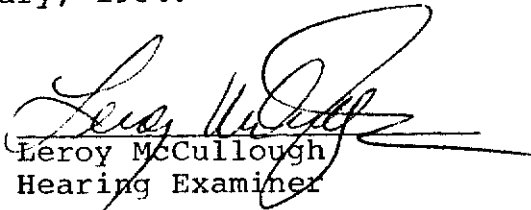
5. Unlike many of the illustrated lots appended to the Director's submittal, the subject lot's rear, front and side lot lines do not escape reasonable detection. Further, application of either the Director's preferred or the Examiner's method still provides applicant a reasonable building area.

6. Since the Director's interpretation is not required in order to avoid an absurd result, this case is markedly distinguished from Silver Shores v. Everett, 87 Wn.2d 618, 555 P.2d 993 (1976) wherein a sewer construction rate structure for assessments was at issue, and legislative intent was sought to avoid an apparent inequity.

#### Decision

The rear yard setback of the subject property must be established as required by the direct language of Section 23.86.10.C.3.

Entered this 20th day of January, 1984.

  
Leroy McCullough  
Hearing Examiner

#### 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.

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

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the Director, Department of  
Construction and Land Use

#### Introduction

Appellants initially contested the Director's interpretation concerning a structure's height and lot location at 3025 N.W. 95th Street.

The appellants exercised the right to appeal pursuant to Chapter 23.88, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on May 2, 1985, pursuant to King County Superior Court remand. A further procedural summary is stated below.

Parties to the May 2, 1985, proceedings were: appellants by attorney Ross Radley; project applicant by attorney Christopher L. Otorowski; and the Director of the Department of Construction and Land Use (DCLU) by attorney Guy E. Fletcher.

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

After due consideration of the evidence elicited and accepted 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

Finding 1 - 8 principally outline the procedure and history of this appeal.

1. DCLU issued on December 15, 1982, a permit to construct a single family residence on a site addressed as 3024 N.W. 95th Street. The resulting structure was located on the southeasterly portion of the lot.

2. Aneva Freeman, neighbor to the site, requested an interpretation of the Land Use Code as it related to the construction on the subject property. On April 6, 1983, the DCLU Director issued an interpretation that

...the height of the structure which was authorized is permitted by the Land Use Code, and the structure's location on the lot conforms to the yard requirements even though the yards are inaccurately shown.

3. Freeman and others appealed the interpretation to the Hearing Examiner principally challenging the conclusion approving the structure's height and the location of the structure with relation to the required rear yard setback.

4. That matter was heard before the Hearing Examiner on May 18 and May 24, 1983. The Hearing Examiner decision issued June 22, 1983, affirmed the DCLU Director's conclusion as to compliance with Title 23 (Land Use Code) height provisions, but remanded the matter for DCLU analysis of whether a south abutting easement could be considered an alley and whether the structure was properly located with respect to the minimum rear yard setback requirements of the Land Use Code.



5. On November 23, 1983, the DCLU Director submitted a request for reconsideration of the rear yard measurement technique suggested in the Hearing Examiner decision of June 22, 1983. Included in the DCLU submittal was a presentation that the easement could not be considered an alley. Appellants' reply brief was submitted January 6, 1984.

6. By Order Resulting From Remand entered January 20, 1984, the Hearing Examiner declared that as related to the subject property, the DCLU technique was erroneous and ordered that the rear yard setback be established "as required by the direct language of Section 23.86.10.C.3."

7. Project applicants then appealed to Superior Court. By Order Vacating Decision and Remanding for Hearing entered February 25, 1985, the superior court remanded this matter for a new hearing on the issue of a rear yard setback, reciting the City's failure to provide a verbatim transcript of the Hearing Examiner proceedings as per Superior Court order of November 9, 1984.

8. Pursuant to the Superior Court Order, the matter was set for hearing, to be limited to the issue of rear yard setback, for May 2, 1985. The hearing was held on May 2, 1985, and the record closed on May 6, 1985.

9. As noted in Finding 1 above, the subject property is addressed as 3024 N.W. 95th Street. The site is legally described as Lot 2, Block 7, Golden View and is zoned Single Family (SF) 7200. The lot area is approximately 13,000 sq. ft.

10. The subject lot is irregularly shaped, but essentially rectangular. The eastern lot line measures approximately 136 ft. north-south and the western lot line approximately 120 ft. The south lot line measures 100 ft. across and the north lot line approximately 101 ft.

11. Appellant Freeman's property is separated from the subject property by the south abutting 20 ft. easement.

12. The north of the lot was settled upon as the front determinant and the south as the rear.

13. The north and south lot lines are off parallel, but to a degree unspecified in the May hearing by appellant, proponent or DCLU. Plot plan Exhibit 8-8 does show an approximate 9 degree 12 minute variance between the two lines.

#### Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.88, Seattle Municipal Code. Section 23.88.20.E.4. accords "substantial weight" to the DCLU Director's determination. The burden of establishing a contrary position is that of appellant.

2. Section 23.44.14.B provides that the minimum rear yard setback is 25 ft. The center line of an abutting alley may be considered as a lot line for purposes of determining the rear yard setback, but as the abutting item in this case is an easement and not an alley, the southernmost measuring point is the south lot line.

3. Section 23.86.10.C.1 provides that

The rear yard shall be measured horizontally from the rear lot line when the lot has a rear lot line which is essentially parallel to the front lot line for its entire length (emphasis supplied).

4. A rear lot line is one that is "opposite and most distant from the front lot line." The front lot line, in the case of an interior lot, one "other than a corner lot," is "the lot line separating the lot from the street." A side lot line is

"any lot line not a front lot line or a rear lot line." Section 23.84.24.

5. No Director's Ruling, Seattle Municipal Code Section or other document was presented to define the term "essentially parallel." Appellant suggested a 15 degree minimum based on a inclusion of that figure in the Code definition of a "through lot." The Examiner is not prepared to engage in a wholesale transfer of the legislative intent of one definition to another. Nevertheless the record shows that the front and rear lot lines are "essentially parallel" to each other. Therefore, the technique described in Section 23.86.10.C.1 is the appropriate one to employ. DCLU's application of the Section 23.86.10.C.3 technique was clearly erroneous and is reversed.

6. Websters New Collegiate Dictionary, (c) 1973 defines parallel as "extending in the same direction, everywhere equidistant, and not meeting..." The direct language of Section 23.86.10.C.1 requires for application only that the lot lines be "essentially", as opposed to "exactly", parallel. In this context of a single approximately 13,000 sq. ft. parcel proposed for construction, with no administrative or code clarifications present to suggest a contrary result, the 9 degree plus variance between the north and south lot lines does not require the lines to be considered as "not essentially parallel." The method of determining the rear yard results in no "absurd consequence" such that an alternative interpretation should be employed.

Decision

The DCLU interpretation is reversed.

Entered this 20th day of May, 1985.

  
Leroy McCullough  
Hearing Examiner

CONCERNING FURTHER REVIEW

The decision of the Hearing Examiner in this case is the final administrative determination by the City, and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. 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. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.