

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

WILLIAM S. BAILEY

FILE NO. MUP-81-012
APPLICATION NO. X-81-016

from a decision of the Director
of the Department of Construction
and Land Use on a Master Use Permit
application

Introduction

The appellant proposes to construct a deck accessory to an existing single family residence at 805 West Blaine Street. Variances are sought to allow expansion of a building nonconforming as to bulk; to exceed the maximum permitted lot coverage; to provide less than the minimum required side yard; and to provide less than the minimum required rear yard.

The appellant exercised his right to appeal pursuant to the Master Use Permit ordinance, Chapter 24.84, Seattle Municipal Code and Title 24, Seattle Municipal Code.

Parties to the proceedings were: Appellant, pro se, and the Department of Construction and Land Use (CLU) by Carol Proud.

This matter was heard before the Hearing Examiner on July 16, 1981.

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 Residence High Density (RS 5000) zone at 805 West Blaine Street on Queen Anne Hill. The lot has a depth of 74 ft. and a width of 37 ft. for a total lot area of 2,738 sq. ft. The lot is significantly undersized for the area.

2. The lot is developed with a single family dwelling that currently provides a front yard setback of 24 ft., an east side yard of 8 ft., a rear yard of 8 ft. and a west side yard of 6 ft. Current lot coverage is 32.5 percent. The built-in garage fronts the south side of West Blaine Street. The lot is generally level.

3. The rear yard of the subject property is separated from the south adjacent property by a 6 ft. picket fence. The west side yard of the subject property is separated from the adjacent property by a 6 ft. wire mesh fence. The applicant proposes to construct a deck within 0 ft. of the rear and west side lot lines in order to facilitate the more functional use of the rear yard space and provide a more secure and safe outdoor play area for the family children. Evidence was presented that Blaine Street on which the property fronts is a busy street, detracting from the capability of the front yard as a safe play area.

4. The Department of Construction and Land Use conditionally granted the variance application but concluded, in part, that the full relief requested would detract from neighbor's privacy and would thus be materially detrimental to the adjacent property. CLU approved a deck of 187 sq. ft. that would meet Building Code requirements for 3 ft. minimum setback.

5. The appellant took issue with the amount of relief granted stating that the deck area approved by CLU would be nonfunctional. The appellant proposes a lot coverage of 42.48 percent where 35 percent is the maximum allowed.

6. CLU ascertained no other 0 ft. lot line decks in the vicinity. While the applicant asserted that some Queen Anne area garages are set on property lines, the CLU analyst distinguished those garages as having been built prior to the implementation of the present zoning code. Three letters from neighboring residents supported the variance application.

7. With regard to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, the action proposed in this application has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC 197-10-170.

Conclusions

1. The undersized lot does create a real property hardship for the appellant. Strict application of the Ordinance would deprive the appellant of rights and privileges enjoyed by others in the vicinity.

2. We agree with the appellant that the concern with privacy of adjacent residences could be more urgent. However, granting the variance relief requested would constitute a grant of special privilege to the applicant in that no other vicinity properties provide a deck without a setback.

3. We also note that the lot is level, and that while the yard space provided is not as spacious as the appellants wish, the appellant is not deprived of the privilege of outdoor yard space. Variance relief beyond that approved by the Department of Construction and Land Use in this instance would constitute relief in excess of the minimum necessary for relief in contravention of the ordinance.

4. The Hearing Examiner also denied an application for 0 ft. rear yard setback based on construction of a deck in X-80-575, in which the lot was also significantly undersized for the zone.

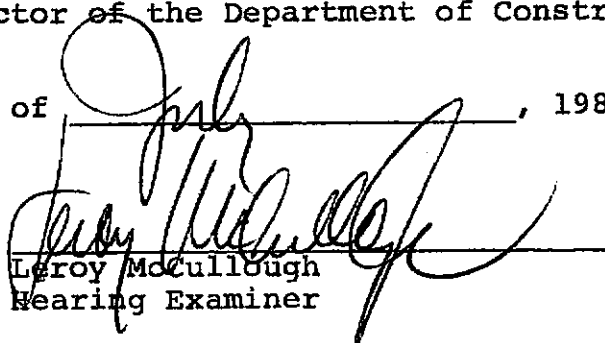
5. The intent of the Comprehensive Plan would not be adversely affected as that plan recognizes under certain circumstances a 3 ft. setback minimum.

6. The decision of the Director of Construction and Land Use to conditionally grant the variance such that the structure be no closer than 3 ft. to any property line and limiting the total deck area to 187 sq. ft. is affirmed.

Decision

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

Entered this 31st day of July, 1981.


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).