

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

EVE McCLURE, ET AL.

FILE NO. MUP-82-049(V)  
APPLICATION NO. 82-0239

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

#### Introduction

Appellants contest a decision by the Director of the Department of Construction and Land Use (DCLU) that approved variances required to construct a second story addition at 1536-38th Avenue.

The appellants exercised their right to appeal pursuant to Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: appellant, pro se, Jonathan T. Franklin, M.D.; project applicant Steven Szender, pro se; the DCLU Director by Hermia Ip.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on August 19, 1982.

After due consideration of the evidence elicited during the public hearing and as a result of the personal inspection of the subject property and surrounding area by the Hearing Examiner, 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 the Single Family (SF 5000) zone at 1536-38th Avenue in the Madrona neighborhood of Seattle.

2. The site is in an irregularly shaped block, generally bounded by East Pine Street to the north and East Pike Street to the south. Slightly curved Grand Avenue is the next street east of the block. Continuing east, Madrona Drive then Lake Washington Boulevard generally complete the pattern of north-south streets preceding the body of Lake Washington. Thirty-seventh Avenue is the nearest street west parallel to 38th Avenue. The subject block has no alley access.

3. The subject lot is approximately 40 ft. wide by 105 ft. deep. The lot has 40 ft. of frontage on west abutting 38th Avenue.

4. The subject lot is developed with a one story with basement single family residence constructed circa 1940. The front yard setback is approximately 7 ft. 10 in. to the covered porch and approximately 12 ft. 4 in. to the front wall. The rear yard setback is roughly 44 ft.

5. Topographically, the area slopes down toward Lake Washington, to the east. Accordingly, properties on 37th Avenue and on the west side of 38th Avenue are higher in elevation than the applicant's property. Project applicant estimates that 37th Avenue is 40 or 50 ft. above 38th so that 37th Avenue residences essentially "look down on" the subject dwelling.

6. Consistent with area topography, the applicant's rear (east) yard slopes approximately 25 ft. to the rear lot line.

7. Applicant proposes to increase the living area of the subject residence from 900 to 1,600 sq. ft. by constructing a second story addition within the permitted height limit. As proposed the addition would constitute a vertical extension of the front wall. Accordingly, variances are required to expand a building nonconforming as to bulk and to provide less than the 50 ft. minimum required front yard setback. Sections 23.44.26A; 23.44.08.D.(1) and (4)(C). Applicant also proposes to add a bedroom to the basement and convert part of the basement into the garage that will be accessed by an existing curb cut.

8. Applicant's proposal is for a gable roof for the second story to rest directly on the existing side walls. This will take advantage of existing beams or footings. Estimating the house width at 24 ft. and the usable second floor area width of 15 ft. due to the roof style, applicant projected that removing the front of the new addition 2 ft. 8 in. to the rear (to equal a 15 ft. setback) would eliminate 40 or 50 sq. ft. of living space, making the room dysfunctional. Setting the second story front wall rearward to equal a 15 ft. setback will have no significant impact on the degree of view obstruction.

9. Opposition to the proposal centered on the potential negative impact of the addition on views and on property values. The appellants were also of the view that many of applicant's neighbors lived in homes similar to applicant and parked on-street and therefore, that applicant enjoys comparable development without the variance relief sought.

10. Specifically, the appeal letter stated that eight of twelve homes "closest" to the subject property were comparable to the subject property with one floor and a basement; that the remaining four homes were two story structures. The illustrative sketch attached to the appeal letter showed three two story dwellings south of Pine Street and six one story dwellings, excluding project applicant's, all apparently oriented to 38th Avenue. Per the sketch three of these homes have garages, two detached.

11. Applicant assessed that on 38th Avenue between Olive and Pine Streets, there were ten one story, nine two story and two three story dwellings; and further that many other homes in the vicinity have had second stories improved, including the residence directly across the street from the subject property. DCLU assessed that "many" buildings in the vicinity had garages and more than one story.

12. The weight of the evidence shows that several vicinity structures are two story and that some have off-street parking.

13. There was no challenge of record to the setback requirements as stipulated by DCLU; nor to the height measurement conformity presented in the DCLU decision. Nor was any challenge raised to the application of the Land Use Code to this application.

13. With regard to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, 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 Director's decision is affirmed. The topography of the lot coupled with the on-site location of the dwelling and the lack of alley access to the block constitute unique property conditions which, without variance relief, would deprive applicant of comparable living space and off-street parking development.

It is not considered a requirement for variance relief to issue that all homes but the subject property's enjoy off-street parking or second story development.


2. The placement of the gable roof to the front wall of the dwelling appears reasonable. Removing the front of the second story addition rearward 2 ft. 8 in. would yield no decrease in view impact but would reduce proposed living space and potentially require new support systems for the second story wall. Due to the dramatic declining rear yard topography of the applicant's lot rearward expansion would require new foundation, piling or support systems. Thus, the literal application of the Land Use Code provisions would cause an undue and unnecessary hardship in this case. In view of the "gable" roof design proposed, which minimizes potential view blockage, and in view of the planned location of the garage which would be consistent with the floor plan and the existing curb cut the relief sought does not exceed the minimum necessary.

3. Increase in the height of the dwelling is expected; however, the proposed height will be within limits of the Code. The area's topography is such that properties west of the subject property, resting at a higher elevation, will have an overview of the subject property. Therefore, the addition will not prove to be "materially" detrimental. Nor would other vicinity properties suffer material detriment as a result of the proposed construction. Section 24.74.030, as amended.

#### Decision

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

Entered this 27th day of August, 1982.

  
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). Should an appeal 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.