

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

ELAINE AND JAMES ELLISON, et al.

FILE NO. MUP-81-066(V)  
APPLICATION NO. 81153-0087

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

#### Introduction

Appellants contest the grant and conditional grant of front and side yard variances, respectively, for construction of a single family residence at 2308-26th Avenue West.

The appellants exercised their right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: appellants by Robert Gould, Gould, Russo and Eitrem; Department of Construction and Land Use (DCLU) by Ed Somers; project applicant by Evvian Willis, agent.

For purposes of this decision, all sections numbers refer to Title 24, Seattle Municipal Code, as amended, (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on November 13, 1981.

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 lot is a legally recognized lot found at 2308-26th Avenue West at the southeast corner of 26th Avenue and W. Lynn Place. The lot has 37.5 ft., its width dimension, of frontage on 26th Avenue W., to the property's west; and 80 ft., its depth dimension, of frontage north along W. Lynn Place. The property is zoned Single Family Residence High Density (RS 5000).

2. As noted by counsel for appellant, the subject property is located on the "southeast brow" of Magnolia Hill, with "striking vistas" of the easterly portion of Queen Anne, Interbay, Elliott Bay, West Seattle and downtown Seattle. Vicinity residences are currently developed in a west to east tiered-down effect which facilitates the properties' views to the east.

3. The subject site is currently developed with a small, older single family frame residence and contemporary detached garage, both fronting on 26th Avenue. The residence is a one story-plus basement dwelling which provides a 16 ft. rear yard; an approximate 30 ft. setback from the west property line; and a 0-2 ft. setback from the north property line. The garage is located in the front yard approximately 10 ft. from the west property line and 5 ft. from the north property line.

4. North abutting W. Lynn Place declines moderately to the east. Credible testimony was that automobiles westbound on Lynn Place must accelerate to get to 26th West, but that visibility of cross automobile and pedestrian traffic is impaired. Much of this intersection traffic is attributed to a public school located approximately 1.5 blocks west. There is an easterly jog in 26th at Lynn Place which vicinity residents state compounds the problem.

5. W. Lynn Street is one block south of and parallel to W. Lynn Place. The residence south adjacent to the subject site fronts on W. Lynn Street and has a 7 ft. side yard to 26th Avenue W.

6. The residence southeast of the subject property also fronts south on W. Lynn Street. It has a detached garage in the rear yard approximately 5 ft. from the Lynn Place (north) property line.

7. The subject property was purchased by applicant in 1973. Applicant now proposes removal of existing on-site development and construction of a new single residence on site, approximately 31 ft. 9 in. in height, a height increase of 8-10 ft. per the testimony of applicant's agent. Applicant sought variances from the zoning code "so that an adequate size dwelling can be built;" i.e. that the new residence could provide a 14 ft. front yard and a 5 ft. side yard whereas 20 and 10 ft. yard setbacks, respectively, are required. DCLU granted the side yard variance and granted the front yard variance on the condition that a minimum 15 ft. front yard setback be provided. Without the variance relief the subject building envelope would be narrower than other vicinity properties.

8. Appellants took issue with approval of the variance. Among other items, appellants feared that the proposed development would constitute an overbuilding of the small lot; would exacerbate visibility and traffic problems at the W. Lynn Place-26th West corner; would add height and decrease view heretofore enjoyed due to the tiered vicinity development; and would be detrimental to the general welfare of the community.

9. 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 provisions of WAC 197-10-170.

### Conclusions

1. The standards for variance relief are delineated in Section 24.74.030. Unique real property conditions should be present which without variance relief would deprive the property owner of comparable development privileges. The variance relief should not exceed the minimum necessary; adversely affect the Comprehensive Plan; nor be materially detrimental to the public welfare or injurious to property or improvements in the subject zone.

2. The dimensions of the lot are unique real property conditions accepted by but not created by the owner. Without variance relief this subject small lot would be denied comparable development in that resultant construction would be narrower.

3. The proposed construction is within the 35 ft. height limit for the zone. It will offer a greater side yard setback than the present setback. The present detached garage will be eliminated, so that the effective front building setback will also be increased. Although some visibility is currently afforded between the garage and the existing dwelling, corner visibility will not be decreased by the current proposal. The south adjacent residence has a 7 ft. 26 Avenue setback; east of the subject property is a detached garage roughly 5 ft. from the north property line. The proposal is not inconsistent with these setbacks.

4. In view of the entire record, the requested variance relief which would herald the proposed development of the lot, has the potential of diminishing some existing views and view-scape patterns. However, the requested relief does not rise to the prohibitive level of "material" detriment to the public welfare nor injury to vicinity property or improvements. With the condition imposed by DCLU, the variance is consistent with the Comprehensive Plan.

Decision

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

Entered this 24th day of November, 1981.

*Leroy McCullough* by *Margaret Klockars*  
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.