

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CUONG N. AND MAI NGUYEN

FILE NO. MUP-82-015(V)
APPLICATION NO. 81362-0513

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

Introduction

Appellants, Cuong N. and Mai Nguyen, appeal the decision of the Director of the Department of Construction and Land Use (DCLU) to deny a side yard variance for property at 3239-13th Avenue West.

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

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

This matter was heard before the Hearing Examiner on March 18, 1982.

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 a lot measuring approximately 50 by 120 ft., developed with a single family house at 3239-13th Avenue W. The site is on the west slope of Queen Anne in a Single Family Residence High Density (RS 5000) zone.

2. Appellants filed an application in July, 1981, for a permit to add a one-story addition to the existing house. According to Mr. Nguyen, after a plans checker at DCLU advised him (mistakenly) that his property was zoned for duplexes he took the plans, which required corrections, to an architect for redesign as a two-story addition with the thought that it could be converted to a second unit in the future. While the application was pending, a City inspector authorized, in writing, the pouring of the foundation. A permit was then issued in October, 1981, and appellants began construction of the addition. After one and one-half months work under the permit, the City ordered that it be stopped and required appellants to have the lot surveyed.

3. The existing house provided a north side yard of 4 ft. and a south side yard of 3.56 ft. The plans had been drawn assuming each to be 4 ft. since the house was 42 ft. wide and plot plans available in the City showed the lot to be 50 ft. wide. Appellants, therefore, indented the addition 1 ft. on each side to provide the 5 ft. required by Section 24.20.090, Seattle Municipal Code. As constructed the addition provides a 5 ft. north side yard setback and a 4.54 ft. south side yard setback.

4. Appellants applied for a variance for the .46 ft. intrusion into the required side yard for a distance of 15.5 ft. The Director denied the variance. This appeal followed.

5. The appellants have spent more than \$10,000 for materials. Labor has been supplied by Mr. Nguyen and a friend. Plumbing and electrical wiring has been installed. The addition lacks siding and some windows.

6. The house adjacent to the south is situated so that its west wall was approximately 1 ft. farther west than the subject house before the addition.

7. The two story addition obstructs or partially obstructs views from residences to the east and each side. The nearly 6 in. extra which is the subject of the variance probably has a minor affect on the views from several houses.

8. Variances for side yard have been granted in the area.

9. The entire south side wall of the house, before addition, is in the required side yard. The house is constructed in an "L" shape. Another south wall, that of the leg of the "L" is over 31 ft., or more than half the lot, from the south lot line.

10. Numerous letters were received concerned with the misapprehension that the addition was built without permit, view loss, aesthetics and possibility of use for multiple dwelling units. Several letters supported the application.

Conclusions

1. The irregular dimensions involved present a unique situation which has created the hardship experienced by appellants in meeting the ordinance requirements. Appellants acted in good faith and attempted to satisfy the side yard setback requirements. Despite those efforts and because of the dimensions' irregularity they failed by 5.5 inches. The variance for the 5.5 in. would be the minimum necessary for relief.

2. As other variances for side yards having been granted in the area, a variances in this case would not confer special privilege.

3. No material detriment to the public welfare or injury to other property in the vicinity would accrue from the small side yard variance. The addition has substantially affected views but only an insubstantial amount of that is attributable to the 5.5 inches. Since the addition is not immediately adjacent to the house on the south, the passage of air should not be affected by the addition.

4. The Single Family Residential Policies provide for a deviation from the required setback when more than 60 percent of an existing wall is within the required yard. This situation meets the intent of that provision.

Decision

The decision of the Director is reversed and the variance is GRANTED.

Entered this 1st day of April, 1982.


M. Margaret Klockars
Deputy 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.