

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

LEROY McCRAY

FILE NO. MUP-81-007(V)

APPLICATION NO. X-81-03

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

#### Introduction

The applicant-appellant proposes an alteration of an existing covered patio which provides less than the minimum required side yard at 4058 N.E. 109th Street.

Parties to the proceedings were: appellant by Anthoney J.W. Jewald, Lasher and Johnson; the Department of Construction and Land Use (DCLU) by Jim Barnes.

The 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 appeal.

#### Findings of Fact

1. The subject property is located in a Single Family Residence Medium Density (RS 7200) zone at 4058 N.E. 109th Street.
2. The relatively level lot is roughly 133 ft. deep and 52 ft. wide. The total lot area is 6,974.6 sq. ft.
3. The lot is developed with a single family dwelling erected in 1954. At time the applicable King County regulation required a minimum 3 ft. side yard and the dwelling was constructed in compliance.
4. The appellant purchased the property in 1970. At that time the patio extending to the west of the single family dwelling was covered and partially enclosed.
5. A building permit to improve the property by way of new additions to the dwelling was issued in 1976. The work began and was completed in 1977 after a building permit lapse, then reapplication.
6. The 1977 permit did not include approval for patio area construction. Its wall additions were made in 1979. The appellant recalled the sequence of events as follows: initial construction; Lake City Building Department verbal approval; more construction; west adjacent neighbor complaints; completion; stop work order; then knowledge that the construction was done in violation of the Code. The west adjacent neighbor recalled that the appellant was advised very early in the construction phase that the project was not in compliance.
7. The patio is now approximately 80 percent enclosed. The west side wall consists of plasterboard and sliding glass doors while the front portion of the patio has more open area. The present west side yard is 2.66 ft., from the eaves 1.16 ft. DCLU denied the variance to provide less than the designated 5 ft. minimum required side yard.

8. Appellant recalled that the patio was partially enclosed at the time of purchase; the south and west walls were approximately 36 in. high. Also the patio was covered. The west adjacent neighbor testified that the previous patio cover was fiberglass. Appellant testified that the roof/cover was not enlarged.

9. Appellant represented that a significant number of Lake City dwellings failed to meet the minimum Code side yard requirement. DCLU represented that most side yards in the area appeared to meet Code requirements and further that no similar side yard variances were granted in the subject vicinity. In the west adjacent neighbor's opinion all neighborhood properties had at minimum a 3 ft. setback.

10. 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 location of a pre-existing, covered and partly enclosed patio 3 ft. from the west side lot line is a unique property condition not created by the appellant. However, in addition to a unique property condition, variance authorization requires that any such special condition would without variance relief deprive the subject property of rights and privileges enjoyed by other properties in the subject zone or vicinity. The variance should not constitute a grant of special privilege; nor prove materially detrimental to the public welfare. Seattle Municipal Code Section 24.74.030.

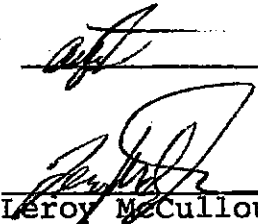
2. The weight of the direct evidence shows an absence of side yard variances for the vicinity and the compliance by the majority of the vicinity properties with the Code requirements. Inasmuch as the construction here at issue occurred in 1979, and not in 1954, when the dwelling was constructed per Code compliance, the variance relief requested in this instance would constitute a grant of special privilege to the applicant and would be inconsistent with observed limitations on other area properties. The variance would also operate as a negative precedent.

3. Some consideration must be given to the fact that appellant assumed the property with a covered and partly enclosed patio. However, further enclosure of the patio with increased side lot line bulk proximity conflicts with the purpose of the zoning ordinance, viz. "to provide adequate light, air, and access, (and) to secure safety from fire and other dangers..." Section 24.06.020, Seattle Municipal Code.

### Decision

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

Entered this 14th day of Sept, 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).