

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

RICHARD PAULETTE

FILE NO. MUP-81-074(V)  
APPLICATION NO. 81188-0173

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

#### Introduction

Appellant, Richard Paulette, appeals the denial of certain variances by the Director of the Department of Construction and Land Use (Director) on appellant's master use permit application for property at 3613-33rd Avenue Southwest (aka 3613-34th Avenue Southwest).

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

Parties to the proceedings were: appellant, pro se, and Diane Althaus representing the Director of the Department of Construction and Land Use.

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 December 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. Appellant obtained permits in 1978 which allowed work on an existing house "to remove and construct new stair enclosure on north side also construct new roof on portion of east side. New sheetrock where necessary to exist. single family dwelling per plans and subject to field inspection." (Exhibit No. 4).

2. Over the past few years appellant and his various contractors have carried out remodeling of the house and garage on the property but have deviated from the plans approved in 1978. The Director has determined that variances from Section 24.20.090, 24.20.100 and 24.14.020 are necessary to permit the structure as it has been built.

3. The Director denied the variance from the front yard requirement and granted the lot coverage variance to 42 percent and the variance to allow the expansion of a building nonconforming in bulk to the same extent. Appellant appealed the decision.

4. The subject property, zoned Single Family Residence High Density (RS 5000), is an irregularly shaped lot which fronts on 34th Avenue S.W. and abuts upon an alley in the rear. Thirty-fourth appears to change into 33rd Avenue S.W. near the subject property so the address for the property given by the Director is 3613-33rd Avenue S.W. and used by appellant is 3613-34th Avenue S.W. The site has a retaining wall in the front supporting the lot which slopes approximately 25 percent over the length of the lot with a concentration in the eastern portion. A single family house with four stories in front, counting basement, and a two car garage attached by an elevated walkway or deck is on the site.

5. The lot contains approximately 3,618 sq. ft. as calculated by DCLU based upon appellant's site plan.

6. The plan approved in 1978 provided for a front deck on the first floor designed to maintain the existing or required setback, 1,216 sq. ft. of lot coverage and a garage located 5 ft. from the north property line. No deck was planned or approved at the second level.

7. Appellant explains that concurrence was obtained from inspectors for some changes and that others were made for good reasons.

8. The code requires a 20 ft. front yard in the zone. The house, before appellant's construction, was found to provide a front yard of 16 ft. A portion of the new deck extends into the 16 ft. yard resulting in a 15 ft. yard so variance would be necessary.

9. The rear yard variance was granted so appellant's appeal did not challenge that decision. The rear yard was nonconforming and a variance is necessary to expand or change that nonconformity.

10. Lot coverage was under 35 percent, as calculated in 1978. As coverage now calculated and as the building is constructed lot coverage is 45.4 percent. Up to 35 percent is permitted by the code.

11. The house, as now constructed, has three bedrooms, three baths, an office and a lower story to the garage shown as "storage" on the plans but which may be used as a studio, theatre or gathering place for children. Between the house and garage is a deck running the full width of the house to allow persons to access the house from the alley and for access to the "storage" area. Another deck connects the garage to the 3rd floor level of the house at the north side.

12. In the immediate vicinity, one house is three stories and the others are all smaller. The other properties in the vicinity have similar topographic conditions.

13. Appellant desires to have the front second story deck to break up the vertical appearance and for eventual access by stairs, to a swimming pool in the front. Because of large numbers of people he plans to entertain he contends more exits such as the deck, are needed for safety.

### Conclusions

1. For variance relief the code requires an applicant to prove that the application meets all the criteria in Section 24.74.030. The first criterion is that because of some unique condition of the property the strict application of the code provisions would deprive the property of rights and privileges enjoyed by other properties in the zone or vicinity.

2. The development of the lot is as great or greater than that on other lots in the area. In granting variance to allow 42 percent lot coverage the Director recognized some hardship resulting from the substandard lot size. A variance may not be greater than the minimum necessary for relief however. While appellant has shown need for elevated accessways because of the topography, those could be accommodated within the 42 percent allowed by the Director's decision. As explained at the hearing, aesthetic considerations are not unique property conditions which may be used as the basis for variance so the extra lot coverage, which would allow both the accessways and the front deck, is not warranted.

3. As for the front yard variance the original plans show that need for it can be avoided so the Director's determination is correct.

4. Granting variances to allow development greater than that enjoyed by others would confer special privilege on this property contrary to the code.

5. The overdevelopment of the lot and the contravention of the code's requirement would be detrimental to the public welfare.

6. The Single Family Areas Residential Policies do provide for relief from the lot coverage limit for lots smaller than standard allowing up to 42 percent. Greater coverage would conflict. The increased nonconformity of the front yard setback would also conflict.

7. The appellant has failed to prove that his property and application meets the criteria for any variance beyond that already granted by the Director.

#### Decision

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

Entered this 23rd day of December, 1981.

  
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.