

FINDINGS AND DECISION  
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ALFRED J. BIANCHI

FILE NO. MUP-82-022(V)  
APPLICATION NO. 82-0048

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

Introduction

The appellant seeks to legalize an 8 ft. fence existing on the north, south and east property lines of the property located at 3213-36th Avenue South. The Department of Construction and Land Use (DCLU) denied the requested variance relief.

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; the Director of the Department of Construction and Land Use by Jeanene Johnson and Cliff Portman.

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 April 22, 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 located in the Single Family Residence High Density (RS 5000) zone at 3213-36th Avenue S. The lot, measuring 40 ft. in width by 104 ft. 6 in. in length, is developed with a single family dwelling and a rear yard swimming pool.

2. The rear yard is primarily level. In 1958, the swimming pool was constructed and a 6 ft. fence erected along the north, west and south property lines.

3. The John Muir Elementary School is located approximately one and one-half blocks away from the subject site. As described by the applicant-appellant's credible testimony, traversing youngsters would throw bricks, garbage cans and similar items in the pool, and would climb the existing fence and swim unsupervised. Accordingly, a 2 ft. addition was made to the grape stake fence, without permit, and the vandalism stopped.

4. Appellant was unsuccessful in a bid to have the 6 ft. fence height limit interpreted as inappropriate for the subject property and the request for variance relief followed. Letters from neighbors were generally in support of the protection afforded by the fence and stated no objection to existing height.

5. The record reflects no similar variances nor fences in the neighborhood in excess of 6 ft.

6. Appellant urged that because of the location, near the school; and because of the tenure of the fence the variance should be granted.

### Conclusions


1. The variance criteria are delineated in Section 24.74.030. They require a showing that because of unique conditions applicable to the subject property, the applicant is deprived of comparable development. Additionally, the variance should not exceed the minimum necessary for relief nor constitute a grant of special inconsistent privilege. The authorization of the variance should not adversely affect the Comprehensive Plan nor prove materially detrimental to the public welfare.

2. The reason for the fence and the apparent success of its 8 ft. height would suggest that the requested variance does not exceed the minimum necessary for relief and is helpful to the public welfare. However, all of the criteria of Section 24.74.030 must be met. In this instance no unique property condition is presented which would justify variance relief. The proximity to the school is a property condition that is not unique to the applicant, but is shared by the properties in the vicinity. No extenuating circumstances, such as topography or shape are presented, which would point to the appellant's denial of comparable development. In view of the foregoing granting the variance would prove detrimental to the public welfare as being violative of the spirit and terms of the zoning ordinance. Further, the requested relief would constitute a grant of special privilege to the applicant in that no other vicinity properties have fences in excess of 6 ft.

### Decision

The decision of the Director is AFFIRMED.

Entered this 23rd day of April, 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.