

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

BARNETT SCHORR

FILE NO. MUP-81-032(V)
APPLICATION NO. X-81-087

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

Introduction

Barnett Schorr applied for a variance to exceed the maximum permitted height in the construction of a seven unit apartment building at 3410 West Government Way.

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

The parties to the proceeding were: appellant, pro se; the Department of Construction and Land Use (DCLU) by Annie Marlowe.

This matter was heard before the Hearing Examiner on August 19, 1981.

After due consideration of the evidence solicited 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 a Multiple Residence Low Density (RM 800) zone at 3410 W. Government Way.

2. The heavily wooded triangular shaped lot has approximately 114 ft. of frontage on W. Government Way to its east. Unimproved Byers Place W. lies to the west. Thirty-fifth Avenue West lies roughly parallel to and west of Byers Place. The approximate lot area is 10,535 sq. ft.

3. Appellant-applicant proposes to construct a four level, seven unit apartment or condominium on this site. Rather than have the building follow the slope down, west, the proponent wishes to utilize one base (thereby minimizing the potential damage to vicinity root structures) and terrace the building upward. The resulting proposed building height is 48 ft. whereas the maximum permitted for the subject zone is 35 ft. Seattle Municipal Code, 24.30.110. Appellant therefore sought variance relief.

4. DCLU denied the variance, deciding that some relief was already afforded proponent by, for example, the elimination of the 15 ft. front yard setback and as well by a corner lot bonus of approximately 2,000 sq. ft. DCLU also determined that the proposed construction would be inconsistent with other vicinity properties and inconsistent with the recently adopted Multi-Family Land Use Policies. No other height variances have been granted for the vicinity.

5. The surrounding neighborhood includes development of single family residences and some multifamily residences of one to three stories above grade at Government Way and at West 35th. One adjacent property that is developed into the same ravine as the subject property is one story above (W. Government Way) grade. Some commercial uses appear across W. Government Way.

6. Several vicinity residents opposed the variance request citing concern with view blockage, increased shade and inconsistency with the tenor of the community. Proponent countered that the proposed building at only 32 ft. in width would not adversely block views or affect the light availability. In fact, he urged, the necessary construction clearance would enhance the availability of light.

7. Proponent also opined that the present plan would enhance the availability of light in the proposed units and the livability of the units. The alternative of locating the building down the hill with converging lot lines and units required to be modified accordingly was seen as a less desirable alternative.

8. 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 shape and topography of the subject lot are special property conditions not created by the owner or applicant. However, to secure variance relief it must be shown that the subject unique conditions would, without variance relief, deprive the owner of comparable development and that the relief would not have a materially detrimental effect on the public welfare. Seattle Municipal Code, 24.74.030.

2. The explanations for the subject proposal have been recognized, including minimized earth-space destruction and improved livability of the new units.

3. However, authorizing the requested variance would constitute a grant of special privilege to the applicant. A neighboring property facing the same ravine enjoys no variance. No other height variances have been granted in the vicinity. Although the applicant calculated that a height of (only) 17 ft. above entry grade would be allowed by the denial of the variance the resulting non-varianced development would not be inconsistent with the existing development of vicinity properties. The variance relief requested could thus be seen to operate as a detrimental precedent.

4. In addition, Policy 4, Height of Buildings, Multi-Family Land Use Policies (adopted by Resolution 26579, 1981) states an intent to, inter alia, require building heights to reflect the topography of the site.

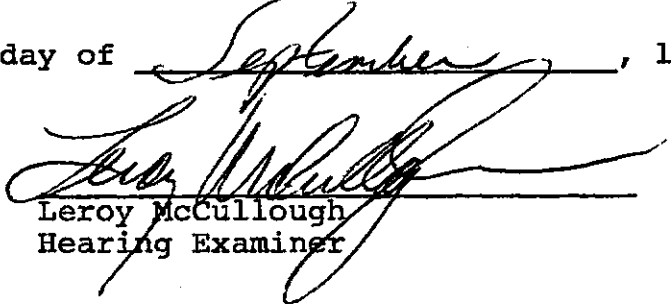
The height of buildings shall be measured to reflect the natural contours of the land and to maintain a consistent maximum height throughout the building envelope in order to maintain scale relationships with adjacent buildings and under varying topographic conditions, and protect views. Page 22.

The Policies continue that when the slope is parallel or perpendicular to the street in front of the building as it is in the instant case, the top of the building envelope shall either "step" or follow the land contours. Page 23. The construction proposed by the appellant is in direct conflict with this implementation guideline.

Decision

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

Entered this 2nd day of September, 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).