

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CHALLEN McCUNE, JR.

FILE NO. MUP-81-071(V)
APPLICATION NO. 81173-0138

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

Introduction

Appellant, Challen McCune, Jr., appeals the decision of the Director of the Department of Construction and Land Use (Director) to deny a variance under a master use permit application for 4915 N.E. Park Place.

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, represented by Robert A. Terwilliger, Breskin, Robbins, Bastian & Cohen, and the Director represented by Ed Somers, environmental specialist.

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 4, 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 applied for a master use permit to construct a fence addition to an existing residence at 4915 N.E. Park Place. A variance was cited from Section 24.62.090 to allow the fence to be over 6 ft. in height in a required yard.

2. The Director denied the variance. Appellant filed the instant appeal.

3. The subject property is a through lot between N.E. Park Place and N.E. 75th Street and is located in the Sand Point Country Club. It is developed with a single family residence.

4. The subject property is located at the top of a T intersection where 50th N.E. joins N.E. 75th.

5. A fence encompasses the perimeter of the private residential area along N.E. 75th. The fence varies in height and is approximately 4½ ft. high at the subject site. A block to the west it is approximately 9 ft. high.

6. A Metro bus stop is located on N.E. 75th adjacent to the subject site. Another bus stop is located about one

block to the west. The No. 71 route goes north on 50th N.E. Busses must stop at 75th before turning west. The bus may stop on 75th at the subject site, immediately after the turn.

7. The street grade rises to the west from the bus stop at the subject site. It then falls off to the west so that busses leaving the stop a block to the west begin a slight downgrade.

8. Fifty-two busses are scheduled to complete the No. 71 route each day. Between 4 and 8 p.m., 22 pass the subject site all of which must stop at 50th and many of which stop at the bus stop.

9. The ambient noise level in the area of the subject property is quite low.

10. The effect of busses accelerating from, first, the stop at the intersection and, then, uphill from the bus stop would be to cause occurrence of levels of noise close to 70 dBA and, perhaps, much higher. To avoid speech interference in appellant's back yard the level should not exceed 55 dBA. Sleep interference occurs when maximum levels exceed 45 dBA. With a reduction for closed windows the levels reached in the bedroom on the subject property would be at least 55 dBA.

11. The subject residence is elevated much higher above the perimeter fence than other residences along 75th.

12. The noise levels at appellant's residence were estimated to be as much as 10 dBA higher than those at other residences along the north side of N.E. 75th.

13. The appellant consulted with accoustical experts to find a method to reduce these levels in his backyard and house. Construction of the fence or wall was proposed and carried out. Later the application for master use permit was made.

14. The height of the fence is 8-9 ft. It is made of adobe brick. Its effect has been to reduce the level of noise some 7 dBA or more.

15. A lower fence would not effect sufficient reduction in noise level to allow a healthful environment for the occupants of the residence, according to expert testimony.

16. A barrier is the only means of interfering with the line of sight to interfere with the noise from the busses. A solid wall is necessary. Trees and shrubs would not be effective.

17. A variance for fence height was denied in the vicinity. The facts in that request were not similar to these facts.

Conclusions

1. The subject property, in its location at the intersection and next to a bus stop and in its elevation above the perimeter fence, differs from other properties in the zone and vicinity. Because of its setting it suffers hardship from bus noise and from its inability to reduce that noise by a means consistent with the provisions of the zoning code.

2. The degree of variance requested is the minimum required for relief. The granting of the variance would not

confer special privilege on this property because of its unique circumstances.


3. No evidence showing injury to any other property was adduced nor was evidence of any material detriment to the public welfare.

4. No conflict with the Comprehensive Plan was found by the Director.

Decision

The determination by the Director is reversed and the variance GRANTED.

Entered this 8th 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.