

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

In the Matter of the Appeal of

ALLISON COLLINS AND DALE NACHAND

FILE NO. MUP-84-053(V)
APPLICATION NO. 8402062

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

Introduction

Appellants seek variance approvals for a house to garage connective structure for property addressed as 4102 2nd Avenue N.W.

Appellants exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on August 9, 1984.

Parties to the proceedings were: appellants pro se, with architect Susan Boyle, witness, and the DCLU Director by Amy Luersen. C.C. Simonsen, proponents' neighbor, presented testimony in opposition to the proposal.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

After due consideration of the public hearing evidence, and subsequent to an inspection of the subject site and vicinity, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The site is a 5500 sq. ft. essentially triangular-shaped plateau addressed as 4102 2nd Avenue N.W. The south leg of the triangle is adjacent to N. 41st Street. The triangle's east leg is the property line between applicants' and the east adjacent property. That property is developed with a single family residence that has a living room side window on its west side, overlooking applicants' rear yard.

2. Applicants' legally required rear yard setback is a small triangular space originating from the southeast corner of the lot. An area rear of the house but north of the required yard constitutes the only level outdoor ground area on site for family use. The northeast leg of the triangle is generally adjacent to 2nd Avenue N.W.

3. The site is currently developed with a c. 1905 single family residence of approximately 1800 sq. ft. and a detached, one-car garage that is without any side or rear yard setback. The 216 sq. ft. area garage is therefore nonconforming. The house is situated atop the plateau. There are 3-7 ft. retaining walls on all street sides. Although the house front faces west, access is by some 26 stairs to the front door that begin south at N. 41st St.

4. The N. 41st elevation is approximately 108 ft. The subject dwelling's first floor elevation is 131.5 ft.; and the second floor, 142.5. The deck, which extends from the northeast (front) portion of the dwelling, also is at the 131 ft. elevation.

5. Current rear access to the dwelling is via 19 steps. The basement, elevation 124 ft., has a head clearance of 6.5 ft.

6. Applicants propose to connect the existing garage to the dwelling by way of a new 205 sq. ft. addition. The added space would be used as a utility workshop-painting studio. It would also provide the only grade level access from the street to the residence-basement. Thirdly, the existing garage would be renovated as part of the project. According to the architect, the resulting, proposed building would appear as a "simple, gable roofed, two-car garage..." (The one car garage could be improved without the other improvements, and without variance relief.)

7. Applicants thus applied for the following variance approvals:

- a. to expand an existing nonconforming accessory structure;
- b. to provide for less than the minimum required rear yard (the proposed addition would encroach into the 15.4 ft. required rear yard);
- c. to provide less than the 10 ft. minimum required side street side yard (along 1st); and
- d. to exceed the maximum combined coverage of the required rear yard. Proposed is 74% and the maximum allowed is 40%.

8. DCLU denied the variances and applicants submitted this appeal. A critical element of the DCLU denial was the view that sites for nonvariance alternatives to the proposed construction existed, such as in the rear and front yard areas of the subject property.

9. Applicants responded that the front yard construction would be visually out-of-character and would be difficult architecturally due to the topography and front yard fill material; and that back area construction would deprive them of their only flat area and simultaneously block the east neighbor's view.

10. Applicants showed that variances for required rear and side yard setbacks have been granted in the Fremont-Phinney neighborhood. DCLU distinguished those by labeling the variances as relatively minor. Some variances were for new construction.

11. The residence at 4107 - 2nd N.W. is directly northwest of the subject property. It has a garage and shop addition, but there is no record of a variance for it although the Exhibit 5 illustration shows the garage and shop as without any significant setback. Applicants provided two examples of vicinity homes with double garages but neither with a variance.

12. With regard to the State Environmental Policy Act of 1971 (SEPA) and Chapter 25.04, Seattle Municipal Code, the action proposed in this subject application has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC 197-10-170.

Conclusions

1. The criteria for variance relief appear at Section 23.40.20 and are paraphrased in the DCLU decision at issue. They require an unusual property condition which, absent variance relief, would deprive the applicant of comparable development privileges; a showing of an undue and unnecessary hardship by literal application of the Land Use Code requirements; and consistency with the Land Use Code spirit and purpose and adopted Land Use Policies. In addition, the variance should prove to be neither a special privilege for the applicant nor a material detriment to the public welfare. All of the criteria must be met for variance relief to be granted.

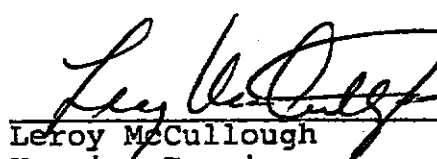
2. The subject site's elevated topography is unusual. There is also the matter of the front yard fill. As a practical matter, therefore, the construction alternatives suggested by the DCLU present undue and unnecessary problems. Front yard construction of an addition would be architecturally problematic and visually disconcerting. Rear yard area construction would deprive the applicants of the premium rear yard level space and could negatively impact the view from the adjacent neighbor's window.

3. The central question for variance relief approvals, however, is whether applicant is deprived of comparable development by reason of the unusual property conditions. These applicants have on-site a dwelling with a front yard deck of 218 sq. ft., a single car garage (that could be made functional without variance relief) and a basement. There is no evidence that other properties have markedly different topographical features; nor that they have responded by requesting or receiving variances such as here requested. For example, the vicinity properties that have double garages were not shown to be subjects of approved variances. The Exhibit showing a garage and shop illustrated the proximity to a front lot line but there is no record of variance approval for that property. Thus, granting the requested variances to these applicants would amount to a grant of special privilege and to that extent would be precedentially detrimental to the public welfare. The variance request therefore cannot be approved.

Decision

The Director's decision is affirmed.

Entered this 22nd day of August, 1984.


Leroy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW OF
HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

The decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. 2 Am. Jur. 2d., Admin. Law Section 524. Any request for judicial review of the decision must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11); Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73.

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.