

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

TERENCE GOODWIN

FILE NO. MUP-83-045(V)
APPLICATION NO. 83-331

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

Introduction

An adjacent neighbor appealed a grant of variance to provide less than the minimum required side yard at 2633 E. Ward Street.

The appellant 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 September 8, 1983.

Parties to the proceedings were: appellant, pro se; applicant by architect David Gee; Director of the Department of Construction and Land Use (Director) by Ed Somers.

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

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 a Single Family 5000 zone at 2633 E. Ward Street.
2. The site is developed with a new single family residence providing a minimum 22 ft. front setback from north abutting E. Ward Street.
3. Topographically, the property and others in the vicinity slope moderately from west down to the arboretum, east.
4. The applicant's property provides a east side yard setback of 6 ft. at the southeast corner and 5.6 ft. at the north-east corner.
5. Essentially due to contractor error, the exterior wall or the west foundation is 4 ft. from the west property line at the southwest corner and 4.4 ft. at the northwest corner. The minimum side yard setback required is 5 ft. Section 23.44.14. C.
6. The Director approved a variance to allow less than the minimum required side yard on the condition that the "10 ft. total amount of the side yards shall be maintained..." and on the condition that the applicant submit a drainage plan to DCLU which should result in a return to the pre-construction surface and sub-surface water flow. The west adjacent neighbor appealed.

7. Appellant acknowledged area ground water problems, but asserted that the siting of applicant's foundation was directly responsible for standing water in appellant's crawl space and super saturation of his property discovered after development on applicant's property. The theory is that the applicant's foundation formed a wall which acts as a dam, restricting the downhill water flow and causing it to back up on appellant's property.

8. Applicant's foundation extends some 9 ft. below ground surface. However, a drainage system is extant which is designed to handle all surface and subterranean water flow.

9. The applicant's construction and the consequential reduced side yard result in less permeable ground area. Because of the topography, a more easterly placement would have allowed an increased degree of natural water flow to the east.

10. 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 Land Use Code provides that variance relief may be sought from the literal interpretation and strict application of the land use code. In essence, for such relief to be granted unusual conditions must be shown which, without variance relief, would deprive the subject property of comparable development rights and privileges. Section 23.40.20.

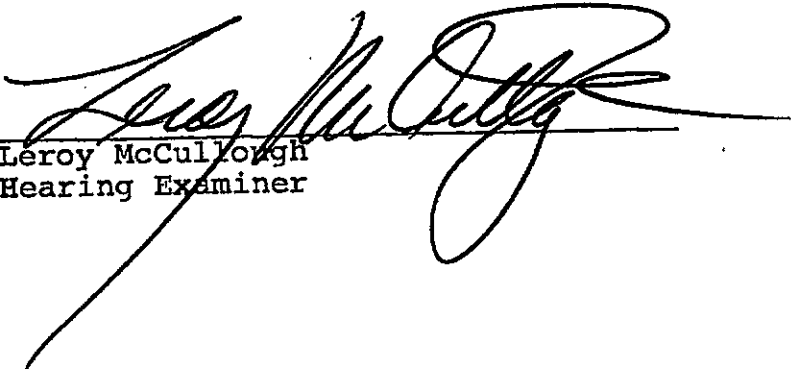
2. A Master Use Permit is required for variances. Section 23.76.06. The Director's decision on variances is subject to appeal. Section 23.76.30. Appeals shall be considered by the Hearing Examiner de novo, and the variance part of Director's decision is to be given no deference. Section 23.76.36.B.6, B.7.

3. The record shows no property condition that distinguishes applicant's property. Other vicinity properties slope downhill from west to east. The topography itself provides no basis for variance relief, notwithstanding the fact that a total side yard setback of 10 ft. would result; and does not require west wall construction 4 ft. or 4.4 ft. from the west lot line. As the Director decision remarks, variance approval cannot be based on contractor error.

Decision

The variance is denied.

Entered this 14th day of September, 1983.


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.