

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

ELVINO W. NACCARATO


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

FILE NO. MUP-82-051(V)
APPLICATION NO. 82-0258

ORDER OF DISMISSAL

A memorandum from Diane Althaus, Department of Construction and Land Use, was filed with the Office of Hearing Examiner showing that the issue as to a proposed deck has been resolved. No further consideration having been requested by appellant, the appeal, as to that issue, may be, and is, hereby, dismissed.

Entered this 29th day of October, 1982.


M. Margaret Klockars
Deputy Hearing Examiner

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

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ELVINO W. NACCARATO

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APPLICATION NO. 82-0258

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Introduction

Appellant, Elvino W. Naccarato, appeals the decision of the Director of the Department of Construction and Land Use (Director) to deny variances for property at 5312 Beach Drive S.W.

For purposes of this decision all section numbers refer to the Seattle Municipal Code, Title 23 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on August 20, 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. Appellant filed an application for a master use permit to construct a second story addition and deck on the existing house. The Director determined that two variances would be required and denied them. Appellant filed this appeal.
2. The house is set back 2 ft. from the front property line. Appellant desires to remove a pitched roof over the front section and substitute a deck. The deck floor would be the same height as the base of the roof.
3. The proposed second floor addition would extend the walls, which begin 10 ft. back from the front property line, upward and then add a pitched roof to provide more headroom in the second floor.
4. Section 23.44.08D(1) establishes a minimum front yard setback of 15 ft. for this property based on the average setback of the two adjoining houses. Because the house is located within that required yard it is nonconforming as to bulk and any expansion in that area would violate Section 23.44.26A. Variances are requested from both provisions.
5. Appellant's plot plan appeared to show a new intrusion into the front yard for the deck. The situation was clarified by the appeal letter and at the hearing. It now appears that no expansion would occur which would increase the nonconformity. Ms. Althaus represented at hearing that, in that case, no variance would be required for the creation of the deck extending no higher than the structure being replaced and no further toward the street.
6. The subject lot, at 3,917 sq. ft. is about the same size as other lots in the block. The other lots provide greater setbacks.
7. The house on the subject property is as large or larger than others on the block. Other residences in the block are one-story and lack any real view of the water.

8. The opinion of Ms. Althaus that the additional height would add undesirable bulk close to the street is accepted.

9. Other front yard variances have been granted in the area based on topographic conditions or shallow depth. This lot does not have such special conditions.

10. The appellant wants to capture a view of the water from the second story to compensate for loss of enjoyment of the rear of the property caused by a lessening of privacy from the overview of the lot from another property.

Conclusions

1. The applicant for a variance must show that the property has a unique condition which, because of a code requirement, prevents it from attaining development comparable to other properties in the vicinity. In this case the siting of the existing house as close to the street is unique for the block but the property is not deprived of rights enjoyed by the others since it is as large as the others and is no different in terms of view.

2. Any variance, therefore, would confer special privilege and go beyond the minimum necessary for relief.

3. The additional bulk in the front yard permitted by the requested variances would not be desirable but does not represent a material detriment to the public welfare.

4. Further development in the front yard would be contrary to the Single Family Residential Areas Policies to preserve the streetscape by requiring averaging of the adjacent front yards.

5. Because the plan's lack of clarity about the deck addition resulted in a determination that a variance would be required, it is appropriate that the portion of the decision relating to that citation be remanded to the Director for reconsideration. The Hearing Examiner should retain jurisdiction as to that portion of the decision so that the appeal may be considered further in the event that variances are still required for the deck.

Decision

The appeal, as to variances for expansion of a nonconforming building in a required front yard (second story), is DENIED and the Director's decision is AFFIRMED. That portion relating to the proposed alteration of the structure to a deck is REMANDED for determination as to whether variances are required and the jurisdiction of the Office of Hearing Examiner is retained for further consideration, if requested by appellant.

Entered this 1st day of September, 1982.

M. Margaret Klockars
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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.