

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

In the Matter of the Appeal of

DANIEL K. AND ROBERTA B. BENJAMIN

FILE NO. MUP-81-085(V)
APPLICATION NO. 81251-0312

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

Introduction

Daniel K. and Roberta B. Benjamin, appellants, appeal the decision of the Director of the Department of Construction and Land Use (Director) to grant front yard and lot coverage variances for property at 3815 N.E. 96th Street.

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

Parties to the proceedings were: Appellants, pro se, and the Director of the Department of Construction and Land Use (Director), represented by Cliff Portman. The applicant did not appear.

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 January 5, 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. John Michael Johnson applied for a master use permit to allow construction of a single family home at 3815 N.E. 96th Street. The Director determined that variances from the front yard requirement of Sections 24.18.090 and 24.62.100 and from the lot coverage limitation of Section 24.18.100 would be required. The variances were conditionally granted. Appellants filed the instant appeal.

2. The subject lot is 27.5 ft. wide and 136.7 ft. deep for an area of 3759.25 sq.ft. The grade of the lots drops some 10-15 ft. just inside the front property line creating a steep slope. The lot slopes up again in the rear. A creek runs diagonally across the property.

3. The plot plan shows a bridge from the property line going 20 ft. back from the property line, then a carport attached to the house and finally a deck with hot tub in the rear.

4. Sections 24.18.090 and 24.62.100 require a front yard setback of at least 25 ft. None would be provided under the proposal. Section 24.18.100 permits up to 35% lot coverage. The proposed lot coverage is 42.7%, which figure includes the access bridge, according to the Department of Construction and Land Use.

5. Lots in the area in this Single Family Residence Medium Density (RS 7200) zone generally exceed the minimum size required of 7200 sq.ft. with a number in the 10-12,000 sq.ft. range. Most houses are one-story with a daylight basement. Two or three have two stories. Appellants' house, which is typical of the area, has about 2,250 sq.ft. of interior space.

6. The proposed house would be two stories plus basement and would have the appearance of being much higher than others in the area. There would be decks at the first and second floors with a hot tub. The deck at the upper level would not be included in the lot coverage calculation because it would be over the floor area of the first level. Floor area, including the deck which does not extend beyond the structure, is 2660 sq.ft., according to DCLU. That deck covers 280 sq.ft., according to the site plan, Exhibit #6.

7. Locating the house further back on the lot would require a retaining wall some 15 ft. high, according to the applicant, to provide access. More views would be blocked from the greater setback as well.

8. A variance from the front yard requirement to allow parking to extend into the front yard was denied for property nearby.

9. Questions regarding the legal status of the lot as a building site were raised but were not part of the appealable variance decision. Appellants may raise those questions in a request for a Director's interpretation.

Conclusions

1. The extreme drop in the lot's topography is a unique condition that warrants variance. A driveway would be allowed without variance at grade but this condition makes that impossible. Therefore, the front yard variance is necessary and would not be special privilege since the property differs from the situation where a front yard variance was denied.

2. The front yard variance would not cause material detriment nor injury to other properties.

3. The small lot, if a legal building site, does create some hardship in attaining comparable development rights. The structure proposed is vastly different from others in that floor area is obtained by providing an extra story. While some variance is appropriate, property rights referred to in Section 24.74.030 A.1. do not include the right of a lot, half the minimum size otherwise permitted, to have greater bulk than others in the area on lots larger than the minimum. Such a variance would exceed the minimum necessary and grant special privilege contrary to the Code's criteria for variance.

4. Since living space proposed appears to be slightly greater than typical for the area and a deck can be provided without additional lot coverage, the necessary variance should not exceed that for 1395 sq.ft. of lot coverage (access bridge, carport and house without hot tub deck of 157 sq.ft.) to avoid special privilege.

5. A variance for this amount will allow a building out of scale and create a sense of bulk but this detriment is not considered material.

6. The Single Family Residential Areas Policies would permit consideration of greater lot coverage for substandard lots to allow reasonable development. This variance, then, would not conflict.

Decision

The Director's decision is affirmed as herein modified to reduce permissible lot coverage under the variance to 1395 sq.ft.

Entered this 19th day of January,
1981.

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.