

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ALFRED J. BIANCHI

FILE NO. S-81-034

from an interpretation of the Director,
Department of Construction and Land Use

Introduction

Appellant, Alfred J. Bianchi, appealed the interpretation of the Director of the Department of Construction and Land Use relating to property at 3213-36th Avenue South. At issue is whether a fence surrounding an accessory rear yard swimming pool may exceed 6 ft. in height without variance from the zoning code.

Appellant exercised his right to appeal pursuant to the Seattle Municipal Code, Section 24.10.030, as amended.

Parties to the proceedings were: Alfred J. Bianchi, Esq.; the Director of the Department of Construction and Land Use (DCLU) by Leslie Durkee.

This matter was heard before the Hearing Examiner on December 14, 1981.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24, as amended, unless otherwise indicated.

After due consideration of the evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions and the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is located in a Single Family Residence High Density (RS 5000) zone at 3213-36th Avenue S. The property, owned by appellant, is legally described as Lot 4, Block 4, York Addition.

2. Appellant has owned the subject residence since approximately 1951. In 1956 a swimming pool was added to the rear yard along with a 6 ft. grape stake fence. Two additional feet of height were added to the fence in response to unguarded intruders and in response to objects being thrown into the pool, such as garbage cans.

3. For reasons not provided in the record, in September, 1981, the appellant received a notice of violation pertaining to the height of the fence and subsequently requested an interpretation which is now the subject of this appeal. At issue is whether the fence surrounding the swimming pool may exceed 6 ft. in height without variance.

Conclusions

1. The Director's decision is to be accorded substantial weight and the burden is on the appellant to establish a contrary position. Hearing Examiner Appeal Rule 8.9. Seattle Municipal Code Section 24.10.070.

2. Accessory uses permitted outright in the RS 5000 zone, Seattle Municipal Code Section 24.20.040, are referenced in the provisions applying to the Single Family Residence Medium Density (RS 7200) zone, Seattle Municipal Code Section 24.18.040 and the Single Family Residence Low Density (RS 9600) zone, Seattle Municipal Code Section 24.16.050(M).

3. Section 24.16.050(M) states that a private swimming pool is an accessory use permitted outright

...provided it shall be enclosed with a fence of strength and design sufficient to resist penetration by children. Such fence shall be not less than 4 ft. high except when placed within a yard enclosed by a fence not less than 4 ft. high.

4. Section 24.62.090, "yard exceptions for certain architectural features", provides at Section C

Fences and freestanding walls 6 ft. or less in height above ground level, may be erected in any required yard...

Peripheries of playground areas accessory to schools and public parks are permitted to be of greater height when wire mesh or similar protective material is used. Id.

5. In his appeal, appellant urged that Section 24.62.090 should be considered as an ordinance directed to fences in general; while 24.16.050 applies specifically to fences for swimming pools. Section 24.16.050 provides no height limit. Accordingly, per appellant's position, there is a conflict in the two code sections and the specific ordinance directed to swimming pools should control. The general rule of statutory construction was put forth that where general and specific legislative provisions are concurrent, the specific provisions should apply to the exclusion of the more general provision.

6. The existing rule in the State of Washington is worded slightly differently as stated in the case of Pearce v. G.R. Kirk Co., 92 Wn.2d 869, 602 P.2d 357 (1979). In that case, RCW 64.12.030 and RCW 79.40.070 provided remedies for the unauthorized cutting of a private landowner's trees. The defendant urged that RCW 79.40.070 provided the exclusive remedy. The court determined as follows:

...we do not find the statutes to be in conflict. The rule is that legislative enactments which relate to the same subject and are not actually in conflict should be interpreted so as to give meaning and effect to both, even though one statute is general in application and the other is special. (Case cited.)

Such an interpretation gives significance to both acts of the legislature. There is no language in either statute making it an exclusive remedy. at 872.

In 22 Wn.App. 323, 589 P.2d 302 (1979) the Washington Appellate Court also stated the principle that statutes relating to the same subject should be read together and harmonized if possible.

7. The two legislative enactments here in issue do not irreconcilably conflict. See Pearce v. G.R. Kirk Co., supra. Interpreting the two ordinance sections "so as to give meaning and effect to both" would dictate a conclusion that absent exceptional relief from provisions of the code, fences enclosing swimming pools shall be not less than 4 ft. high, but no greater than 6 ft. in height.

"There is no language in either (section) making it an exclusive (section)." The 6 ft. stated height in Section 24.62.090 is a non-varianced maximum.

8. Further, the purposes of the zoning regulations include the promotion of the general welfare through a well considered comprehensive plan, by classifying land

...within the city into various land use zones each with appropriate zone designations, and within each zone (to)...limit the use of land and limit(s) the height, size, use and location of buildings and structures...

A structure is defined in the code at Section 24.08.200 as

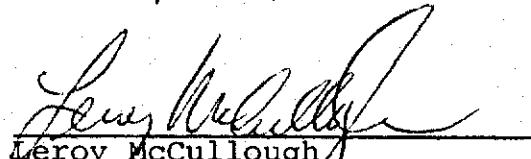
...anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground, but not including fences and walls less than 6 ft. in height... Section 24.06.020

If the purposes of the zoning code include limiting the size and height of structures, by inference fences and walls 6 ft. or higher, to comply with a "well considered comprehensive plan" the interpretation proposed by appellant would directly conflict. Anyone with a swimming pool would be able to arrive at his or her own estimate as to the proper height of the enclosing fence which height might well exceed other required yard permitted fence heights.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 22nd day of December, 1981.


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.