

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

FEDERAL INDUSTRIES,
GENERAL CONTRACTORS, INC.

FILE NO. MUP-81-017(v)
APPLICATION NO. X-81-014

from a decision of the Director of the
Department of Construction and Land Use
on a Master Use Permit application

Introduction

Federal Industries, General Contractors, Inc., appealed as the interested party contracted by property owner Harry Yoshimura, concerning construction of a deck in the rear yard of the residence at 3919-42nd Avenue South.

The appellant exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code. Parties to the proceeding were: Appellant by Darryl H. Weiss, Vice President, Federal Industries; the Department of Construction and Land Use (CLU) by Arthur Ward.

The matter was heard before the Hearing Examiner on July 22, 1981.

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 the Single Family Residence High Density (RS 5000) zone at 3919-42nd Avenue S. The lot has 60 ft. of frontage on the west side of 42nd Avenue S., extends 100 ft. along S. Andover Street, and is developed with a two story, single family residence oriented toward 42nd Avenue S. The property slopes from west to east as do most of the properties in the vicinity.

2. Approximately 7 ft. to the rear of the residence is a two level wooden deck. The deck extends approximately 31 ft. 7 in. from front to rear (east to west) and 28 ft. 4 in. across. Section 26.16.090 requires a minimum 5 ft. side yard. The north side yard by the deck provides no side yard. The deck is not visible from the street.

3. The property owner testified that the deck was constructed to make the back yard usable. In other words, the nature of the slope seemed to prohibit the amenity of a stable chair or table in the rear yard. An additional benefit of the deck is its provision of some lake view.

4. The appellant's deck and the rear yard of the north adjacent neighbor are separated by thick vegetation and a wooden fence approximately 5 ft. in height. Unobstructed, the north view from the appellant's deck would be into the north neighbor's rear yard or toward the rear of that neighbor's dwelling.

5. Beginning at its westernmost point the deck is built approximately 1 ft. above grade. Proceeding easterly, however, the topography declines such that the deck lies between 1 and 3 ft. above ground level. Toward the mid point of the deck are stairs to the second and lower level.

6. The analyst determined that no side yard variances had been considered for properties in the subject block or the block to the south since 1957. The analyst also concluded that the existing deck was much larger than those typically enjoyed by vicinity residents. These assertions were unrefuted.

7. By stipulation the issue remaining for the examiner was whether a variance to provide less than the minimum required side yard should be granted. CLU determined that the remaining two variances - to provide less than the minimum required rear yard and to exceed the maximum allowed rear yard lot coverage - were not required.

8. The Department of Construction and Land Use received no letters concerning this variance application.

9. With regard to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, the action proposed in this application has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC 197-10-170.

Conclusions

1. The Hearing Examiner may authorize variances from the requirements of the zoning code that are not contrary to the public interest, but only where, due to special real property conditions, the strict application of the ordinance would cause undue and unnecessary hardship. Section 24.74.030. In addition, the unique real property conditions must, without variance relief, deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity; the variance must not exceed the minimum necessary for relief nor constitute a grant of special privilege; the variance should not prove materially detrimental to the public welfare or injurious to the property or improvements in the subject zone or vicinity; and the authorization of the variance should not adversely affect the Seattle Comprehensive Plan.

2. Authorizing the variance to allow the 1-3 ft. deck to remain would not necessarily prove injurious to neighboring properties in view of the fact that the deck is visually separated from the north adjacent lot and cannot be viewed from the front of the dwelling. The topography of the appellant's lot is noted as a unique condition which could, without variance relief, deprive the property of some rights and privileges enjoyed by other properties in the same zone or vicinity.

3. However, the record does not show that the present area of the deck is the minimum required for relief; nor that it would have been prohibitive to add 5 ft. to the southern portion of the deck. The latter item would have obviated the necessity for a variance from the 5 ft. side yard requirement.

4. Further, in view of the unrefuted assertion that the deck is larger than the typical deck in the vicinity and in view of the consideration that no side yard variances have been granted for the area, authorizing this variance would constitute a grant of special privilege to the appellant in contravention of the provisions of the ordinance.

5. Authorizing the variance would also conflict with the Comprehensive Plan as modified by the Single Family Residential Areas Policies in that those policies dictate a minimum side yard setback of 5 ft. unless, under certain circumstances, alteration is being made to a building that is nonconforming in this regard. Even in that instance, a 3 ft. minimum is recognized.