

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MICHAEL DOMAN

FILE NO. MUP-81-076 (V)
APPLICATION NO. 81258-0335

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

Introduction

Applicant appealed the Department of Construction and Land Use denial for a variance to allow for the expansion of a building nonconforming as to use at 1700-36th Avenue.

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

Parties to the proceedings were: appellant, pro se; the Director of the Department of Construction and Land Use (DCLU) by Cliff Portman.

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 December 11, 1981.

After due consideration of the evidence elicited during the public hearing and as a result of the personal inspection of the subject property and surrounding area by the Hearing Examiner, 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 1700-36th Avenue. The 8,480 sq. ft. area lot is developed with a circa 1904 residential structure which physically appears as a single family dwelling. The lot is also developed with a detached garage which is located 5 ft. from the south lot line.

2. Topographically, the lot slopes steeply eastward from the rear of the dwelling. The lot is extensively vegetated with several older trees as part of the landscaping.

3. The property is in current use as a duplex and has been, according to the applicant, for 30 years or more.

4. The subject vicinity is a mix of single family and duplex uses. DCLU determined that no variances had been secured for the vicinity, and assessed further that the vicinity development was primarily single family.

5. In 1979, applicant requested and received a permit to construct a deck at the subject property. A second permit was issued in 1981, when construction began, a stop work order was posted, then per agreement the work continued and completed on the stipulation that variance relief be sought. According to DCLU the two permits were issued in error. The subject deck and living room additions are essentially not visible by the neighbors because of the topography and vegetation.

6. With regard to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, 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 applicant requests a variance for the expansion of the building which is nonconforming as to use. Section 24.14.060. As noted by the Director's decision the variance to allow construction would not materially injure other properties because of the separation of the subject development from adjacent lots.

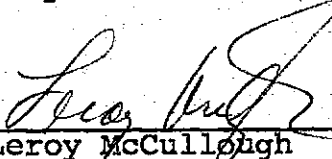
2. The topography and development of the subject lot are real property conditions which in the absence of variance relief would deprive the applicant of rights and privileges enjoyed by other properties in the same zone or vicinity. Based on the unique circumstances of this case the requested variance would not exceed the minimum necessary for relief nor constitute a grant of special privilege to the applicant.

3. The proposal does not operate to increase the number of residential units nor intensify the appearance of the subject dwelling. Under the circumstances, the spirit and purpose of the Single Family Policies would not be violated by the authorization of a variance from the strict and literal applications of those policies which will be the subject of future codification.

Decision

The Director of the Department of Construction and Land Use is REVERSED.

Entered this 28th 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.