

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MICHAEL GAIN AND DAVE DUNCAN

FILE NO. MUP-81-079(V)

APPLICATION NO. 81205-0213

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

Introduction

Appellants filed an appeal from the authorization of a variance to provide less than the minimum required front yard at 1425 Sunset Avenue S.W.

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 by Kimberly Mason, Keller, Rohrbach, Waldo, Hiscock, Butterworth and Fardal; project applicant by David Gee; the Director of the Department of Construction and Land Use (DCLU) by Malli Anderson.

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 17, 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 1425 Sunset Avenue S.W. The lot is a legal lot of record.

2. The vicinity is developed with a mix of single family styles and architectures, some homes dating from circa 1916 and recognized by the Seattle Historical Society. As described by counsel for appellant the vicinity enjoys an established colonial ambiance.

3. The subject property is an irregularly shaped lot, dimensions 120 ft. by 100 ft. by 123 ft. by 128 ft. Proceeding westerly from a triangularly shaped flat area of approximately 100 by 48 by 106 ft. the lot slopes steeply toward Puget Sound. The total lot area is 13,680 sq.ft.

4. The applicant proposes to develop the subject site with a single family dwelling to be located in the flat portion of the lot. The proposed envelope would provide a 5 ft. front setback, i.e., as a minimum distance between the front of the dwelling and the front property line. Variance from the Seattle Municipal Code requirement for a minimum 20 ft. front yard was requested and approved by DCLU. DCLU decided that the 5 ft. variance request should be granted on the condition that

All development of the site must be under the guidance and supervision of a licensed soils engineer with expertise in the geotechnic field, and that a soils report giving recommendations on foundations, drainage and maintaining soils stability be provided prior to the issuance of any development permits.

As noted by the DCLU representative, compliance with the 20 ft. front setback would leave approximately 477 sq. ft. of flat area; a 5 ft. setback would yield approximately 1,567 sq. ft.

5. Appellants filed an appeal from the granting of the variance on the grounds that the alleged hardship was self-created; that authorizing the variance violated the Seattle Municipal Code; that the granting of the variance would prove of material detriment to the public welfare and injurious to vicinity properties; and that the subject area is an environmentally sensitive area, such that development as proposed at 1425 would be detrimental to vicinity residences.

6. Several expressions in opposition to the variance were received into the record, including a petition. Some comments of record did favor the variance request.

7. Specifically, opponents cited several concerns, including: a view that the hardship claimed by applicant was self-created since applicant purchased both the 1429 and 1425 lots together as one unit and the existing vacant lot served as a side yard, effectively compensating for the reduced front yard; and that the area is environmentally sensitive, as evidenced by histories of sloughing. The property owner of 1439 Sunset Avenue testified that 12 years ago she had to replant a bank. The property owner of 1414 Sunset Avenue related that there were formerly two homes north of the 1425 site that slid off their foundations. The concrete patio at 1333 Sunset Avenue was discarded, according to the property owner, because of the supportive land's sloughing. And, the witness continued, the north side of that property dropped by 4½ inches in the last eight years, also because of sloughing. (On the issue of soils, applicant's general response was that, a more advanced technology would be employed in the subject construction.) Vicinity opponents also were of the view that their property values would suffer if the construction were allowed; that the site would appear overbuilt; that if the applicant is to build at all, the applicant should be required to comply with the setback by building on poles, if necessary; and that the variance as requested would serve as negative precedent.

8. The dwelling south adjacent to the subject property at 1429 Sunset Avenue S.W. is dubbed the log house. Its site topography is similar to that of the subject property. In September, 1970, the City of Seattle Board of Adjustment approved a variance for a 15 ft. front yard setback for the log house based on findings that

- (1) A unique topographic condition exists in the westerly portion of the lot in that the grade falls off sharply and could jeopardize the structure proposed for relocation on the site were normal front yard provided. Exceptional circumstances do exist, then, on this site that warrant variance approval.

- (2) Setback provided would be reasonably consistent with that provided in the block front and exceed that provided by same. Approval will insure this lot a similar privilege of land use to that now enjoyed by others...

9. Some vicinity residents assumed that the log house was subsequently located in compliance with the Board of Adjustment grant and that it was (therefore) located 15 ft. from the sidewalk. We find, however, in accord with the plot plan submitted as Director's Exhibit 1 and prepared by applicant's representative-architect. That plan shows that there is a 6 ft. distance between the sidewalk and the front lot lines of the 1429 and 1425 Sunset Avenue addresses. Continuing easterly from the 6 ft. wide sidewalk is a 10 ft. wide parking strip, a 6 inch curb, then the Sunset Avenue Street pavement. No direct evidence to the contrary was presented showing, for example, that the front lot lines of these properties were located differently.

10. Some testimony in opposition was based on the assumption that the 1429 log house was constructed in compliance with the Board of Adjustment grant, i.e., providing a 15 ft. setback. Relating the log house distance from the sidewalk to the proposed dwelling some opponents were apprehensive that the proposed new dwelling would be only 5 ft. from the westerly edge of the sidewalk. In fact, applicant proposes that the front of the new dwelling be located 11 ft. from the sidewalk, i.e., 5 ft. from the front of the dwelling to the front lot line and an additional 6 ft. from the front lot line to the westerly edge of the sidewalk.

11. Testimony of record shows that the properties at 1439 and 1333 Sunset Avenue S.W. have residences set back approximately 15 ft. either from the sidewalk or the property line; in one instance, the witness was not sure of the location of the property line. The DCLU report found that there were a number of residences in the vicinity with less than the required 20 ft. distance from the front property line.

12. 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. Where unique real property conditions that were not created or caused by the owner-applicant would deprive the applicant of development privileges comparable with vicinity residents absent some variance relief, variance from the strict provisions of the code may be allowed pursuant to the provisions of 24.74.030. However, the variance relief may not exceed the minimum necessary for relief nor constitute a grant of special privilege.

2. The subject lot is a separate legal lot of record. Its rearward, steeply declining topography is a unique property condition not created by the owner-applicant that could sustain variance relief. Requiring pole or other circumstantial construction by maintaining a 20 ft. setback would amount to an undue and unnecessary hardship.

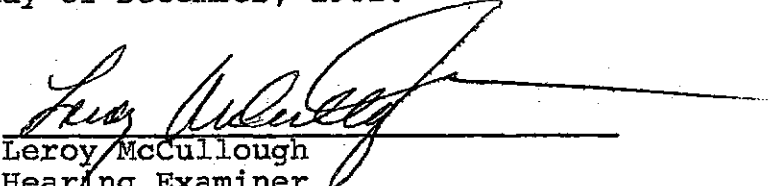
3.. As modified, variance relief would not amount to a grant of special privilege to the applicant. The south adjacent dwelling was granted a variance for a 15 ft. front setback, although the record suggests the log house' 12-15 ft. setback from the sidewalk and its 6 ft. setback from the front property line. Applicant proposes a structure set back 5 ft. from the property line or 11 ft. from the westernmost edge of the sidewalk. DCLU assessed that several properties in the vicinity had less than a 20 ft. front yard setback. Specifically, the properties at 1439 and 1333 Sunset are setback approximately 15 ft. either from the sidewalk or property line.

4. The effect on the public welfare in this very unique circumstance have been considered. Regarding soil stability, DCLU has imposed a reasonable condition which is adopted and incorporated herein.

Decision

The decision of the Director of the Department of Construction is AFFIRMED subject to the additional condition that a minimum 9 ft. front yard setback be provided, effectively establishing a minimum 15 ft. setback from the sidewalk.

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.