

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

In the Matter of the Appeal of

RANDALL E. JEWETT

FILE NO. MUP-82-060(V)
APPLICATION NO. 82-0302

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

Introduction

Applicant-appellant seeks to legalize a deck addition to an existing single family residence providing less than the minimum required front yard at 5028-37th Avenue S.W.

The appellant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

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

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on September 21, 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. Appellant is the owner and occupant of the subject property located at 5028-37th Avenue S.W. The site is found in a single family zoned and developed area.

2. Consistent with the vicinity development pattern, the north and south adjacent residences have 30 ft. setbacks to their principal walls. Prior to the development here in issue, the applicant's front yard setback was also 30 ft.

3. The view from the applicant's front is west to the Olympic Mountains and to Puget Sound. To maximize this amenity applicant has constructed a 24 ft. wide by 16 ft. deep front yard deck with 45 degree corners. The surface of the deck is approximately 5.5 ft. above the level portion of the covered front yard. There is a distance of 14 ft. to the front lot line. The area underneath the deck is used as storage. Siding matching the residence covers the perimeter of the deck. The deck was built without permit, as explained by the applicant, in an effort to avoid delay since the friend who constructed the deck was to be in the Seattle area for a limited period of time.

4. A residence south of the subject property was granted a 2 ft. variance for a second story deck providing a 25.5 ft. setback. Otherwise, no vicinity residences have decks constructed in the required front yard. The topography of the applicant's front lot is similar to those of his immediate neighbors.

5. An adjacent property resident testifying in opposition to the variance request noted that he and family could presently view directly onto the applicant's deck; and further that the bulk of the project detracted from the real and aesthetic view of the witness' property. A comment letter opined that the existing deck was "about 3 ft." too far. Other comment letters complimented the construction and noted that it was an improvement to the area.

6. A deck reduced 6 ft. in depth would still provide a west view. However, according to the applicant, reducing the size of the deck would constitute an economic hardship to him; construction of the deck was designed to and resulted in an improvement to the property and to the neighborhood.

7. 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. In order for variance relief to be granted unique property conditions must be shown which would, without variance relief, deprive the subject property of rights and privileges enjoyed by other properties in the same zone or vicinity. In addition, the variance should not exceed the minimum necessary for relief nor prove materially detrimental to the public welfare. Section 24.74.030, as amended.

2. The required front yard setback for the single family zone is "either the average of the front yards of the single family structures of either side or 20 feet, whichever is less". Accordingly, the front yard setback required for the subject property is 20, as opposed to 30 ft. Section 23.44.08(D)(1). Applicant is proposing a front yard setback of 14 ft.

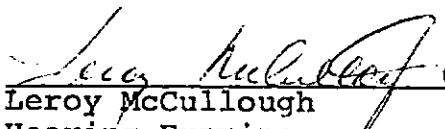
3. Because the deck in question is approximately 5.5 ft. above the level portion of the front yard it is not within the exception for decks "no greater than eighteen inches on average above existing grade" which may extend into required yards, but not within 5 ft. of any lot line. Chapter 23.44.

4. Although the economic hardship to the appellant has been noted, the criteria for variance approval have not been met. No unique property conditions have been presented which suggest that a deck, as has been constructed by the appellant, is necessary for the appellant to enjoy development comparable to those of his neighbors. In point of fact, approval of this variance would constitute a grant of special privilege to the appellant since no decks have been built in required front yards with the exception of a varianced residence which provided a 25.5 ft. front yard. Applicant is proposing a 14 ft. setback. Thus, granting this variance could prove materially detrimental to the public welfare by negative precedent.

Decision

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

Entered this 5th day of October, 1982.


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, instruction 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.