

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

In the Matter of the Appeal of

ROBERT MCNEILLY FOR LEONARD VANN

FILE NO. MUP-85-016(V)
APPLICATION NO. 8406462

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

Introduction

Applicant proposes to construct a second floor addition to an existing garage/sauna structure that is accessory to a single family residence addressed as 4043 - 55th Avenue S.W. DCLU denied the variance relief required and applicant submitted this appeal.

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

This matter came on for hearing before the Hearing Examiner on May 7, 1985, and pursuant to stipulations of record was remanded for DCLU's and interested persons' review of revised plans. By subsequent Hearing Examiner Order the hearing on the revised plans was scheduled to be heard on July 22, 1985. On July 22, 1985 the matter was continued to July 23, 1985. On July 23, 1985, pursuant to stipulations of record between neighbors, applicant and DCLU the matter was continued to August 2, 1985, when testimony was received from DCLU and from Paul Carkeek, a neighbor to the project site. Applicant did not appear at the August 2, 1985 hearing, but subsequently telephoned his concurrence with the requests of record that the record be closed on August 2, 1985 and that a decision be issued on the most recent plans submitted.

Property owner Leonard E. Vann was represented at pre-August 2, 1985 hearings by architect Robert McNeilly.

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

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. Applicant proposes to add a second floor to an existing structure that is accessory to a single family residence addressed as 4043 - 55th Avenue S.W. The property is zoned Single Family (SF) 5000.
2. The subject rectangular lot has approximately 62 feet frontage along east abutting 55th Avenue S.W. and is approximately 100 feet deep. The lot is basically level.
3. The 6250 sq. ft. lot is developed with a one story single family residence with basement that is located to within 3 ft. 6 in. of the south property line. The north setback is at least 13 ft.
4. Part of the north setback is in use as a driveway that leads to the accessory garage structure. The garage has a floor area of 220 sq. ft. and a sauna and shower room that has a floor area of 300 sq. ft.
5. The accessory structure is 13 ft. wide and 40 ft. long. It rests within 3 ft. of the north lot line and within 1 ft. of the rear (west) lot line. It is 8-1/2 ft. high. A swimming pool is located immediately south of the accessory garage structure.

6. The location of the accessory structure in relation to the side yard has not substantially changed since the garage was built in 1948-49.

7. Applicant's plans under current review consist of two proposals, both of which are designed to increase storage area and were subjects of the DCLU decision here appealed. Applicant's letter of appeal states that he decided against extending the residence height for additional storage out of consideration for neighbors' views, out of his "desire for architectural cleanliness;" and "to try and re-group ...privacy from the 'Tower' that was constructed to [his] immediate North..." The referenced "tower" was built two years ago within, according to appellant, "5 ft. of the property line..." with no variance.

8. The owners of the north adjacent property submitted that the "tower" construction was done with no variance but "completely within current building codes," and that their addition results in no invasion of privacy to the south or otherwise.

9. Applicant's first proposal is to excise 1 ft. from the length and add a second story to the accessory structure. The result would be the structure's 5 ft. separation from the principal dwelling and an 18 ft. ridge height for the remaining 39 ft. of structure. See Exhibit 4, plot plan. The proposal would, according to the DCLU decision at issue, require a 2 ft. side yard variance for the easterly 20 ft. and a 2-1/2 ft. height variance. However, the sheet notes, Exhibit 4, p. 1, indicate that the "new addition roof will only exceed existing house roof by 8". The height variance applied for is to allow an accessory structure, located in a rear yard, to exceed maximum permitted height.

10. Seattle Municipal Code Section 23.44.16(E)(2) limits a garage located in a required yard to 12 ft. in height but allows the ridge of a pitched roof to extend up to 3 ft. above the 12 ft.

11. The second proposal would add height (to a 20 ft. ridge) only to the portion east of the required (rear) yard setback, leaving only a side yard variance of 2 ft. required. If applicant indented the structure south, this side yard variance would not be required. A variation under review by applicant is to replace the existing pitched roof with a 42" (3 ft. 6 in.) high solid deck wall where that portion is in the required (rear) yard. As this would not exceed 12 ft. in height, no variance would be required, according to the DCLU decision.

12. Vicinity properties are zoned and developed single family.

13. The north and west adjacent property owners object to the construction and any variance relief to accomodate same because of expected intrusions on "light, air, safety, privacy and dominion". Their rear yards abut the applicant's rear yard. Objection was also made to the negative precedent that could be established and on the potential overbuilding of the lot.

14. The record shows and the Hearing Examiner finds that there has been no similar variance relief granted in the subject vicinity. According to DCLU "no rear yards of properties in the vicinity were observed to have accessory structures comparable to that proposed or which exceeded the maximum permitted height." Applicant presented no information to the contrary. The Hearing Examiner finds in accordance with the DCLU observation.

15. With regard to the State Environmental Policy Act of 1971 (SEPA) and Chapter 25.05, 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 Chapter 197-11.

Conclusions

1. In order for variance relief to be granted, all of the criteria of Seattle Municipal Code Section 23.40.20 must be met. In brief, the literal application of the Code provisions must be shown to cause an undue and unnecessary hardship. Unusual property conditions must also be shown which, without variance relief, would deprive applicant of comparable development rights and privileges. Next, the relief must be the minimum necessary and should not constitute a special privilege. Finally, the variance relief must be consistent with the spirit and purpose of the Land Use Code and Policies, and not materially detrimental to the public welfare.

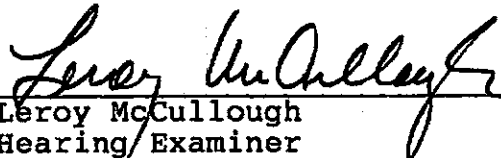
2. DCLU decisions on variances are given no deference. Seattle Municipal Code Section 23.76.36(B)(7). Nevertheless, since the criteria of above Seattle Municipal Code Section 23.40.20 must be shown before variance relief may issue, the burden of persuasion is on the applicant.

3. The present location of the garage/accessory structure within the required side and rear setback areas can be considered as an unusual property condition which prevents construction of the proposed addition without height and side yard variance relief for proposal 1 and side yard variance relief for proposal 2. In neither case, however, was it established that the additional storage space to be created by the second story addition is necessary for applicant to enjoy development privilege that are comparable to others in the zone or vicinity. The record reflects that no similar variances have been granted and that no other rear yard structures are present in the vicinity that are of the bulk proposed by the applicant. Thus, the principal criterion has not been met. Nor was it established that the Land Use Code building restrictions, though inconvenient, cause hardship that is "undue and unnecessary." The Hearing Examiner considers code imposed setbacks as instrumental in ensuring adequate air and light passage between properties. Therefore, under the circumstances presented by this case, approval of the variance relief would be inconsistent with the spirit and purpose of the Land Use Code.

Decision

The variance relief is DENIED.

Entered this 8th day of August, 1985.


Leroy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW OF
HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

The decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review of the decision must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11).

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.