

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

In the Matter of the Appeal of

MERLIN RAINWATER AND GREG FOSTER

FILE NO. MUP-87-010(V)  
APPLICATION NO. 8607340

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

Introduction

Applicants-appellants propose to construct second and third floor additions to an existing single-family residence addressed as 430 - 25th Avenue East. DCLU denied the variance relief requested related to the rear yard setback and appellants submitted this appeal.

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

This matter was heard before the Hearing Examiner on April 1, 1987.

Parties to the proceedings were: appellants, by Samuel M. Jacobs, attorney at law; and the Department of Construction and Land Use Director by Cheryl Waldman, Associate Land Use Specialist.

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. The subject property is located in a Single Family 5000 zone on the east side of Capitol Hill. The street address is 430 - 25th Avenue East.

2. The rectangular site has 50 ft. of frontage to 25th Avenue East and extends east for 100 ft.

3. The 5000 sq. ft. area lot is developed with a c. 1948 single-family residence structure that was originally one-story. The structure is located approximately 45 ft. from the front property line (to 25th) but only 15 ft. from the rear property line.

4. Exhibit 3, the City Building Permit for the site, shows that arrangements were made to move the house forward to provide a 15' rear yard "per code." See also Exhibit 4. It was undisputed that the required setback (without variance) is 20 ft., i.e. 20 percent of lot depth for lots less than 125 ft. deep. Seattle Municipal Code Section 23.44.14(B).

5. Topographically the lot is level from 25th Avenue until it begins a decline approximately 20 ft. from the rear property line. The rear yard is described as steep, narrow and essentially useless.

6. The site is within a single-family developed neighborhood of older single and two-story residences. Development sites of 5000 sq. ft. are common in this area.

7. Applicants propose to utilize the existing wall lines to construct second and third-story additions to the structure. According to DCLU, applicant was erroneously issued a building permit for the addition in 1986. Subsequent to that permit and construction, the structure now has three stories, and a portion of the addition extends into the required (20 ft.) rear setback.

8. Resetting the additions by 5 ft. would likely mean adding vertical support, such as through an existing first floor room, and a significant alteration of the stair access.

9. The Hearing Examiner finds in accord with the credible testimony of record and in accord with photo Exhibit 9 that similar remodeling has occurred in the neighborhood, i.e. adding one or two stories to existing walls, and is not uncommon. DCLU could not state whether similar variances had been granted under the Land Use Code for this vicinity.

10. Exhibit 9 indicates that a side yard variance, X-79-98 was granted June 7, 1979 for property at 453 - 26th East. Exhibit 9 also reflects variance approvals for sites at 814 26th East and 210 - 22nd East to expand, although rear and front yards were less than the minimum required.

11. Residents of a home in the 400 block of 26th Avenue East complained by letter about the height, privacy intrusion and solar blockage impacts of the proposed structure. With respect to shadows, photo Exhibit 6A and 6B, taken "3:30 p.m. in mid-March", fail to show that the 26th Avenue East property would be impacted by the (already built) proposal. The 26th Avenue East and other east adjacent properties are topographically below the subject property. There is no evidence of record that the height exceeds code limitations or that the soil structure cannot withstand the addition. DCLU acknowledges that other vicinity residences appear to meet the minimum rear yard requirement.

#### Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to Chapter 23.76, Seattle Municipal Code.

2. Pursuant to Seattle Municipal Code Section 23.76.022(C)(7), the DCLU decision shall be given no deference in the review of a decision on a variance application.

3. The variance criteria of Seattle Municipal Code Section 23.40.020(C) must be met in order for relief to issue. Discussion of specific criteria appears below.

4. DCLU acknowledges that other vicinity residences appear to meet the minimum rear yard requirement, and that the subject property, with its 15 ft. rear yard, is somewhat unusual. The Hearing Examiner is persuaded that the siting of the structure within 15 ft. of the rear setback is an unusual property condition not caused by applicants that will sustain variance relief.

5. The Hearing Examiner agrees with DCLU and applicants that because of the present siting the requested variance is the minimum necessary for relief.

6. The question of an inconsistent special privilege is more difficult. While the record fails to show other variances for rear yard setbacks, it is clear that other properties have built on existing walls and have added 1-2 stories. It is also clear that vicinity properties in the past have been allowed to expand notwithstanding less-than minimum required rear or side yards. The Hearing Examiner therefore concludes that the variance would not constitute a special privilege that would be "inconsistent" with limitations upon other properties. In point of fact, the variance would allow applicants development

privileges similar to those of others in the vicinity.

7. The Hearing Examiner agrees with DCLU and applicants that the variance approval would present no material detriment to the public welfare. There is no evidence of record that any solar, geological or privacy impacts will be material or injurious. In that most other residences have adequate rear yards, the precedential effect of this variance will be extremely limited.

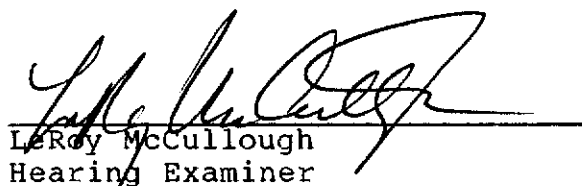
8. The strict application of the code would require applicants to provide supplemental support for the 5 ft. (east) indentation, or to impact the integrity of the front yard area. In light of the condition of rear yard, and the other considerations of record, the strict application of the Land Use Code would constitute an undue and unnecessary hardship in this case.

9. The final criterion addresses the consistency with the spirit and purpose of the Land Use Code. Based on the severe topographical break between the subject site and the east adjacent sites, the proposal poses no significant threat to the City policy regarding separations by minimum rear and side setbacks. Further, the variance would encourage renovation and expansion of existing inner city housing. Cf. In Re Krzeszowski, MUP-86-015(V), DCLU Application No. 8506570 (1986).

#### Decision

The variance is GRANTED.

Entered this 16th day of April, 1987.

  
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 party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

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, 5th Floor, Seattle, Washington 98104, (206) 625-4197.