

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

In the Matter of the Appeal of

BURTON AND RALENE WALLS

FILE NO. S-86-002

from an interpretation of the Director,
Department of Construction and Land Use

Introduction

Appellants challenge an interpretation concerning development at 116 Prospect in the City of Seattle.

The appellants exercised the right to appeal pursuant to Seattle Municipal Code Section 23.88.020.

Parties to the proceedings were: appellants by John C. McCullough, Foster, Pepper and Riviera; project applicant by John D. Blankinship of Montgomery, Purdue, Blankinship and Austin; and the Department of Construction and Land Use (DCLU) Director by attorney Guy Fletcher, land use specialist.

This matter was heard before the Hearing Examiner on April 15, 1986.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23, as amended, 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. Most of the basic facts are undisputed. The subject property is addressed as 116 Prospect Street and is legally described as

the west 1/3 of Lots 1 and 2, the east 17.34 feet of Lot 7, and the east 17.34 feet of Lot 8, lying north of Queen Anne Boulevard, all in Block 7, Mercer's Addition.

2. The Single Family 5000 zoned site has been developed with a single family structure that is nearing completion. Presently, the building gives the visual effect of offering two separate garage openings. As will be discussed below a one car garage is proposed.

3. Topographically the site slopes uphill from Prospect to the north. It is the area between the south (Prospect Street) lot line and the dwelling that is at the center of this dispute, i.e., the front setback area.

4. In the past, project applicant sought various approvals to allow a three car garage in this front yard setback area, and subsequent to variance denial approval for a two car garage of the same dimension as initially proposed. Both requests were denied. Throughout the DCLU and Hearing Examiner review of the applications neighbors to the proposal site exercised vigilance in monitoring the applications.

5. Appellants herein own and reside in the property east adjacent to the subject site. They do not contest the DCLU Interpretation Finding that "a one-car garage is permitted in the front yard of 116 Prospect."

6. Rather, appellants question whether the structure adjoining the garage, dubbed a workshop, is in fact an "underground" structure. Secondly, appellants fear that the adjoining structure will be converted to parking area for two cars. If their apprehensions are realized three cars would ultimately be parked on-site, variance denial notwithstanding. See Appellant Exhibit 5.

7. Appellants presented a copy of 1984 site plans for a different, unspecified project. Those plans show the elevation at the subject south and east lot line intersection as 111.52 ft. Exhibit 15. A March 1985, survey done at appellants' behest shows a point a short distance north of (above) and east of the intersection as 112 ft. 8 in. Appellants did not assert that they had precise figures for pre-existing elevations.

8. The more reliable testimony on the subject of pre-existing elevation was offered by the applicant's contractor. He indicated and the Hearing Examiner finds that prior to September 20, 1984, proponent secured a survey and based his building plans thereon. Site excavation occurred between January 8-10, 1985. Where Exhibit 15 showed elevation of 111.52 ft., applicant's pre-excavation survey showed a higher elevation of 112.6 ft.

9. The approved plans, Director's Exhibit 11, show a one car garage with a 12 ft. wide opening and a depth (north-south dimension) of 20 ft. 6 inches. To the east of a 2 by 4 solid partition wall is the designated workshop area that is similar in width and depth. The plans in issue show that the front opening of the workshop is to be filled in.

10. Another portion of the plans shows that the front of the workshop is to be decorated with a rockery wall "to qualify workshop as underground structure". The rockery extends nearly to the eastern property line, according to these plans, Director's Exhibit 1, and should extend from ground level to obscure the workshop from view.

11. The building plans show the roof of the workshop at a corrected elevation of 110.99 ft. Department Exhibit 12.

12. The Hearing Examiner finds that the workshop portion of the structure is in fact under 111 ft. in elevation.

13. After a test effort, applicant's witness concluded that it was not possible to maneuver three cars into the site as feared by appellants. DCLU also entertained serious doubt as to whether required turning radii would permit the parking scheme feared by appellants.

Conclusions

1. The Hearing Examiner has jurisdiction of these proceedings pursuant to Chapter 23.88, Seattle Municipal Code.

2. Seattle Municipal Code Section 23.88.20(E)(5) provides that the decision of the Hearing Examiner shall be made "upon the same basis as was required of the DCLU Director". The section continues that

The interpretation of the Director shall be given substantial weight, and the burden of establishing the contrary shall be upon the appellant.

Appellants did not overcome the "substantial weight" given the Director's decision. The interpretation at issue is therefore affirmed.

3. Although not the issue, the weight of the evidence shows that it is highly improbable that autos could be maneuvered such that three could be parked on site. Neither is variance relief at issue.

4. The issue is whether the plans accord with the zoning ordinance provisions. Appellants do not contest the location of a one-car garage in the front yard. Cf. Seattle Municipal Code Section 23.44.16. Rather, appellants view the garage-workshop combination as an "obvious three-car garage" which exceeds pre-construction elevation. The plans show the easterly portion of the structure as a workshop.

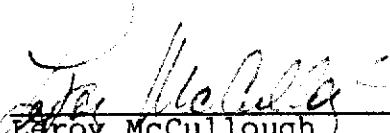
5. The weight of the evidence shows a pre-existing elevation of 111 ft. at the eastern edge of the workshop structure, and that the workshop structure is below the 111 ft. elevation. Seattle Municipal Code Section 23.44.10(D)(2)(e) provides concerning lot coverage that "an underground structure may occupy any part of the entire lot." "Underground" is defined at Seattle Municipal Code 23.84.040 as "entirely below the surface of the earth excluding access." By inference, the DCLU decision considers that "surface of the earth" as the previous elevation level. Appellants did not argue against this inference and cited no Land Use Code language precluding such consideration. (The resulting visual effect is admittedly that of a structure above some ground level.) This record therefore provides no basis for the Hearing Examiner to conclude that the workshop structure is not an underground structure with permitted siting within the front yard setback. Seattle Municipal Code Section 23.84.46.

6. The plans at issue show that the workshop entry must be closed and its visibility obscured by a rockery generally extending to the east lot line. Continued vigilance on the part of the neighbors should provide additional incentive for DCLU to enforce compliance with the approved plans.

Decision

The interpretation is AFFIRMED.

Entered this 30th day of April, 1986.


Leroy McCullough
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City, 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 must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such request 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. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.