

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

In the Matter of the Appeal of

DANIEL L. ADAM

FILE NO. MUP-87-065(V)
APPLICATION NO. 8706191

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

Introduction

Daniel Adam appeals the decision of the Director, Department of Construction and Land Use, on a master use permit application to deny variances requested for property at 5812 Padilla Place South.

The appellant 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 December 21, 1987.

Parties to the proceedings were: Daniel Adam, pro se, and the Director by Jim Barnes, 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. Daniel Adam applied for variances needed for the carport addition he has constructed at 5812 Padilla Place South. The Director denied these variances. Appellant filed a timely appeal.

2. The subject property is a 2,400 sq. ft. lot developed with a single-family residence in an L-2 zone in Georgetown. The house has a 10 ft. front setback and 4.5 ft. rear setback. A carport is located on the south side of the house 3.5 ft. from the house. The carport was 22 ft. long and 12 ft. wide before the addition and extended to the rear property line and 3.5 ft. from the south property line. Mr. Adam has constructed an additional 23 ft. of carport in front of the existing carport which extends to within 5 ft. of the front property line and provides the same 3.5 ft. setback from the south property line.

3. The Director determined that the addition to the carport would require three variances: 1) from Section 23.45.028A which requires a 10 ft. front setback; 2) from Section 23.45.024.B.1.a which permits a maximum depth for a structure of 33 ft. on this lot and 45 ft. for the total carport is proposed; 3) from Section 23.45.028.D.2.a which requires a 5 ft. setback for this property on the south side of the carport.

4. The lot is one of two very small lots created from the division a lot in a strip of single-family, duplexes and other small residential uses and one church between South Orcas and South Homer Streets. Across the alley from the subject lot is a poorly maintained church. Appellant's property is very well maintained.

5. Appellant constructed the addition which is enclosed on

three sides to provide security for a second car, privacy for a barbecue area and a wind break. Within a recent two month period the street has had one car stolen, wheels stolen from another car and the license plates stolen from a third.

6. Appellant found that there are other garages and accessory structures in the area close to sidewalks and alleys. The record shows that no variances have been granted for any of those. One example was located in a commercial zone which has different development standards. Garages could have been placed legally up to the alley. One other structure may have been illegally placed.

7. Jim Barnes testified that an 11 ft. by 10.5 ft. space could be covered without requiring any variance from code standards. This testimony was uncontroverted.

8. A solid, 6 ft. high fence could be constructed for privacy and wind protection without variance. Mr. Barnes suggested that flowers needing sun could be planted on the south side of the fence.

9. Appellant discussed his structure with neighbors and none had any objection to the addition. A letter was received from the nonresident owner of an adjacent property suggesting that appellant should buy that property for additional space.

Conclusions

1. Variances can be granted only if all requirements of Section 23.40.020C are met. First, the property must have an unusual property condition because of which the strict application of code standards deprives it of rights other properties in the zone and vicinity enjoy. The size of the lot is unusual, however covered parking for one car is currently on the lot. There was no showing that other lots have been approved for more extensive parking. Therefore the size does not cause the application of the setback and maximum depth standards to deprive the lot of rights enjoyed by its neighbors.

2. The second requirement is that the variance not exceed the minimum necessary for relief and not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity. The need for variance could be avoided with a different configuration so the request exceeds the minimum necessary. While other garage structures are close to sidewalks or alleys, they are not as a result of variances so granting one in this case where relief is not warranted would amount to special privilege.

3. The third requirement is that the variance will not be materially detrimental to public welfare or injurious to property in the zone and vicinity. While the amount of open space remaining would be less than intended under the code, the examiner cannot conclude that the variances would cause material detriment. Under appellant's care the property causes no injury to other properties.

2. The fourth condition is that the literal interpretation and strict application of the provisions would cause undue and unnecessary hardship. Since the structure has been constructed there would be hardship from denial of the requested variances.

3. The final requirement is that the variances be consistent with the spirit and purpose of the Land Use Code and Land Use Policies. The policies for Lowrise 2 do require setbacks which would not be met and without greater justification the variances would conflict with those policies.

4. The appellant believes that the area will soon be other than residential and asks that the structure be allowed to remain for that period. While the examiner agrees that removal of the structure would not greatly improve the area and would be wasteful, the examiner has no authority to permit the structure to

remain except through the variance process. Since all requirements cannot be met by the application, variance cannot be granted.

Decision

The variances are denied.

Entered this 5th day of January, 1988.

M. Margaret Klockars
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Deputy 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, Seattle, Washington 98104, (206) 684-0521.