

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DAVID AND NANCY EDELSTEIN

FILE NO. MUP-84-074

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

APPLICATION NO. 8403790

#### Introduction

Appellants, David and Nancy Edelstein, appeal the decision of the Director, Department of Construction and Land Use, to deny or condition certain variances related to parking in the required front yard at 1122 Harvard Avenue East.

The appellants exercised their 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 November 8, 1984.

Parties to the proceedings were: appellants, represented by Sarah E. Mack, Hillis, Cairncross, Clark and Martin, and the Director represented by Ed Somers, 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 appellants applied for a master use permit to construct a two car garage in the front yard at 1122 Harvard Avenue East. The Director found that four variances would be required and denied all but one to exceed maximum lot coverage for a one car garage. Appellants appeal those decisions.

2. The subject site is a 50 by 100 ft. lot developed with a single family residence in an SF 5000 zone in the Harvard-Belmont Landmark District. A steep embankment occupies the front of the lot rising 7.5 ft. above the sidewalk. No on-site parking is provided. There is no alley abutting the site.

3. Appellants propose to construct a two car garage terraced into the embankment extending to the front property line. The property meets the conditions of Section 23.44.16D3 for a one car garage in the required front yard. A variance from that provision would be required to allow parking for the second car in the front yard. Section 23.44.16E1C allows for 300 sq. ft. of lot coverage for a garage in the front yard. Appellants need a variance to allow 400 sq. ft.

4. Section 23.54.30E1(b) permits a 10 ft. wide curb cut. Appellants request variance for a 16 ft. wide curb cut.

5. Section 23.44.10C establishes maximum lot coverage of 35% or 1,750 sq. ft., whichever is larger. Existing lot coverage is 1,764 sq. ft. The proposed lot coverage is 1,984 sq. ft. or

39.68% for which variance is requested. The Director granted the lot coverage variance to allow up to an additional 300 sq. ft.

6. The subject property adjoins the Scottish Rite Temple property on the south side of its parking lot.

7. Parking is prohibited on the west side of Harvard Avenue East, the opposite side from appellants' property.

8. Of the 10 residential lots with frontage on both sides of Harvard Avenue East in the 1100 block, three have one car garages and two have two car garages. Two other lots have provision for parking, one in a circular driveway and one in two driveways. In the same two block faces there is one 9 ft. wide curb cut, one 10 ft. wide curb cut, two 13 ft., one 14 ft., one 15 ft., and 16 ft., one 17 ft. curb one 22 ft. curb cut.

9. In the next block south, the 900 block of Harvard East there are eleven lots in single family use and one to be occupied by condominiums. Two of the lots have one car garages, four have two car garages and one has a four car garage built in 1982. Of the twelve curb cuts one is 10 ft. wide, two are 14 ft., six are 15 ft., two are 16 ft. and one is 22 ft. wide.

10. Most garages and curb cuts in the two blocks were constructed prior to the current Land Use Code.

11. Parking from activities at the Scottish Rite Temple spills over several nights each week until as late as midnight and on most weekends. People park on the restricted side of the street, in front of fire hydrants and block driveways. Appellants have to double park to unload groceries on occasion and then park several blocks away.

12. Appellants desire the security of a garage for their cars as well as the certainty of parking space. They have had a car broken into three times in three years, the last three months ago. Their insurance has been cancelled. A visitor's car has been broken into as well as those of neighbors.

13. The curb cut needs to be 16 ft. wide for the proposed garage to allow maneuvering room, especially given the propensity of those seeking parking in the area to encroach on driveways.

14. Because of the placement of a fire hydrant and other curb cuts, a 16 ft. wide curb cut at appellants' property would displace no more parking than a 10 ft. wide curb cut.

15. The Director interprets Section 23.44.16D6, which allows two car garages in front yards under certain circumstances, to apply only when 24 hour parking is prohibited on both sides of the street. If the ambiguous language of the section were interpreted differently, only the lot coverage variance would be required in this case.

### Conclusions

1. Unusual conditions combine in this case to deprive the property of the enjoyment of reasonably convenient and safe parking which many other properties in the area enjoy. The conditions are the embankment, restriction on street parking, proximity to the Scottish Rite Temple and high crime incidence. None of these conditions was created by appellants.

2. Variance from the four provisions to allow a two car, 400 sq. ft. garage with 16 ft. wide curb cut are the minimum necessary for relief. Special privilege would not be conferred because of the number of two car garages and curb cuts wider than

10 ft. in the area.

3. The two car garage and 16 ft. wide curb cut would not injure any other property. No detriment to the public welfare is foreseen and some benefit could accrue from reducing the demand for on-street parking. The review by the Landmarks Preservation Board will assure that appellants' proposal will not violate Harvard-Belmont Landmark District standards.

4. Without the variances appellants would suffer the hardship of having to compete for parking on-street for a second car.

5. The Single Family Residential Areas Policies indicate that parking in front yards is generally prohibited but both the policies and code recognize the need for exceptions through special code provisions and variances. The combination of factors in this case are such that variance is warranted and would not violate the spirit and purpose of the policies and Land Use Code.

Decision

The variances are granted.

Entered this 21st day of November, 1984.

  
M. Margaret Klockars  
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 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); Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73.

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.