

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ROBERT L. BOGGESS, AIA

FILE NO. MUP-84-071(V)
APPLICATION NO. 8401321

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

Introduction

Appellant, Robert L. Boggess, appeals the decision of the Director, Department of Construction and Land Use, to deny a variance to waive off-street parking for property at 1116 California Way S.W.

The appellant exercised his 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 October 11, 1984.

Parties to the proceedings were: appellant, pro se, 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. Appellant applied for a master use permit for the future construction of a two-unit ground-related residence. A variance to waive required off-street parking was requested and denied. Appellant appeals.

2. The subject site is a vacant lot with frontages on California Way S.W. and Elm Place S.W. The property is very steep and is designated as environmentally sensitive. The current zoning is SF 9600 but at the time of application was RD 5000. The Director recognizes that the applicant's rights to RD 5000 standards are vested. The property is within the area consisting of the hillside on both sides of California designated as greenbelt.

3. Appellant proposes to provide three parking spaces for the residence on a parking deck within the undeveloped California Way S.W. right-of-way. The Director determined that a variance would be required from Section 24.64.120 which requires one off-street parking space per unit.

4. The appellant proposes to locate the residence on the upper portion of the lot to take advantage of the view overlooking Elliott Bay and to minimize the risk of damage from an earth slide as well as structural and construction reasons.

5. Buildings in adjacent zones block the view from lower elevations of the site.

6. Residences on the west side of Elm Place S.W. are located on the bottom portions of the lots. They were built prior to the view-blocking structures. Two of the these properties have terraced garages in the front yards accessed from Elm Place. The other two developed properties have no off-street parking.

7. California Way S.W. is a designated arterial. A count of traffic volume on one day showed an average of 38.6 vehicles per hour by the site between the hours of 6:00 a.m. and 6:00 p.m. and a p.m. peak hour volume of 157 vehicles.

8. One large tree would have to be removed from the right-of-way for the parking area. Appellant proposes to provide holes in the deck for trees to soften the impact of the structure and mitigate the loss of contiguity of the greenbelt.

9. The proposal would require cars to back out onto California Way.

10. Section 23.54.30.D permits backing onto the street unless the street is an arterial.

11. Section 11.58.280 of the Traffic Code permits backing only if it can be done with safety.

12. In two blocks of California Avenue are 17 houses, 15 of which have parking which requires backing onto the arterial. The two are the only ones with development along the arterial of California Avenue-California Way.

13. A significant history of slide activity exists in the vicinity of the site. Due to the steep slope of the site and its subsurface conditions, there is a moderate level of risk associated with development of the site. Exhibit 3.

14. A natural "bench" across California Way S.W. from the site reduces the likelihood of damage from a slide upslope of the roadway. The consequences of a slide downslope from the roadway would be less if the structure is located at the top of the slope rather than at the bottom because slide debris would pass beneath the structure. At the bottom the debris would hit the structure.

15. While it is technically possible to construct the residence at the bottom of the lot with a design to withstand a shallow slide, extraordinary structural elements would be required. One possible element would be a retaining wall some 5 ft. thick extending 20 ft. above ground level, 40 ft. below and then under the entire structure. The cost of such a retaining wall alone could be \$500,000. Other possible designs would not be less expensive.

16. Appellant offered an alternative design for parking which would allow the cars to head out into the arterial rather than back out but would accommodate only two cars. Landscaping to be provided on the proposed deck would have to be eliminated.

17. The Engineering Department commented that backing across a sidewalk and onto an arterial is dangerous and not permitted and that the street right-of-way may be needed for future work on the street.

18. Walter Hundley, Superintendent of the Department of Parks and Recreation, recommends that the variance be denied to protect the integrity of the greenbelt.

19. Three comment letters were received by the Director from neighbors. (Exhibit 2). Two from the same address on Harbor Avenue S.W., an arterial one block east of the subject site, experience overflow parking from Alki Avenue and Don Armeni Park so oppose any waiver of off-street parking. The third letter addresses the risk from any construction on the slope, potential street closure and hazard from parking on the roadway.

20. The construction of a retaining wall for a structure at the bottom of the lot is likely to necessitate the removal of a high proportion of the trees on the lot.

21. If parking was provided on the upper level of the structure, the floor area for living purposes would be reduced by one floor (approximately 1,000 sq. ft.) plus that taken up by the greater amount of wall space needed to carry the increased load. The structural design would have to be altered and would probably need to be more "sophisticated" to accommodate the greater load so high above the ground.

Conclusions

1. The lot's extreme topography makes it unusual and makes the provision of required on-site parking difficult. Two properties on the block do not provide on-site parking but if redeveloped to re-establish views, as appellant suggests is likely, they would be required to have off-street parking. The Director denied the requested variance finding "off-street parking could be provided on-site from Elm Place S.W." The evidence from the hearing does not support that conclusion. While it is technically possible to use the bottom of the lot, additional costs are so exorbitant as to make development of the lot infeasible.

2. The other alternative, parking on the top level of the structure, was not shown by appellant to be infeasible. The evidence adduced shows it to be somewhat more expensive than the proposed deck but there was no showing that the increased cost would render the lot's development impracticable.

3. With an alternative to the variance, which was not shown to be unreasonable, the granting of the variance would exceed the minimum necessary for relief.

4. Since the location of the development, and hence the intrusion on the greenbelt for access, would be fairly similar with or without the variance, the granting of the variance would not be materially detrimental to the public welfare. This is true even if backing into the street was necessary because of the low volume of traffic. The variance to allow parking off-site would not be injurious to any property in the vicinity.

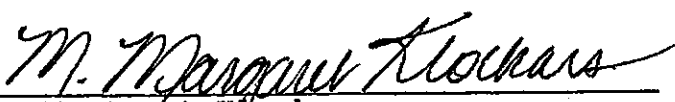
5. Because the record does not show an available alternative for on-site parking to be unreasonable the literal interpretation of this provision of the Land Use Code would not cause undue and unnecessary hardship. Were it not for the alternative of providing parking in the structure there would be such hardship.

6. The revised design for parking to avoid backing onto the arterial would not conflict with the intent of the Land Use Code. If the intent is to minimize hazard and interruption of traffic, it can be observed that the variance for the original proposed design would be consistent as well.

Decision

As there is an alternative, not shown to be unreasonable, for complying with the off-street parking requirement, the variance must be denied.

Entered this 23rd day of October, 1984.


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