

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

In the Matter of the Appeal of

RICHARD FISHER

FILE NO. MUP-88-030(V)
APPLICATION NO. 8800898

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

Introduction

Appellant, Richard Fisher, appeals the decision of the Director, Department of Construction and Land Use, to deny a variance required for a gargage extension at 7830 56th Place N.E.

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 June 20, 1988.

Parties to the proceedings were: appellant, pro se; the Director, by Christina VanValkenburgh, land use specialist; and the applicant, Arthur Boelter, pro se.

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 applicant proposes to construct an addition to an existing garage and reconfigure the driveway. Because a portion of the structure would extend into the required front yard, a variance is required. The applicant submitted an application for a variance which was denied by the Director and this appeal followed.

2. The subject property is zoned Single Family 5000 (SF 5000), is a through lot fronting on 56th Place N.E., and 56th Avenue N.E. The site measures approximately 60 ft. along 56th Place N.E., 142.68 ft. deep at the northern side of the lot line, and 149.42 ft. at the southern lot line. It has a lot area of approximately 8,763 sq. ft., and is on an easterly down slope. Topographically the lot is level to slightly sloping in the western portion (upper part along 56th Place N.E.), then it slopes downward to the east, falling approximately 42 vertical feet over approximately 75 ft. lot depth. This portion of the site is designated as Environmentally Sensitive, and is indicated as a Potential Slide Area on the City's Kroll maps.

3. The site is developed with an L-shaped, two-story single family dwelling, constructed in the 1940's, which is located on the more level portion of the site (western half). The residence, as presently stands on the site, has the following yards: a 75.5 ft. rear yard (the steep slope), a 5 ft. north side yard, a 5.5 ft. south side yard, and a 14.5 ft. front yard.

4. An attached, one-car garage measuring approximately 19 ft. 2 inches long by 17 ft. wide is located on the southwest corner of the site, and is accessed by an existing curb cut on the northwest corner of the property and through a curved driveway on the front yard. The rest of the front yard and the side yards are landscaped.

5. The area has a steep easterly downslope which is reflected on both streets (series of upward curves) and development patterns. The two streets abutting the lot are platted to 40 ft. of width and are paved to about 20 ft. Fifty sixth Place N.E. is a dead-end street with pavement on the western 20 ft. of the street. The southern half was landscaped as part of the front yard by the property owners on this blockface. On-street parking is allowed on both sides of the street.

6. The Director's inspector went to the site in April of 1988 and measured the existing front yards of the single family structures on either side of the proposal. There were approximately 15 foot front yards for the properties adjacent to the north and south of the proposal.

7. The applicant proposes a 8.5 ft. front yard.

8. The existing garage is approached through a curved driveway to a side entrance parallel to the street. The proposal includes a 6 ft. addition to the west/east dimension (towards to the street), and relocation of the garage entrance and driveway to the southwest corner of the site to permit an entrance directly off 56th Place N.E. (perpendicular to the street). The resulting garage would measure approximately 23 ft. long and 19 ft. 2 in. wide. The existing curved driveway would be removed, and the front yard re-landscaped.

9. The applicant claims that the six extra feet are necessary to accommodate a full sized car. The applicant also claims that the garage, as it is presently located on the site, creates an unsafe traffic pattern for the owners' small child since the garage door opens within inches of the front stairs, and the driveway crosses the front yard. Due to safety for the child, the applicant proposes turning the garage around for better visibility of the child and her playmates in order to avoid an accident. The applicant claims that the child was nearly struck on at least two occasions. Applicant also claims that the proposal will allow for both of the owners' vehicles to be parked on the site rather than leaving one on the street. The additional 6 ft. of garage length will better enable the applicant to park a vehicle in the garage.

10. A building permit to enlarge the garage was issued for the subject property. The permit was granted based on submitted plans by the applicant showing a 34 ft. existing front yard, a 20 ft. required front yard and a 28 ft. proposed front yard. A site inspection revealed that the information on the plot plan submitted by the applicant was incorrect, and revisions were requested. A revised plan submitted by applicant showed a 14.5 ft. existing front yard, and an 8.5 ft. proposed front yard. The revised plan also indicated that the proposed garage extension complied with code provisions allowing for an exception to allow 300 sq. ft. of a garage to extend into the required front yard if the "lot has a vertical drop of at least 20 ft. in the first 60 ft." as measured from the street lot line. A new permit was granted based upon information provided by the applicant. However, further review of the revised plot plan indicated that the applicant failed to provide a topographic survey to prove that the lot complies with the 20 ft. drop in the first 60 ft. of lot provision. After the foundation was laid, a construction inspector ordered that the project be stopped which led to an application for this variance.

11. The applicant asserts that because the garage foundation has already been poured (pursuant to the permit granted by the Director), the only appropriate remedy would be the grant of the variance to proceed with the construction of the garage as proposed.

12. Since no surveys of the site's topography exist, the only evidence indicating the degree of slope on the property is available from public Kroll maps which indicate less than a 20 ft. drop within the first 60 ft.

13. Appellant testified that the reason no topography survey

was submitted was that the building permit was issued without such a requirement.

14. Twelve letters were received during the public comment period where two writers favored and ten writers opposed the variance. Among the concerns expressed were: street and pedestrian safety hazard from an additional car backing up directly into the street right-of-way; possible precedent for future variances and developments of the same nature on the neighborhood; and degradation of neighborhood appearances due to front yard encroachment diminishing the street openness.

Conclusions

1. Variances from the provisions of the Land Use Code may be granted only if the facts and conditions set out in Section 23.40.202.C are found to be present.

2. The first fact that must be found to be present is an unusual condition of the property because of which the application of the Land Use Code to the property deprives it of rights and privileges enjoyed by other properties in the vicinity. Section 23.40.020C.1. The existing residence and its attached one-car garage are comparable in size and location to other developments in the immediate vicinity. The safety issue, claimed by the applicant, does not constitute a property related hardship "not created by owner or applicant". The fact that the foundation had already been poured before a work-stoppage order was issued by the Director, does not constitute an additional property-related condition warranting variance relief due to the fact that the initial building permit was based upon erroneous information and was correctly revoked. Construction by itself does not constitute a property related hardship (see Leroy McCray, MUP-81-007-V). Therefore, the applicant has failed to show any unique property conditions that would warrant variance relief. Thus strict application of this Land Use Code would not deprive the property owner of rights and privileges enjoyed by other properties in the same zone or vicinity.

3. The second requirement is that the variance requested be the minimum necessary for relief. Section 23.40.020C.2. The existing one-car garage provides the legal parking space for this residence and allows parking outside the minimum required front setback (15 ft.) without a variance relief. Other garages are similarly situated, and City records show only one front yard variance approval for the immediate vicinity (7834 56th Place N.E.). The variance granted to the adjoining property was much smaller in size and based on different circumstances. A 19 ft. 2 in. long by 17 ft. wide garage provides legal dimensions to accommodate a medium sized car, when considering that the minimum parking space dimension for a medium sized vehicle is 16 ft. by 8 ft. (SMC 23.44.030A.1). If the variance was warranted to expand the garage to the proposed dimensions (23 ft. long by 19 ft. 2 in wide), the degree of variance would exceed the minimum necessary to build a typical medium size garage and would, therefore, confer special privilege on this property inconsistent with the limitations upon other nearby properties. In addition, without established hardship any grant of variance would go beyond the minimum necessary for relief and convey special privilege to the applicant.

4. The third factor is whether there would be material detriment to the public welfare or injury to other properties from the variance. Section 23.40.020C.3. None appears to be present.

5. The fourth condition is that the literal interpretation and strict application of the provision would cause undue or unnecessary hardship. Section 23.40.020C.4. The applicant's assertion that because the garage foundation has already been poured pursuant to a previous permit later revoked, strict application of the front yard provisions would create financial hardship if the foundation had to be removed. Financial hardship is not a property related condition warranting variance relief.

In addition, the permit was revoked due to inaccurate information provided by the applicant which led to the issuance of the original permit. Likewise, the applicant has failed to prove that there exists a 20 ft. vertical drop within the first 60 ft. to meet the exception allowing for a private garage in the front yard pursuant to SMC 44.14.05(7). No undue or unnecessary hardship exists in this proposal.


6. Finally, the variances are to be consistent with the spirit and purposes of the Land Use Code and Single Family Residential Area Policies. Section 23.40.020C.5. The proposal to extend an existing front yard garage is consistent with surrounding neighbors' front yard garages. The proposal minimizes traffic congestion, enhances the streetscape environment and maintains a compatible scale within an area in conformance with Section 23.02.020.

7. Since several of the required facts or conditions were not shown to be present in order to grant a variance for this proposal, the variance cannot be granted.

Decision

The proposed variance for extending an existing garage into the required front setback is DENIED.

Entered this 30TH day of June, 1988.


Albert Velarde
Hearing Examiner Pro Tempore

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.