

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

SALLYE W. SOLTNER

FILE NO. MUP-90-044(V)
APPLICATION NO. 8907636

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

Introduction

Appellant, Sallye W. Soltner, appeals the decision of the Director of the Department of Construction and Land Use (DCLU) to deny variances to allow parking in the required front yard and to allow a portion of the principal structure to project a required side yard.

The appellant exercised her 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 August 8, 1990. The record was held open until August 13, 1990 to allow for a site visit by the Examiner.

Parties to the proceeding were the appellant, pro se, accompanied by Keith Soltner, and Faith Lumsden, Senior Land Use Specialist, for the Department of Construction and Land Use.

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 site visit, and documents received prior to the closing of the record, the following shall constitute the findings of fact, conclusions of law, and the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is located at 1514 North 35th Street. The property is zoned Single Family 5000 (SF 5000).

2. The property is a corner lot, with approximately 117 ft. of frontage on Carr Place and 53 ft. of frontage on North 35th Street.

3. Given the above dimensions of 53 x 117, the lot has an area of 6,201 sq. ft. in size.

4. For purposes of application of development standards, DCLU has treated the North 35th Street frontage as the front property line and the Carr Place North frontage as a side property line.

5. Running along the rear property line is an alley that runs east-west between Carr Place and Ashworth Avenue North.

6. The lot is developed with a single family home.

7. The rear yard is terraced with rockeries in two levels down from the alley to the house.

8. Because the next house to the north of the subject property faces on to Carr Place North, the subject property is considered a reverse corner lot.

9. Section 23.44.014(c) provides, in part, that:

In the case of reverse corner lots...the width of the side yard on the street side of the reverse corner lot shall be not less than ten (10').

10. Prior to the addition in the side yard that is the subject of the proceeding, the entire facade of existing house was set back 12 ft. 6 inches from Carr Place.

11. The appellants have constructed a shed roofed addition with a glass roof extending off the existing master bedroom. Included in the addition is a six-foot diameter hot tub. The addition extends into the side yard abutting Carr Place to within 3 ft. 3 inches of the property line.

12. The only exterior wall of the master bedroom is the side wall. Another smaller bedroom is in the northeast corner of the house and has exterior walls on both the side and rear facade.

13. According to the appellant, the addition was constructed by a contractor who failed to obtain the required permits.

14. According to testimony presented at the hearing, Keith Soltner suffers from back problems and the hot tub was desired for hydro-therapy.

15. Because of a fence along the side property line and existing vegetation on the site, the addition is not obtrusive.

16. The driveway leading off of North 35th into the front yard has been there for many years. It is not apparent that there has ever been any other location for parking established on

the lot.

17. The applicants have installed paving stones in the front yard to accommodate the parking of one car, and have surrounded the space with fencing.

18. No parking is allowed on North 35th in front of the subject property.

19. A retaining wall extending out from the west side of the house blocks access into the side yard.

20. As demonstrated by the applicant, numerous other houses in the vicinity have parking located in the front yard.

21. Section 23.44.082 provides that nonconforming structures may be repaired, modified, or altered in ways that do not increase the level of nonconformity.

22. Another house in the neighborhood has recently received a variance from the code's requirements pertaining to location of parking.

23. Authorization of a variance requires the following facts or conditions:

1. Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code or Title 24 would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity; and
2. The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located; and
3. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located; and
4. The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code or Title 24 would cause undue and unnecessary

hardship; and

5. The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan component, as applicable.

Conclusions

1. The jurisdiction of the Hearing Examiner in this case is based on the provisions of Section 23.76.022. Pursuant to paragraph C(7) of that section, variance determinations by DCLU are not entitled to deference.

2. Dealing first with the variance for location of parking, the Examiner is unsure whether applicants required a variance to develop their parking pad. Given their assertion that the front yard was where parking had always been located, it would seem that their action in installing the paving stone parking area might have been permitted outright under Section 23.44.082.

3. However, assuming a variance is required, it appears to be justified. Contrary to the conclusion of the DCLU report, the Examiner believes the topography of the rear yard and of the western side yard constitute a property related hardship. Moreover, in seeking a variance for only a one-car parking pad, the applicants have not requested more than is necessary to provide relief. The pad has been tastefully done and is not materially detrimental to other properties or the public welfare.

4. The topography of the rear yard also creates a property related hardship in relation to the addition in the side yard. While there is a distance of more than 34 ft. between the house and the rear property line, because of the rockeries, only about 10-feet of that distance serve as usable rear yard accessible from the house. While the DCLU report may be correct in concluding that an addition could have been built off the back bedroom and extended off the rear of the house, to have done so would have eliminated most of the usable rear yard.

5. The side yard variance requested does not go beyond the minimum necessary to provide relief. The Examiner is convinced by his site visit that the approximately nine-foot extension into the yard was necessary to accommodate the applicant's desire to provide a hot tub for Mr. Soltner's therapy. While it is true, as noted by DCLU, that hot tubs are not a "typical development element" in the vicinity, neither can they be considered an unusual or extraordinary item.


6. Because of the buffering provided by the fence and landscaping along the property's west side, granting of the variance will not be injurious to other properties in the vicinity, and is consistent with the spirit and purpose of the

Land Use Code.

Decision

The variance to allow parking in the required front yard is GRANTED. The variance to allow a portion of the principal structure in the required side yard is GRANTED.

Entered this 28th day of August, 1990.


Guy E. Fletcher
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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.