

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DARYL FUNSTON

FILE NO. MUP-82-045(V)
APPLICATION NO. 82-0220

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

Introduction

Appellant, Daryl Funston, applied for variance relief in order that a new garage might be constructed at 7018-4th Avenue N.W. The Department of Construction and Land Use (DCLU) initially denied the three variances requested and the applicant filed this appeal.

The appellant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: appellant, pro se; the DCLU Director by Rosemary Horwood.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was initially heard before the Hearing Examiner on August 9, 1982. On his own motion, the Hearing Examiner continued the matter for 30 days for DCLU's reevaluation of the application in light of the applicant's testimony of record. DCLU responded first by a memorandum dated August 27, 1982; however, this was superseded by a memorandum dated September 2, 1982. By letter dated August 30, 1982, applicant was provided a copy of the August 27, 1982, DCLU memorandum and was allowed until September 18, 1982, to respond. Applicant's written response was received in the Office of Hearing Examiner September 13, 1982. On September 22, 1982, applicant was apprised of the September 2, 1982, memorandum and waived further opportunity for written response. DCLU was so apprised and the record closed on that date.

After due consideration of the evidence elicited during the public hearing and to close the record, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is located in the Single Family 5000 zone at 7018-4th Avenue N.W. The vicinity development is predominantly residential. Most of the homes in the area that have garages have one car garages.
2. The approximately 7,786 sq. ft. area lot is 78 ft. wide and roughly 99.6 ft. deep.
3. The subject lot is developed with a circa 1907 single family dwelling and a partially constructed detached garage structure located approximately 17 ft. east of the principal rear wall of the dwelling. The garage structure is the subject of this appeal.
4. The garage, 40 ft. wide and 20-25 ft. deep, is located 2 ft. 4 in. from the rear (east) lot line and 1 ft. 6 in. from the north side lot line.

5. The rear yard setback requirement for the zone is 25 ft. Section 23.44.08(D)(2). Compliance with the required rear yard setback thus leaves 1,950 sq. of area, i.e., 25 ft. depth by the lot width of 78 ft. At approximately 853 sq. ft. the garage structure amounts to roughly 43.76 percent of the required rear yard whereas 40 percent is the maximum allowed. Section 23.44.08(D)(4)(f)(ii). Part of the structure is outside the required rear yard.

6. The garage was built to its present maximum height in order to accommodate the applicant's camper. In addition, applicant has a boat that he would like stored. The height maximum for the zone for accessory uses customarily incidental to principal uses, such as garages, is 12 ft. Section 23.44.10(A)(3). At one point the existing garage is 13 ft. in height.

7. Subsequent to filing this appeal, applicant executed an easement agreement with the north adjacent neighbors. This agreement was recorded July 23, 1982.

8. Applicant's plan was and is to construct the present garage as a replacement of two original garages that had deteriorated to the point of a fire hazard. Although no plot plans could be located verifying the applicant's testimony, applicant credibly stated that to his belief the previous garages were in "the exact same space" as the present single garage structure.

9. In response to the Hearing Examiner's request, DCLU prepared memoranda addressing the nonconformity of the previous accessory structures and their replacement, an issue raised in hearing by the applicant. In the second of the responses dated September 2, 1982, DCLU stated that the easement agreement executed between the Funston's and the north adjacent neighbor eliminated the need for the side yard variance. Concerning the rear yard coverage variance, the memorandum stated

It seems the old garages had two feet of spacing between them, and the northernmost garage was located on the northern property line. The present configuration eliminated the two-foot separation between structures, but this is made up in the new two-foot separation between the new garage and the northern lot line. This Department's policy has been to permit contemporaneous replacement of lot coverage in situations involving nonconforming decks, so it follows that Title 23 will also permit this type of switching. Thus, this variance is also unnecessary.

10. Concerning the height variance, the September 2, memorandum stated:

The nonconforming height of this garage cannot be established; therefore, we still deny this variance request...

11. Applicant responded telephonically to the September 2, 1982, memorandum, stating that the present garage was 1 ft. higher than the previous garage but reiterating that neighbors had no objection to the construction. In hearing, applicant raised the question of averaging the height of the garage structure by which process conformity with the Land Use Code would be proved. However, no interpretation request or decision is of record.

12. With regard to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, Chapter 25.04, Seattle Municipal Code, the action proposed in this application has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC 197-10-170.

Conclusions

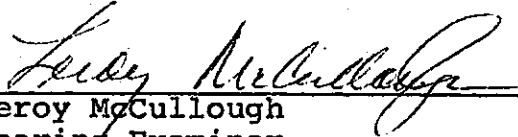
1. As the issue pertaining to the side yard has been eliminated per the easement agreement with the north adjacent neighbors, Section 23.44.08(D)(4)(b), DCLU memorandum, September 2, 1982, no appealable issue thereof remains for decision. Similarly, the rear yard coverage appeal issue is considered moot per the DCLU memorandum.

2. The height variance, however, remains in issue. In order for any variance relief to be granted unusual property conditions must be shown which, without variance relief, would deprive the applicant of comparable development rights and privileges. The variance should not prove materially detrimental to the public welfare nor exceed the minimum necessary for relief. Section 24.74.030, as amended. Applicant candidly admitted that the height of the garage was increased to accommodate a camper. The reason for the garage height is a personal condition, not a unique real property condition as required by the Code. Applicant is not deprived of comparable development by denial of the requested variance. Accordingly, the Director's decision to deny the height variance is affirmed. This decision is without prejudice to the applicant's ability to question whether a height variance is necessary, e.g., whether the averaging process in the Code could be applied to the subject property. However, applicant is cautioned to make preliminary interpretation cost and other inquiries.

Decision

The Director's decision to deny the variance to exceed the maximum permitted height of an accessory structure is AFFIRMED.

Entered this 24th day of September, 1982.


Leroy McCullough
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal 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.