

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

In the Matter of the Appeal of

JOSEPH P. MARCELLA

FILE NO. MUP-82-073(V)
APPLICATION NO. 82-0392

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

Introduction

Project applicant appeals the conditions imposed by the Director of the Department of Construction and Land Use (DCLU) concerning property at 6207 Evanston Avenue North.

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: project applicant by O. Fausko, agent; DCLU Director by Jim Barnes.

No correspondence or testimony was received in opposition to the application.

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

The matter was heard before the Hearing Examiner on November 12, 1982.

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 subject property is located in the Single Family 5000 (SF 5000) zone at 6207 Evanston Avenue N. The 50 by 85 ft. lot is developed with a single family structure that was converted to duplex use in 1942. As opposed to other lots in the block that are oriented in the north-south direction, the subject lot is oriented in an east-west fashion.
2. The subject lot's frontage is east to adjacent Evanston Avenue N.
3. There has been rear yard parking at the subject property since the early "1900's". According to the plot plan, the setback from the structure to the rear lot line is 18 ft.; per DCLU 18 ft. 6 in.
4. Vehicular access to the rear of the site is via an easement from N. 62nd Street, south of the subject property, which traverses the yard area of a south adjacent property addressed 526 N. 62nd Street. The easement has been confirmed as legal since 1932. The access is paved.
5. Applicant proposes (already constructed) an 18 ft. 6 in. deep 16 ft. wide carport attached to the rear of the dwelling structure. From the southwest corner of the carport to the northeast corner of the adjacent dwelling is a distance of 12 ft. The carport has three open sides, including the west side.

6. Directly west of the subject property rear lot line is an upwardly sloping grassy area approximately 5 ft. in width; then a fence. This grassy area has been maintained by this property owner-applicant and is part of the east yard of the west adjacent property.

7. With a carport separation of 5 ft. from the principal structure, construction in the rear yard could be done without variance.

8. The proposed structure is less than 1,750 sq. ft. so that no lot coverage variance is requested.

9. Per the unrefuted DCLU report statement, covered parking is a commonly enjoyed privilege in the vicinity. No platted alleys are located in the subject block.

10. Chapter 23.44.08(D)(2), citation subsequently amended, provides that the minimum rear yard setback for the subject zone is 25 ft. Section 23.44.08(D)(4)(f), citation amended, provides that an attached carport may extend into the required rear yard but not within 12 ft. of any rear lot line that is not an alley lot line. Applicant is proposing to build to the rear lot line for a 0 ft. minimum rear yard setback. Section 23.44.24(D), citation amended, prohibits the expansion of a building containing a nonconforming use. Variance is sought from these provisions of the Land Use Code.

11. DCLU approved the requested variances on the condition that

- (1) All Building Code requirements be met by the proposed structure.
- (2) that the owner obtain an easement from the west adjacent property owner providing a minimum 5 ft. of open area adjacent to the west wall of the carport structure.

The second condition continues:

such easement shall include a provision of access for normal maintenance activities to the carport structure. The easement shall be recorded with the King County Department of Records and Elections and a copy of the recorded document shall be provided to the Land Use review section before issuance of a Master Use Permit.

12. Appellant disagreed with the conditions and requested substitution or elimination of same.

Conclusions

1. The subject block - and property, without variance relief - are without interior automobile access. Vicinity properties enjoy covered parking. Therefore presented is a unique property condition which without variance relief would deprive the applicant of comparable development rights and privileges. Adherence to the literal requirement of the rear yard setback would, due to the limited rear yard setback, effectively prevent a carport. However, while it is noted that no challenge was raised to the base variance relief it appears that neither the spirit nor purpose of the Land Use Code would be violated by permitting construction (retention) of the accessory structure as proposed.

2. Appellant essentially challenges the wording of the DCLU conditions. We conclude that both DCLU conditions are reasonable but that the second should be modified such that the owner may obtain an easement or other written agreement to be recorded as per DCLU condition 2, that will stipulate the subject property's access

to a minimum 5 ft. by 16 ft. area, and secondly to include a prohibition against the west adjacent property owner's building up to the property line. Without these conditions we agree that the potential for precedential material detriment to the public welfare is present.

Decision

The decision of the Director of DCLU is AFFIRMED as modified in Conclusion 2, above.

Entered this 24th day of November, 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, instruction 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.