

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MERLE ADLUM

FILE NO. MUP-82-095(V)
APPLICATION NO. 82-0496

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

Introduction

Applicant proposes to construct an attached deck/carport to an existing single family residence. Appellant contests the Department of Construction and Land Use Director's (Director) decision denying the application for three variances for providing less than the minimum required front yard, to exceed the maximum permitted curb cut width, and to allow parking in the front yard for two vehicles.

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 Merle Adlum represented by Mark C. Carlson of Bogle and Gates law firm; the Director by Ed Somers.

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

This matter came before the Hearing Examiner on January 17, 1983.

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 three variances for a deck/carport addition to his residence at 3703 35th Avenue S.W. in Seattle. The Director denied all three variance request on December 3, 1982. Appellant appealed on December 17, 1982.

2. The subject property is in an SF 5000 zoned property in the West Seattle neighborhood that has 50 ft. frontage on 35th Avenue S.W., 89.5 ft. depth and about 4,470 sq. ft. of lot area. The property is developed with a single family residence that has a one-car garage located under the structure.

3. Surrounding development consist of single family residences. All of the six residences on this block front originally had basement garages. Two now have unusable basement garages and have parking in the front yard. No variances were approved for the front yard parking and no carports have been constructed in the front yard for the residences in this block front.

4. The appellant has developed a curb cut and a 22.5 ft. by 22 ft. parking pad in the required front yard without variance approval, and now proposes to construct a deck/carport over the parking pad.

5. The first variance requested by appellant is to provide less than the minimum required front yard; 20 ft. is required while the proposal requests 3.5 ft. front yardage.

6. The second variance requested by appellant is to exceed the maximum permitted curb cut width. Ten feet is permitted while 22.5 ft. is proposed by appellant.
7. The third variance requested by appellant would allow parking in the front yard for two vehicles. Parking in the driveway of the existing garage is permitted for one car.
8. While the majority of appellant's neighbors do not object to the granting of the three requested variances, two neighbors did submit written objections to the proposal.
9. Appellant's lot lacks an alley approach, limiting his options for covered parking. Approximately half of the surrounding neighborhood have alley approaches onto their properties.
10. Appellant's lot is smaller than most in the immediate area. The majority of the lots in the immediate area either have an alley approach or are significantly deeper than appellant's, allowing those owners greater space for rear garage/carport access or construction.
11. On-street parking on 35th Avenue S.W. is restricted to the west side. This causes frequent inconvenience to the appellant in securing nearby on-street parking which is at a premium.
12. A major bus route exist on 35th Avenue S.W. The bus route increases the chances of accidents to parked cars. A potential danger exist to pedestrians who park their car on 35th Avenue S.W. while the bus faces opposing traffic when making a turn.
13. The small size of appellant's existing garage creates difficulty in parking his station wagon and/or his four door Skylark.
14. Approximately once per month an international representative pertaining to appellant's business stays at appellant's home for one or two nights while renting a car which is parked on the street.
15. The top deck of the proposed carport will allow appellant to regain an obstructed view created by a large home located at 34th Avenue S.W. and Manning Street.
16. Appellant submitted photographs of 37 different homes within a five block radius, all containing one or two car garages in front of their homes. Appellant argues that the requested variances does not constitute a grant of special privilege inconsistent with the limitation upon other properties in the vicinity and zone in which this subject property is located.
17. The Director applies the term of "vicinity" as pertaining only to property located within a two block radius of appellant's.

Conclusions

1. The Office of Hearing Examiner has jurisdiction pertaining to this appeal.
2. The Director's decisions on variances are given no particular deference, Section 23.76.36.B.7 and Hearing Examiner Appeal Rule 2.8; nevertheless, the burden of proof in each proceeding is that of the appellant. Hearing Examiner Appeal Rule 1.26(a).
3. The definitional section of the Land Use Code does not define the term "vicinity". However, the term "zone" is defined as
"a portion of the City designated on the Official Land Use Map of the City of Seattle within one of the land use classifications." Sections 23.84.48(Z).
4. The record of this appeal contains photographs of numerous properties containing two car garages in their front yard which are located within a five block radius of appellant's and are designated

as SF 5000 zoned property, granting of the requested variance would not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which these subject properties are located.

5. 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.

6. Because of unusual conditions applicable to the subject property which were not created by the owner or appellant, the strict application of this Land Use Code would deprive the property of rights and privilege enjoyed by other properties in the same zone or vicinity.

7. The requested variance does not go beyond the minimum necessary to afford relief.

8. A maximum of one 10 ft. wide curb cut shall be permitted for lots with street frontage of 80 ft. or less, Section 23.54.30.C.2.a.1.

9. A minimum of one off-street parking space is required for each single family structure. Section 23.44.16.B.1.

10. Parking shall not be located in the required front yard except for specific exceptions which are not applicable to this appeal. Section 23.44.16.D.1. The front yard shall be either the average of the front yard of the single family structure on either side or 20 ft., whichever is less. The front yard requirement pertaining to this appeal is 20 ft. Section 23.44.14.A. The policy intent of the current Land Use Code is that off-street parking is mandatory, and parking in front yards is generally prohibited. Section 23.16.02.09.


11. The Land Use Policies are not regulations in themselves and may not be the basis for enforcement action pursuant to the provisions of this Land Use Code. Section 23.12.40.

12. The requested variances would not conflict with the spirit and purpose of the Land Use Code.

Decision

The decision of the Director is reversed and the variances are GRANTED.

Entered this 27th day of January, 1983.


Al Velarde
Hearing Examiner Pro Tempore

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.