

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JOHN AND MARLA SMITH

FILE NO. MUP-82-055(V)  
APPLICATION NO. 82-0280

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

#### Introduction

Appellants, John and Marla Smith, appeal the decision of the Director of the Department of Construction and Land Use (Director) to deny a variance to legalize a carport addition constructed without permit at 2609-37th Avenue S.W. in Seattle.

The appellants exercised their right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: appellants, represented by John Smith, pro se; and the Director represented by Rosemary Horwood.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23.

This matter was heard before the Hearing Examiner Pro Tempore on September 14, 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 Pro Tempore on this appeal.

#### Findings of Fact

1. Appellant's hired a contractor who constructed a deck/carport to their existing single family residence without having obtained a permit. Appellant's applied for three variances:

- (1) one variance to exceed the maximum permitted lot coverage whereby 35 percent was required pursuant to Section 23.44.08(B)(3), appellants proposed 35.8 percent;
- (2) the second variance was applied to provide less than the minimum required front yard of 20 ft. pursuant to Section 23.44.08(D)(1), whereby appellants propose 14 ft.; and
- (3) the third variance was to provide less than the minimum required side yard of 5 ft. pursuant to Section 23.44.08(D)(3), where appellant proposed 0 ft.

The variances were denied. Appellants filed the instant appeal.

2. The subject lot is located on the west side of 37th Avenue near S.W. Admiral in a single family zone, and is 50 ft. wide by 100 ft. deep. Surrounding uses are residential; a City park is across the street on the east. The existing single family house is about 6-7 ft. above street level. The house was built in 1954 with a two car basement garage which has access at street level, and the existing retaining wall on the north side is at the

property line. A 22 ft. curb cut beginning at the north property line was built at the same time as the house. Adjacent houses are set back 27 ft. A portion of the existing house is set back 27 ft., but at the carport/deck area it is set back at 33 ft. The deck as built is 14 ft. from the front lot line and spans the retaining wall built for the garage access. The deck is 2-3 ft. above ground level on the northerly side.

3. Appellants offer a new proposal whereby the existing carport/deck will be brought in by 6 ft. which will meet the maximum lot coverage of 35 percent and will provide the minimum required front yard of 20 ft. However, the required side yard minimum of 5 ft. cannot be complied with by appellants.

4. Appellants attempted to contact the contractor who had built their carport/deck. The contractor obtained a divorce recently and has moved out of the State of Washington and is unavailable.

5. All of the adjoining neighbors to the subject property indicated that they have no objection to the deck as it presently exists, that it is of no hinderance to them in any way nor does it block anybody's view.

6. No legitimate complaints by neighbors exist pertaining to the existing carport/deck on the subject property.

7. Appellants bought their home approximately one year ago.

8. The subject property is unique to the neighborhood in that it is the only house containing a basement two-car garage. No other property in the immediate neighborhood with similar basement garages being built around 1954 exist.

#### Conclusions

1. Jurisdiction exists pertaining to this appeal with the Office of Hearing Examiner for the City of Seattle.

2. The new proposal and plans proposed by the appellants will not exceed the maximum permitted lot coverage nor would it provide less than the minimum required front yard.

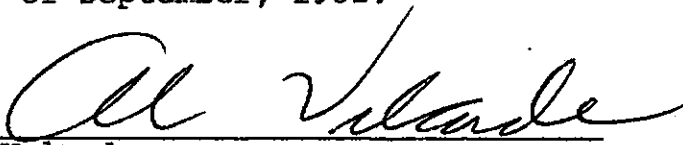
3. No physical detriment or injury to the other property would accrue from the variance allowing less than the minimum required side yard. The addition would in no way change the character of the neighborhood.

4. The literal interpretation and strict application of the provisions or requirements of this Land Use Code would cause undue and unnecessary hardship upon the appellants. The variance to provide less than the minimum required side yard on the subject property should be granted.

Decision

The appeal, as to variances pertaining to the maximum permitted lot coverage and the minimum required front yard, is DENIED, and the Director's decision is AFFIRMED. The decision of the Director pertaining to the minimum required side yard is REVERSED and the variance permitting less than the minimum required side yard is GRANTED.

Entered this 24<sup>th</sup> day of September, 1982.

  
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.