

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

In the matter of the Appeal of

PAUL P. CARKEEK

FILE NO. S-86-006

from an interpretation of the
Director, Department of Construction
and Land Use

Introduction

Appellant appeals the interpretation of the Land Use Code by the Director, Department of Construction and Land Use, as it applies to a garage addition at 4043 - 55th Avenue S.W.

The appellant exercised his right to appeal pursuant to the Seattle Municipal Code, Section 23.10.030, as amended.

Parties to the proceedings were: Appellant, Paul Carkeek, represented by O. J. Humphrey III, Lasher & Johnson; the Director by Guy Fletcher, land use specialist; and the property owner, Leonard Vann, pro se.

This matter was heard before the Hearing Examiner on August 28, 1986.

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 following findings of fact shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. On November 26, 1985, a permit was issued to "expand garage, 2nd story storage space, raise roof over rear 20 ft remove portion of roof to maintain 5 ft separation between house/garage per plans" for property at 4043 - 55th Avenue S.W. (Exhibit 1). Construction on the garage began in April, 1986.

2. In May, 1986, Paul Carkeek, who owns the property adjacent to the north of the subject property, requested an interpretation as to whether the garage addition complies with the Land Use Code.

3. The Director, Department Construction and Land Use, (Director), issued her interpretation of the code June 24, 1986, deciding that the structure complies with the Land Use Code provisions. This appeal followed.

4. In 1950, a permit was issued for the construction of a one car garage measuring 20 ft. by 11.5 ft., to be located no nearer than 3 ft. to the lot line.

5. In 1969, a permit was issued to construct a 13 ft. by 18 ft. addition to the garage.

6. The garage as it existed, prior to the most recent addition, is somewhat less than 3 ft. from the property line.

7. By removing the eave, or part of an eave, the separation between the house and the garage is at least 5 ft.

8. The height of the garage structure, with the new addition, is 19.5 ft. in the principal building area of the lot, and 15 ft. in the required rear yard. The garage has a sloped roof.

9. The new second story of the structure is set in from the first story on the north side 2 ft. in an attempt to provide a 5 ft. setback at the second level for that portion of the building

forward of the required rear yard. That portion of the second story within the rear yard is built to the property line.

10. The front 20 ft. of the structure is used as a workshop by Vann. It has a garage door and space in which a car could be stored, though it seldom is used for vehicle storage. A wall totally separates the front half from the rear. The rear has dressing rooms for the pool, bath, sauna, and pool machinery area.

11. In 1985, Vann applied for variances to allow the construction of an addition of a second story to the garage structure which would have been 19.5 ft. high for the length of the structure. A second proposal was made which would have lowered the second story to 18 ft. for the entire length. Height and side yard variances were denied.

12. Ordinance 112522, amending Section 23.88.020, was effective December 28, 1985.

13. Appellant was first aware of the issuance of a construction permit when construction began.

14. No public notice of the construction permit was required or given.

15. A building inspector confirmed that the distance between the principal structure and accessory structure is more than 5 ft. He also verified that the addition, except for a decorative lattice, does not intrude into the required side yard. The required side yard for this purpose would be that forward of the rear 25 ft. of the rear lot line.

Conclusions

1. Appellant contends that the Director's interpretation is in error in four ways. First, he maintains the structure is not a garage and, therefore, cannot be located in a required yard; second, that the accessory structure cannot exceed the 12 ft. or 15 ft. height for accessory structures; third, that there cannot be new construction in a required side yard, and, finally, that the Director's determination that the interpretation cannot affect the issued permit is wrong.

2. As to the first contention, Section 23.44.14.D.6.a, in addition to establishing setbacks and height limitations for garages, provides that "(a)ny...detached permitted accessory structure meeting the requirements of Section 23.44.040, General provisions for accessory uses, may be located in a rear yard." There has been no suggestion that a workshop/pool dressing rooms/bath/sauna/mechanical shed structure is not a permitted accessory structure in a single family zone. The use, then, even if not a garage, would not disqualify the structure as one which could be in the required rear yard so long as it conforms with the requirements of Section 23.44.040.

3. Section 23.44.014, however, suggests a different result as to side yards:

C. Side Yards. The side yard shall be five feet (5'). (text omitted)

D. Exceptions from Standard Yard Requirements.

1. Certain Accessory Structures. Any accessory structure may be constructed in a side yard which abuts the rear or side yard of another lot upon recording with the King County Department of Records and Elections an agreement to this effect between the owners

of record of the abutting properties.

Any accessory structure which is a private garage may be located in that portion of a side yard which is either within thirty-five feet (35') of the centerline of an alley or within twenty-five feet (25') of any rear lot line which is not an alley lot line, without providing an agreement as provided in Section 23.44.016. (emphasis supplied)

4. If the structure is not a garage, then, it is not permitted within 5 ft. of the side lot in the rear 25 ft. of the lot, unless it is legally nonconforming. Even if it is nonconforming, the "line formed by the nonconforming wall of the structure shall be the limit to which any additions may be built" as long as it is at least 3 ft. from the side property line. Section 23.44.14.D(3).

5. The exhibit to Section 23.86.010 which shows standard required yards, Exhibit 23.86.010.A, seems to contradict the text of Section 23.44.14.D in that it shows no side yard in the rear 25 ft. of the lot, only rear yard. The text, though, does not refer to a required side yard but to a specific area so there is no actual ambiguity.

6. Section 23.44.040 permits accessory uses subject to certain limitations. The relevant restriction is that any accessory structure located in a required yard may not exceed 12 ft. in height. Section 23.44.040.F.

7. Section 23.44.16.E, Private Garages Located in Required Yards, provides:

Private garages which are either detached accessory structures or portions of a principal structure may enclose parking permitted in required yards according to the following conditions:

2. Height Limits.

a. Private garages shall be limited to twelve feet (12') in height as measured on the facade containing the entrance for the vehicle.

b. The ridge of a pitched roof on a private garage located in a required yard may extend up to three feet (3') above the twelve foot (12') height limit.

8. So, it may be concluded that any accessory structure may be located in a rear yard, but only accessory structures which are garages may be in the side yard in the rear 25 ft. Accessory uses, in general, located in a required yard may not exceed 12 ft. in height. Section 23.44.040.F. Garages in required yards are limited to 12 ft. in height but may be extended 3 ft. for a pitched roof. Section 23.44.016.E(2). This extension only applies to private garages and not to other accessory use structures. Again, if the rear half of the structure is not a garage, at least the portion in the rear yard may not exceed 12 ft.

9. The Land Use Code provides a definition of "garage."

"Private garage" means an accessory structure or an accessory portion of the principal structure, designed or used for the shelter or storage of vehicles owned or operated by the occupants of the principal structure. (See "Carport.")

Section 23.84.030.

10. The front 20 ft. of the structure is clearly designed to store a vehicle and is, therefore, a garage. It is equally clear that the rear 20 ft. was not designed for the storage of vehicles nor could it store a vehicle. It is not a garage.

11. That portion of the rear 20 ft. within 25 ft. of the rear lot line must be set back at least 3 ft. from the side lot line and may not exceed 12 ft. in height. The interpretation is in error.

12. The other issue raised by appellant about height is whether that portion of the structure not in any required yard may observe principal structure height limits, i.e., up to 30 ft. or in this case, 19.6 or 20 ft. The Director finds no limitation on the height of accessory structures within the principal building area, or any portion of an accessory structure within the principal building area.

13. Section 23.44.040.A provides that the general development standards for single family zones apply unless specifically modified for accessory uses. Then Subsection F provides "any accessory structure located in a required yard shall not exceed twelve feet (12') in height nor one thousand (1,000) square feet in area." The Director apparently interprets this provision to read "any part of accessory structure located in a required yard shall not exceed twelve feet in height," while appellant would read the provision as "any accessory structure with any part located in a required yard shall not exceed twelve feet in height." The language of Section 23.44.16.E(2) is also subject to either reading: "Private garages...may enclose parking permitted in required yards according to the following conditions: a. Private garages shall be limited to twelve feet in height...." Again, this provision could be read that if any part of the garage is in a required yard the garage may not exceed 12 ft. or that part of the garage in the required yard may not exceed 12 ft.

14. Since the language lends itself equally to either reading and the intent cannot be ascertained from the remainder of the code, the Hearing Examiner is required to give substantial weight to that of the Director. Section 23.88.020.E(5). Moreover, the construction of a provision by the official charged with enforcing it is given great weight by the courts. Green River College v. HEP Board, 95 Wn.2d 108, 622 P.2d 826 (1980). Therefore, the Director's interpretation as to the height of a building partially within a required yard will be accepted.

15. While appellant seems to contend that an accessory structure, wholly within the principal building area, is governed by the 12 ft. height limit, the situation which is the subject of the interpretation and appeal does not involve that issue so it need not be addressed.

16. As to appellant's third contention that there cannot be new construction in a required yard, the provisions cited earlier for additions to nonconforming structures apply since the record does not support appellant's allegation that the existing structure (prior to the proposed and completed addition) is not legally nonconforming. Therefore, that portion which is not a garage may extend to the line formed by the nonconforming wall of the structure as long as it is at least 3 ft. from the side property line. The garage portion of a structure may extend into the side yard to the lot line, Section 23.44.014.D(1), if it is within 25 ft. of a rear lot line so any portion of the structure which is a garage in the rear 25 ft. of the lot may extend to the lot line. If it is more than 25 ft. from the rear lot line it may extend to the lot line upon the recording of an agreement with the owner of the abutting property, Section 23.44.16.E(3)-(e), or to the line of the existing wall, provided it is at least 3 ft. from the lot line.

17. Finally, appellant urges that the Director erred in her determination that the interpretation has no effect on the issued permit because the interpretation was issued after the effective date of Ordinance 112522. The provision relied upon by the Director states

(w)hen public notice is not required for a project, a request for an interpretation concerning that project may be made at any time, provided that issued permits shall not be affected by subsequent Code interpretations.

Section 23.88.020.B.

18. Appellant's argument is, in part, that Vann applied for a variance, was denied the variance, and now has received a permit for a similar proposal. He argues that certain rights accrued to him with the denial of the variance which the application of the provision cited above would eliminate so that the new provision should not be read to affect permits issued before its enactment.

19. There is no ambiguity in the language of the provision. The words clearly show the intent to be to change the effect of interpretations after the effective date of the ordinance. Appellant's request for interpretation was made after the effective date so the provision governs the effect of the interpretation. Only the courts may determine whether the provision is unconstitutional. See Yakima County Clear Air Authority v. Glascam Builders, Inc., 85 Wn.2d 255, 534 P.2d 33 (1975).

Decision

The interpretation is modified as follows: the accessory structure which is not a garage may not be closer than 3 ft. from the side lot line in the rear 25 ft. of the lot and may not exceed 12 ft. in height in the required rear yard. In other respects it is affirmed.

Entered this 12th day of September, 1986.

M. Margaret Klockars
M. Margaret Klockars
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, 400 Yesler Building, Seattle, Washington 98104, (206) 625-4197.

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

On the Matter of the Appeal of

PAUL P. CARKEEK

FILE NO. S-86-006

from an interpretation by the
Director, Department of
Construction and Land Use

ORDER MODIFYING DECISION
AFTER RECONSIDERATION

Appellant, Paul P. Carkeek, by his attorney, O.J. Humphrey III, Lasher and Johnson, filed Appellant's Motion to Correct Mistakes with the Office of Hearing Examiner. The Director, by Guy Fletcher, land use specialist, filed a Motion for Reconsideration. Responses were filed by both parties. The subject of the motion's is the Hearing Examiner decision of September 12, 1986.

Appellant cites two mistakes in the decision of the hearing examiner on this appeal. The first "mistake" urged is the unstated conclusion that the rear half of the structure is a nonconforming use upon which Conclusions 2, 4, 11 and 16 rest. The second "mistake" cited is that Conclusions 13 and 14, regarding the interpretation of Sections 23.44.040(A) and 23.44.16(E)(2), are contrary to the Land Use Code and to the prior decision of the Hearing Examiner on a variance application for the same property.

The Director asks reconsideration of the modifications made by the hearing examiner to the interpretation. The Director asserts that the Hearing Examiner erred in her application of Section 23.44.14(D) and in her determination that the rear half of the structure is not a garage.

Regarding appellant's first allegation of error, the Director concluded in her interpretation that the structure is a nonconforming structure. The 1969 addition to the garage is described in permit No. 532287 as "13' x 18' to exist. garage, 1 story 324⁴." Since the burden of proof is upon appellant and no proof of conflict with the Zoning Code as it existed in 1969 was offered, it was not a mistake to adopt the Director's treatment of the structure, after the 1969 addition, as legally nonconforming.

Regarding the Director's allegation of error, the Director urges that, for administrative ease, if any part of an accessory structure contains a garage, the entire structure be considered a garage. The Director's concern is with determining "at what point a portion of a structure can no longer be considered a portion of the garage" since area for storage, work space etc., commonly is included in a garage structure. While that determination may create administrative difficulties in some cases and may need to be addressed by rulemaking or amendment, the facts in this case pose no difficulty. A structure meeting the definition of a garage existed prior to additions. A wall separates the garage from the rear addition. The rear addition is greater in area than the garage. It is not designed or used for the shelter or storage of vehicles but for uses accessory to the swimming pool. It has an entrance separate from the garage entrance. Its only relationship to the garage is its sharing of a common wall. The rear 23 ft. 3 in. is not a garage.

The Director suggests an alternative reading of Section 23.44.014(D)(1) which avoids the contradiction with Section 23.84.046 described in Conclusion No. 5, of the Hearing Examiner decision. That reading takes into consideration that required rear yards may be less than 25 ft., as in this case, and that a garage structure which is permitted in a rear yard may also extend into any portion of the side yard that is within 25 ft. of the rear lot line. In this case, five feet of the side yard is

within 25 ft. of the rear lot line so a garage structure could be located in that portion. The examiner agrees with this interpretation of Section 23.44.014(D)(1).

The alternate reading of Section 23.44.014(D)(1) still does not allow an accessory structure which is not a garage as an exception to the side yard requirement in that portion of the side yard within 25 ft. of the rear lot line, i.e., the 5 ft. length beginning 20 ft. east of the rear lot line and ending 25 ft. east. Therefore, the sauna/pool accessory structure may be located in the rear yard but not in the side yard since the exception available to garages, Section 23.44.014(D)(1), does not apply.

Appellant urges reconsideration of Conclusion No. 4 where Section 23.44.14(D)(3) was applied to this structure. A more careful reading of that section shows that it addresses the "single-family structure" which is nonconforming as to a required yard. Section 23.84.036 defines "structure, single-family" by referring to "single-family dwelling unit." The definition of "single-family dwelling unit" is "a detached structure containing one (1) dwelling unit and having a permanent foundation." Section 23.84.036. The subject structure is clearly not a single-family structure so the examiner incorrectly applied Section 23.44.14(D)(3). Since Section 23.44.14(D)(3), which would allow continuation of a line formed by a nonconforming wall, does not apply and no other provisions allowing a new addition to an existing nonconforming accessory structure to continue the nonconformity have been brought to the examiner's attention, the new addition must observe the required side yard.

Finally, the appellant argues that this examiner's decision conflicts with a decision by a different examiner on Mr. Vann's earlier variance application. No conflict is seen by the examiner.

Based on the foregoing, the following changes are made to the decision entered September 12, 1986:

AS TO FINDINGS OF FACT:

Finding of Fact No. 10 is corrected to read:

10. The front 16 ft. 9 in. of the structure is used as a workshop by Vann. It has a garage door and space in which a car could be stored, though it seldom is used for vehicle storage. A wall totally separates the front half from the rear. The rear 23 ft. 3 in. has dressing rooms for the pool, bath, sauna, and pool machinery area.

The following is added:

16. The depth of the subject lot is 100 ft.

AS TO CONCLUSIONS:

Conclusion No. 4 is deleted and replaced with the following:

4. If the structure is not a garage then it is not permitted within 5 ft. of the side lot line.

Conclusion No. 5 is deleted.

Conclusion No. 8 is amended to read:

8. So, it may be concluded that any accessory structure may be located in a rear yard, but only accessory structures which are garages may be in that portion of the side yard within 25 ft. of the rear lot line. Accessory uses, in general, located in a required yard may not exceed 12 ft. in height. Section 23.44.040(F). Garages in required yards are limited to 12 ft. in height and may be extended 3 ft. for a pitched roof. Section

23.44.016(E)(2). This extension applies only to private garages and not to other accessory use structures. Again, if the rear half of the structure is not a garage, at least the portion in the rear yard may not exceed 12 ft.

Conclusion No. 10 is corrected to read:

10. The front 16 ft. 9 in. of the structure is clearly designed to store a vehicle and is, therefore, a garage. It is equally clear that the rear 23 ft. 3 in. was not designed for the storage of vehicles nor could it store a vehicle. It is not a garage.

Conclusion No. 11 is amended to read:

11. That portion of the rear 23 ft. 3 in. of the addition located between 20 ft. and 25 ft. from the rear property line must be set back at least 5 ft. from the side lot line. Any portion of the rear 23 ft. 3 in. within the required 20 ft. rear yard may not exceed 12 ft. in height. The interpretation is in error.

Conclusion No. 16 is amended to read:

16. The garage portion of a structure may extend into the side yard if it is within 25 ft. of the rear lot line, Section 23.44.014(D)(1), so any portion of the front 16 ft. 9 in. within 25 ft. of the rear lot may extend to the side lot line.

The decision is amended to read:

Decision

The interpretation is modified as follows: the accessory structure which is not a garage may not exceed 12 ft. in height in the required rear yard and that portion between 20 ft. and 25 ft. from the rear lot line may not extend into required side yard. In other respects it is affirmed.

Entered this 23rd day of October, 1986.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner