

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DORIS KYLE

FILE NO. MUP-82-013(V)
APPLICATION NO. 81355-0503

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

Introduction

Applicant filed an appeal from the denial, by the Director of the Department of Construction and Land Use, of variance relief required to park in the required front yard at 7014-47th N.E.

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

Parties to the proceedings were: appellant by architect Carl Heller; the Director of the Department of Construction and Land Use (DCLU) by Rosemary Harwood.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on March 15, 1982.

After due consideration of the evidence elicited during the public hearing and as a result of the personal inspection of the subject property and surrounding area by the Hearing Examiner, 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 Residence High Density (RS 5000) zone at 7014-47th N.E. in the View Ridge area of Seattle.

2. The lot, situated on the eastern side of 47th Avenue N.E., slopes up from the street roughly 6 ft. to the floor level of the residence located thereon. Some variation of this topographical feature is shared by the remaining lots along the block-face.

3. The subject lot measures 56 ft. wide by 100.99 ft. deep. It is developed with a two bedroom, sans basement or attic, single family dwelling and attached one-car garage.

4. The dwelling provides a 26 ft. 10 in. front yard and a 46 ft. rear yard. Based on north and south adjacent residence setbacks of 27 ft. 6 in. and 26 ft. 6 in., respectively, DCLU's plot plan determination of applicant's required setback was 27 ft., or the average of the two adjacent residences pursuant to Section 24.62.100(A). The plot plan also shows existing side yards of 5 and 3 ft. Otherwise, there is no access to the rear yard.

5. Applicant proposes to convert the garage to living space and establish parking in the required front yard. DCLU denied the request for variance, citing Section 24.62.080(D), and the applicant appealed.

6. Appellant urges that the variance criteria of Section 24.74.030 are met; that soon-to-be effective zoning regulations encourage flexibility-performance standards, and will, for example, require only a 20 ft. front yard setback, leaving the project with only 1 ft. in variance; that the current floor plan prevents rearward expansion since it would be cost prohibitive to make necessary adjustments to that plan; and that the natural grade of applicant's property 10 ft. back from the front property line is approximately 5 ft. 6 in. above grade, making construction of a detached garage or carport per Section 24.62.080(B) impossible.

7. The south adjacent residence has a detached garage at street level constructed under permit in 1959. Applicant's architect-witness testified that that property's original garage was converted to storage use. For off-street parking, some vicinity dwellings provide basement level garages; a residence across 47th N.E. provides a street level carport.

8. The residence north adjacent to the subject property sets in the 47th Avenue N.E. - N.E. 71st Street bend. Because of this street relationship and topography, the proposed project would be less visually obtrusive. Neighbors' letters and testimony of record generally approved of the project; one comment letter of opposition was also received.

9. No other variance for vicinity front yard parking was cited.

Conclusions

1. The criteria for variance relief from the literal requirements of the zoning code are delineated in Section 24.74.030. Essentially, a unique property condition must be shown which, without variance relief, would deprive applicant of comparative rights and privileges. The variance relief should not exceed the minimum necessary for relief, nor "adversely affect the Comprehensive Plan". Nor should the variance relief prove materially detrimental to the public welfare.

2. Applicant has indicated a wish to expand living area by utilizing the existing garage. Rearward expansion would be cost prohibitive, it is urged, due to the current floor plan and other factors. However, the record is devoid of any real property condition which would deprive the applicant of potential rearward expansion, which could provide the additional living area desired for comparable development. For the same reason the variance relief requested exceeds the minimum necessary for relief. Applicant's restrictions on rearward development are not property related but are personal.

3. Because of the topography and streetscape, the relief requested would not prove as visually obtrusive. And, the south adjacent neighbor enjoys a street level garage constructed by permit while the topography of applicant's lot would not support such an alternative. Thirdly, some comments and testimony favored the project. Finally, applicant suggests that consideration of new zoning code provisions would make the variance relief ultimately de minimis. The foregoing would suggest that the public welfare would not be materially harmed by the proposal.

4. However, in order for variance relief to issue, all of the current requirements of Section 24.74.030 must be met.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 29th day of March, 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.