

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

In the Matter of the Appeal of

CATHERINE HARVELL, ET AL.

FILE NO. MUP-82-059(W,V)
APPLICATION NO. 82-0152

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

Introduction

Project applicant proposed construction of an 11 unit apartment building at 3200 N.W. 65th Street. Concerning the project the Director of the Department of Construction and Land Use (DCLU) issued a declaration of non-significance (DNS) and approved certain required variance relief. Appellants Catherine Harvell and others, opponents of the project, appealed the Director's decisions. The challenge to the DNS was dismissed in the public hearing.

The appellants exercised their right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: appellants by Catherine Harvell, pro se; project applicant by Stephen J. Crane, Crane, Stamper, Boese and Dunham; the DCLU Director by Leslie Durkee.

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 September 27, 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 site, located on the northwest corner of 32nd Avenue N.W. and N.W. 65th Street, is addressed 3200 N.W. 65th Street. It is zoned Neighborhood Business (BN) and is currently developed with an old gas station used for auto repair.

2. The lot is 62 ft. wide fronting on N.W. 65th Street and 111 ft. deep, along 32nd Avenue N.W. The resulting lot area is 6,882 sq. ft. The lot is basically level.

3. Residential properties predominate the adjacent land use pattern. A multifamily residential structure is west adjacent, and a single family dwelling north adjacent. These properties are somewhat separated from applicant's property by an approximate 6 ft. grade change.

4. BN zoned small business development is present on the remaining corners of the 32nd Avenue N.W. - N.W. 65th Street intersection.

5. Applicant's initial proposal was to construct on-site a landscaped three story plus basement, 11 unit apartment building with 11 off-street parking spaces, six to be located along the northern property line, four to be located under the north end of the building, and one along the west side of the building. Access would be via a 20 ft. wide drive to be located roughly 17 ft. from the north property line.

6. Applicant requested and DCLU approved a variance from the front yard requirement of 20 ft., Section 24.40.100A; applicant proposes 15 ft. The building design is for two 12 ft. wide projections on the west and east ends of the building, separated by 23 ft. of front wall that is 20 ft. from the front lot line. According to the application, the front yard variance "would allow desirable, functional apartment plans."

7. From east to west the nine properties fronting on N.W. 65th west of the subject site and also on the north side of N.W. 65th provide the following front setbacks:

15 ft. 3 in.
15 ft. 3 in.
25 ft.
45 ft.
23 ft.
25 ft.
37 ft.
20 ft.
30 ft.

8. One comment letter, opposing the front yard variance, considered the variance unfair to persons who had "constructed in compliance with the Codes," and that

the intrusiveness of a looming 35-feet-high façade projecting farther toward the sidewalk than the rest of the dwellings on the block would create an unnecessary blockage of the view to the east, the Cascade Mountains and Phinney Ridge.

9. DCLU denied the requested variance to allow parking in the west side yard, which action was not appealed. However, DCLU approved the variance allowing applicant to design five, as opposed to three, of the parking spaces for compact car dimensions. Section 24.64.030(B)(1). DCLU noted that "the new Multi-Family Code would allow up to 100% of the building's parking spaces to be of the compact-car dimensions". Following denial of the west side yard parking variance applicant modified his plan to reduce the number of units and parking spaces by one.

10. At 90 degree parking, proposed, a full size parking space should measure 8.5 ft. wide by 19 ft. deep; a compact space 8 ft. wide by 16 ft. deep. A full size car can fit into a compact space.

11. Without variance relief the site could accommodate 8 full size spaces. This would seriously impair the project's feasibility. Applicant presented that a minimum 10 ft. side yard was required as a result of the BN corner location, which further restricted site development options. In applicant's view the selection of 65th Street for the front yard allowed

the most desirable massing for the number of units allowed on the site. All other possibilities produce a negative visual impact to neighbors and public in general because setbacks required by fronting on 32nd produce a 40'0 X 100'0" building footprint.

12. In the analysis of the parking space dimension variances, DCLU concluded that the width of the lot constituted a hardship to the applicant, since that width directly limited the building width, which in turn affected the required width of support columns. The building support columns directly affect the spacing of proposed underground parking.

13. Neighborhood sentiment was mixed, as was represented by petitions and letters pro and con, of varying signators. Some residents eagerly anticipated replacement of the gas station "eyesore" with a new apartment building. Others were concerned that the addition of 11 units, with parking provisions for only 11 cars, some spaces of minimum size, would only exacerbate the existing neighborhood parking shortage. Some opined that construction of an 11 unit complex would amount to overbuilding of the lot, and that reduction of the number of units proposed would or could eliminate the need for variance relief.

14. Applicant considers the proposed project less detrimental and more desirable than alternatives available under the BN zoning, such as a commercial "16-20 ft. structure built right up to the property lines, except at the north property line..." It was also conjectured that BN allowed businesses could generate a higher parking demand. Applicant projects that the units, to rent from \$285 to \$400 per month, will be within the means of senior citizens.

Conclusions

1. The requirements for variance relief are delineated in Section 24.74.030, as amended. Essentially, the applicant must show that a unique real property condition exists which would, without variance relief, deny the applicant development privileges enjoyed by others in the vicinity; and that the strict application of the Land Use Code would cause undue and unnecessary hardship. The unique property conditions should not be owner-created. The variance should not exceed the minimum necessary for relief, and should not operate to the material detriment of the public welfare. Finally, the variance should be consistent with the spirit and purpose of the land use code provisions.

2. In appeals to the Hearing Examiner, the Director decision on variances is given no deference, Section 23.76.36(7), and appeals should be considered de novo. Hearing Examiner Appeal Rule 2.8. Therefore, although some comments may have misconstrued the variance(s) requested, the entire matter is subject to Hearing Examiner review as a result of the appeal.

3. It would appear that denying the front yard variance would adversely affect the design and function of the building, as noted by DCLU. DCLU also correctly observed that some adjacent properties provide less than the 20 ft. front yard setback.

4. However, the record is devoid of a real property condition which would justify variance relief. The lot is basically level. Applicant chose the front yard and design as an alternative to what was projected to be a long, narrow, less aesthetically pleasing building that would face 32nd Avenue N.W. The issue therefore is one of design and not of a prohibition in construction due to a real property limitation per Section 24.74.030, as amended.

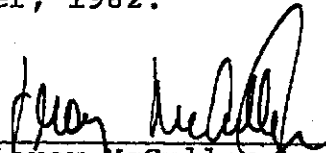
5. Similarly, the request for variance relief from required parking space dimensions results not from a unique condition; rather it follows the applicant's choice of building design and setting. In a sense, the applicant appears to have selected a design and placement only to later allege hardship resulting from the conscious selection.

6. We would agree that current Land Use Code provisions on parking space dimensions are more to applicant's favor, and consequently that the requested relief would not be inconsistent with the public policy expressed thereby. However, the application was received and reviewed during a period when more other provisions were in force; and those provisions apply. Without the requisite showing of property conditions, variance from those provisions would operate to the precedential detriment of the public welfare. The applicant's financial hardship is a personal one which is properly not a part of the variance analysis. The Director's decision approving the variances is reversed.

Decision

The decision of the Director of the Department of Construction and Land Use to approve the variances is REVERSED.

Entered this 11th day of October, 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 of the appellant is successful in court.