

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

In the Matter of the Appeal of

RUTH H. SQUIRES

FILE NO. MUP-83-008(V)
APPLICATION NO. 82-571

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

Introduction

Appellant, Ruth H. Squires, appeals from the decision of the Director of the Department of Construction and Land Use (Director) to deny variances for property at 4909 S.W. Dakota Street.

The appellant exercised her right to appeal pursuant to Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: appellant, represented by Ward Squires, and the Director represented by Rosemary Horwood.

No correspondence or testimony was received in opposition to the application.

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

This matter was heard before the Hearing Examiner on March 14, 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 a master use permit to allow construction of a carport at 4909 S.W. Dakota Street. Front and side yard variances were denied by the Director. Appellant appealed.

2. Appellant's lot has 65.38 ft. of frontage on S.W. Dakota Street and is approximately 85 ft. deep. A one story house is set 17.5 ft. back from the front property line and 18 ft. from the west property line.

3. The property is located in an SF 5000 zone and abuts upon the Genesee Hill Elementary School property on the west.

4. Southwest Dakota Street has a platted right-of-way 80 ft. in width but is only partly developed.

5. Appellant proposes to construct a 10 ft. by 20 ft. carport to the west of her house. It would be set back from the front property line 17.5 ft. and 3 ft. from the west property line. The carport must be at least 5 ft. from the house to meet Engineering Department standards.

6. Sections 23.44.14A and 23.44.14C require a minimum 20 ft. front yard and 5 ft. side yard.

7. The carport would utilize a curb cut for an alley which has been vacated. The carport would be in that vacated alley.

8. The property slopes down to the back. The former alley, behind the subject property, is filled with trees and brush.

9. Appellant and her neighbors have been the victims of criminal acts, e.g., property damage, trespass, burglary. She wishes to locate the carport where it can be observed easily from the street and her house because of the high incidence of crime.

10. The fence on school property is set 10 ft. west of the property line. The nearest building on school property is some 200 yards away.

11. Seattle Public Schools declined to enter into an accessory structure agreement provided for by Section 23.44.14D(1), the representative indicating orally to appellant that it is concerned with precedent.

12. A carport could be located in the rear yard without variance. The rear yard is isolated by the existence of the playfield on the west side, a rear yard on the east and south sides with the densely vegetated alley at the southwest corner.

Conclusions

1. Appellant's property is unusual in the immediate area in its amount of exposure to the playfield and secluded areas. Requiring strict observance of the setback requirements would place the carport in a more isolated location than other properties in the area would be required to do and would cause undue and unnecessary hardship.

2. The requested side yard variance is the minimum necessary for relief. The appellant did not show, however, why the carport could not be set back an additional 2.5 ft. thus meeting the code's requirement. Therefore, the request for a front yard variance would exceed the minimum necessary for relief.


3. No material detriment or injury would result from either variance as, due to the circumstances of the playfield and undeveloped right-of-way, the carport at the proposed location would not cause any crowding.

4. The code's provision for avoiding the necessity of variance by getting neighbor's approval makes the purpose of the code less clear in that even though other conditions are not met, if the neighbor is not concerned, the structure can be located in the required side yard, so the maintenance of open space is not the single purpose of the side yard setback provision. Here, where the neighbor, a public entity, declines to enter into an agreement but expresses no disapproval and a great deal of open space is reasonably likely to remain, a side yard variance would not conflict with the spirit and purpose of the Code. Granting the front yard variance, without justification, would.

Decision

The front yard variance is denied. The side yard variance is GRANTED.

Entered this 18th day of March, 1983.


M. Margaret Klockars
Deputy 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.