

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

In the Matter of the Appeal of

RON BILLS AND RENE SOULARD

FILE NO. MUP-84-072(V)
APPLICATION NO. 8403626

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

Introduction

Appellants, Ron Bills and Rene Soulard, appeal the decision of the Director, Department of Construction and Land Use, to deny variances for property at 310-21st Avenue East.

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

This matter was heard before the Hearing Examiner on October 15, 1984.

Parties to the proceedings were: appellants, pro se, and the Director represented by Ed Somers, land use specialist.

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 shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Appellants applied for a master use permit to allow the construction of a single family residence at 310-21st Avenue East. Certain variances are necessary for the development as proposed. Appellants appeal the denial of variances for a two car garage in the front yard and the condition imposed on the front yard variance.

2. The subject property is a vacant lot, zoned SF 5000, across from Meany Junior High School. A steep embankment in the street right-of-way separates the lot from the sidewalk and road-way grade. The grade at the front lot line is 11 ft. above the grade at the sidewalk.

3. Because of the steep bank, the lot is entitled pursuant to Sections 23.44.16.D.3 and 23.44.16.E.1.c to have a garage of up to 300 sq. ft. for one car in the required front yard.

4. The required front yard setback as determined by the Director is 20 ft.

5. Appellants originally proposed to construct a house set 10 ft. from the front property line, which line is back 11.5 ft. from the sidewalk. Certain features would extend to within 6 ft. of the front property line. They also propose a two car garage under the house partly in the front yard.

6. The Director found that a variance for a 10 ft. setback for the house is warranted but that only 18 in. of eaves and deck could extend into that 10 ft. setback.

7. Appellants presented a revised plan which would move the front wall of the house back 2 ft. creating a 12 ft. setback with an extension into the setback for the porch overhang and the point of the front entry bay the same distance as the eaves would have been permitted by the Director's decision. The point within the 10 ft. setback would cover 2½-3 sq. ft. of area.

8. Appellants propose to have planters built into the driveway to improve the appearance of the garage.

9. Because of the topography, each foot the house is set back beyond the 10 ft. requires the removal of another 125 cu. ft. of dirt and makes more retaining wall visible from the street.

10. The house on the north side of the subject lot is creating a greenhouse back porch so placement of the proposed house forward on the lot will avoid interference with its exposure to the sun.

11. The house next to the subject site on its north side provides a 20 ft. setback. The next property north of that has a 66 ft. setback. To the south is a house fronting on East Thomas Street with a 10 ft. setback from 21st.

12. The subject site is across from the front entrance to the school and recreation center gymnasium. Teachers, parents and others park on the street.

13. A recreation center and lighted, year round playfield is located on the block with the school. The playfield is heavily used for organized team sports. Participants and spectators park on surrounding streets.

14. Parking is limited to the east side of the street in the area of the subject property.

15. Section 23.44.16.D.6 permits parking for two cars in the front yard if the front yard meets the conditions of 23.44.16.D.3 where "uninterrupted parking for twenty-four hours is not permitted on both sides of the street...." An intradepartmental committee of the Department of Construction and Land Use has interpreted that provision to apply only when parking is not permitted on either side of the street. Since parking is permitted on the one side of the street in this case, the Director has not allowed parking for a second car under this exception.

16. Parking is very difficult on 21st East because of the demand from school and playfield and street limitations. Neighbors find they have to park and carry groceries and children a block from home at times.

17. The subject site is 4 blocks from 23rd and Madison, an area frequented by drug dealers and buyers.

18. The cars parked on the street near the school are frequently broken into or vandalized, as are houses on the block. Neighbors report that of the cars belonging to neighbors and friends one has been vandalized every two months for the last four years.

19. The owners of the property next door cannot report thefts in their car or house to their insurance company because they have had so many incidents they are in danger of cancellation which would jeopardize their mortgage.

20. Two new houses on nearby streets meet setback requirements and have double car garages.

Conclusions

1. The high embankment in front of the subject lot would frustrate compliance with code requirements for placement of parking if not for an exception in the code for parking in the required front yard for one space under these slope conditions. Appellants ask for variance to allow space for a second car in the front yard and for a garage larger than 300 sq. ft. The conditions relating to the location of this property, across from a school and heavily used recreation center and playfield, street parking limited to one side of the street and experiencing an unusually high incidence of property crime, in combination, deny this property the right to reasonable parking with relative security. The variance for second car parking would not exceed the minimum necessary for relief.

2. Though properties on the immediate block do not have parking for two cars, they represent older development with no provision for parking. Newer development in the area is providing two car garages. Therefore, the variances would not confer special privilege.

3. Space for a second car in the required yard would not be injurious to other properties or detrimental to the public welfare.

4. Strict application of the code restriction would cause undue hardship given the conditions of the property's location.

5. The intent of the Single Family Residential Areas Policies is to reduce the impact of parking structures on the streetscape through regulation of location. The Code implements this intent but recognizes exceptions for lot conditions. Where on-street parking is restricted further consideration may be given. In this case, conditions exist which make variance consistent with the intent of the exceptions.

6. Several property conditions are present which, if the full 20 ft. front yard setback were required, would deprive the property of rights and privileges enjoyed by other properties. Those conditions are the high embankment in the street right-of-way in front of the property, the location and grade of the property line in relation to the street and the setback of the adjacent house.

7. The Director concluded that that a 10 ft. setback with 18 in. of eave overhang was the minimum necessary for relief. Because of the importance of the design feature to appellants they have proposed to move the structure two feet farther back on the lot so that the entrance point feature would extend no further than the eave overhang. The small amount of bulk associated with the point feature is more than offset by the 2 ft. shift of the entire building. Therefore, the revised variance request is still the minimum necessary for relief. Because of the adjacent property's setback the variance would not confer special privilege.

8. The setback variance would not be materially detrimental to the public welfare nor will it injure other property. In fact the record shows that having the structure toward the front of the lot will preserve sun exposure for the next lot.

9. The variances are necessary to avoid undue hardship.

10. Again the intent of the Single Family Residential Areas Policies is to preserve the streetscape character. Here, there is no regular pattern of setbacks except for the undeveloped street right-of-way embankment. Therefore, the reduced setback would not alter the streetscape character so would not conflict with the spirit and purpose of the Land Use Code and policies.

Decision

The variances to allow parking for a second car in the required front yard and to allow the area of a garage to exceed 300 sq. ft. are granted. A variance to allow a structure in the required front yard is granted for a front yard setback of 12 ft. with 18 in. of eaves and front entry point permitted to extend into that setback.

Entered this 29th day of October, 1984.

M. Margaret Klockars
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Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

The decision of the Hearing Examiner in this case is the final administrative determination by the City, and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73. Should such request 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. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.