

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

In the Matter of the Appeal of

SCOTT LABEL

FILE NO. MUP-88-052(V)

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

APPLICATION NO. 8707536

Introduction

Appellant appeals the decision of the Director, Department of Construction and Land Use which denied three requested variances: to expand a non-conforming structure, to allow structure in required rear yard, and to allow exterior alterations for a home occupation.

Appellant exercised the 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 August 30, 1988.

Parties to the proceeding were: appellant, Scott Label, and the Director of the Department of Construction and Land Use by James Barnes.

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 facts, conclusions, and the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The property is located at 1924 - 46th Ave. S.W. at mid-block on the east side of 46th Ave. S.W. The area is zoned single family 5000 (SF 5000), has 75 ft. of frontage along 46th Ave. S.W. and is 115 ft. in depth.

2. The site is developed with the main residence, a 3 story home; a detached garage; a workshop/studio house; an addition which connects the garage and workshop; a shed; and a playhouse. A daycare center for 12 children is presently being operated out of the connected structures.

3. The main residence is 30 ft. from the front property line and 36.5 ft. from the rear property line. The workshop/studio house at the rear of the house is built to the east property line and intrudes approximately .4 ft. into the 20 ft. right of way of the 15 ft. wide improved alley.

4. The garage which is situated southeast of the main residence is built to the south property line and intrudes .25 ft. into the neighbor's property at the property line. Due to the 18 inch overhang of the third floor eaves of the main residence, the distance between the main residence and the garage is 4.5 ft. when measured eave to eave. According to the Director's determination pursuant to Director's Rule No. 50-82, the garage-addition-workshop structure is therefore considered to be part of the main residence.

There was an indication that no appeal would be taken from this determination and the Hearing Examiner finds that this matter is not properly before this hearing.

5. The Hearing Examiner finds that plans submitted prior to issuance of the building permit for the addition indicated that the detached garage and the main residence were separated by 7 ft. (site plan, Exhibit 3, and survey, Exhibit 5).

6. The Director's representative indicated that no action would be required by the Seattle Engineering Department of the homeowner in regards to the encroachment of the workshop into the alley right-of-way. And although the neighbor to the south and the appellant have executed a side yard easement in regards to the garage's encroachment, the Director's representative indicated that the intrusion can not be approved by the easement.

7. The addition connecting the workshop and the garage is considered an external alteration to the principal structure that the Director indicates was made to accommodate the daycare, a home occupation.

8. The Director indicated that the suggested cure for the situation was for the appellant to modify the eaves so that a 5 ft. separation existed between the eaves of the main residence and the garage.

9. Attempted resolution of the violation filed against the appellant in the proceeding LUCE 87-010 recommended the appellant to obtain a conditional use permit to legalize the daycare. Appellant has instead attempted to legalize the daycare through the various requested variances.

10. Seven comment letters were received during the comment period. The concerns expressed were over the use of detached structures for a daycare, concerns of traffic, parking, safety, noise and objections to the possible granting of variances.

11. Two area residents cross-examined the Director's and appellant's presentations and made a presentation in objection to the requested variances. The area residents stated the daycare existed prior to the construction of the addition and that traffic is impeded by full-sized vehicles parking perpendicular to the alley at the rear of appellant's property.

12. The Director's representative indicated that the traffic and parking concerns were minor impacts and that if emergency vehicles in the alley are impeded, Seattle Engineering Department will issue a violation notice.

13. Appellant countered the area residents' allegation of an illegal rental unit within the main residence and tenant parking by indicating that a friend resides temporarily in the home.

Conclusions

1. All of the variance criteria of Seattle Municipal Code, Section 23.40.020 must be met in order for the appellant to be afforded variance relief.

2. The Hearing Examiner concludes that there are no unusual conditions applicable to the subject property that would deprive the appellant of comparable development rights enjoyed by other property owners in the area. Seattle Municipal Code 23.40.020(C)(1).

3. In light of the Director's suggested cure, the Hearing Examiner concludes that the requested variances are all beyond the minimum necessary to afford relief to the appellant and that the grant of the variances would constitute a special privilege. Seattle Municipal Code 23.40.020(C)(2).

4. The Hearing Examiner concludes that the grant of the requested variances would be detrimental to the public welfare and injurious to other properties in the area as an unprecedented grant of variances will be established. Seattle Municipal Code 23.40.020(C)(3).

5. The Hearing Examiner concludes that the literal and strict interpretation of the Land Use Code would not cause an undue or unnecessary hardship on the appellant as the appellant has been able to develop his property according to its development guidelines. Seattle Municipal Code 23.40.020(c)(4).

6. The Hearing Examiner concludes, therefore, that denial of the variances would be consistent with the purposes of the Single Family Area Policies to preserve and maintain the physical character of single family areas. Seattle Municipal Code 23.40.020(C)(5).

Decision

The Director's decision is affirmed.

Entered this 13th day of September, 1988.

Roger Shimizu
Roger Shimizu
Hearing Examiner Pro Tempore

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) 684-0521.