

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

EVVIAN WILLIS

FILE NO. MUP-88-057(V)
APPLICATION NO. 8803322

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

Introduction

Applicant appeals DCLU's denial of lot area and front setback variances for construction of an attached garage at 9337 45th Avenue S.W.

The 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 September 27, 1988.

Parties to the proceedings were: applicant and property owner by Evvian Willis; and the DCLU Director by Faith Lumsden, associate 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. The essential facts are undisputed. The subject property consists of a 5762 sq. ft. area parcel addressed as 9337 - 45th Avenue S.W. The lot is developed with a single family residence and attached two-car garage built in 1979.

2. Total lot coverage, inclusive of a 320 sq. ft. deck added in 1980, is 32 percent.

3. The steep driveway exceeds a 20 percent slope. DCLU records show and the Hearing Examiner finds that for construction

The north portion of the lot was cut to establish the existing driveway grade and a rockery was established along the south edge of the driveway.

4. The property owner, a sea captain, was not on hand to supervise or monitor the construction. According to his letter, he did not realize "that the driveway would be so steep for normal and safe use..."

5. The homeowner subsequently submitted this application to construct a 409 sq. ft. garage addition to the residence. This new garage would leave a front setback of 10 ft. and would increase the lot coverage to 39 percent. The garage would be 20 ft. deep, within the general range of garage depths.

6. Since the north adjacent lot's front setback is 20 ft. and the south adjacent lot's setback 13.5 ft., the applicant's minimum front setback is 16 ft. 9 in., the average of the two neighboring lots. The maximum lot coverage per Land Use Code is 35 percent. Applicant therefore sought variance relief from the

front setback and lot coverage provisions of the Land Use Code.

7. Page 2 of the variance application form states in part that

This home has a driveway which is so steep a car high confers at top and bellies out at the bottom on ingress and egress. Also it is so steep even with rain one cannot get traction - with snow it cannot be used at all - the builder should have set the house 18" to 24" higher elevation (sic)...

8. The subject vicinity, zoned Single Family 5000, is developed with single family residences. Many of the homes have rockeries, retaining walls, and sloped driveways or yards in response to the area's steep hills and sloping topography.

9. The Hearing Examiner was presented with no evidence of a similar variance for the vicinity and finds that there have been no such variances permitted. Neighbors have responded to the topography, however, in different ways. Some have used rockeries and retaining walls. Others have parked their trucks or other vehicles in the driveways. Applicant would park his vehicle on the street. According to applicant's representative, these customs show that the code setback is not observed.

10. Several homes along the 9300 block of 47th Avenue S.W. have garages and carport setbacks of 5 ft., 6 ft., 8 ft. and 12 ft. Exhibit 8.

11. Some 15 support letters were presented into the record as part of applicant's submittal. They indicate that the resolution of the problem is reasonable and would not be detrimental to the community. Also submitted were copies of letters on the proposal addressed to DCLU. Although many of the DCLU - addressed letters favored the variance, several were opposed. One such letter argued that variance approval would constitute a negative precedence for visual blighting of the lawn and garden streetscape; other letters argued that variance approval would mean devaluation of surrounding residential values and a negative aesthetic impact.

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code.

2. The Hearing Examiner shall consider these appeals on a de novo basis, Seattle Municipal Code Section 23.76.022(C)(6), and shall give "no deference" to the DCLU Director's variance determinations. Seattle Municipal Code Section 23.76.022(C)(7).

3. All of the variance criteria must be met before variance relief may be granted. Seattle Municipal Code Section 23.40.020(C).

4. The first criterion requires that an unusual property condition be presented which would, without variance relief, deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity. The unusual condition must not have been created by the owner or applicant.

5. The subject structure was constructed in 1979 after the north portion of the lot was modified by applicant's builder or agent to establish the present (20%) driveway grade that is being offered as justification for the variance. The modified topography does not qualify as an unusual property condition "not created by owner or applicant;" the original steep topography could have qualified.

6. Although a 409 sq. ft. area garage would not exceed the ordinary depth and dimension for a single family garage, approval of the variance would constitute a grant of special, inconsistent

privilege to applicant in that other vicinity properties faced with similar topography have not responded by approved variances from the front setback. Further, the net increase in building area and lot coverage occasioned by the development would not be consistent with existing development privileges. In this connection, approval of the variance could establish a negative precedent and would have a negative impact on vicinity property or improvements.

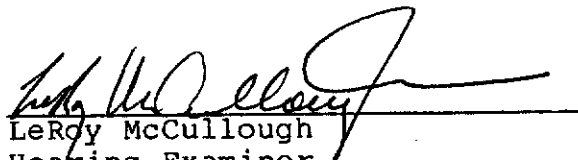
7. No "undue and unnecessary hardship" is presented by strict application of the Land Use Code. The present driveway and slope were built not by applicant's predecessor-in-interest but by applicant's agent.

8. As all of the variance criteria are not met the variance application is properly denied.

Decision

The variance application is denied.

Entered this 11th day of October, 1988.


Leroy McCullough
Hearing Examiner

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.