

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

In the Matter of the Appeals of

W. DAVID POOT AND
CLYDE J. DIEMER

FILE NO. MUP-88-065(V) and
MUP-88-067(V)

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

APPLICATION NO. 8804077

Introductions

Appellants challenge the decision of the Director, Department of Construction and Land Use, to approve side yard variances for additions to property at 901 11th Avenue E.

The appellants 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 November 23, 1988.

Parties to the proceeding were: appellant, W. David Poot, pro se, appellant, Clyde J. Diemer, pro se, the Director, Department of Construction and Land Use by Ed Somers, land use specialist, and the applicant, Ray Hook, pro se.

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. A master use permit application was filed for the construction of a two-story addition with deck and carport in connection with the conversion of a single family residence to a duplex at 901 11th Avenue E. Plans were changed during the construction to extend the deck to the property line which required a variance. It was also discovered that the stairs and porch within the required side yard would require variance. The variances were granted and these appeals followed.

2. The subject property is a corner lot, 4200 sq. ft. in area, developed with a single family residence being converted to a duplex. The property is zoned Lowrise 3.

3. The subject lot is adjacent to a lot in the same zone with a single family residence. There are two other single family residences north of those lots and then apartment buildings north of that. Single family zones lie to the east and west of these properties.

4. An easement, eight feet wide, for access to the rear of the property on the north side lies at the rear of the subject property. The plans show a new, 12 ft. wide concrete driveway over the easement leading to a two-car garage below a deck on the subject property.

5. The access easement had been granted to the adjacent property before the applicant's purchase of the subject property. The price of the property would have reflected the existence of

the easement.

6. The applicant proposes to add a main floor deck, approximately 9 ft. above grade, measuring some 20 by 21.5 ft. over a basement garage. The floor of the deck would be about 5.5 ft. above the grade of the adjacent property with a 3 or 3 1/2 ft. wall above the floor.

7. A brick courtyard is to be provided on the south side of the deck at grade covering an area of about 24 ft. by 15 ft. There is a 17 ft. front setback provided for the house and a south side yard, 5.5 ft. at the narrowest, elevated above the street by a low retaining wall. The plans also show a new deck off the top floor, above the garage deck, measuring 11.5 ft. by 16 ft.

8. The proposed stairs and porch would be a second entrance to the unit which occupies the upper two floors with the main entrance on the south side. It will allow more direct access from the main floor to the garage than from the other entrance.

9. The Director determined that a 5 ft. side yard is required, though the plan cover sheet shows 5.5 ft. required. No setback is proposed for the depth of the deck and 3 ft. along the porch and stairs.

10. The garage proposed is a standard size for a two-car garage.

11. The other single-family developed lots in the L-3 zone have single car, detached garages.

12. The other lots with single family residences in the L-3 zone also are burdened by access easements. Areas as much as 510 sq. ft. on one lot are within the easement compared to 320 sq. ft. on the subject property.

13. On-street parking is heavily utilized in the area. Secure parking is desirable because of incidents of vandalism and theft in this area close to Volunteer Park.

14. The property is bounded by Aloha Street on its south side which is heavily travelled. Landscaping on the street side is important for privacy and, to the limited extent that vegetation affects it, noise reduction.

15. The apartment buildings in the zone have little usable open area except for one which has a roof garden.

16. Variances from required setbacks have been denied in the area. A variance for fence height was granted to the property three lots north in 1977 to give some privacy from a four-story apartment building.

17. The Director granted the variance but required that the solid deck enclosure within the side yard be removed or replaced with an open rail. At hearing, the land use specialist suggested that a preferable alternative would be to require that the roof of the garage within the required yard be pitched.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.76.022.

2. A variance may be granted only if the facts and conditions required by Section 23.40.020C for approval are found to be present. Those facts or conditions are: an unusual condition, not created by the owner or applicant, because of which the code provision denies the property rights enjoyed by other properties in the same zone or vicinity; that the variance requested is the minimum necessary for relief and its granting would not confer

special privilege; that the variance would not cause material detriment to the public welfare or injure other properties; that strict application of the code requirement would cause undue or unnecessary hardship; and that the variance would be consistent with the spirit and purpose of the Land Use Code and applicable policies.

3. The Director, in granting the variance, relied upon the access easement as the unusual property condition which was viewed as reducing the area available for usable open space. However, the single family-developed lots in the same zone also have access easements. On the other hand, the multi-family developed lots do not have significant usable ground level open space. If the owner maintained the use as single family with parking for one car, the ground level open space would be available. By converting to multifamily with parking for each unit, the ground level open space must necessarily be reduced. The condition is not one, then, which causes the side yard requirement to deny the property development rights enjoyed by other properties in the zone.

4. The variance which would give the property both ground level open space and parking for multi-units would confer special privilege inconsistent with the limitations on other properties in the zone and vicinity. Since no variance for the deck is warranted, such variance would exceed the minimum necessary for relief.

5. The variance to allow an elevated deck at the property line would cause injury to the adjacent property from loss of privacy and a sense of crowding. While a tall hedge would be allowed and would interfere with sunlight, it would not have the same privacy and aesthetic effects.

6. There was no showing that strict application of the standards would cause unnecessary hardship.

7. The land use policies for residential multi-family are applicable to this site. Those policies require side yard setbacks "...to provide a minimum sense of privacy, openness, light, air, to gain solar access, and to mitigate shadows to adjacent sites...." Eliminating the setback would be contrary to that particular policy. The policies also encourage usable open space so the variance to maximize usable open space would be consistent with another policy.

8. The evidence as to the conditions requiring the side yard variance for the stairs and porch was not generally distinguished from that for the deck. It appears, however, that the siting of the existing house on the lot and the elevation of the main floor result in the inability to obtain necessary access.

9. The 2 ft. incursion into the required side yard is the minimum necessary to provide standard stairs and landing and it would have little effect on the neighboring property.

10. The strict application of the code provision would cause unnecessary hardship by forcing the placement of an entrance/exit at a place where it is not as usable.

11. The incursion of the stairs into the side yard would not conflict with the spirit of the policies which provide for projections for architectural features within 3 ft. of the lot line.

12. Because not all the facts and conditions necessary for variance approval are present for the deck, that portion of the variance must be denied. The portion of the variance for the stairs and porch may be granted.

Decision

The side yard variance for the deck is denied and for the

porch and stairs is granted.

Entered this 8th day of December, 1988.

M. Margaret Klockars
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Deputy 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.