

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

D B ASSOCIATES

FILE NO. MUP-89-006(V)  
APPLICATION NO. 8806036

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

#### Introduction

D B Associates appeals the decision of the Director, Department of Construction and Land Use, on a master use permit application to condition a height variance for a parking structure at 231 26th Avenue East.

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 March 15, 1989.

Parties to the proceedings were: appellant represented by Donald Bazemore and the Director, Department of Construction and Land Use, represented by Cristina Van Valkenburgh, 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. A permit was issued under Title 24 for the construction of two apartment buildings at 25th Avenue East and East Madison Street. Parking for the structure at 231 26th Avenue East was to be on a slab off the alley to be supported by a retaining wall and backfill. The present application is to support the parking slab on piles, rather than a retaining wall and backfill, and enclose the parking in a garage structure. The height of the proposed structure would violate Title 23 so a variance was requested.

The proposed garage structure would be within the required rear yard setback in the same location as the original proposal. Title 24 permitted retaining walls within required yards for the purpose of raising the grade and the height of the structure could be measured from the created grade. Under Title 23 the height of an accessory structure in a required yard is limited to 12 ft. measured from the existing or finished grade, whichever is lower, so the originally proposed solution would be nonconforming under the current code.

2. The overall site lies south of East Madison Street on both sides of a dead-end alley which runs south from Madison Street to about East John between 25th and 26th Avenues East. The site of the proposed 27-unit apartment building and the subject parking structure slopes steeply down from an alley to 26th Avenue East for a drop of some 40 ft. over a distance of 120 ft.

3. The site is part of a Lowrise 3 zone along both sides of East Madison Street from 24th Avenue East to 27th Avenue East.

On the east side of 26th Avenue East, south of the L-3 zone, is a Lowrise 2 zone a half block wide and then a Lowrise 1 zone. To the south of the L-3 zone is a large L-2 zone.

4. Development surrounding the site, in addition to the second apartment building being built as part of the same project on the west side of the alley, is multifamily across Madison to the north, rowhouses to the east along Madison, mixed single family and small multifamily directly east across 26th and to the south of the site and a four-story apartment building west of 25th Avenue East.

5. The site is designated as environmentally sensitive by the City because of its sloping topography as are other properties on this particular topographic feature which extends several blocks to the north.

6. The height of the proposed garage would be 34 ft. from the lowest part of the grade. The piles represent some 18 to 22 ft. of that height with the garage rising above the slab approximately 12 to 13 ft.

7. Because the proposed garage would be located between the two apartment buildings being constructed on the site, it would not be visible to other properties east and west. Occupants of the single family residence at the end of the alley will pass it and may have a view of it. The structure would be visible briefly to motorists passing on Madison and may be within the view of a limited number of apartments on the north side of Madison Street.

8. The garage would be some 156 ft. long and provide parking for 22 cars. The DCLU has determined that several additional variances from code provisions would be required for the structure as proposed.

9. Ownership of the property has changed since the time of the original application and the current owner proposes to enclose the parking to meet market demand for secure parking. He feels that some form of security is necessary and further, that a garage will be more aesthetically pleasing than a row of exposed automobiles. The DCLU staff did not dispute those judgments.

10. No evidence of similar variances for apartment structures was presented. DCLU's decision stated that enclosed parking is common in the area but did not specifically address multifamily buildings or the zone.

11. No explanation as to how enclosed parking from an alley could be provided on a sloping lot downhill of the an alley under the current code was available.

#### 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 all the facts and conditions required by Section 23.40.020 for variance relief are shown to be present.

3. First, there must an unusual property condition, because of which the strict application of the code would deny the property of development rights enjoyed by other properties in the same zone and vicinity. Section 23.40.020C1. The substantial slope is a condition which makes the provision of parking off the alley not possible without variance for height of a structure under the current code. Here, since the applicant has vested rights to a structure under the former code, which code provided for the sloping condition by allowing measurement from finished grade, but would be denied the right to use a less expensive and safer support system under the existing code, strict application would deny the property of rights enjoyed by other developers to use the better technology. The same reasoning and conditions

would be present had the original application included covered parking since a 12 ft. structure would have been permitted. The applicant has failed, however, to show that other properties in the L-3 zone in the vicinity have been allowed to exceed the height limit to enclose parking or even have enclosed parking.

4. The variance must be the minimum necessary for relief and not confer special privilege on the property. Section 23.40.020C2. The portion of the variance to allow the change from a retaining wall to pilings without any change in the height is the minimum necessary for relief. Because it had been previously vested it would not constitute a grant of special privilege. The additional height for the enclosure was not vested and there was no proof of denial of comparable development rights so relief was not shown to be warranted for the covered garage. The additional height would, therefore, constitute special privilege.

5. The granting of the variance may not materially detrimental to the public welfare or injurious to other property. Section 23.40.020C3. There was no evidence of potential material detriment or injury from the height. Because the proposed garage would be between the two apartment buildings on the site, it would be seen by few. The enclosure is likely to be considered by those who can see it more aesthetically pleasing than a row of parked cars.

6. The literal interpretation and strict application of the code provisions must be found to cause undue and unnecessary hardship. Section 23.40.020C4. This requirement is satisfied since the strict height limit application would prevent the change from a retaining wall with backfill to the preferred piling support. The effect of allowing only outdoor parking can also be viewed as unnecessary hardship since it prevents the applicant from providing a better product to future residents at no apparent gain to the public welfare.

7. The variance must be consistent with the spirit and purpose of the code and policies. Section 23.40.020C5. Policy 9: Location and Appearance of Required Off-street Parking lists three goals, one of which is to "maintain an attractive environment at street level...." p.23-37. To achieve that goal the policies and code prohibit parking in front of the building, require access from the alley, etc. The policy on height does not address the height of accessory structures though the code does limit accessory structures in the required rear setback to 12 ft. Since the only apparent means to have access from the alley on a sloping lot would be to allow the accessory parking structure to exceed the 12 ft. limit, the variance would not conflict with the spirit and purpose of the policy or code.

8. The examiner is concerned that the physical situation facing the applicant may be common and one overlooked by the drafters of the Code and encourages the applicant to bring the problem to the attention of the City Council. The variance mechanism may not be used to effect a de facto amendment to the code, however. Only if the requirements for variance are present may the variance be granted. Here, there was not adequate proof as to the denial of comparable rights to allow height variance for the enclosure of the parking.

#### Decision

The height variance for the parking platform is granted. Variance for the additional height for enclosure is not warranted by the facts presented.

Entered this 30<sup>th</sup> day of March, 1989.

  
M. Margaret Klockars  
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.