

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

In the Matter of the Appeal of

STEVEN FAIN AND MAUREEN FAIN

FILE NO: MUP-89-073(V)
APPLICATION NO: 8904702

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

Introduction

Applicants, Steven and Maureen Fain, appeal the decision of the Director, Department of Construction and Land Use, to conditionally approve a variance to allow construction of an addition to a single family structure at 4918 Corson Avenue South that would extend into the rear yard beyond the code rear yard requirements.

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

The matter was heard before the Hearing Examiner on Tuesday, January 16, 1990.

Parties to the proceedings were appellants, pro se; and the Director, Department of Construction and Land Use, by Corbitt Loch, 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 of law and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Appellants applied for a variance required to construct an addition, including a kitchen and two-car garage, onto an existing single family structure situated at 2918 Corson Avenue South. The Director, Department of Construction and Land Use (DCLU), conditionally approved the variance.

2. The conditions contained in the DCLU decision (Exhibit #6) were: (a) removal of an existing curbcut and replacement with a curbcut and driveway that complied with the code; and (b) construction no closer than twelve (12) feet from the rear property line.

3. DCLU's representative stated that the second condition contained in the decision (Exhibit #6) should be amended and clarified to permit construction no closer than 12 feet from the actual rear property line. (Loch testimony).

4. Appellants' lot is an irregularly shaped parcel of land situated on the northeast corner of Corson Avenue South and South Shelton Street. The subject lot has a 49 foot frontage along Corson Avenue South, then a 90 foot frontage along South Shelton, then along the rear of the lot on the east property line for approximately 48 feet and along the north lot line for approximately 80 feet. Corson Avenue South runs from north to south at a diagonal to South Shelton. (Exhibit #7) At the subject lot, Corson Avenue South intersects South Shelton at an angle less than 90 degrees, resulting in a lot that is not rectangular in conformation.

5. The subject lot is zoned SF5000 and situated in the southwest corner of the Beacon Hill area of the city.

6. The subject lot is approximately 4115 square feet.

7. The subject single family structure is across the street from the Maple Elementary School and diagonally across the street from Maple Park.

8. The majority of houses in the vicinity have one-car garages. However, there is a two-car garage in the house across South Shelton Street and a number of newer homes (approximately six) that are ten blocks from the subject structure on 13th and 14th Avenue South with two-car garages.

9. The structure presently has a existing one-car garage, which is underneath the structure and is entered from South Shelton Street. It is functionally obsolete in that the entrance to the garage and the garage itself at 7 feet 6 inches wide is too narrow to accommodate most vehicles. The current garage accommodates a very small sports car; however, once the car is in the garage the car doors cannot be opened due to the narrowness of the garage.

10. Expansion of the current garage would require one of the two retaining walls lining the access to the garage to be torn down and excavation and construction of a new retaining wall. In addition, the eastern interior garage wall is a load bearing wall for the primary structure. Because of these difficulties and the expense involved, the proposal is to build a new garage and convert the existing garage into storage space.

11. The land use code requires one off-street parking space. (SMC 23.44) The DCLU representative testified that he defined the variance code section minimum necessary requirement (SMC 23.40.020.C.2) as meaning one covered parking space.

12. Location of the subject structure across the street from both Maple Park and Maple Elementary has resulted in a competition for parking spaces with the staff and parents of the school as well as frequent car vandalism to both the exterior and interior of the Fains' two vehicles which are parked on the street. (Fain testimony).

13. Steven Fain has a alarm system on his van. The alarm system does not prevent vandalism to the exterior of his van.

14. Applicants initially proposed to construct an addition to the principal structure that would include a kitchen as well as a two-car garage. The initial proposal presented to DCLU was for an addition that would extend into the rear yard and be located 5 feet 6 inches from the rear property line.

15. In Applicants' November 27, 1989 appeal letter, they amended the proposal by reducing the width of the proposed construction and to request a variance to build no closer than nine feet from the rear property line. The nine foot variance would allow for a two-car garage in which the cars are parked in a staggered position, so that the car doors could be opened while both are parked.

16. Under the Seattle Municipal Code, according to DCLU, the rear yard set back requirements for an irregular lot such as applicant's would permit construction of the garage to be no closer than 12 feet from northern end of the actual rear lot line and no closer than 15 feet from the southern end of the actual rear lot line. Seattle Municipal Code Section 23.44.014D.6 and Seattle Municipal Code Section 23.86.010C.

17. The initial proposal would have occupied the majority of the rear yard area. The November 27 amendment to the proposal would increase the rear yard area and move the addition further toward South Shelton Street, adding five feet to the eastern end of southern wall of the initial proposal. (Fain testimony)

18. The question of the shadows cast by the initial and secondary proposal was raised by DCLU. No evidence was presented as to the actual shadows that would be cast by the addition. DCLU testified that the variance was conditionally granted because the initial request went beyond the minimum necessary. The shadows cast by the addition were not a factor for conditioning the variance request.

19. DCLU received one letter during the comment period, dated September 8, 1989, from the Maple Elementary School principal, supporting the proposal.

20. The Land Use Policies for single family residential areas is silent on the establishment of off-street parking spaces where on-street spaces are utilized at a high level. However, the Policies in Section in SMC 23.16.002 allow for maximum flexibility in the use and enjoyment of single family homes and uses and activities consistent with single family residential living.

21. There is no curb on South Shelton Street along the subject lot.

Conclusions

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

2. The Director's decision on a variance shall be given no deference on review. Section 23.76.022C.7.

3. An attached garage may extend into the required rear yard, but may not be within twelve feet of the rear lot line. Section 23.44.014 D.6.

4. A variance from the code requirements may be granted only if each of the five conditions listed in Seattle Municipal Code Section 23.40.020 are met.

5. The first requirement is that there be an unusual condition of the property, not created by the owner or applicant, because of which the strict application of the code would deprive the property of the rights and privileges enjoyed by other properties in the same zone or vicinity. Seattle Municipal Code 23.40.020C.1. Appellant offers two: the location of the lot across the street from an elementary school and park, and the unusual configuration of the lot. The location of the lot does not qualify as an unusual condition since it is shared by many other properties in the same zone and vicinity. The irregular configuration results in a buildable area that is limited because construction is precluded by strict application of the land use code. This irregular shape constitutes an unusual condition that would deprive the applicant of privileges and rights enjoyed by other properties in the same zone and vicinity.

6. The second requirement is that the requested variance not go beyond the minimum necessary for relief or constitute a grant of special privilege. Section 23.40.020C.2. The initial variance did not constitute the minimum necessary for relief to allow off-street parking. The fact that appellants requested in their November 27, 1989 appeal letter a relief that was less than the initial request confirms that the initially requested variance was not for the minimum necessary. The question is whether the relief sought in the November 27th appeal letter (SMC 23.76.022C.3.a.) constitutes the minimum relief necessary. While the code requires one off-street parking space, it does not preclude two or more parking spaces. In the present matter, the minimum necessary relief from the obsolete current garage, auto vandalism, and competition for on-street parking would be a two-car garage. The nine foot variance from the actual rear lot line is the minimum necessary to permit a two car garage in which the cars are parked in a staggered position. Comparable two-car garages, i.e., the garage across the street and the garages 10 blocks from the subject site, indicate that the variant use would not alter the main complexion of the neighborhood and constitute a special privilege.

7. The third requirement is that the requested variance not cause material detriment to the public welfare or injury to other property in the area. Section 23.40.020C.3. No evidence was presented as to the actual shadows that would be cast by the addition. The additional off-street parking provided by the amended proposal would be beneficial to the public, i.e., the staff and parents of Maple Elementary School, in that it would decrease the competition for on-street parking. The letter from the school principal reflects support for this proposal. The amended proposal contained in the November 27th appeal letter would increase the rear yard area over that originally proposal, enabling the subject lot to conform with the rear yards of neighbors within the vicinity.

8. The fourth requirement is that the record show that literal interpretation and strict application of the code provision would cause undue and unnecessary hardship. Section 23.40.020C.4. Strict application of the code would cause such hardship in that without the additional extension requested into the rear yard, a two-car garage could not be built and the applicants' cars could not be safely and securely parked.

9. Finally, the variance must be consistent with the spirit and purpose of the Land Use code and SFRAP. The amended proposal is consistent with land use policies that encourage the establishment of off-street parking spaces.

10. Because there are no curbs on the South Shelton Street the condition imposed by DCLU for removal of existing curbcuts and replacement with a curbcut will not apply. However, the condition that the driveway comply with the code is still applicable.

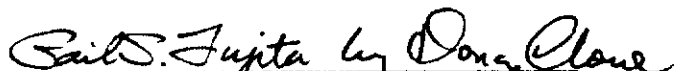
Decision

The decision of the Director, Department of Construction and Land Use, to conditionally grant the variance is affirmed, subject to the following:

a. The variance shall be conditioned to allow construction no closer than nine feet from the actual rear lot line.

b. The condition as to curbcuts should be eliminated.

Entered this 31st day of January, 1990.


Gail S. Fujita
Hearing Examiner Pro Tempore

CONCERNING FURTHER REVIEW

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, 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.