

FINDINGS AND DECISION
BEFORE THE SEATTLE HEARING EXAMINER

In the Matter of the Appeal of
ROBERT A. AND MARY A. STEWART

FILE NO. MUP-89-077(V)
APPLICATION NO. 8904488

from a decision of the Director,
Department of Construction and
Land Use

AMENDED DECISION

Introduction

Applicants Robert A. and Mary A. Stewart, applied for a Master Use Permit to construct an addition to a single family residence. The Stewarts appeal the decision of the Director, Department of Construction and Land Use (DCLU) to deny a variance to allow a private garage in one of the required front yards of a through lot to exceed 300 square feet and the condition that their deck railing, to be placed on top of said garage, be limited to an open railing.

The applicants/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 Thursday, February 1, 1990.

Parties to the proceedings were the appellant, Mary A. Stewart, pro se, Peggy Miller, architect, and the Director, Department of Construction and Land Use, by Corbett Loch, Land Use Specialist.

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 Master Use Permit to construct an addition to a single family residence and, in the view of the Director, four variances were required: 1) to allow a private garage in a required front yard to exceed 300 square feet; 2) to allow a deck over 18 inches to extend in the required front yard; 3) to allow an attached garage to exceed the height limit; and 4) to allow expansion of a non-conforming structure.

2. The proposal site, 4100 East Highland Drive, is zoned Single Family 7200 (SF 7200) and is a through corner lot between 41st and 42nd Avenues East, one block west of Lake Washington. The lot is rectangular in shape. The site has a developed two-story, single family residence and there is an existing carport with an open deck structure located along the 42nd Avenue East frontage. The residence, as it sits on the site, is non-conforming as to the required set-backs having yards of 7.5 feet western front yard, 12.5 feet eastern front yard, 1.5 feet northern side yard, and 7.5 feet southern side yard. SMC Section 23.44.014.

3. The site is also non-conforming as to lot coverage because it has a 39% lot coverage (SMC 23.44.010(c) allows a maximum of 35%).

4. The proposal is to convert the existing carport into a two-car enclosed garage attached to the existing residence. A deck would occupy the roof of the proposed garage. This deck would be open but enclosed by two single rails attached by no more than eight cross rails for support with a trellis facing 42nd Avenue East. There would be no other structure (as appellant by redesign abandoned any use of walls) but greenery would be used for privacy and beauty. The proposed garage would be approximately 600 square feet in size, partially in the required front yard.

5. The parties dispute the height above grade of the proposed structure. The appellant stated that the proposed structure would not exceed the height maximum of 15 feet above average grade (12 feet height plus 3 foot rail). The Director's report puts the height of the structure at approximately 16 feet.

6. There is ample off-street parking in the area immediately surrounding the site.

7. The vicinity of the site consists primarily of single family residences (SF 7200). In the immediate vicinity of the site there is an abundance of attached or detached one and two car garages in the required front yards. It appeared, from a site visit, that violations of lot coverage were also common in the vicinity of the site. The vicinity also appeared to be in danger of structures overwhelming the greenery.

8. Six letters, received by the Department of Construction and Land Use, objected to the size and bulk of the proposed structure. Two of these letters were not received by the Department within the time period for public comment and for that reason, are not considered in this decision. Two letters acquiesced in the proposed construction.

Conclusions

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

2. The Director's decision on the Master Use Permit shall be given no deference on review (SMC Section 23.76.022.C.7.).

3. SMC Section 23.44.082(A) provides that a non-conforming use shall be prohibited from expanding in any manner that increases the extent of the non-conformity, except as necessary to improve access for elderly or disabled.

4. Variances from the code requirements may be granted only if each of the five conditions in SMC Section 23.40.020.C. are met:

a) That there be an unusual condition of the property, not created by the owner or applicant. Here the size and location of the house and carport were non-conforming at time of purchase (required front yards and coverage) and were not created by the owner/applicant.

b) That the requested variance not go beyond the minimum necessary for relief nor may it constitute a grant of special privilege. Here, a two car garage, while desirable, exceeds the minimum necessary for relief, given the on-street parking availability. The deck must be placed upon the new garage and so long as the trellis does not exceed height limitations, it certainly does not exceed a minimal amount of relief, particularly when limited in bulk.

c) That the requested variance not cause material detriment to the public welfare or injury to other property in the area. Here approval of the proposed deck would cause no detriment to the existing neighborhood and, indeed, would benefit the area in adding more greenery and minimal visual detriment.

d) That literal interpretation and strict application would cause undue and unnecessary hardship. Certainly, privacy is of great value and the proposed deck would allow for privacy and minimal obstruction of views.

e) That the variance must be consistent with the spirit and purpose of the Land Use Code. This proposal, as regards the deck, is consistent with the vicinity and privacy.

Decision

The decision of the Director of the Department of Construction and Land Use is affirmed in part and reversed in part, to wit:

DENY variances to allow a private garage in one of the required front yards of a through lot to exceed 300 square feet - AFFIRMED.

CONDITIONALLY GRANT variance to allow a deck over 18 inches to extend in the required front yard - AFFIRMED.

DENY variance to allow an attached garage in the required front yard to exceed the height limit - AFFIRMED (DCLU clarified at the commencement of the hearing that their position was to deny this variance).

CONDITIONALLY GRANT variance for expansion of a non-conforming structure - AFFIRMED.

CONDITIONS

Prior to issuance of a Master Use Permit:

1. The owner and/or responsible party shall reduce the total size of the garage to approximately 22 feet by 22 feet. The portion of the garage within the required front yard shall not exceed 300 square feet. The western wall of the garage shall be set back a minimum of 7 feet from the west property line.

2. Appellants maintain that their proposed structure will conform to height requirements, and that issue is therefore moot. There shall be no walls around the perimeter of the proposed deck. The deck shall be limited to the portion above the proposed garage, and shall be essentially open. A 3 foot high railing and single trellis constructed of two 2 x 10 foot and 1/2 x 2 foot cross members on the north and south sides shall be allowed.

Any storage necessities may be utilized by extra space within the garage or elsewhere.

Entered this 26th day of February, 1990.


Hunter E. John
Hearing Examiner Pro Tempore

CONCERNING FURTHER REVIEW OF
HEARING EXAMINER FINAL DECISION 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, 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104.