

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ELEANOR LESTER

FILE NO. MUP-89-082(V)
APPLICATION NO. 8906049

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

Introduction

This is an appeal by the applicant from a decision of the Director of the Department of Construction and Land Use denying the variance requested in application 8906049. The appellant exercised the right to appeal pursuant to Chapter 25.76 of the Seattle Municipal Code.

This matter was heard on April 2, 1990, and the record closed on April 6, 1990, in order to allow for a site visit by the Hearing Examiner. Parties to the proceedings were appellant, appearing pro se; and the Director of the Department of Construction and Land Use (DCLU), represented by Faith Lumsden, Land Use Specialist.

All section numbers below refer to the Seattle Municipal Code, unless otherwise specified.

After consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Finding of Fact

1. Eleanor Lester applied for a master use permit in 1989 to rebuild an attached carport at the rear of her house and to extend an existing front porch. The roof of the carport is to serve as a deck accessing the second story of the residence.

2. Three variances from the requirements of the Land Use Code were needed and requested for this proposal:

(a) to allow a ground-related dwelling to exceed the maximum depth allowed;

(b) to allow a ground-related dwelling to exceed the maximum lot coverage allowed; and

(c) to allow a ground-related dwelling to extend into the required rear setback.

The Director denied all of these variance requests.

3. The proposal is for property at 152 Lee Street. The site is a rectangular lot of 51' wide x 84.8' deep, or 4,324.8 square feet. It is situated at the northeast corner of the intersection of Lee Street and Warren Avenue North on Queen Anne Hill. Fire Station 8 is across Warren Avenue North to the west. A three-story condominium development is adjacent to the east. Zoning for the site and much of the surrounding area is Lowrise 2 (L-2). Zoning in the blocks south of the site across Lee Street is Single Family 5000.

4. The Land Use Code requires a minimum rear setback of ten feet for structures in L-2 zones, other than for exceptions not relevant here. Appellant's proposed carport would extend to within 1.82 feet of her rear lot line at the closest point.

5. The maximum depth of ground-related housing structures

in an L-2 zone is 65 percent of the lot depth, or in this case 55 feet. With the rear carport and front porch extensions proposed, appellant's proposal would be 65 feet in depth.

6. Maximum lot coverage in the zone for single structure development is 45 percent. Appellant's proposal would cause lot coverage to be 45.5 percent.

7. Appellant's present lot was created in 1984 as a result of a lot boundary adjustment under master use permit application 8402478 sought by the developer of the adjacent condominiums. Prior to this time, appellant's lot and the condominium property site were owned as one parcel by appellant in common with others. With the lot boundary adjustment, title to 35.3 feet of the larger parcel north of and to the rear of appellant's lot was deeded over to the condominium developer. This lot adjustment left about 17 feet on the north side of appellant's residence for her rear yard.

8. Appellant was not a party in the lot boundary adjustment proceedings with the DCLU. However, as one of the owners of the property being divided, she agreed to it and was a signator on the documents transferring title to the property. Appellant was represented by an attorney for the sale and title transactions.

9. The proposed carport will attach to the rear of the house and extend back 15 feet. It will have space for only one car under cover. In addition, the carport will provide cover for a rear house exit and stoop of approximately four feet and will have enclosed storage and a stairway going up on the east side of the carport. The stairway will provide access to the deck planned for the roof of the carport, which deck will provide access to the second story of the residence.

10. There was a pre-existing carport behind appellant's house on her property at the time of the lot boundary adjustment. That carport was deeper than the one proposed and had space for two cars side by side.

11. As a condition of approval of the 1984 lot boundary adjustment, DCLU required that the existing carport be removed. Appellant was aware of this requirement, but did not understand that removal would mean she could not rebuild the carport to a smaller dimension, inasmuch as she had planned to replace the carport in any event because of dryrot and inasmuch as the smaller carport would not be within the property to be used by the developer.

12. Appellant's lack of understanding of the significance of DCLU's requirement also stemmed from her first discussion with the developer about granting an easement over the north-western portion of her property for the developer's use. This occurred after the sale of the rest of the property to the east of her residence when the developer indicated that he needed more property to satisfy open space requirements for the condominium development. She agreed to granting of the easement not believing that any of her property development rights would be harmed by an easement. Later, she was presented with the lot boundary adjustment documents which transferred fee title to the property at issue. Although she was surprised, she agreed to transfer of title since she did not believe that it would be harmful to her. No money exchanged hands or was ever paid her by the developer for the extra land acquired from her for the developer's purpose.

13. The deeded backyard property now provides egress from the underground parking of the condominiums next door. It also provides two spaces for off-street parking for guests of the condominiums. Concrete retaining walls support the earth on both sides of the cut made for egress. Approximately five feet of the deeded property nearest appellant's rear lot line remain as open space for landscaping.

14. The original carport was in fact removed sometime before 1986 during the condominium development. Construction of the proposed smaller carport was begun sometime in 1988 or 1989 but was stopped because appellant had failed to secure a permit, due to a misunderstanding on her part that no permit was needed in replacement of such a structure. It was at this point that appellant first became aware of development problems relating to the carport's intrusion into the rear yard of her lot.

15. In addition to the application to rebuild a carport in the rear yard of her property, appellant proposes to extend the front porch of her residence by 8.5 feet into her front yard. This front porch extension is for protection of flowering plants during winter months. The front porch extension alone has been authorized previously by permit.

16. Covered parking is typical for the vicinity.

17. On-street parking is congested in the immediate area of the site due to the development there.

18. No neighbors have objected to the proposals or the variances requested.

19. Several properties in the zone or vicinity have similar intrusions into their rear yards as that proposed, with little or no rear setbacks. Many other homes in the area have ground-related structures, including garages and carports, constructed in front or side yards to the apparent property lines, some of which cover substantial portions of those required yards. Variances for at least two of such developments were granted.

20. There was no evidence of comparable owner-created or applicant-created unusual conditions of the properties on which such comparable development exists or which relate to the variances granted.

Conclusions

1. The Hearing Examiner has jurisdiction over the parties and the subject matter pursuant to section 23.76.002.

2. The appeal is to be considered de novo. Section 23.76.022C.6. In variance determinations, the Director's decision shall be given no deference on review. Section 23.76.022C.7. The burden is on the appellant, however, to establish that the variances requested are warranted. Hearing Examiner appeal rule 1.16(a).

3. To grant a variance, the Director or Hearing Examiner must find the existence of the facts and conditions required by Section 23.40.020C, i.e., 1) an unusual condition related to the property which was not created by the owner or applicant, because of which a strict application of the Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity; 2) that the variance does not go beyond the minimum necessary to afford relief and does not confer special privilege; 3) the variance will not be materially detrimental to the public welfare of injurious to other property; 4) that the literal interpretation and strict application of the provisions would cause undue and unnecessary hardship; and 5) that the variance would be consistent with the spirit and purpose of the land use code and policies.

4. The appellant has met her burden of proof by the evidence presented that the variances requested satisfy the facts and conditions identified in paragraphs 2, 3, 4 and 5 of Section 23.40.020C. There is comparable development, yard intrusions and even more intensive and bulkier development next door and in the same zone or vicinity than is proposed by appellant's application, some of which development was authorized by variance. In addition, appellant's proposal will have a negligible effect on the neighborhood and on diminishment of light, air, privacy, solar gain, vegetation, open space, and permeable surfaces. It

will have some positive effects by providing screening of objectionable storage and vehicles and by providing off street parking in an area where parking on-street is difficult. Moreover, appellant's neighbors do not object to the variances proposed.

5. The difficulty and main problem in this case is with the requirement in paragraph 1 of Section 23.40.020C. That section, sadly and unfortunately for appellant, prohibits granting a variance for owner or applicant-created conditions applicable to the subject property. The Hearing Examiner cannot overlook or ignore this provision within that paragraph, since the Seattle Municipal Code mandates that variances from the requirements of the Land Use Code "shall be authorized only when all the facts and conditions are found to exist." Section 23.40.020C (Emphasis supplied).

6. In the instant case, it is clear that appellant consciously deeded title to the property north of her present lot during the course of the lot boundary adjustment proceedings in 1984, which deed and title transaction resulted in the lot of the size and shape presently held by her with a rear yard of about 17 feet. Appellant had an attorney during this transaction. Furthermore, it is clear that appellant was aware that the existing carport had to be removed, and in fact it was removed, for the lot boundary adjustment action. It is equally clear that appellant did not fully understand the consequences or significance of that action with regard to rear setback requirements for development of her backyard and that she was under the mistaken idea that she could rebuild the carport to a smaller dimension at some later point. However, appellant's intent or misunderstanding in deeding the property or as to how she could develop her property later cannot be considered by the Examiner in this action. The Municipal Code provision at issue does not include a requirement for knowledge, intent or mistaken belief as to the owner-created condition.

7. Nor can the Examiner deal with the equities of the situation. The Examiner does not have general equity powers, but only those powers authorized by the Seattle Municipal Code or as otherwise provided by law.

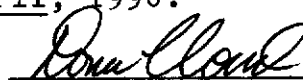
8. Therefore, it appears from the evidence that appellant created the unusual condition relating to the property, that is its size and configuration and the resulting 17 foot-rear setback pre-existing the variance application. As such, the variances requested for the proposal cannot be granted because appellant has failed to satisfy all the conditions of paragraph 1 of Section 23.40.020C.

9. As DCLU indicated, however, appellant may still park her vehicle in the rear yard, proceed with the porch enlargement under prior authority, and take such other action on this matter as DCLU has indicated is available under the Code.

Decision

The determination of the Director of DCLU on this master use permit application is affirmed. The variances requested are denied.

Entered this 19th day of April, 1990.



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