

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

In the Matter of the Appeal of

CAROLYN D. GEISE

FILE NO. S-77-010

from a ruling of the Superintendent
of Buildings

The appeal is GRANTED in part and DENIED in part.

Introduction

The appellant, Carolyn D. Geise, filed an appeal from an interpretation of the Superintendent of Buildings which determined that certain variances are required for proposed construction on property located at 806 West Lee Street.

The appellant exercised her right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

This matter was heard before the Hearing Examiner on June 30, 1977.

After due 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.

Findings of Fact

1. On May 26, 1977, the Superintendent of Buildings (hereinafter the Superintendent) issued a written interpretation concerning the application of the zoning ordinance to construction proposed by the appellant on property located at 806 West Lee Street. Notice of this interpretation was published on June 2, 1977, and the appellant filed the appeal on June 16, 1977. The interpretation in relevant part concluded that front yard and parking variances are required for the proposal.

2. The proposed construction on the subject property consists of remodeling and adding to an existing single-family residence. The existing residence is a one-story structure which, under the proposal, would be remodeled and two additional stories would be constructed. Consequently the existing first story and foundation will be retained and the structure will be a three-story single-family residence.

3. The subject property is situated in an RS 5000 zone which, pursuant to Section 8.5, Ordinance 86300, as amended, requires that a 20 foot front yard be provided. This section is, however, modified by Section 22.44(a) of the aforementioned ordinance which would permit a front yard setback on the subject property that would be the average of the front yard setbacks on abutting properties to either side of the subject property. For this modifying section to apply, however, the front yard of neighboring properties to either side of the subject property must abut upon the front yard of the subject property.

4. The front lot line, for purposes of establishing the location of a front yard on a corner lot, may consist of either street lot line pursuant to Section 3.13, Ordinance 86300, as amended. The other street lot line, however, must then be designated the side street lot line.

5. The lot abutting to the east of the subject property is situated on the northwest corner of the intersection of 8th Avenue W. and W. Lee Street, although W. Lee Street at this point is not fully developed. The residence on this corner lot has frontage on 8th Avenue W. due to its orientation to this street. An attached garage is situated in the southeast corner of the lot and is developed up to the south side street lot line and the front lot line, so that the development on this property provides no front or south side yard setback. All vehicular and pedestrian access to the residence on this corner lot is via 8th Avenue W. and the street address is on 8th Avenue W. Consequently, the front lot line is the 8th Avenue W. street line and the south yard is actually a side yard which directly abuts upon the subject property to the west.

6. The single-family residence on the subject property was constructed in 1908 and since that time there has been no off-street parking space on the site. Consequently, the parking situation is of a nonconforming status since the development predates the more recently enacted off-street parking requirements. Section 23.24(a), Ordinance 86300, as amended, requires that additional off-street parking be provided when a particular expansion or enlargement of an existing structure would itself require additional parking on the site. This ordinance provision is inapplicable in this instance since the proposed expansion and enlargement does not require an additional parking space. Since the development will still consist of a single-family residence there will be no increase in density on the site.

7. The citation by the Superintendent in this instance of a variance for an off-street parking space is the first such citation and there is no record of a similar application of Section 23.24(a), Ordinance 86300, as amended, by the Superintendent in previous similar circumstances. Consequently, the citation of the off-street parking variance is inconsistent with previous cases and represents a departure from a long-standing interpretation of this ordinance section by the Superintendent. The Superintendent has customarily given credit for nonconforming parking spaces and required only the additional spaces that are necessitated by the expansion.

Conclusions

1. The Superintendent has properly concluded that the front yard averaging provisions of Section 22.44(a), Ordinance 86300, as amended, are not available to the appellant with regard to the proposed construction on the subject property. This ordinance section clearly requires that a front yard be situated on either side of the subject property so that a front yard average can be determined. In this instance, however, the subject property abuts upon the side yard of the adjoining property to the east so that a front yard average is not ascertainable. As a result the 20 foot front yard setback requirement is applicable in this instance and the appellant must obtain a front yard variance in order to proceed with the construction in the desired manner.

2. The Superintendent has, with respect to this project, misinterpreted and misapplied the provisions of Section 23.24(a), Ordinance 86300, as amended, and has consequently erroneously cited the appellant as needing an off-street parking variance. The applicant's proposal will not result in an increase in density on the subject property but will rather amount only to a structural expansion of an existing single-family residence. The fact that there is a nonconforming off-street parking situation on the site is not functionally related to the proposed construction and the application of the aforementioned ordinance section is

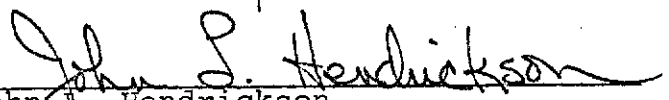
inappropriate in this instance.

3. The interpretation of the Superintendent of Section 23.24(a), Ordinance 86300, as amended, as it relates to the subject property and the appellant's proposal, is clearly inconsistent with previous interpretations involving a similar set of facts. As a result the present interpretation is an anomaly which does not represent the long-standing interpretation of this ordinance section. Section 23.24(a) should be applied only in those instances where the proposed expansion itself requires additional off-street parking spaces such as in the instance where additional dwelling units will be provided or in the commercial sense where additional floor area necessitates the addition of off-street parking spaces.

Decision

The appeal is DENIED with respect to the front yard setback issue and GRANTED with regard to the off-street parking issue.

Entered this 6th day of July, 1977.


John L. Hendrickson
Deputy Hearing Examiner

Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination. Any appeal must be made to the courts. Section 12, Ordinance 102228, the Administrative Code, sets forth the procedure for staying enforcement of an administrative order or decision pending judicial review.