

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JAMES AND JANE PUGEL

FILE NO. MUP-81-069(V)
APPLICATION NO. 81880-0154

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

Introduction

Appellants, James and Jane Pugel, appeal the decision of the Director of the Department of Construction and Land Use (Director) to grant variances under a master use permit application for property at 1607-7th Avenue West.

The appellants exercised their right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: appellants, represented by James Pugel; applicant, Paul Dennis, represented by Geoff Lundquist, Geoff Lundquist Associates, Architects; the Director represented by Malli Anderson.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on November 18, 1981. The record was left open for 20 days to receive any further comment by persons who had not received the notice of the decision and hearing they had requested and for additional time to allow the parties to respond to such comments.

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. The applicant applied for a master use permit to construct an addition to an existing single family residence at 1607-7th Avenue West. The Director granted the permit which included two variances. Appellants appealed that decision.

2. The subject property is a lot with frontage of 67.5 ft. on Seventh Avenue West, 77.5 ft. on an alley and a depth of 120 ft. developed with a single family residence built 4 ft. 4 in. from the alley. The house is over a two car garage and the proposed addition, which is actually already built, is over another two car garage attached on the north side of the building.

3. The subject property is in a Single Family Residence High Density (RS 5000) zone on the south slope of Queen Anne.

4. Section 24.20.090 requires a 25 ft. rear yard which may be measured from the centerline of the alley. The structure provides a rear yard setback of 11 ft. 10 in. Variance would be required from that section for the addition and from Section 24.14.020 to allow expansion of a building nonconforming as to bulk, which expansion is otherwise prohibited.

5. The structure covers 18.8 percent of the lot where up to 35 percent coverage is permitted.

6. The evidence adduced as to the size of the structure on the subject site as compared to others in the vicinity was that it is the largest on that side of the block (Pugel); there are other houses at least that size or larger in the area (Anderson); the house on the north is much smaller; and a series of pictures of houses in the vicinity which are inconclusive as to relative size.

7. One house in the block is built approximately the same distance from the alley, however, that yard is the side yard for that house which is required to be only 5 ft. Much of the alley on that side appears to be bounded by a retaining wall of varying and unspecified height, but as high as a basketball hoop at one point north of the subject site.

8. Properties in the area enjoy views of the water. The view of the water from the house immediately to the north would be impaired. The degree of impairment and the significance of the view (e.g. from what room) was not disclosed.

9. The addition is for a "studio". (Lundquist letter, December 9, 1981.)

10. The architect, who acted as applicant's agent at the hearing, indicated that while it is possible for the addition to have been located elsewhere on the lot, the garage over which it was built is sturdy and other location would have required substantial alteration to the interior. For example, if the addition were moved forward it would be in front of the kitchen and a bathroom requiring a new ventilation system.

11. According to the Director's representative 58.1 percent of the wall line extends 12.5 ft. into the required rear yard. The Single Family Residential Areas Policies provide an exception to required setbacks for residences which have walls, 60 percent or more extending into the required yard if the wall is at least 20 ft. from the rear property line.

Conclusions

1. The burden to produce facts qualifying a property for variance relief under Section 24.74.030 is upon the applicant initially and remains there on appeal since the Director's decision is to be given no deference. Section 24.84.170.

2. The facts must show that because of unique property conditions not created by the applicant, the strict application of the code's provisions will deprive the property of rights and privileges enjoyed by other properties in the zone or vicinity. Section 24.74.030A.1. The evidence is inconclusive as to whether a larger structure is needed to attain comparable development.

3. The facts must also show that the variance would not go beyond the minimum necessary for relief nor grant special privilege. Section 24.74.030A.2. Without proof of the denial of development rights no variance can be found necessary. Assuming, however, that the structure needs to be expanded for comparable development there is still question as to the necessity of doing it at the location proposed and to the degree proposed. If the hardship involved in altering the interior of the structure were shown to be too great there is still the question of the height of the structure. An intrusion into the rear yard of a lower structure, e.g. without the second garage underneath, might be the minimum necessary. Facts supporting the degree of variance were not proven.

3. The variance may not cause injury to other properties nor be materially detrimental to the public welfare. Section 24.74.030A.3. A loss of a view of undetermined amount and significance is injurious to the adjoining property but would not be sufficient to defeat the variance were the other necessary facts proven.


4. The variance must be shown not to adversely affect the Comprehensive Plan, which the examiner reads to mean not to conflict with that plan. Section 24.74.030A.4. The rear yard intrusion is much greater than that excepted from the required setback. While it is possible that greater intrusion could be found to be consistent with the intent of those policies it is unlikely that an intrusion of this distance and height interfering with a view and looming over the alley would have been intended.

5. Since the burden of producing facts consistent with the requirements of the code for variance relief has not been met no variance can be granted.

Decision

The Director's decision to grant the variance is REVERSED.

Entered this 17th day of December, 1981.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.