

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the appeal of

PATRICK WHEAT

FILE NO. MUP-81-081(V)
APPLICATION NO. 81226-0266

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

Introduction

Applicant appealed the denial by the Department of Construction and Land Use prohibiting construction of a detached garage accessory to an existing single family residence at 4801 Beach Drive S.W.

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

Parties to the proceedings were: appellant, pro se; the Department of Construction and Land Use (DCLU) by Arthur Ward, environmental specialist.

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 December 22, 1981.

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 subject property is located in the Single Family Residence High Density (RS 5000) zone at 4801 Beach Drive S.W. The waterfront site is developed with a circa 1927 single family dwelling which provides a minimum 22 ft. 6 in. front yard, a north side yard of 7 ft. 5 in. and a south side yard of approximately 3 ft. The rear yard is concrete surfaced to the water. A structure constructed as a two car garage is located approximately 4 ft. from the south property line and measures 19 ft. by 22 ft. 4 in.

2. Access to the rear yard area is via a driveway located along the north side of the property that narrows to 7 ft. 5 in. at the adjacent concrete porch. The driveway widens into a turn-around area in front of the rear yard garage structure.

3. As described by the applicant, the subject rear yard is one of the lowest points in the neighborhood such that with each high tide, the garage floods with salt water necessitating sandbagging. The flooding has been as high as 2 in.

4. The applicant's truck has a width of approximately 7 ft. 4 in. The north property line is marked by a wooden fence. Applicant experiences some difficulty maneuvering his truck through the narrow point of the driveway without causing damage to the truck and/or to the north adjacent fence.

5. Applicant therefore sought a master use permit to construct an accessory detached garage which would provide a 3 ft. minimum front yard setback whereas a 20 ft. setback is required (Sections 24.20.090, 24.62.110); and which would provide a minimum side yard of 3 ft. whereas a 5 ft. minimum setback is required (Section 24.20.090). DCLU denied the master use permit application and the applicant appealed.

6. The DCLU decision noted that

...a substantial majority of the properties to the north and south (4 lots to the north and 8 lots to the south and across Beach Drive S.W. to the east) have accommodations for two off-street parking spaces either in garages or carports.

The DCLU representative was not aware of the problem of flooding with the existing garage.

7. Applicant assessed that of the 143 houses "in both directions" from the applicant's house, 75-80 percent of these houses did not observe the 20 ft. front setback and in fact had many parking facilities built right to the sidewalk.

8. Petitions in support of the application were submitted as were petitions in opposition. Variance relief to provide less than the minimum required front yard and to provide less than the minimum required side yard in order to construct an accessory carport to an existing single family residence at 4773 Beach Drive S.W. was conditionally approved by DCLU in X-81-028, and subsequently affirmed by a decision of the Hearing Examiner in File No. MUP-81-004. The DCLU decision found in part that

...a variance would allow development of a carport roof addition to a small single family dwelling. Development of the carport roof addition in the front and side yards would bring about parity in privileges and rights between the subject lot and surrounding developed properties with two car garages. Since many other front yard garages exist along the west side of Beach Drive S.W., allowance of the variance would not constitute the grant of a special privilege...Two car garages in the required yard setbacks are standard practice on the west side of Beach Drive S.W. Variances have been granted in the past for neighboring properties with similar unique property conditions (X-79-128, 79-274, 80-201)...

9. The property owner south adjacent to the subject site, however, was of the view that while some structures were built up to the sidewalk, the supporting reason therefor was that as one proceeds north from the subject property, the land between the road and water narrows such that development was necessarily forced closer to the street. Another witness in opposition felt that with the existing concrete path the addition of a garage to the front yard would create a front yard parking lot which would be aesthetically displeasing.

10. With regard to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, Chapter 25.04, Seattle Municipal Code, the action proposed in this subject application has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC 197-10-170.

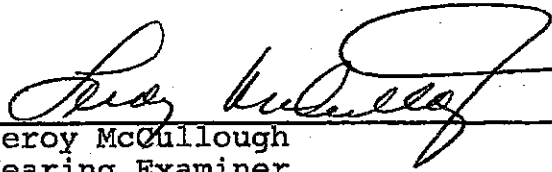
Conclusions

1. The location of the subject dwelling with rear water frontage and the constrictive driveway access are unique property conditions not caused by the applicant which could sustain some variance relief from the strict application of the zoning ordinance. Although a structure is located in the rear yard which was designed and undoubtedly used as a garage, the problem of flooding is one which deprives the applicant of privileges enjoyed by other real property owners with garages in the same zone or vicinity.
2. Granting the relief requested would not amount to authorization of a special privilege. Many of the properties in the vicinity have accommodations for two off-street parking spaces. At least one variance was approved for a 2.4 minimum required front yard at 4773 Beach Drive S.W.
3. Approval of the variance would be in consonance with the spirit and purpose of the Comprehensive Plan which in its Single Family Areas Policies Policy Intent indicates that off-street parking is mandatory while parking in front yards is "generally" prohibited. Since the variance approval would mean the addition of two parking spaces, variance approval would inure to the benefit of the public welfare in that some requirement or need for on-street parking would be reduced.
4. The application for variance relief is accordingly granted, subject to the conditions that the applicant submit a landscaping plan to be approved by DCLU to mitigate the visual impacts of the front yard development. This plan should include extensive vegetation or similar screening for the south side of the project. Secondly, the condition imposed is that the existing garage shall not be used for parking. In this manner the applicant will be provided two off-street parking spaces and will not be accorded the special privilege of having four off-street parking spaces. As conditioned the variance relief sought will not prove of material detriment to the public welfare nor injurious to the property or improvement in the subject zone or vicinity.

Decision

The decision of the Director of the Department of Construction and Land Use is REVERSED. Variance relief is GRANTED according to the conditions of Conclusion 4 above.

Entered this 5th day of January, 1982.


Leroy McCullough
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.