

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

In the Matter of the Appeal of

ROBERT D. GUTH

FILE NO. MUP-82-067(V)  
APPLICATION NO. 82-0270

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

INTRODUCTION

The appellant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: appellant, pro se; and the Department of Construction and Land Use by Ed Somers.

For the 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 October 13, 1982.

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 Ballard neighborhood of Seattle at 3037-43 N.W. 56th Street. Found on the south side of 56th Street, the lot is roughly 67 ft. wide and 71 ft. deep.

2. The rear of the lot is marked by a steep slope and retaining bulkhead. The adjacent rear alley has been vacated and is privately owned.

3. The lot is developed with a structure originally constructed as a duplex. In 1970, pursuant to a 1970 permit, the structure was converted to triplex "per plan...one offstreet parking provided."

4. The dwelling structure provides a 7 ft. 9 in. west side yard. East adjacent of the structure is a 10 ft. wide driveway; 8 ft. of the width falls within applicant's lot. East of the driveway is a fourplex with parking in front of the structure. The Department of construction and Land Use has no record of variances for front yard parking along this portion of N.W. 56th. Permit records show that the fourplex parking provides the required front yard 15 ft. setback; applicant challenges this degree of setback.

5. On June 7, 1982, applicant submitted his application for a variance to establish two accessory parking stalls in the required front yard of an existing triplex.

6. The Department of Construction and Land Use concluded that as the structure was built without parking in then-conformance, only one parking space is now required, i.e. pursuant to the 1970 permit. Applicant proposes (already existing) two 8 ft. by 16 ft. parking spaces at 45 degree angles to the front facade of the building and a new driveway in line with the center of the building so that the vehicles could proceed directly across the sidewalk to or from the street. This driveway width ranges from 10 ft. 6 in. to 18 ft. 4 in. Areas east and west of the access have beauty bark and shrubbery. According to the project applicant, the existing shrubbery will grow to provide effective screening of the front yard parking. The

parking area is gravelled.

7. The Department of Construction and Land Use assessed that in contravention of Land Use Code provisions the proposal eliminates one on-street parking space and "does not result in parking being screened from view"; and that an alternative configuration, e.g., parking two vehicles in the front parallel to the street, with use of the east adjacent driveway for vehicle ingress and egress, could eliminate the need for variance relief pursuant to the new Land Use Code, Title 23, Seattle Municipal Code. Variance relief for the existing configuration was denied.

8. Applicant appealed the variance denial. According to applicant, the adjacent driveway is used for parallel parking by the neighboring property, and two cars are parked in the driveway "90 percent of the time." This would significantly decrease the maneuverability of vehicles attempting to exit the front yard via the east adjacent driveway, according to applicant.

9. Vicinity development includes homes with terraced garages.

10. Comment letters acknowledged the premium of on-street parking in the vicinity. Some letters favored the variance request; others were opposed to the "negative effect" of front yard parking on the neighborhood.

11. 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. Applicant's submittal for the variance was made prior to the effective date of the Land Use Code, Title 23. The more recent code allows front yard parking under certain conditions that are not here proposed or met by applicant.

2. Procedurally, it appears that the applicant has the right to request review of his application pursuant to Title 24 or Title 23, and that the Department of Construction and Land Use is not empowered to exercise the choice for applicant. Accordingly, this decision is based on the provisions of Title 24 per applicant's selection. That application of Title 23 could eliminate the need for variance relief is appropriate for indirect consideration.

3. Where unusual property conditions would deprive the property of rights and privileges enjoyed by others, variance relief from the strict application of the zoning code is appropriate pursuant to Section 24.74.030, as amended.


4. The steep topography of the rear of the lot, combined with the private alley, constitute unique property conditions affecting development and parking accessibility on the applicant's lot. Variance relief is appropriate. The record shows no front yard parking variances for the immediate street area. However, there is parking in the front of the east adjacent dwelling. More offstreet parking is desirable in this neighborhood. Adjacent driveway access (east) is limited by factors, e.g., others' parking, beyond the applicant's control. The spirit of the zoning code would, under these special circumstances, not be violated by variance approval.

5. Variance approval is conditioned on 1) approval of the curb cut and proposed access aisle by the Department of Engineering; 2) DCLU approval of the front yard parking area screening. DCLU shall consult with the Department of Engineering prior to imposing any screening recommendation.

Decision

The application for variance is approved on the conditions indicated in Conclusion 5, infra.

Entered this 27<sup>th</sup> day of October, 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 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.