

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

VICTOR HANZELI

FILE NO. MUP-82-088(V)
APPLICATION NO. 82-0476

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

It appearing that a clerical error has been made in the Findings
and Decision under the subheading Conclusions 7, which reads

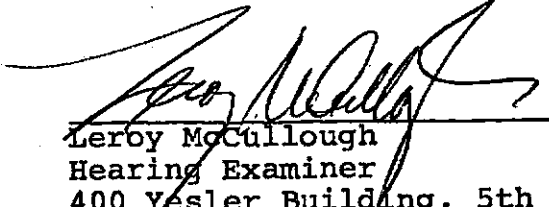
...The appealed from variances are approved on
the condition that the garage not exceed 25 ft.
2 in. in depth, i.e., the north-south dimension
of the applicant's dwelling, and that the current
north setback of applicant's be maintained.

the Hearing Examiner hereby corrects that portion of the Findings and
Decision to read as follows:

...The appealed from variances are approved on
the condition that the garage not exceed 26 ft.
2 in. in depth, i.e., the maximum north-south
dimension of the applicant's dwelling, and that
applicant's current north minimum setback of
19 ft. 2 in. be maintained.

This order shall become attached to and a part of the decision
entered in this matter January 4, 1983.

Entered this 7th day of January, 1983.


Leroy McCullough
Hearing Examiner
400 Yesler Building, 5th Floor
Seattle, Washington 98104
Telephone: 625-4197

AFFIDAVIT OF SERVICE BY MAILING

State of Washington)
County of King)

DORA WRENN, being first duly sworn, upon oath
deposes and states:

That on the 7th day of JANUARY, 1983, affiant deposited
in the mails of the United States and the Mail/Messenger Service (used for City
personnel only) a sealed envelope containing an order,
with postage prepaid, addressed to the parties listed in this affidavit or
attached mailing list in the below-entitled appeal.

Dora Wrenn

Subscribed and sworn this 7th day of January, 1983.

Cynde Kellers

Notary Public in and for the State of
Washington, residing in Seattle.

FILE NO. MIP-82-088 (V): VICTOR HANZELI

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

In the Matter of the Appeal of

VICTOR HANZELI

FILE NO. MUP-82-088(V)
APPLICATION NO. 82-0476

from a decision of the Director of
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Introduction

Applicant proposes to construct a garage addition to an existing single family residence at 403 N.E. 81st Street. Appellant contests the Department of Construction and Land Use Director's decision approving the variance for the expansion of a structure nonconforming as to development and approving the variance to provide less than the minimum required rear yard.

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 Victor Hanzeli, pro se; the project applicant by Hugh McCann and Terry McCann; the Department of Construction and Land Use Director (Director) by Nanette Mozeika.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23 (Ordinance 86300, as amended) unless otherwise indicated.

This matter came before the Hearing Examiner on December 21, 1982.

After due consideration of the evidence elicited during the public hearing and as a result of the personal inspection of the subject property and surrounding area by the Hearing Examiner, 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 (SF) 5000 zone and is addressed 403 N.E. 81st Street. The lot is a reverse corner lot with 50 ft. of frontage on west adjacent 4th Avenue N.E. and 75 ft. of frontage along north adjacent N.E. 81st Street. The lot area approximates 3,750 sq. ft..
2. The lot is developed with a single story frame construction residence which is oriented to N.E. 81st Street. The minimum setback from the front of the dwelling to the north lot line is 19 ft. 2 in. The setback from the rear of the house to the south lot line is approximately 4 ft. 8 in. From the west side of the dwelling to the west lot line (to 4th N.E.) is a setback of 18 ft. 3 in., and the east setback is 16 ft. 9 in.
3. A concrete drive 9 ft. 2 in. wide and 19 ft. 2 in. deep is near the northeast section of the dwelling. Access is to N.E. 81st Street.
4. Applicant proposes to provide on site covered parking by constructing a one car garage-hobby shop addition to be attached to the east side of the dwelling. The existing concrete drive would be removed and the area covered with grass.
5. As originally proposed the garage-shop structure measures 12 ft. 6 in. wide and 35 ft. 4 in. deep. The setback to the north property line (to N.E. 81st Street) would be 10 ft.

6. The east adjacent residence also fronts on N.E. 81st Street and is setback approximately 17 ft. from the north property line per Department's Exhibit 1, the plot plan. There is general conformity of the setbacks on the applicant's (south) side of N.E. 81st Street.

7. Many neighboring properties have one-car garages on-site. Not all are in use for vehicle storage. It is unclear whether they generally feature hobby shops. However, one witness testified credibly that he used his garage as a shop and that generally others in the vicinity park on the street and use their garages for other than on-site vehicle storage.

8. The Director determined the east yard of the subject property to be the rear yard; the west to be the front yard and north and south yards to be side yards. This was testified as in keeping with the Department general policy to minimize nonconformity, e.g., considering the north yard to N.E. 81st as the front yard, the rear yard would be 4 ft. 8 in. No interpretation was pursued which contested the yard designations, Chapter 23.88, and they are accordingly adopted in this decision.

9. The normal minimum rear yard is 25 ft. Section 23.44.14.D. However, where, as in the instant case, the lot depth is less than 105 ft. the required minimum rear yard setback is 20 percent of the lot depth. In this case, the lot depth was considered 75 ft. so that the minimum rear yard setback is 15 ft.

10. Attached carports or garages may extend into the required rear yard but not within 12 ft. of the rear lot line. Section 23.44.14.D.6.a. Attached carports or garages and nonconforming sections of principal structures are limited to a maximum combined coverage of 40 percent of the required rear yard. Section 23.44.14.D.6.b.

11. Applicant sought variance relief to allow for the expansion of a structure nonconforming as to development standards; to provide less than the minimum required rear yard (4 ft. 9 in. is proposed); and to exceed the maximum permitted rear yard lot coverage.

12. The minimum required rear yard area is the product of 15 ft. minimum depth and 50 ft. lot width, i.e., 750 sq. ft. The maximum lot coverage of the rear yard area is 40 percent of 750 or 300 sq. ft. By the original application, applicant is proposing to exceed the permitted rear yard lot coverage by 62 sq. ft.

13. The maximum lot coverage permitted for principal and accessory structures is 35 percent or 1,750 sq. ft., whichever is greater. Section 23.44.10.C. However, the width of a corner lot may be increased by one half the width of the abutting side street for the purpose of computing the lot coverage. Section 23.44.10.D.1. With the corner lot "bonus" applicant's resulting lot coverage conforms to the maximum lot coverage provision.

14. The Director approved the variance for the rear yard setback and as well the variance from the Land Use Code provision prohibiting the expansion of a structure nonconforming as to development standards. However the Director denied the rear yard lot coverage variance, which decision was not appealed. The functional result is that applicant is restricted to 300 sq. ft. of area in which to erect the structure.

15. Appellant filed this appeal on the Director's decisions alleging violation of the variance provisions of the Land Use Code and specifically alleging detrimental impact on his property value, since the proposed structure would extend markedly closer to N.E. 81st than the appellant's property. This could affect the east-west view profile of the subject block front, and the appellant's property value, so it was reasoned. Appellant, the east adjacent neighbor, resides at 411 N.E. 81st Street.

16. In hearing, applicant stated his intention to reduce the size of the garage to comply with the Director's decision by shortening the proposed structure by roughly 5 ft. This would leave a north setback of approximately 15 ft.

17. A 25 ft. deep garage is considered adequate for single car parking. A garage of 12 ft. by 22 ft. could also accommodate a single car.

Conclusions

1. Director's decisions on variances are given no particular deference, Section 23.76.36.B.7.; nevertheless, the burden of proof in each proceeding is that of the appellant's. Hearing Examiner Appeal Rule 1.26(a).

2. The definitional section of the Land Use Code does not define a front yard as the area between the front door of the dwelling to the lot line. Rather, front yard is defined as

An area unobstructed by structures from the ground upward between the side lot lines of a lot, extending from the front lot line to a line on the lot parallel to the front lot line, the horizontal depth of which is specified for each zone. Section 23.84.46"Y".

It is the appellant's burden to show that the Director's designation of front yard in the instant case was improper. As no interpretation has been requested on that subject the Director's designation for purposes of this appeal will stand. Hearing Examiner Rule 1.26(a). Concerns with the cost or other mechanics of a Director's interpretation are more properly addressed to the City legislative body.

3. The Land Use Code variance criteria are found at Section 23.40.20.C. As conditioned herein, the variance criteria are met.

4. The small size of the lot, the pre-existing development thereon and the corner location of the site are unusual property conditions not created by this owner-applicant.

5. The majority of homes in the vicinity have garages although some are placed to varying uses. Therefore, allowing the applicant covered parking on site would not constitute a grant of special privilege. It would, in fact, permit applicant to enjoy rights and privileges comparable to other properties in the vicinity. Denial of some variance relief would constitute an undue and unnecessary hardship.

6. As originally proposed the line of site along N.E. 81st would have been unduly affected by the structure. The projection to within 10 ft. of the north (front) lot line would have unnecessarily disturbed the east-west view pattern to the specific detriment of the east adjacent property owner. This is of particular interest since the front of the appellant's and the applicant's houses both face N.E. 81st Street; since both have similar north lot line setbacks; and since the designation of this north setback as a sideyard can be considered a fiction, though unchallenged.


7. The Director approved the east (rear) setback variance but by virtue of its position on the maximum rear yard coverage limited the construction to 300 sq. ft. of area. Applicant testified his intention to comply by reducing the north projection of the structure by 5 ft. Such a reduction would provide a minimum setback of approximately 15 ft., similar to that of the north setback provided by the east adjacent neighbor. However, this would still result in a structure approximately 30 ft. 4 in. in length. While the rear yard coverage of the Code could allow such construction, it is noted that the current driveway is 19 ft. 2 in. deep; that single car garages may range from 22-25 ft. in depth; and that the garages in the vicinity are in a variety of uses. The relatively small size of the lot is also noted. Accordingly, a 30 ft. deep structure exceeds the minimum necessary to afford comparable relief. The Director's

decision is therefore modified. The appealed from variances are approved on the condition that the garage not exceed 25 ft. 2 in. in depth, i.e., the north-south dimension of the applicant's dwelling, and that the current north setback of applicant's be maintained.

Decision

The Director's decision is affirmed as modified by Conclusion 7, above.

Entered this 4/4 day of January, 1983.


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.