

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ROD TAYLOR AND JOY AZOUS

FILE NO. MUP-85-010(V)

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

APPLICATION NO. 8405953

Introduction

Appellants appeal the decision of the Director, Department of Construction and Land Use, to deny certain variances for a garage at 4912 Erskine Way S.W.

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

This matter was heard before the Hearing Examiner on April 10, 1985.

Parties to the proceedings were: appellants represented by Fred Kaseburg and the Director represented by Art Ward, land use specialist.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

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. Appellants had partially constructed a garage on their property at 4912 Erskine Way S.W. when they were required to apply for a master use permit. The size and location of the garage did not conform to the code so appellants applied for five variances. The Director granted two variances and denied three. Appellants appeal the decision.

2. The subject lot is a through lot with frontage on Erskine Way S.W. and Lewis Place S.W. The lot measures 50 by 90 ft. and is developed with a 1 1/2 story house with basement. Appellants had torn down the walls of an existing garage some years ago leaving footings and cornerstone.

3. The subject lot is zoned SF 5000 and is the third lot in from the boundary line of a Community Business (BC) zone along California Avenue S.W. Uses in the zone are generally single family however there is a nonconforming duplex located next door to the subject site. Uses in the BC zone include a 7-11 convenience store at the north end of the block where Erskine Way S.W. intersects with California Avenue S.W. and south of that on a through lot is a Firestone store. The block on California also has a laundromat with two dwelling units on top and a large condominium with parking in the back along the alley.

4. The garage under construction and proposed by appellants would measure 26 ft. 1 in. wide, 21 ft. 10 in. deep and 23 ft. 1 in. high to the top of the roof ridge. The garage would cover 509 sq. ft. and provide room for two cars and a work area. The structure would have a second story which appellants propose to use as a master bedroom. The garage structure would be located 5 ft. 9 in. from the principal structure however it is the intent of appellants to connect the two structures by a second floor walkway.

5. The garage is set back 6 inches from Lewis Place S.W., 10.5 ft. from the east property line and 13 ft. 5 in. from the west property line.

6. The Director has determined that the subject lot is required to have a 20 ft. front yard setback from Lewis Place. That setback requirement was determined by averaging the setbacks of the lot on each side of the subject property, one with a 22 ft. setback which was treated as 20 ft. and one to the east which was deemed to have a 22.5 ft. front yard because the existing garage is nonconforming and therefore not permitted in the front yard so not considered for averaging purposes pursuant to Section 23.86.10B1c.

7. The Director determined that a variance would be required to allow parking for two vehicles in the required front yard because Section 23.44.14D5 permits space for one vehicle. The Director granted the variance for parking for two cars.

8. Section 23.44.14E1c permits up to 300 sq. ft. of garage in a required front yard and appellants are proposing approximately 508.6 sq. ft. in the required setback. The Director had denied this variance because staff had concluded it was not needed. Later, when a new setback requirement was determined staff found the variance would be required.

9. Section 23.44.14E2a sets maximum height for a garage in a required yard at 12 ft. where 16 ft. 8 in. to the plate is proposed. Section 23.44.14E2b allows up to 15 ft. maximum height to the ridge of a pitched roof where the pitch is 3 to 12. Appellants propose 23 ft. 1 in. Photographs show this to be higher than the principal structure on the lot and as high as other houses on the block.

10. Appellants propose a 26 ft. 1 in. curb cut to coincide with the width of the garage. Section 23.54.30.E.1.b allows one curb cut of 10 ft. width for a lot of this size. There is no actual curb.

11. Because there is a distance of only 6 inches from the street to the proposed garage, the full width of the entrance to the garage is needed to gain access.

12. The right-of-way for Lewis Place S.W. is 30 ft. wide. Parking is permitted on the northerly side which is the side of the street that the subject property lies on but not along the southerly side. The street is reportedly frequently used by trucks and traffic associated with the commercial uses on California.

13. The through lots along Lewis Place S.W. provide for parking as follows: at 4904 Erskine Way S.W., a two car garage; 4916, one car garage; 4920, one car garage; 4928, one car garage; 4932, two car garage; 4934, one car garage; 4942, one car garage; 4948, which has access off of Erskine only, a one car garage; 4954, with access from S.W. Hudson a one car basement garage; and across Lewis at 4336 Hudson, no provision for parking; 4920 Lewis Place S.W., no garage; 4964, no garage; 4960, a shed which could be used as a one car garage; and 4954, a one car garage with access off the alley.

14. The property at 4932 Erskine Way, which is the fourth lot to the south of the subject site, had an addition to the house constructed in 1960 which the record show to be 24 by 24 ft. which included a garage. In 1965, a permit was issued to allow the addition of a second floor to the garage addition to the residence. The height of the roof on that part of the house has not been measured by either party but is estimated to be up to 18 ft. by the land use specialist. The house is set back from the property line approximately 7 ft. The record does not show the setbacks of the houses to each side.

15. Appellants located the new garage some 11 ft. south of where the prior garage was to improve the visibility to drivers coming around the corner on Lewis Place S.W.

16. The size of the garage is intended to accommodate some of the classic or "aged" cars that Mr. Taylor works on as a hobby which have been parked in the yard and on the street. He does not like to park on Erskine Way because it is at the start of a winding, downhill slope where hit and runs have occurred. Moving his cars inside would reduce the clutter, noise and dust from his hobby that some neighbors object to and would protect the vehicles from vandalism which occurs, probably done by youths going down Lewis from the 7-11.

17. The second story master bedroom would replace space in the upper story of the principal structure which appellants feel cannot support a waterbed. They believe that the supporting members of the structure were damaged when the windows were left open for years after a fire and that they are not sufficiently strong to support the weight of a waterbed. They have not consulted any structural experts about either the safety of using that space or what would be involved in reinforcing the structure but have chosen to provide replacement space over the garage.

18. The floor area of appellants' existing house is near the median of floor areas on the two block fronts.

19. The large, four story condominium structure across Lewis and the alley provides parking under a canopy along the alley. Mr. Taylor estimates it is around 15 ft. high and 125-150 ft. long.

Conclusions

1. Variances may be granted only when all of the facts and conditions set forth in Section 23.40.20C are shown by the applicant/appellant to be present. The Director apparently found that the required facts and conditions were present when he granted the variance to allow parking for two vehicles in the required front yard limited to a 20 ft. wide garage. The Director denied the variance to allow a private garage located in the required front yard to exceed maximum permitted square footage on the basis that no variance was required. However, at hearing his representative explained that the determination of required setback had not been done properly and that, in fact, the proposed garage would exceed the permitted square footage. Relying solely on the Director's analysis that allowing the relocation of the former garage to the new space to provide better sight distance presents an unusual property condition, the variance to exceed the maximum permitted square footage for a two car garage will be granted. The effect of denying the square footage variance would be to deny the unappealed variance to allow parking for two vehicles in the required front yard. So long as the variance is limited to a 20 ft. wide structure at the permitted height, the variance should not exceed the minimum necessary for relief nor should it cause any detriment to the public welfare or injury to other property. Denying this variance when the variance for two vehicles has been granted would cause undue and unnecessary hardship. The variance would not be inconsistent with the spirit and purpose of the land use code or policies.

2. As to the two height variances, no unusual property condition was shown to be present which would cause application of the height limit to deprive the property of rights and privileges enjoyed by other properties. The example given of greater height pertains to the principal structure which has a 7 ft. setback compared to the 6 inches here. Moreover, there has been no showing that the principal structure on the subject lot cannot be rehabilitated to provide the space desired by appellants. Without unusual property conditions any variance would

exceed the minimum necessary and would constitute special privilege. Some detriment or injury to other properties would occur from the greater bulk and obstruction of light and passage of air. The height limitation has not been shown to cause undue or unnecessary hardship except as to the construction that has already taken place. The examiner may not consider that hardship as it was self-imposed by proceeding without proper permits. The variance for greater height would not be consistent with the spirit and purpose of the the Land Use Code or Single Family Residential Areas Polices.

3. As to the curb cut variance appellants appealed the condition limiting the curb cut to 20 ft. with a sight triangle to be provided, however with a 20 ft. garage no greater curb cut would be needed, so the condition should remain. The justification for the variance to allow the greater width is largely the closeness of the structure to the right-of-way which does not allow access to the 20 ft. garage if the curb cut was limited to 10 ft. No detriment should result and no special privilege would be present since most garages have access the full width. Again, the variance would not be in total conflict to the spirit and purpose of the Land Use Code and Single Family Residential Areas Polices because the restriction on curb cuts is intended for the more traditional front yard streetscapes where here the lots have two front yards with the front yard where the parking is to be provided more in the nature of an alley.

Decision

The variance to allow a garage located in the required front yard to exceed the maximum permitted square footage is granted for a two car garage. The variances to allow a garage located in a required yard to exceed maximum permitted height are both denied. The variance to allow a 20 ft. wide curb cut, provided a sight triangle is established pursuant to Section 23.54.30.F.1, is granted.

Entered this 24th day of April, 1985.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW OF HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

The decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review of the decision must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11).

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.