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FINDING AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE
OFFICE OF HEARING EXAMINER

APR 28 1986

In the Matter of the Appeal of

JOHN NAGY

FILE NO. MUP-86-010(V)
APPLICATION NO. 8600260

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

APR 24 1986

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Introduction

John Nagy appeals the decision of the Director, Department of Construction and Land Use, to deny variances needed for a garage roof for property at 3004 West Viewmont Way West.

The appellant exercised the 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, 1986.

Parties to the proceedings were: appellant, John Nagy, pro se and by Bob Miner, his contractor; and the Director by Leslie Lloyd, associate land use specialist.

No correspondence or testimony was received in opposition to the application.

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. Appellant applied for variances necessary to add a hip-roof and gutters to an existing two-car garage on his property at 3004 W. Viewmont Way West. The variances were denied by the Director and this appeal followed.

2. Appellant's property is a large, SF 5000 zoned lot in Magnolia bounded by three streets. The garage measures 30 ft. 10 in. by 19 ft. and is located within 3 1/2 in. of the east property line along 40th Avenue West and 3 ft. 10 in. from the eave overhang of the house to the west. The garage has a flat roof and is 9 ft. 3 in. in height.

3. Appellant proposes to replace the flat roof with a 7/12 pitch hip-roof and to add gutters. The total height, with removal of several inches off the top of the brick walls, would be 13 ft. 6 in. The gutters would extend approximately 2 1/2 in. The existing garage has no gutters.

4. Three variances had been cited by DCLU staff as required for the proposed renovation: from Section 23.44.82A to expand an existing nonconforming structure; from Section 23.44.16E(2)(a) to exceed the maximum permitted height for a garage in the required front yard; and from Section 23.44.14A to allow a portion of the principal structure to extend into the front yard. At hearing, Ms. Lloyd determined that the proposed roof would meet the pitch exception for height so that variance would not be needed.

5. The garage was determined to be a nonconforming structure because parking only for one car is permitted in the required front yard, and then only under certain circumstances. The garage is treated as part of the principal structure, rather than as an accessory structure, because it is closer than 5 ft. to the principal structure.

6. Appellant's lot is a "through" lot between W. Viewmont Way West and 40th Avenue West so it has two required front yards.

7. Most houses on the block with the subject site treat W. Viewmont Way West as the front.

8. The added height would not block any views or interfere with solar access of any other property.

9. Only one other garage in the area has a flat roof.

10. The applicant added to the house on his lot in 1983. The addition was shown to be 5 ft. from the garage on the 1983 plans, Exhibit 11. As constructed, and shown on the plans submitted with the variance, Exhibit 5, the eave overhang is only 3 ft. 10 in. from the garage.

11. The addition to the principal structure was designed with a mansard-style roof.

12. A mansard-style roof on the garage would provide a slope but would be a lesser expansion of the building and could be done only slightly exceeding the existing garage envelope.

Conclusions

1. The location of the garage, within 5 ft. of the principal structure and in a required yard, and its size with space for two cars, makes the garage nonconforming which causes the height expansion proposed by appellant to conflict with restrictions on expansion of nonconforming structures. Appellant's addition in 1983 created the condition of less than 5 ft. separation so that condition cannot be considered one on which a variance can be based. The location of the garage in one of the two front yards, its size and its flat roof are conditions not created by the appellant. The location and size were not shown to be unusual, however. The flat roof was.

2. The height proposed, 13 ft. 6 in., does exceed the minimum expansion necessary to achieve a sloping roof instead of a flat roof since a mansard-style roof would provide a slope with the addition of less volume.

3. No detriment to the public welfare or injury to other property would result from variance approval.

4. The strict application of the code provisions for nonconforming structures would cause unnecessary hardship in that appellant could not replace the roof of the garage with one that slopes which all other garages but one in the area have.

5. The requested variances would have no effect on the streetscape since the two car garage already exists so they would not be inconsistent with the intent of the Single Family Residential Areas Policies to preserve the streetscape character. The proposed variances would also not be inconsistent with the purpose to provide front yard setbacks and to discourage parking in the front yard since there would be no change in the setback, other than the 2 1/2 in. gutter overhang, which would be virtually imperceivable, and no increase in the parking in the front yard.

6. As the application meets all the conditions of Section 23.40.20.C required for variance if the degree of variance is restricted, the needed variances should be granted.

Decision

Variances sufficient to allow a mansard-style roof, similar to that on the addition to the principal structure, and gutter overhang are granted.

Entered this 24th day of April, 1986.

M. Margaret Klockars
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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 party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

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, (206) 625-4197.