

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

In the Matter of the Appeal of

ALBERT B. SATHER

FILE NO. MUP-88-075(V)
APPLICATION NO. 8805502

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

Introduction

Albert B. Sather appeals the decision of the Director, Department of Construction and Land Use, on a master use permit application to deny variances for property at 343 North 76th Street.

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 January 5, 1989.

Parties to the proceedings were: appellant, pro se, and the Director, Department of Construction and Land Use, by Meredith Getches, senior 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. A master use permit application was filed for an addition to an existing garage at 343 North 76th Street. The Director, Department of Construction and Land Use ("Director"), determined that a number of variances from the Land Use Code would be needed and issued a decision denying those variances. Appellant filed this appeal.

2. The subject property is a lot developed with a single family home and attached single car garage in an SF 5000 zone. The lot has 30 ft. of frontage mid-block on the south side of the street and 3,090 sq. ft. of area. The house is set back 18.5 ft. from the front lot line.

3. The applicant proposes to add 210 sq. ft. of area to the existing garage so it can accommodate two cars and to create a large deck to provide usable outdoor space in the front yard. The garage addition would extend to the front property line and require that the curb cut be widened to 20 ft.

4. The Director determined that four variances would be required: 1) a variance from Section 23.44.082A to allow the structure to extend into the required front yard where 20 ft. is required and no setback is proposed; 2) a variance from Section 23.44.016C to allow parking for two vehicles in the front yard where only one is permitted; 3) a variance from Section 23.54.030E to allow the width of a curb cut to exceed 10 ft.; and 4) a variance from Section 23.44.082A to allow a nonconforming structure to expand.

5. The Director determined that the house with attached

garage is a nonconforming structure because, even though a single car garage is permitted in the front yard where the grade slopes up to at least 6 ft. at a line 10 ft. back of the front lot line, the house is closer than 20 ft. to the front lot line.

6. There are 24 single family residences in the two facing block fronts on North 76th Street between Dayton Avenue North and Greenwood Avenue North. The lots are platted 30 ft. wide but some lots are combinations of two or have added a portion of another lot. Of those 24 lots, most have one off-street parking space, either open or in a single car garage. Two on North 76th Street have detached, two-car garages, both located at or near the front lot line. Another two-car garage at the front of a lot is located around the corner on Dayton Avenue North. All two-car garages cited are on lots wider than the subject site. Several other lots, including that of appellant's neighbor to the east, are wider and allow access to the rear yards for parking.

7. The subject property and the other lots on the block are not served by an alley.

8. Parking on North 76th Street is restricted to the south side. The widening of the curb cut would eliminate an on-street parking space.

9. The street parking is heavily utilized by residents of the houses in the single family zone, including two houses used as group homes for recovering mentally ill people, and by cars associated with apartments in the commercial zone at the end of the block.

10. The additional parking space would improve the parking situation for the residents of the subject property and allow increased use of the portion of the front yard, now sloping, between the existing garage and the stairs.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.76.022C.

2. A variance may be granted only if all conditions set forth in Section 23.40.020C are shown to be present.

3. The first requirement is the existence of an unusual property condition because of which the Land Use Code provisions would deprive the property of rights or privileges enjoyed by other properties in the same zone or vicinity. Section 23.40.020C(1). The property condition suggested by appellant to meet the requirement is the narrowness of his lot which, at 30 ft., does not permit vehicular access to the rear of the lot. While this condition does limit access to the rear, the record shows that 30 ft. wide lots are not unusual in the block or in the surrounding zone. Therefore, no property condition has been shown to meet this requirement.

4. The required variance may not go beyond the minimum necessary to afford relief and may not constitute a grant of special privilege inconsistent with the limitation upon other properties in the vicinity. Section 23.40.020C(2). Since no variance is shown to be warranted, those requested would go beyond the minimum necessary to afford relief. Where the subject property is not unlike the majority of properties in the area, the variances to allow the property to avoid the restrictions on parking location, curb cut width and expansion of a nonconforming structure which apply to other properties as well would confer special privilege contrary to the second required condition.

5. The variances may not be materially detrimental to the public welfare. Section 23.40.020C(3). The Director's decision found detriment from the loss of one public parking space even though it would be offset by a new private parking space. Despite the likelihood that there will be no loss in number of

spaces, there will be detriment in the form of loss to the public of an available space.

6. The strict application of the code provisions must cause undue and unnecessary hardship. Section 23.40.020C(4). Since the subject property has development comparable to most other properties in the area, it would not be subjected to undue or unnecessary hardship.

7. The variances must be shown to be consistent with the spirit and purpose of the Land Use Code and the Land Use policies. Section 23.40.020C(5). The parking policy of the Single Family Residential Areas policies describes the intent or purpose underlying the regulations on parking location and size.

Off-street parking is mandatory, and the City shall regulate its location in order to reduce the impact created on the streetscape by the location of accessory parking structures, vehicles and curb cuts. Parking in front yards is in generally prohibited.

Section 23.16.002, p. 23-13. One of the implementation guidelines applies in this case. Implementation Guideline 2 provides:

When the front yard is more than 1.8 meters (6 feet) above sidewalk grade, and where there is no accessible alley, a parking structure which is completely enclosed may be built into the hillside in the front yard, provided that the curb cut and parking bay do not exceed the width needed for one car.


Section 23.16.002, p. 23-13. The addition would exceed the width needed for one car as would the curb cut so the variances would not be consistent with the purpose as shown by these sections of the policies.

8. As not all of the facts and conditions necessary for variance have been shown to exist, the variances may not be granted.

Decision

The variances are denied.

Entered this 19th day of January, 1989.


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 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) 684-0521.