

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

WARREN L. DEWAR, JR.

FILE NO. MUP-90-026(V)
APPLICATION NO. 8905763

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

Introduction

Appellant, Warren L. Dewar, Jr., appeals the decision of the Director of the Department of Construction and Land Use to place certain conditions on the granting of variances to allow lot coverage in excess of that permitted by Seattle Municipal Code Section 23.44.010C and to permit a portion of a principal Structure to extend into a required rear yard.

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

This matter was heard before the Hearing Examiner on July 10, 1990. The record was held open until July 13, 1990 to allow for a site visit by the Examiner. The record was reopened on July 25, 1990 by order of the Examiner in order to have two points clarified by the Department. It was closed again on August 27, 1990 after receipt of a statement from the Department and a response by the applicant.

Parties to the proceeding were the appellant, pro se, and the Director, Department of Construction and Land use, by Arthur Ward, Associate 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 and the site visit and the documents received prior to the closing of the record, the following shall constitute the findings of fact, conclusions of law, and the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is located at 2507 10th Avenue West. The property measures approximately 80 ft. north-south by 40 ft. east-west, resulting in a lot area of about 3150 square feet.

2. The property is zoned Single Family 5000 (SF 5000).

3. Development on site consists of a two-story plus basement,

single-family residence. This structure provides a 0-ft front yard (on West Wheeler Street), a 19 ft. 9 inch rear yard (12 ft. 1 inch rear yard to existing deck), a 3 ft. 3 inch west side yard, and a 17 ft. 9 inch street side yard (to 10th Avenue West).

4. Properties in the vicinity are SF 5000 zoned and single-family developed. Most of the properties in the vicinity (both sides of 10th Avenue West and Westview Drive West between West Halladay and West Wheeler) have one and two-car garages/carports. These lots are generally larger (i.e., 4000-5000 sq. ft.) and contain smaller residences.

5. The appellant proposes to remove the existing 7 ft. 8 inch by 25 ft., 4 ft. high deck and replace it with a 7 ft. by 29 ft. 8 inch (including steps) deck of the same height with a hot tub. Both the existing deck and proposed deck have about the same lot coverage. In addition, the applicant wants to construct a 10 ft. 6 inch wide by 29 ft. 8 inch long carport to abut the proposed deck. The proposed carport is proposed to provide a 2 ft. 3 inch rear yard, extend 6 inches from the west lot line, and 19 ft. from the east lot line. An existing 10 ft. curb cut provides access to the proposed carport.

6. Section 23.44.010 provides that a single family lot may have lot coverage of 35 percent or 1,750 sq. ft., whichever is greater. Because of the subject lot's small size, 1,750 sq. ft. is the limit applicable in this case.

7. The residence and existing (or proposed) deck have a total lot coverage of about 1,621 sq. ft. With the proposed carport of 311 sq. ft., there would be 1,932 sq. ft. of lot coverage.

8. Pursuant to Section 23.44.014, the property has a rear yard requirement of 16 feet.

9. The subject property originally had a one-car garage which was torn down prior to appellant's purchase of the property.

10. The existing deck, which provides access to the rear of the residence, needs replacement because it is rotting.

11. Because the proposed carport connects to the proposed deck and residence, it is considered part of the principal structure.

12. The applicant wants to add a deck with a railing on top of the carport. The Department report states that this proposed addition would not require any additional variance approvals except for the railing being replaced by a one-hour fire resistant wall. However, in response to an order for clarification dated July 25, 1990, the Department indicated that this statement was incorrect and that an additional variance would be required.

13. The plans submitted to DCLU with the application, introduced at hearing as Exhibit 8, do not show a deck on top of the garage. Revised plans showing the deck were never submitted. The notice of application mailed to neighboring property owners indicated that variances were sought to allow "for future construction of a single vehicle carport and an adjacent deck." The notice made no mention of a deck atop the carport.

14. DCLU received one letter of support for the variance.

15. The applicant indicates he has received and recorded private easement agreements from the abutting owners of lots to the north and west to construct the proposed improvements.

16. Under the terms of 23.40.020, variances from Land Use Code development standards are allowed only under the following conditions:

1. Because of unusual conditions applicable to the subject property including size, shape, topography, location or applicant, the strict application of this Land Use Code or Title 24 would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity; and

2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located; and

3. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located; and

4. The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code or Title 24 would cause undue and unnecessary hardship; and

5. The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan component, as applicable.

18. DCLU approved the variance request, but limited the proposed carport to 10.5 feet by 23 ft. It was this limitation that was appealed by the appellant/applicant. DCLU also imposed the following two conditions which were not appealed:

Prior to Issuance of Building Permit

1. The applicant shall document he has obtained an easement to provide a 6 ft. open space extending from the subject carport's proposed north walls into the abutting lot to the north and west. This easement shall be worded satisfactory to DCLU for recordation.

2. The north wall of the carport and west wall of the deck shall be provided with one-hour fire restrictive walls (as required by the Building Code) with no openings. (Note: The carport can be provided with a deck on its top with a wall in its north side provided the carport/deck is no higher than 12 feet above lot grade).

19. Section 23.44.014(D)(6)(b) provides that "attached or detached private garages, covered, unenclosed decks or roofs over patios, other accessory structures and nonconforming portions of principal structures are limited to a maximum combined coverage of forty percent (40%) of the required rear yard." No variance was sought from this standard.

20. Section 23.44.016(D)(1) also limits rear yard coverage to 40 percent.

21. The required rear yard in this case is 800 square feet in size.

Conclusions

1. The jurisdiction of the Hearing Examiner in this case is based on the provisions of Section 23.76.022.

2. The Examiner agrees with the Department's conclusion that the existing development on the lot creates a property related hardship as it relates to the applicant's desire to have a garage. As noted in the Department's report, because the existing development covers 1,621 sq. ft., and because 1,750 sq. ft. is the maximum allowed outright, the only garage the applicant could build without variance relief would be uncommonly small. Moreover, the only place the property owner has for placing a garage is in the required rear yard.

3. The maximum rear yard coverage permitted in this case by Section 23.44.014(D)(6)(b) and 23.44.016(D)(1) is 320 sq. ft. (.40 x 800 = 320). As no variance was requested from those sections, the Examiner cannot authorize rear yard coverage in excess of that limit.

4. This limitation on the Examiner undercuts the very basis of the appeal, to seek a carport larger than the 240 square ft. Because the plans submitted by the appellant showed a larger carport, these code sections should have been cited in the Department's notices of application and decision, and the Department should have specifically decided whether variance from the provisions of those sections were appropriate.

5. Moreover, at some point during the review of this application, the appellant apparently made it clear that he desired a deck on top of the carport. While the original report of the Director assumed this was permitted, the Department's response to the Examiner's inquiry indicates that an additional variance may be required before plans showing a deck would be approved. The Examiner notes that while the Department's response makes reference to 23.44.010(D)(2), the Director's Interpretation and Hearing Examiner decision cited in the Examiner's order of July 25, 1990 were concerned not with that section, but 23.44.014(D)(11).

6. On the basis of the above, this case must be remanded to the Department. On remand, the Department must evaluate and decide whether variances from the code sections limiting rear yard coverage to 40 percent are appropriate. The Department must also determine what, if any, variances, are needed to allow a deck on top of the proposed carport. If variances are required, they should be considered and a decision made on them. If the Department decides variances are not required, the Examiner believes an evaluation of the impact of the deck on adjacent residences should be still included as this question is directly relevant to the issue of detriment to other property in the vicinity.

7. Because a number of code sections were not cited in the original notices of application and decision, and because the project description never included any reference to the rooftop deck, the Department should consider what, if any, additional notice should be given in regard to this application.

Decision

The matter is REMANDED to the Department for further action consistent with this opinion.

Entered this 29th day of August, 1990.


Guy E. Fletcher
Deputy Hearing Examiner