

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ROBB PANKEY FOR  
JESS BENNETT

FILE NO. S-80-021

from a determination of the  
Superintendent of Buildings

The appeal is DENIED and the Findings and Decision of  
the Superintendent of Buildings are AFFIRMED.

Introduction

The architect for this applicant filed an appeal from  
the Superintendent of Buildings' denial of a use permit for  
construction at 3319 South Judkins Street.

The appellant exercised his right to appeal pursuant to  
Section 25.40 of the Zoning Ordinance 86300, as amended.

Parties to the proceeding were: David Gee, architect  
for the appellant, Jeff Bennett, and Joyce Kling, Zoning  
Administrator, for the Superintendent of Buildings.

This matter was heard before the Hearing Examiner on  
May 6, 1980.

For purposes of this decision, all section numbers, un-  
less otherwise indicated, refer to the Zoning Ordinance (86300,  
as amended).

After due consideration of the evidence elicited during  
the public hearing, the following findings of fact and  
conclusions shall constitute the decision of the Hearing  
Examiner on this appeal.

Findings of Fact

1. The architect, David Gee, applied for a variance  
for the subject property at 3319 South Judkins on September  
12, 1979. That application states the proposed development  
is: "convert existing carport into attached garage per  
plan."

2. A hearing was held January 25, 1980 and a decision  
granting said variance issued on February 8, 1980.

3. The decision to grant the variance was based in  
part on the conclusion that the present placement of structures  
created a hardship in reasonable use of the property without  
variance. The evidence indicated that the present residence  
was to be remodeled with its present carport converted to an  
attached garage. The carport extends into the required 25  
ft. rear yard leaving a 14 ft. rear yard and the proposed  
attached garage would leave the same 14 ft. rear yard.

4. Subsequent to the September 12, 1979 application  
to alter and remodel the existing residence and attached garage,  
utilizing its existing foundation, it was found that the  
cost of upgrading that foundation would exceed an all new  
structure. A decision to demolish the old structure and  
rebuild in its place a new structure including a foundation  
was made. However, the existing slab from the carport was  
proposed to be retained as the floor of the new attached  
garage.

5. The appellant's position is that the new structure design is substantially the same as the old frame house remodeled and the rear yard variance grant should be applicable. The Superintendent's position is that a new design negates the applicability of the present development as supporting a variance. Further, this change of a material fact supports the Superintendent's determination that the new plans do not comport with the variance grant.

6. The new plans submitted February 20, 1980 show the existing carport and slab, but the new design of the residence is apparent and the appellant acknowledges that there is a the new design.

7. The face of the permit application of February 20, 1980 states as the proposed development:

"to demolish existing residence and construct a new residence per plans. Also establish use of existing nonconforming dwelling encroaching into adjacent lot to south of this property."

8. A building inspector found on his on-site inspection the existing carport slab intact but substantial differences at least in elevations in what was existing and what was proposed.

#### Conclusions

1. The ruling of the Superintendent shall be regarded as prima facie correct and the burden of establishing the contrary shall be upon the appellant. Section 25.44, Zoning Ordinance 86300, as amended.

2. To sustain his burden, the appellant must show by a preponderance of the evidence that the ruling is in error. Allison v. Department of Labor and Industries, 66 Wn. 2d 263 (1965).

3. The original application filed in September anticipated a remodeling of an existing structure to which would be attached a garage intruding into a rear yard. The February 20 application was for a wholly new residence to which would be attached a garage intruding into a rear yard. Clearly, a material fact had changed.

4. The appellant's good faith is not in question, nor any intimation that there would be detriment to others through the new design.

5. New design clearly gives more flexibility in structure placement than remodeling design. It usually does not significantly change topography or other considerations of structure placement for access, security or economy. A variance might have been granted on the basis of new construction, but the variance granted was based on a remodeled residence with an attached garage intruding into a required rear yard.

#### Decision

The appeal is DENIED and the Findings and Decision of the Superintendent of Buildings are AFFIRMED.

Entered this 9<sup>th</sup> day of May, 1980

Joan B. Allison  
Joan B. Allison  
Hearing Examiner Pro Tempore

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).