

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

BARBARA AND PETER PEARCE

FILE NO. S-88-010

from an interpretation of the
Director, Department of Construction
and Land Use

Introduction

Barbara and Peter Pearce appeal the interpretation of the Land Use Code by the Director, Department of Construction and Land Use, as it applies to the garage at 1825 North 52nd Street.

Parties to the proceedings were: appellants, represented by Mark Gouras, Taylor Kiefer & Bartlett; the Director, Department of Construction and Land Use, by Andrew McKim, land use specialist; and respondent, who requested the interpretation, Robert Yingst, represented by Adam Kline, his attorney.

This matter was heard before the Hearing Examiner on December 20, 1988.

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 findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Robert Yingst requested that the Director, Department of Construction and Land Use ("Director"), issue an interpretation of the Land Use Code as it applies to a deck under construction on a garage at 1825 North 52nd Street. The Director determined that the deck would not be permitted and the owners, Barbara and Peter Pearce, appealed.

2. The owners purchased the property in 1980. It consisted at that time of a house built in 1907 and a detached garage with a pitched roof in the front yard. The owners set about improving the property, including, in 1986, making the garage roof flat for aesthetic reasons. A stop work order was placed on the job and then, after a period of no work, the contractor began again so the Pearces assumed that a permit had been obtained. None was.

3. While the overall height of the roof was lowered, in that no part of the roof reached as high as the former peak, the side walls were built up about 15 inches on one side and 12 inches on the other. Roof joists that extended out beyond the walls some 14 inches (and onto neighboring property) were removed.

4. The owners decided to add a deck to make the roof usable and railings for safety. The deck was to be accessible via a ladder since they understood that the addition of stairs would not be permitted under the code. The deck was not to be permanently affixed to the structure to avoid code problems. Plans for the railing were submitted to the Department of Construction and Land Use and "signed off" by a department staffperson who wrote "OK to install handrail w/o permit (zoning allows safety railing)." Exhibit 3.

5. A complaint filed by the neighbors, the Yingsts', resulted in a stop work order on the deck and the subject interpretation followed.

6. The garage was determined by the Director to be a legal nonconforming structure in that it would not be permitted in the required front yard under the current code or that version of the code in existence in 1986. The Director also determined that the deck and railing would be an expansion of a nonconforming structure and, therefore, not permitted.

7. According to the plans, Exhibit 2, 5/4 x 4 treated sleepers tapered to level the deck were placed on top of the existing roof with a 2 x 4 rail over the sleepers and the duck board sections of 1 x 4 cedar placed on top. The safety rail supported by 4 x 4 posts was to be 3 ft. above the deck.

8. Numerous examples within a four or five block area of decks on garages were shown by appellants. Most decks were on attached garages, on garages built into a slope which slope appeared to the land use specialist to be steep enough to qualify for a code exception to allow the garage in the front yard, or the garage appears to be in a side street side yard.

9. The Director found the garage to be within the required front yard and would be permitted there under the current code only if it met one of the exceptions found in Section 23.44.014-D. None of the exceptions was found by the Director to apply and no showing was made by appellant that they apply.

10. The Director determined that if the garage is permitted in a required yard, the development standards of Section 23.44.-016D apply including a height limit of 12 ft. as measured on the facade of the garage entrance. Open rails may exceed the 12 ft. limit on roofs of these garages by a maximum of 3 ft. Another restriction to 12 ft. on the height of accessory structures, in general, in required yards is found at Section 23.44.040E.

Conclusions

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.88.020E.

2. On review of an interpretation by the Director of the Land Use Code, the Hearing Examiner is required to give his interpretation substantial weight. Section 23.88.020E(5).

3. As to the status of nonconforming structures the Land Use Code states:

A nonconforming structure may be maintained, renovated, repaired or structurally altered but shall be prohibited from expanding or extending in any manner which increases the extent of nonconformity or creates additional nonconformity, except as otherwise required by law, as necessary to improve access for the elderly and disabled or as specifically permitted for nonconforming uses and nonconforming structures elsewhere in this Code.

Section 23.44.082A.

4. The Director's conclusion that the deck and guardrails increase the size of the structure is supported by the evidence adduced at the hearing. Since the structure's existence in the required yard is its nonconformity, the increase in bulk increases the extent of a nonconformity and is therefore not permitted unless otherwise required by law, necessary for handicapped access or specifically permitted elsewhere.

5. The Seattle Building Code, Section 1711(a), requires guardrails for balconies and porches more than 30 inches above grade and for roofs "used for other than service of the building...." The deck is not "otherwise required by law" and, absent the deck, the railing is not required so expansion is not permitted under the exception for increases "otherwise required by law."

6. The deck and railings are not necessary for handicapped accessibility.

7. Appellants urge that the railing is specifically permitted elsewhere in the code, referring to Section 23.44.016D-(2)(c) which states:

Open rails around balconies or decks located on the roofs of private garages may exceed the twelve-foot (12') height limit by a maximum of three feet (3').


Appellants overlook the context of the provision permitting open rails on roof decks. Subsection C specifically states that parking is not to be located in the required front yard except as provided in subsections C3, C4, C5 and C6. There is no contention before the examiner that the property conditions come within those provisions. The provisions allowing railings on garage roofs apply to garages which are allowed in required yards and garages are allowed in front yards only if they come within those subsections. Therefore, railings are not an expansion "specifically permitted for nonconforming uses and nonconforming structures elsewhere in this code." That means the third exception to the prohibition on expansion of a nonconforming structure does not apply.

8. Appellants have shown no error in the Director's interpretation. Therefore, it must be affirmed.

Decision

The Director's interpretation is affirmed.

Entered this 4th day of January, 1989.


M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

The decision of the Hearing Examiner in this case is the final administrative determination by the City, 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 must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such a request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.