

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

In the Matter of the Appeals of

FORD PLACE UNITED

FILE NO. MUP-89-020(W)
APPLICATION NO. 8900968

from (I) a decision of the Director of the Department of Construction and Land Use (DCLU) on a master use permit application and (II) from an interpretation issued by the Director of the Department of Construction and Land Use

and

FILE NO. S-89-007
APPLICATION NO. 89-005

INTRODUCTION

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

This matter came on before the Hearing Examiner on September 27, 1989. On September 28, 1989, the Hearing Examiner, party representatives and other interested persons engaged in a visit to the site and environment. The hearing concluded on October 16, 1989.

Parties to the proceedings were: Christopher Hamilton, pro se, representing Ford Place United, and the applicant by James Webster. The DCLU Director was represented on the Interpretation by Hermia Ip, land use specialist, and by Christina Van Valkenburgh, land use specialist, on the master use permit appeal.

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. The basic facts are undisputed. Karin and James Webster own property addressed as 3307 East Mercer Street. The property is legally described in the record.

2. The property is zoned Single Family 5000 (SF-5000) and is bounded on the north by the East Mercer Street right-of-way. The subject site also consists of a 30 ft.-wide strip of property that extends south to East Ford Place. This southern portion is covered with trees and understory vegetation. Total lot area approximates 8,683 sq. ft.

3. Because the two street frontages "are not within 15 degrees of parallel with each other" the lot is not considered a through lot.

4. The property is designated as environmentally sensitive due to steep slopes and potential landslides. In fact, the property slopes steeply to the south and has an elevation change of approximately 50 ft. over 197 ft. of lot depth.

5. The property is developed with a single family structure that is located on the more northerly, 60 ft. wide portion of the site. The 1930 dwelling has attached an existing garage. Presently, however, the Websters park their two vehicles in the front yard area outside the garage. According to Mr. Webster, the parking scheme is an aesthetic problem for neighbors and a crime problem for the Websters.

6. Accordingly, applicants propose to construct an accessory structure on the more southerly leg of the lot. It would be located approximately 55 ft. south and downslope of the principal structure and accessed from East Ford Place. Applicants refer to the proposed structure as a workshop/garage.

7. On April 20, 1989, DCLU issued an Analysis and Decision on the master use permit application "to construct a detached garage/workshop building accessory to a single family residence in an environmentally sensitive area." (Since construction was proposed for an environmentally sensitive area, the project was not exempt from State Environmental Policy Act (SEPA) review).

8. DCLU concluded that no environmental impact statement (EIS) was required and therefore issued a determination of nonsignificance (DNS) on the project. DCLU attached SEPA conditions to the permit, however, to require such things, prior to issuance of the master use permit, as an acceptable geotechnical report; plans incorporating the geotechnical report recommendations; and covenants, waivers, bonds, and insurance as required.

9. On May 5, 1989, Ford Place United submitted an appeal from the DNS. Concurrently, Ford Place United requested a formal Interpretation.

10. The Interpretation, published August 11, 1989, concluded that

For purposes of the Land Use Code, the proposed structure...is a legitimate accessory structure so long as either the toilet or shower is eliminated. The structure is in compliance with applicable height, size and rear yard coverage limits.

Ford Place United then appealed the Interpretation as inadequate. Appellant group wishes to ensure "that the accessory use is not eventually converted to a dwelling unit by present or future owners of the property."

11. The two appeals were consolidated for hearing.

12. Ford Place United is concerned that the workshop garage, particularly as it was originally proposed, will ultimately be used as a separate dwelling unit in violation of the character of vicinity development and of present codes and regulations.

13. The proposed garage would be 16 ft. wide, 28 ft. deep, and 12 ft. high. The proposed workshop would step back some 16 ft. to the north from the garage entry so that a garage-top terrace area would be provided. The workshop area would extend for some 42 ft. north and would be 20 ft. wide. Structure height would approximate 21 ft. The structure would be built into the hillside.

14. The original submittal called for the upper level to contain a workshop, a loft area, a full bath and a storage area.

15. Ford Place United considers the 2,040 sq. ft. proposed for the workshop/garage to be excessive and out-of-scale with other street-abutting garages. The group therefore requests that the structure's area be restricted to 1,000 sq. ft. or less. While appellant group would not object to inclusion of a wash basin or toilet, a shower or tub within the new structure would be opposed by them.

16. By affidavit of April 21, 1989, applicant James Webster certified that the proposed accessory structure is not intended to be designed, arranged, used, rented, or sold as a second dwelling unit. Exhibit 16.

17. Applicant has also agreed by covenant "for and in consideration of issuance of a building permit..." that the structure will be used only as incidental to the present residential structure on the lot and will not be used as a separate dwelling unit. Exhibit 17.

18. The Hearing Examiner finds that applicants propose to install a direct pedestrian route from the new structure to the residence. The intervening area would be landscaped. It is not proposed that garage-users would circumnavigate the block for access.

19. The structure would be larger than the usual accessory structure for the vicinity.

20. The proposed structure will cover approximately 320 sq. ft. of the required rear yard.

21. Appellant group also stated a general concern that removal of the vegetation and excavation for construction would destabilize the slope. The Hearing Examiner finds that if construction occurs during "dry months" and that if other geotechnical recommendations relating to excavation, shoring, and drainage are followed, the proposal should have minor impacts on soil and slope stability. In addition, construction would be required to comply with the City's Grading and Drainage control provisions, and with Director's Rule 2-87 which is specifically designed to address construction in potential slide areas.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction of these appeals and this subject matter pursuant to Chapter 23.76, Seattle Municipal Code.

2. Seattle Municipal Code Section 23.76.022C.7 provides that the DCLU Director's environmental determination shall be accorded substantial weight. The burden is therefore on the appellant to show clear error. Brown v. Tacoma, 30 Wn. App. 762 (1981). Appellant group has not sustained its burden of proof and the DCLU determination is therefore affirmed.

3. An EIS can be required if the evidence shows a significant adverse environmental impact. In the present case, the proposed accessory structure is large in comparison with other garages/workshops. It will rest within a slope and is within an environmentally sensitive area. However, these impacts are of no more than a moderate effect on the environment. With the restrictions imposed relating to excavation, foundation and related components, soil and slope stability impacts were not shown to be "significant." Without the EIS, the Hearing Examiner cannot deny the proposal. Seattle Municipal Code Sections 25.05.665A.2; 25.05.660.

4. The evidence of record fails to show that further mitigation is required. The fact that the proposed structure is unusually large (for an accessory structure) is acknowledged. However, the structure will rest within the slope and is stepped-back from East Ford Place. No "substantially incompatible" height, bulk and scale impact is presented by the proposal. Seattle Municipal Code Section 25.05.675G. Relating to soils, the DCLU Analysis and Decision requires compliance with a geotechnical report which addresses soil stability, construction and excavation. Further protection will be accorded by required compliance with Director's Rule 2-87 and with the City's Grading and Drainage code provisions. Seattle Municipal Code Section 25.05.665B.

5. Regarding the Interpretation, the determination of the DCLU Director shall be given substantial weight. Appellant must show that the Interpretation is clearly erroneous. Seattle Municipal Code Section 23.88.020.E.5.

6. In essence, the Interpretation states that elimination of either the shower or toilet prevents consideration of the proposed structure as a separate dwelling unit. It further concludes that the proposed structure's bulk is consistent with Land Use Code regulations. For reasons stated herein, the Hearing Examiner concludes that the Interpretation was not clearly erroneous.

7. As the Hearing Examiner perceives the Interpretation appeal and the appeal in general, project neighbors request maximum assurance that any accessory structure will not be converted to a separate living unit. To that end, appellant group requests restrictions on such items as volt source, door signaling devices, electrical/gas meters and square footage.

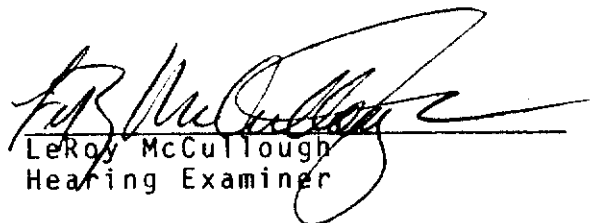
8. The Hearing Examiner concludes that the proposed structure will cover approximately 23 percent of the required rear yard (320 sq. ft.). This amount is less than the 40 percent coverage allowed, Seattle Municipal Code Section 23.44.016D.1.a. The 320 sq. ft. is less than the 1,000 sq. ft. permitted area of development for the rear yard. Seattle Municipal Code Section 23.44.016D.1.b. And the 12 ft. height of the garage, which is within the rear yard, is within the Code requirement. Seattle Municipal Code Sections 23.44.016D.2; 23.44.040E. There is no restriction of record which would limit the height (or bulk) of the portion of the accessory structure that is not located within the required rear yard.

9. The record fails to support the imposition of additional restrictions on voltage supply, meters and similar items. An affidavit and a covenant are of record to the effect that the structure will be used only as an accessory structure. The Interpretation, as bolstered by these items, is affirmed.

DECISION

The DCLU environmental determination and the decision on the Interpretation are AFFIRMED.

Entered this 6th day of November, 1989.


Leroy McCullough
Hearing Examiner

CONCERNING FURTHER REVIEW FILE NO. MUP-89-020(W)

Pursuant to Seattle Municipal Code Section 23.76.024, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center, 5th Floor Municipal Building, 684-8322. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 23.76.024, the time for filing a request for judicial review of the underlying governmental action and/or other SEPA issues is stayed until the City Council renders a final decision on this City Council appeal.

If no appeal is taken to the City Council, 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 request for judicial review of the decision on the underlying governmental action must be filed in King County Superior Court within fifteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.22.(C)(12)(c). Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. SEPA issues may be added to the request for review within 30 days after the date of this decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 400 Seattle Municipal Building, Seattle, Washington 98104, within fifteen days of the date of this decision. See Chapter 43.21C, RCW and Chapter 25.05, Seattle Municipal Code.

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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104. As an alternative to the written transcript, RCW 43.21C.075(6)(b) provides that a tape may be used for court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review.

CONCERNING FURTHER REVIEW
FILE NO. S-89-007

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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104.