

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

WILLIAM SMITH

FILE NO. MUP-81-021(V)
APPLICATION NO. X-81-015

from a decision of the Director of
the Department of Construction and
Land Use on a Master Use Permit
application

Introduction

Appellant, William Smith, appeals the denial of variance for property at 4527 Rainier Avenue South.

Parties to the proceedings were: Appellant, represented by Fred Butterworth, attorney at law, and the Director of the Department of Construction and Land Use (Director) represented by Margaret Fleek, Director of the Land Use Division of the Department of Construction and Land Use (DCLU).

For purposes of this decision, all section numbers refer to Title 24, Seattle Municipal Code (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on August 4, 1981.

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. Appellant applied for a master use permit to legally establish and occupy a garage storage/warehouse garage which had been constructed without a permit at 4527 Rainier Avenue South. The Director denied necessary side and rear yard variances. Appellant filed a timely appeal.

2. The garage is located at the rear of a 40 by 114 ft. lot. In the front of the lot is a small, one story structure occupied by a beauty shop. Eleven feet behind that structure is a two-story, single family residence. The garage is located 5 ft. away from the first floor of the residence, 6 in. from the northern property line, 5 ft. 6 in. from the southern property line and 6 ft. from the alley in the rear.

3. Sections 24.52.160 and 24.32.120 require a 20 ft. rear yard for a residential building and a minimum side yard of 6 ft. in the General Commercial (CG) zone in which the subject site lies.

4. Appellant reasonably believed that the contractor constructing the garage had obtained the necessary City approvals. The contractor has either filed a petition for bankruptcy or has been adjudicated a bankrupt.

5. Lots across the alley are in residential use. The lot on the north side of the subject lot, also owned by appellant, contains a smaller but similarly situated garage structure and a residence. No other property in the area with three uses was known to participants in the hearing.

6. The rear yard slopes up toward the alley. A high cement wall was necessary to compensate for the grade which makes the building appear, from the elevation drawing, to be some 21 ft. high to the base of the roof at the east end, adjacent to the residence.

7. The CG zone in the area of the subject site has a mixture of uses -- commercial, retail, church, residential.

8. The residence on the subject lot is approximately 15 ft. from the garage on the property to the north and some 17 ft. from the residence to the south. That residence is situated forward of the residence on the subject lot so that the rear half of the latter is exposed to the open 40 ft. wide back yard of the other residence.

9. With regard to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, the action proposed in this appeal has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC 197-10-170.

Conclusions

1. A variance may be granted from the strict requirements of the zoning code only when facts or conditions meeting all the criteria of Section 24.74.030 exist. The burden is on the applicant/appellant to show those facts or conditions. While a hardship situation is present in this case because of the misleading and unlawful behavior of appellant's contractor, the only hardship recognized by the code is that resulting from unique conditions of the property. Not only must those conditions exist but with the application of code requirements they must deprive the property of development rights comparable to those enjoyed by other properties in the zone or vicinity.


The record indicates that other properties in the vicinity have no more than two uses where the subject property, with the garage, has three. So even were there a unique property condition variance relief would not be warranted because the property has achieved comparable development with two uses. No showing of a unique property condition was made.

2. Appellant desires relief based on the economic hardship he will suffer and suggests that concession be made to avoid that loss. His situation is appealing since he does not have the usual recourse against his contractor. However, the Hearing Examiner has only that authority granted by the code and a granting of the variances in this case would be ultra vires.

Decision

The decision by the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 10th day of August, 1981.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981).