

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

GEORGE SMITH

FILE NO. MUP-81-104(V)

APPLICATION NO. 81270-0357

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

Introduction

Applicant seeks to legalize the construction of an attached carport, pool cover and deck to an existing single family residence at 3616 S.W. Dakota Street.

The appellant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: appellant by William Harris, Esq.; the Director of the Department of Construction and Land Use (DCLU) by Jim Barnes.

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

This matter was heard before the Hearing Examiner on February 2, 1982. The record was left open until March 2, 1982, for responses to a "corrected" plot plan.

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 subject property is located in the Single Family Residence High Density (RS 5000) zone at 3616 S.W. Dakota Street. The lot, located on the north side of S.W. Dakota, is 55 ft. wide and 90 ft. deep for an area of 4,950 sq. ft.

2. A 16 ft. wide alley is east adjacent to the subject lot. It slopes down to the south.

3. An 11 ft. wide driveway is located inside the eastern margin of the property. This driveway is access for the one car carport/garage 20 ft. north of S.W. Dakota attached to the single family dwelling.

4. The lot is also developed with a 16 ft. by 12 ft. pool that is 3 ft. from the east side lot line. As explained by project applicant, the alley slope required building a wall along the eastern lot line and the south deck/carport was constructed as part of the pool wall. Because of concerns for the safety of neighborhood children applicant felt required to cover the pool. The result is the existing covered pool and connecting deck.

5. Further on-site development ~~consists~~ of a 24 ft. by 30 ft. covered carport/garage in the northwest corner of the property.

6. The Director's decision, the subject of this appeal found that

The various constructions were connected to each other and to the house by covered decks and result in excessive coverage of the lot as well as intrusion into required side and rear yards.

That decision cited four variances required: (1) to provide less than the minimum required side yard and sum of side yards, (2) to exceed the maximum lot coverage, (3) to exceed the maximum permitted rear yard lot coverage, and (4) to provide less than the minimum required rear yard for an accessory attached carport. Following the submission and evaluation of applicant's "corrected" plot plan, the Director determined that the rear yard coverage variance would not be needed and the total lot coverage at issue was reduced (from 50.15 percent to 46.66 percent). For purposes of lot coverage, the alley area bonus of 720 sq. ft. was added to the 4,950 sq. ft. of lot area. The Director denied required variances and applicant appealed.

7. Although the applicant's property extends to more than one platted lot, his lot is similar in size and use to vicinity properties. The Director reported no record of similar variances.

8. Among other points, applicant argued that certain variances cited were simply not needed; that covering the swimming pool and providing a minimum side yard are in conflict; that the pool is virtually into the side yard; that the pool and walls were improved by a DCLU field inspector; and therefore the Department should be estopped from here denying the requested variance; and that many neighbors have garages which are set within 12 ft. of the corner property lines, such that denying the variances would deny applicant from comparable privilege.

Conclusions

1. Generally, the issue of whether variances are in fact required for a project is a matter of the Director's Interpretive ruling process. Section 24.10.030. The Hearing Examiner's function in a Master Use Permit variance component appeal is to apply the variance criteria delineated in Section 24.74.030 to the application presented.


2. Section 24.74.030 requires, inter alia, that a unique property condition must be shown which deprives the applicant of rights and privileges enjoyed by others similarly situated. No such property condition is presented in this case. The lot is not significantly smaller than the minimum required for the zone and is similar in dimension to other vicinity properties. Neither is the east adjacent alley's slope to the south a qualifying real property condition per Section 24.74.030.

3. No similar variances were reported for the vicinity. Neither the swimming pool, cover, nor rear yard carport were presented as items required for comparative development. Granting the variances to accommodate those items to the requested degree would therefore suggest special privilege, notwithstanding the existence of some garages close to the alley.

Decision

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

Entered this 16th day of March, 1982.


Leroy McCullough
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). Should an appeal 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.