

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeals of

J.F. TAIT,  
RALENE WALLS and  
FRASER TAIT AND LEE NICHOLS

FILES NO. MUP-85-007,  
MUP-85-008 and  
MUP-85-009

APPLICATION NO. 8406310


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

ORDER CORRECTING DECISION

It appearing that an error was made in that part of the  
decision entered April 17, 1985, reading "The variance to allow  
more than one parking space in the required front yard is granted  
for a two car garage set back at least 3 ft. 9 in. from the front  
property line", that part of the decision is hereby corrected to  
read:

"The variance to allow more than one parking space  
in the required front yard is granted for a two car  
garage set back at least 12 ft. 6 in. from the  
front property line."

Entered this 18<sup>th</sup> day of April, 1985.

  
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## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

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FILES NO. MUP-85-007,  
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of the Department of Construction  
and Land Use on a master use  
permit application

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#### Introduction

Three appeals were filed by appellants J.F. Tait, Ralene Walls and Fraser Tait and Lee Nichols of the decisions made by the Director, Department of Construction and Land Use, on a master use permit application for variances for parking in the required front yard, from the maximum height and the maximum curb cut for property at 116 Prospect Street.

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

This matter was heard before the Hearing Examiner on March 28 and April 3, 1985.

Parties to the proceedings were: Appellant and applicant, J.F. Tait, pro se; appellants Ralene and Burton Walls represented by Jack McCullough, attorney at law; appellants Fraser Tait and Lee Nichols, pro se; and the Director by Ed Somers, land use specialist.

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. Appellant Tait obtained a building permit in December, 1984, for a single family residence at 116 Prospect Street. The plans provided for a 29.5 to 30 ft. high residence with space in the required front yard for one car to park and a 10 ft. wide curb cut.

2. Later, new plans were submitted with a master use permit application for development that would require variances. The new plans provided for a 34 ft. high structure and a three car, 649 sq. ft. garage in the required front yard with a 20 ft. wide curb cut.

3. The site of the proposed development is an almost rectangular, 60 by 120 ft. lot zoned SF 5000 on the south slope of Queen Anne Hill. Prospect Street curves in front of the site creating a triangle in the street and the street's full 80 ft. wide right-of-way has not been utilized for street purposes. There is a strip of street right-of-way between the sidewalk and the property line going from approximately 15 ft. wide at the east property line down to 2 or 3 ft. on the westerly third of the lot.

4. The Director has determined that the front yard setback requirement for the subject lot is 16 ft. 3 in. based on the

average of the 12.5 ft. setback of the house on the lot to the east and 20 ft. because the lot is treated as a corner lot for front yard averaging purposes. The house to the west actually provides less than 20 ft.

5. The proposed front yard setback would be 12 ft. 6 in., 3 ft. 9 in. less than required.

6. The Director determined that the proposed development would require three variances: one from Section 23.44.16.D to allow three parking spaces in the required front yard of an uphill lot where one is permitted; one from Section 23.44.12A for a 34 ft. height where 30 ft. is permitted; and one from Section 23.54.30E to allow a 20 ft. wide curb cut where a 10 ft. curb cut is permitted.

7. The applicant proceeded with excavation and construction of retaining walls in contemplation of these variances, however, the work was not consistent either with the permit issued or, according to testimony, with the plans submitted with the variance application.

8. According to the exhibits there was a 10 ft. change in elevation in the street right-of-way in front of the subject lot, as well as the lot to the east, supported by a granite block retaining wall. The lot was relatively level for approximately 90 ft. along its eastern lot line. The rear 30 ft. rises approximately 15 ft. in elevation. On the westerly 2/3 of the lot, the front 10 ft. slope occurred in the front 20 ft. of the lot. The topography has been altered by the unauthorized excavation so this description no longer applies to the existing lot.

9. The proposed garage would be 29.5 ft. wide occupying about one half the width of the lot. The lot has been excavated so that the garage would largely be "underground" and would be landscaped. The garage would have two separate doors, one single and one double.

10. Residences in the area are generally two to three stories in height. None have required height variances but most were constructed before the maximum height permitted was reduced to 30 ft. The majority have pitched roofs.

11. A survey of the area conducted by appellant Tait shows that most lots have two car garages with a few with none, one or more than two. The average is space for slightly over two cars. Many of the garages are located in front yards. Many of the lots are sloping.

12. The survey shows that curb cuts in the area are generally much wider than 10 ft. The average for the residences surveyed is greater than 22 ft. No variances have been granted for curb cuts in the area.

13. Much of the development of the area occurred 40 to 50 years ago or more.

14. The supply of on-street parking in the immediate area is reduced by a series of wide curb cuts on the south side of Prospect, demands of a religious group housed across the street from the subject site, the area's proximity to apartment development along Queen Anne Avenue and various no parking sections including that along 1st Avenue North at the Japanese Consulate. Parking is available on the street triangle immediately adjacent to the subject site and to the west of a light or power pole which is located approximately 10 ft. from the property's eastern boundary.

15. The applicant has patterned his plans for the residence after a house at 120 Highland Drive which was built approximately

ten years ago. That house has parking in the basement level.

16. The applicant requests the height variance to allow 10 ft. high ceilings in his house for aesthetic reasons and to maximize enjoyment of the view.

17. The roof at the proposed height would be approximately at the level of the grade of the property to the north so it would be unlikely to block its views or sunlight. The house to the west is one and a half stories and would be shadowed by the new structure in the morning whether or not it is a extra 4 ft. high but may make the period of shadow slightly longer. The new structure will interfere with views and light from the house to the east but the additional 4 ft. would probably have minimal effect.

18. No front yard or other parking variances have been granted in the area.

19. Parking could be located on other areas of the lot if the principal structure was moved back or redesigned to allow passage on a side to the rear of the lot, however, the slope of the lot in the rear restricts the area available.

20. The applicant asks for development comparable to that at 18 Highland Drive. A garage and deck were added to an older residence at that address pursuant to a permit issued in 1984. The two car, 511 sq. ft. garage is built to the front property line at one point. The lot is on a curve in Highland Drive similar to the curve at the subject site. The garage for two cars in the front yard was determined by the Director to be permitted by Section 23.44.16.D.6 because of the prohibition of parking on both sides of the street in front of the property.

21. The 20 ft. wide curb cut is proposed for the western edge of the lot frontage with a driveway across the front of the lot to the garage which would occupy the eastern half of the lot.

22. The Engineering Department found that the western portion of the lot was better for a curb cut than the eastern.

23. The Director granted the variance for a three car garage in the required front yard conditioned upon placement of the curb cut on the eastern portion of the lot to reduce the amount of lot devoted to driveway and landscaping. He denied the curb cut and height variances.

#### Conclusions

1. Variances may be granted only if all of the facts and conditions set forth in Section 23.40.20C are present. As no deference is to be accorded the decision of the Director, Section 23.76.36.B7, the burden of proving the existence of the requisite facts and conditions remains on the applicant.

2. The Director has determined that the lot meets the uphill slope condition required for the exception to Section 23.44.16.D2 which prohibits parking in the required front yard. Under the exception of Section 23.44.16.D3 accessory parking for one car may be placed in the required front yard. The applicant requests a variance for parking for three cars in the required front yard. The Director treated the variance as one reducing the required setback and found that the unused street right-of-way and curve of the street are unusual property conditions which cause the code restriction to deny the property rights enjoyed by other properties. The applicant sees limited on-street as a further unusual condition. Neither the curve nor the unused street right-of-way have any effect on the amount of lot available for parking or other development, however. The amount of curb line eliminated from use for parking by curb cuts and prohibited parking is unusual. Also, the space available on

the lot is reduced by the steep bank in the back yard. Since the great majority of lots have more than one parking place, an average of more than two, and many of these are in the required front yard, restricting the lot to one parking space would deny the lot development enjoyed by the majority of lots in the vicinity. A variance for more than two cars would, however, confer a special privilege. There is parking available in front of the subject lot and around the triangle in the street. More than two spaces is not warranted by the conditions or by comparable development. Even the house at 18 Highland Drive, which applicant believes represents what he should be allowed, though permitted outright, has but a two car garage. A two car garage, if set back at least the proposed 3 ft. 9 in. and landscaped to the extent possible would not be materially detrimental to the public welfare or injure other property. A three car garage covering half the width of the lot would be detrimental in that the open space which usually offsets the bulk of a building would be missing. Restricting the lot to a one car garage would cause undue hardship where parking is limited and others have more. The purpose of the Land Use Code and Single Family Residential Areas Policies is to reduce the impact on the streetscape by the location of the parking structure. Here, because a one car garage would be permitted outright and garages in their front yards are common in the area, this variance would be consistent with that purpose. The variance for parking for one additional car should be granted.

3. Section 23.54.30E permits one 10 ft. curb cut at this lot because it has less than 81 ft. of frontage. No unusual condition relating to the property was shown which causes the code to deny the property comparable rights. While most properties in the area have wider curb cuts, the Land Use Code has changed since those were established and would now limit any with less than 81 ft. of frontage to 10 ft. The requested variance would not confer special privilege but would go beyond the minimum necessary for relief since there is no condition warranting relief. A wider curb cut would be materially detrimental in that it would remove on-street parking from an area which the applicant describes as having limited on-street parking. No undue hardship has been shown. In fact, the lot's greater distance from the street because of the unused right-of-way allows a greater distance for the driveway to be widened between the curb cut and the garage. The variance would not be consistent with the intent of the Single Family Residential Areas Policies to restrict curb cuts to the width of one car.

4. Section 23.44.12A restricts the height of the structure, without a pitched roof, to 30 ft. The applicant has shown no unusual property condition because of which the property is denied comparable development rights. Since no relief is warranted a variance would go beyond the minimum necessary and confer special privilege. The extra height was not shown to be likely to cause injury in the form of view blockage but could set a harmful precedent. No undue hardship was shown to be caused by maintenance of the maximum height limit. Such a variance would be inconsistent with the purpose of the code and policies.

#### Decision

The variances from the maximum permitted curb cut width and from the maximum permitted height are denied. The variance to allow more than one parking space in the required front yard is granted for a two car garage set back at least 3 ft. 9 in. from the front property line.

Entered this 17<sup>th</sup> day of April, 1985.

*M. Margaret Klockars*  
M. Margaret Klockars  
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW OF  
HEARING EXAMINER FINAL DECISIONS ON MASTER USE PERMITS

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 must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11).

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, 400 Yesler Building, Seattle, Washington 98104.