

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

In the Matter of the Appeals of

WILBUR B. McPHERSON and  
J.F. TAIT

FILE NO. MUP-85-034(V) ✓  
FILE NO. MUP-85-041(V)  
APPLICATION NO. 8502087

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

Introduction

Appellants challenge the decisions made by the Director, Department of Construction and Land Use (DCLU), on variances for property at 116 Prospect Street. Appellant McPherson appeals the granting of the front yard variance. Appellant Tait appeals the conditioning of that approval.

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 August 12, 1985.

Parties to the proceedings were: Fraser Tait, pro se; and the Director by Ed Somers, land use specialist. Appellant McPherson did not appear in person or through a representative but submitted his appeal letter in support of his 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 these appeals.

Findings of Fact

1. The applicant proposes to construct a 29 ft. 6 in. wide, 22 ft. deep garage in front of the three story single family home he is constructing at 116 Prospect Street. He proposes to place the garage 5 ft. back from the front property line. The Director determined that variance would be required from Section 23.44.16.D(2) to allow an accessory structure to be located in the required front yard and from Section 23.44.16.D to allow parking for three vehicles in the required front yard.

2. In an earlier variance application, on appeal a variance was granted to allow a two car garage, 12 ft. 6 in. from the front property line. The applicant agrees to accept the two car limitation but wishes to have a garage of the same size originally proposed.

3. The Director denied the variance to allow parking for three vehicles, not requested by the applicant, and granted the variance allowing a 5 ft. setback on the conditions that an area in front of the garage designated by the Director in an attachment to the decision be landscaped and that the garage be reduced in width to 22 ft., not exceed 500 sq. ft. in area and be designed for two cars. Additional conditions restricted the elevation of the finished roof of the garage and finished grade and allowed an open rail up to 3 ft. in height on top of the roof of the garage.

4. Appellant Tait challenges the conditions as to landscaping and reduction in size. Appellant McPherson challenges the variance allowing a setback of only 5 ft.

5. The subject property is a 60 by 120 ft. lot on a curving portion of Prospect Street. A 15 ft. width of the street right-of-way is undeveloped at the eastern property line tapering down to nothing at the western property line.

6. The front area of the lot has been excavated but prior to excavation there was a 4 ft. high rock wall on the lot side of the sidewalk within the street right-of-way. The grade of the lot then rose gradually from the wall some 8 ft. to an elevation of approximately 111 ft. at the rear of the proposed garage. The topography was somewhat different on the western portion of the lot. According to Ed Somers' testimony, the topography of the lot would have qualified the lot for the exception from the front yard requirement and would allow a single car garage in the required front yard.

7. The applicant proposes to place most of the garage underground. He would provide landscaping on top of the garage, in the 5 ft. strip between the garage and the eastern property line and in the portion between the west property line and the garage. That section, according to the plot plan, is less than 25 ft. wide. A rockery would be located on both sides of the lot. The portion in front of the garage, for a width of approximately 33 ft., would be blacktopped. The blacktop would extend out from the garage approximately 18 ft. and then the 10 ft. wide driveway would continue to the developed street.

8. Because the garage would be constructed to be partially underground the side walls would be approximately 10 in. thick. The walls of an ordinary garage would be expected to be approximately 6 in. thick. The thicker walls, then, would leave approximately 8 in. less space than in an ordinary garage.

9. A smaller lot at 18 Highland Drive was permitted a garage in 1984 without variance. The main body of that garage measures 22.33 by 22 ft. and has a total area of approximately 511 sq. ft. One corner of the garage is at the front lot line providing no setback. That street has a curve, similar to the curve at the subject site, so there is greater setback at the other end. The property qualified both for the exception that allows a garage for one car in the required front yard because of the topography and for garage for a second car because no parking is permitted on either side of the street in front of the subject property. That garage is above grade.

10. No parking is permitted east of the telephone pole at the subject property. The telephone pole is shown to be located approximately 15 ft. west of the east property line. Curb cuts on the street directly across from the subject property virtually eliminate parking from that side of the street.

11. Other garages in the area provide less than the normally required setback.

12. As proposed, the development of the lot would include an unusual amount of blacktopping according to the testimony of Ed Somers.

13. A typical two car garage is 22 ft. in width.

### Conclusions

1. Variances from the provisions of the Land Use Code may be granted only when all of the requisite facts and conditions set forth in Section 23.40.20.C are present. The first is that an unusual property condition, not created by the applicant, deprives the property of rights and privileges enjoyed by others when the Code strictly applied. The record shows that the property's topography is such that a single car garage would have been permitted in the required front yard and that other garages in the area are located in the required front yard. Therefore, the topography constitutes such a property condition.

2. The variance may not go beyond the minimum necessary to afford relief or constitute a grant of special privilege. It appears that a variance to allow a garage to house two cars would be consistent with that allowed other properties and, therefore, such a variance would not confer special privilege. To set the garage back further would mean the excavation of additional slope so the 5 ft. may be the minimum necessary.

3. The variance may not cause material detriment to the public welfare or injure other property in the zone or vicinity. The Director imposed landscaping conditions and a restriction on the amount of blacktop along with size and height restrictions to remove the potential for detriment. The amount of blacktop proposed is unusual. Since the front yard setback would be reduced by the variance, the amount available for landscaping should be maximized as well as that part of the right-of-way available to avoid aesthetic detriment to the area.

4. The strict application of the code provisions must be shown to cause undue and unnecessary hardship. The sloping condition of the lot is such that requiring the full setback would cause undue and unnecessary hardship.

5. The variance must be consistent with the spirit and purpose of the Land Use Code and policies. With the conditions limiting the size and maximizing landscaping the variance would be consistent with the Land Use Code and Single Family Areas Policies.

### Decision

The variance to allow the garage to be located in the required front yard is granted subject to the following conditions:

- 1) The garage be no wider than 22 ft. 8 in.
- 2) The elevation of the finished roof not exceed 110 ft. and finished grade not exceed 111 ft. as shown in the plans.
- 3) An open rail not to exceed 3 ft. in height may be provided on the roof and exceed the elevations stated above.
- 4) The blacktop in front of the garage not exceed the width of the garage and taper to the 10 ft. driveway in the manner depicted on the drawing attached to the Director's Analysis and Decision. Areas not blacktopped shall be landscaped with shrubs and/or groundcover plantings.

The variance to allow a three car garage in the front yard is denied.

Entered this 23rd day of August, 1985.

M. Margaret Klockars  
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 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, 5th Floor, Seattle, Washington 98104.