

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

In the Matter of the Appeal of

CHARLES AND ALICE GUSTAFSON

FILE NO. MUP-85-058(V)
Application No. 8504096

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

Introduction

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

The matter was heard before the Hearing Examiner on October 16, 1985.

Parties to the proceeding were: applicants/appellants representing themselves and by the wife who is an attorney; the Director, Department of Construction and Land Use 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. The subject site located at 13560 Riveria Place N.E. is 50 ft. by 85 ft. in an SF 5000 zone in a Urban Residential and Conservancy Management shoreline environment. The site is developed with a single family residence and an attached two (2) car garage.

2. Applicants propose to convert a portion of the existing two (2) car garage to a workshop, reduce the standard 16 ft. width to 13 ft. for one car and construct a new one (1) carport. The proposal would result in two (2) separate curb cuts for the site.

3. Lake Washington borders the property on the east and west across Riveria Place N.E. is the Burke-Gilman Trail which runs the length of Riveria Place N.E. The trail is used daily and public parking is not provided.

4. From credible testimony the Hearing Examiner finds that the area is unique in that the character of the neighborhood is that of a beach community with development consisting of single family residences on small waterfront lots with no established curbs or gutters.

5. Through credible testimony the Hearing Examiner finds that property owners who have front yard setbacks and garages as a rule park their vehicles in the driveways in front of their garages and in the front yard setback areas. Where garages and front yard setbacks are not available, parking is on the west side of Riveria Place N.E. This is also the area where the public parks to utilize the trail.

6. Through credible testimony of the Director's representative the Hearing Examiner finds that parking is only legal in the driveways in front of garages. That the city has not chosen to enforce parking violations in the front yard setbacks is an issue not before the Hearing Examiner in this proceeding.

7. From credible testimony the Hearing Examiner finds that Riveria Pl. N.E. is capable of two way traffic but that 2 cars can not pass side by side at the same time. Where residences and structures are set back and curb cuts for garages exist, motorists pull into these areas to pass one another if the property owner's vehicles are not parked there.

8. The record discloses and the Hearing Examiner finds that the applicants have a curb cut for a garage but the family's dog kennel occupies the remaining setback area.

9. From applicants' testimony regarding their survey of the vicinity the Hearing Examiner finds that property owners when and where they are able to do so, utilize their driveways and front yard setbacks for parking.

10. A petition was received in support of the applicants' proposal indicating their support of applicants' requested variance and that denial of the variance would continue the parking problem in the neighborhood.

11. Variances in this area have not been granted. See Hearing Examiner File No. MUP-85-050.

Conclusions

1. Appellants prove the existence of unusual conditions applicable to their property that were not created by them. The area's character, the narrow street and lot size limit use and expansion proposals of the property owners. All property owners are so limited so that strict application of the Land Use Code would not deprive applicants of property rights and privileges enjoyed by the others in the vicinity.

2. The requested variance would go beyond the minimum necessary to afford relief and would constitute a grant of special privilege to applicants that others in the vicinity do not enjoy. The Code limits the number of curb cuts and the Code requires only one off-street parking space for a single family residence. Appellants now have parking for two cars but wish to convert one to a workroom and re-establish the parking space in a manner that would require the second curb cut. The second curb cut would go beyond the minimum necessary to afford relief and would constitute a grant of special privilege that is inconsistent with limitations placed upon all of the other properties in the vicinity.

3. Granting of the variance would be materially detrimental to the public welfare and injurious to the properties and improvements in the vicinity in that an unwarranted precedent will be set.

4. The literal interpretation and strict application of the provisions of the Land Use Code would not cause undue and unnecessary hardship to the property owner.

5. The requested variance is inconsistent with the spirit and purpose of the Land Use Code provisions which address concerns of design standards for access.

Decision

The Director's decision is affirmed.

Entered this 30th day of October, 1985.

Roger H. Shimizu
Roger H. Shimizu
Hearing Examiner Pro Tempore

Concerning Further Review

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.