

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

In the Matter of the Appeal of

JOAN THACKER and OWEN KING

FILE NO. MUP-85-082(V)
APPLICATION NO. 8505484

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

Introduction

Appellants, Joan Thacker and Owen King, appeal the decision of the Director, Department of Construction and Land Use (DCLU) denying a variance to allow a detached garage, located in a required side yard, to exceed the allowable height of 12 feet.

The appellants 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 January 24, 1986. The record was left open for supplemental information to January 31, 1986.

Parties to the proceedings were: the appellants, pro se, and the Department of Construction and Land Use Director by Clayton W. Leming, Land Use Specialist.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise specified.

After due consideration of the evidence submitted on appeal, elicited during the public hearing and provided at the request of the Hearing Examiner on or before January 31, 1986, the following shall constitute the findings of fact, conclusions of law and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Joan Thacker and Owen King applied for a variance to allow the ridge of a pitched roof on a detached garage to exceed the allowable height. The garage is accessory to a single family residence at 1003 36th Avenue East, Seattle, Washington.

2. The variance requested in the proposal would increase the allowable height for a detached garage from 12-15 feet to 21 feet. The construction has already occurred.

3. The structure which appellants use as a detached garage was originally built as a carriage house around 1903, prior to adoption of the 1957 Land Use Code. The carriage house had a 12 foot flat roof and was built in what is now defined, by the 1957 Land Use Code, as amended and revised, as a required side yard.

4. Unlike a typical detached garage, the sidewalls of the carriage house are 12 feet high to accommodate the height of vehicles for which it was designed. The sidewalls of a typical detached garage need not be higher than 7-8 feet. As a result, the ridge of the proposed roof is approximately 6 feet higher than the Land Use Code permits.

5. If the sidewalls of the garage were 8 feet in height, appellants could add up to 7 feet of storage within the pitch. To lower the sidewalls from 12 feet to 8 feet would disturb the basic structure and character of the carriage house design and could be more expensive than the cost of a new garage. Construction of a pitched roof within the Land Use Code's requirements would result in a 3 foot pitch and an aesthetically unattractive garage.

6. Appellants request variance relief because: (1) the original 12 foot flat roof leaked due to poor drainage, thereby causing deterioration of the entire structure; and (2) to make the roof aesthetically consistent with the pitch, appearance and design of the roof on the single family residence.
7. The additional height above the sidewalls inside the garage would provide an attic area for storage.
8. If the variance is granted, the garage would not block views from, and would not significantly interfere with, light to adjacent properties.
9. No other garages in the vicinity were constructed or improved with variance relief. However, several other garages in the vicinity have been remodeled or constructed with pitched roofs which exceed 12-15 feet as permitted in the Land Use Code, and the 21 feet requested by appellants. At least three of those garages were built prior to the adoption of the Land Use Code and a fourth garage, whose pitch exceeds 12-15 feet, is not located in a required yard.
10. One letter in opposition (distant neighbor) and two letters supporting (adjacent neighbors) the variance were received during the comment period, ending October 31, 1985. In response to the Hearing Examiner's invitation to provide additional information, a third letter, supporting the variance, was received prior to closing the record on January 31, 1986. No comment was received from the owner of property immediately north of the appellants' residence.

Conclusions

1. Appellants have proven the existence of unusual conditions applicable to their property which were not created by them. The existing structure which is used as a garage was originally constructed as a carriage house, in about 1903, prior to any land use code. The carriage house was built on what is now defined by the Land Use Code as required side yard. Unlike a typical garage, the sidewalls of the carriage house were built to a height of 12 feet, which inherently limits the appellants' ability to add a pitched roof within the permissible limits of the Land Use Code. Other detached garages in the vicinity of the subject property which have pitched roofs that exceed the 12-15 feet height limit were constructed prior to enactment of the Land Use Code. The Land Use Code encourages pitched roofs but limits their height if located in a required side yard. Therefore, the strict application of this Land Use Code would not deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity.
2. The requested variance goes beyond the minimum necessary to afford relief and constitutes a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone. Although the Land Use Code encourages pitched roofs, appellants propose to add a 9 foot pitched roof on pre-existing 12 foot sidewalls. The additional 9 feet goes beyond the minimum necessary to construct a pitched roof on the garage of the subject property. Design consistency and space requirements do not overcome the limitations of the Land Use Code.
3. All parties are in agreement, and the Hearing Examiner concludes, that the granting of the variance would not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property located.

4. The flat roof of the detached garage did not properly drain and leaked causing deterioration of the entire structure. The Land Use Code encourages pitched roofs, in part, as a solution to problems of poor drainage, leaking and deterioration, which are common to Seattle structures. The proposed improvement to the subject property is the most cost-effective and aesthetically logical solution to the problem. The new roof has already been built and the cost to remove it, lower the sidewalls of the garage, and build a new pitched roof to a height up to 15 feet, could be more expensive than the alternative of building a new garage. However, the literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would not cause undue and unnecessary hardship. The added expense of re-modeling the garage could have been avoided by timely request for variance relief prior to commencing the remodeling project.

5. The requested variance is not consistent with the spirit and purpose of the Land Use Code, as discussed above.

6. Since all criteria for variance relief are not met, the variance is denied.

Decision

The variance is denied.

Entered this 14th day of February, 1986.


Christopher E. Mathews
Hearing Examiner Pro Tempore

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.