



Marysville Hearing Examiner

September 22, 2011

7:00 p.m.

Marysville City Hall

CALL TO ORDER

Hearing Examiner Kevin McDonald opened the hearing at 7:00 p.m. Mr. McDonald overviewed the issue being heard tonight. He noted that he had read the materials and viewed the site in question. He also explained the process that the meeting would follow.

ATTENDANCE

The following staff was noted as being present:

Hearing Examiner Kevin McDonald, CAO/CD Director Gloria Hirashima, Senior Planner Chris Holland, City Attorney Paul McMurray, and Recording Secretary Amy Hess

PUBLIC HEARING

1. **PA11020 – Blackmon Admin Appeal**- appeal of an Administrative Interpretation pursuant to MMC 22A.010.090(2)(b) denying the issuance of building permits to construct five accessory structures based on the code provisions outlined in MMC 22C.010.170(3), MMC 22C.180.020(1)(a)(ii) and MMC 22C.180.020(3)(a).

Appellant: John and Jennifer Blackmon
8109 75th Street NE
Marysville, WA 98270

Appellant Contact: Law Office of Catherine C. Clark PLLC
701 Fifth Avenue, Suite 4785
Seattle, WA 98104
(206) 838-2528

Location: 8109 75th Street NE, Marysville, WA

Staff Comment:

Mr. McMurray noted that Exhibits 1-30 are already entered into the record. Mr. McMurray turned over Staff's presentation to Chris Holland. Mr. Holland stated he had been with the City for 11 years. His involvement with this case started when the application was received in July of 2011 and came to him for review. In review of the application, there appeared to be 3 provisions of MMC that the application did not comply with. Mr. Holland explained each of the 3 provisions of which the application did not comply with in detail. Mr. McMurray asked some clarification questions regarding the easement Mr. Holland was speaking of. Mr. Holland clarified the regional utility easements he had referred to in his testimony. There was further questioning and testimony between Mr.

McMurray and Mr. Holland specifically related to information outlined in the Staff Recommendation (Exhibit 26).

Hearing Examiner McDonald questioned the provisions for setbacks for regional utility corridors. He wanted to clarify that these provisions existed before Title 22 was adopted in February of 2011. Mr. Holland responded that the setback provisions were adopted by Ordinance No. 2131, effective June 9, 1997 and that the adoption of Title 22 repealed Ordinance No. 2131.

Mr. McMurray continued questioning Mr. Holland regarding the size of the footprints of the proposed accessory units. The final issue discussed was the design standards that were required of accessory buildings if they were constructed in the front or side yard. He overviewed those design standards. Mr. McMurray questioned if the proposed structures complied with these standards. Mr. Holland responded that they did not; the information on file with the city showed the structure to be steel framed with metal roofing neither of which was consistent with the existing single family residence.

Mr. McMurray questioned if either of the utilities with easements on this property were in approval of the proposed structures. Mr. Holland responded that there was no approval from these utility companies to his knowledge. Mr. Holland noted that he had emailed PSE as well as Snohomish County PUD notifying them of the application and provided the application materials for their review. He described the email response from PUD which indicated that the structure would not be allowed; as well as a letter from PSE stating that the structures would not be allowed.

Mr. McMurray questioned Mr. Holland as to any interaction or discussion he had had with Mr. Blackmon regarding location of structures. Mr. Holland responded that he did not have any direct contact with Mr. Blackmon, after the building permit application was submitted, except for e-mailing the exhibits and staff recommendation regarding this matter. Mr. McMurray questioned if there was a variance process that would be available to Mr. Blackmon if he chose to go that path. Mr. Holland responded that the city does have a variance process, but that it had not been initiated for this situation.

Hearing Examiner McDonald questioned when a property was encumbered by easements if it was the responsibility of the applicant to know the restrictions before the application is submitted or if it is the job of the city to educate the applicant. Mr. Holland responded that Title 22A states that an applicant should be aware, but that he had met with Mr. Blackmon prior to the application being received discussing all of requirements and restrictions for accessory structures.

Appellant Comment:

Ms. Clark noted that she would like Mr. Blackmon to testify. She questioned Mr. Blackmon as to the siding on the home. He responded that it is a type of concrete and is under construction, noting that he was thinking of using a galvanized type of siding. He noted that he currently has a building permit thru February of 2012 for a water damage claim. Ms. Clark questioned how close his home was to the orange shaded area in Exhibit 22. He responded that it was on his property and thought it was about 6 feet from his home.

Ms. Clark asked Mr. Blackmon to explain the process he went through to obtain a permit for his car ports. He described the current use of the temporary carports as helping him during his insurance claim process. The correspondence Mr. Blackmon received from the City was described. He felt that the reason he was here was based on an incorrect administrative interpretation of the Marysville Municipal Code. Ms. Clark questioned whether he was ever informed about a possible variance.

Mr. Blackmon responded that he did discuss a variance with Paul Rochon and John Dorcas. Mr. Blackmon described his intended use for the proposed carports.

Ms. Clark questioned why Mr. Blackmon had not contacted anyone from PSE or PUD. Mr. Blackmon replied that he had contacted them years ago and that he was told that he could basically do whatever he wanted as long as he did not construct a dwelling unit.

Mr. McDonald questioned who Mr. Blackmon had contacted. Mr. Blackmon replied that he had contacted both PUD and PSE but could not remember the names of people he spoke with.

Ms. Clark continued her questioning regarding the carports. Mr. Blackmon stated that in 2009, Ms. Hirashima and Paul Rochon had advised him to locate the carports on the lower area of his property in order to address a nuisance claim filed by neighbors in the area. Ms. Clark questioned if any representatives from PUD or PSE had ever asked him to remove the car ports. Mr. Blackmon responded that he had never been asked to remove them by PUD or PSE.

Mr. McDonald questioned the Costco style carports Mr. Blackmon stated were recommended to him and whether or not they required a permit. Ms. Hirashima replied that the City had not recommended a specific product to resolve the neighborhood complaints and bring the property into compliance with some code violations that Ms. Clark had discussed. She added that the car ports currently in use are a temporary type and do not require a permit. There is also no record of the city issuing any permits for the storage structures in question.

Staff Rebuttal:

Mr. Holland clarified that Paul Rochon is the Code Enforcement Officer for the City of Marysville. Mr. McMurray stated that the city had no rebuttal at this point, nor any further information.

Appellant Rebuttal:

Ms. Clark had no rebuttal at this point.

Staff Closing Comments:

Mr. McMurray stated that this was an appeal of the City's administrative interpretation by the Community Development Department, denying the issuance of building permits for accessory structures. Mr. McMurray noted the reasons that the application was denied; specifically the set-back requirements from the regional utility corridor outlined in MMC 22C.010.170(3). He noted that the setback requirement in the Municipal Code has been in place since at least 1997. It is not a violation of the setback requirement for a city utility easement as the appellant was claiming. The proposed foot print of the structures violates MMC 22C.180.020 (1) (a) (ii) as does the proposed design of the accessory structures which violates MMC 22C.180.020 (3) (a). Mr. McMurray added that in addition to the roofing proposed the type of siding that Mr. Blackmon stated is currently in place or being proposed with his remodel, still does not seem to be consistent with the proposed accessory structures. Mr. McMurray noted that all 3 problems had been clearly identified.

Mr. McMurray stated this case is not about the city's utility easement. He added that is has very little, if anything, to do with the problems with the building permit application. He also noted that the issue brought up by the appellant regarding a regulatory taking of property is unfounded and not under the jurisdiction of the Hearing Examiner. He asked that the Hearing Examiner uphold the Administrative Interpretation that has been issued by Ms. Hirashima.

Appellant Closing Comments:

Ms. Clark stated that the big issue in this case is location of the accessory units. She described the language of the easements of her client. She stated that her client had not been given a reason why he could not construct the accessory units, only a general denial. She added that her client has repeatedly used the easements for multiple types of activities with a variety of permanent and temporary structures over the time he has owned the property. She raised the issue that the 5 foot set-back expands the easement on either side and is a regulatory taking.

Ms. Clark noted that her client had never been told that he could change his permit to comply with the size issue. She did not feel that the permit should be denied until Mr. Blackmon had finished his remodel project and has reasonable time to comply with the design standards. She concluded that the matter should be reversed and remanded for further consideration.

Hearing Examiner McDonald questioned the permanent structures that Ms. Clark had described her client had used on the easements and what had happened to the permanent structures. Ms. Clark responded the question at hand was how permanency was being defined; was a concrete slab used or was it attached to the ground another way. She wanted to sit down with the City and resolve the issue.

ADJOURNMENT:

Hearing Examiner McDonald solicited any testimony from the public, seeing none, he adjourned the hearing at 7:58 pm. Mr. McDonald stated that he would have his decision within 15 working days.



Amy Hess, Recording Secretary