

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

In the Matter of the Appeal of

S.L. BIRULIN

FILE NO. MUP-84-017(V)
APPLICATION NO. 8400013

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

Introduction

Appellant, S.L. Birulin, appeals the decision of the Director, Department of Construction and Land Use, to deny a lot coverage variance for his property at 4878 Beach Drive S.W.

The appellant exercised his 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 16, 1984.

Parties to the proceedings were: appellant and the Director, represented by Leslie Durkee, 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. A 16 by 28 ft. deck has been added to the rear of the house at 4878 Beach Drive S.W. without permit. Appellant applied for side yard and lot coverage variances which were denied by the Director and Hearing Examiner in 1983. Appellant refiled, offering to remove the 17 sq. ft. which intrudes into the required north sideyard. The Director, again, denied the lot area variance.

2. The lot is zoned SF 7200 and contains approximately 7,425 sq. ft. of area. A two-story house covers 2,838 sq. ft. or 38.2% of the lot. The addition of the deck, as proposed to be reduced, would bring total lot coverage to 43.6%.

3. Section 23.44.10.C permits up to 35% lot coverage or 1750 sq. ft., whichever is greater.

4. The subject lot is on the east side of Beach Drive S.W. on the flat area near the base of the hill rising up to the east. Because of springs in the hillside and the slope, most properties along this shelf experience standing water. Appellant's property may suffer from more water than the property to its north as it is slightly lower than a portion of that property and has not had measures taken to control the runoff as the property to the north has.

5. The house has a 6 by 41 ft. deck across the front at the second level similar to that on the neighboring house to the north. The houses face Puget Sound across Beach Drive. Beach Drive is heavily travelled.

6. The second level is appellant's family's main living area. A "mother-in-law apartment" in the first level is currently used by the appellant's son.

7. Appellant wants the rear deck addition to make the rear open space usable, despite the dampness, and for personal reasons relating to the physical condition of family members.

8. A deck within 18 inches of grade is not included in lot coverage. Section 23.44.10(D)(2)(C). Such a deck would make the rear open area usable without variance. A lower level deck would not be as convenient for the owners and would not afford a view of Puget Sound from the rear yard.

9. Mrs. Birulin wants the deck with its stairway down to the yard as an additional fire escape.

10. In addition to interior stairs and stairs to the front deck there are stairs in the side yard to the former landing, now expanded to the deck in question.

11. Most houses in the area have decks or porches.

12. The subject lot and the adjoining lot on its north side are the smallest in the SF 7200 zoned vicinity.

Conclusions

1. The evidence adduced suggest that the subject property receives a greater share of the runoff from the hillside than adjacent properties because it is lower and suffers from that runoff because measures have not been taken to deal with it. The property is unusual in that sense and should have the right to do what is necessary to correct the situation. The Land Use Code provisions do not prevent corrective measures from being taken. A deck to keep the occupants out of the wet yard can be built within Code limitations. Appellant's convenience really cannot be considered since the unusable yard is the condition to be remedied and it would be similar in convenience to a ground level deck. The property is not deprived of view enjoyment as it has a deck on the front of the house comparable to the adjoining property.

2. The variance relief requested would go beyond the minimum necessary where there is an alternative available not requiring variance. Even if a second level deck were necessary the amount of variance appears to be excessive.

3. The granting of the lot coverage variance for a second level deck would allow a greater intrusion into neighbors' privacy than contemplated by the Code and could be considered harmful to those properties.


4. The requested variance would not be consistent with the spirit and purpose of the Land Use Code or the Single Family Residential Areas Policies. Those policies and the Code make provision for higher lot coverage for substandard lots. Though smaller than most lots in the immediate SF 7200 zone the lot is not substandard and already enjoys greater development, in at least its excess lot coverage, than contemplated by the

Land Use Code. To grant variance for the proposed deck would conflict with the purpose of both.

Decision

The variance is denied.

Entered this 30th day of March, 1984.


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. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11). 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.