

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

In the Matter of the Appeal of

CLARK STUEMPGES

FILE NO. MUP-90-002(V)
APPLICATION NO. 8904358

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

Introduction

Appellant, Clark Stuempges, appeals the granting of variances to allow a single family structure (1) to exceed the rear yard permitted height and (2) to intrude into the required rear yard. He exercised the right to appeal pursuant to Chapter 23.76 of the Seattle Municipal Code.

A motion to dismiss the appeal was filed on March 26, 1990, by the applicant. This motion was denied at the beginning of the hearing on April 4, 1990. The matter was then heard before the Hearing Examiner on April 4, 1990. A site visit was made following the hearing and the record closed on April 6, 1990. Thereafter, on April 18, 1990, the Examiner reopened the proceedings for evaluation of new evidence presented by the appellant and for submission of a report thereon from the Director. The Director's report on the new evidence was filed with the Hearing Examiner on May 3, 1990, and has been marked as an exhibit along with the other evidence submitted during the reopened proceedings. The record then closed on May 8, 1990.

Parties to the proceedings were appellant appearing personally and represented by Blaine McCool; the Director of DCLU (Director) represented by Cristina Van Valkenburgh, Land Use Specialist, who was substituting for Corbitt Loch of that department; and the applicants, Linda and Bruce Colasurdo, appearing personally and represented by Barry Huntington, Architect.

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, and during the reopening of the proceedings, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The Colasurdos propose to construct a single family residence on property located at 1113 N.E. 108th Street in the Northgate area. They applied for variances to allow the structure to exceed the height permitted in the rear yard, to allow a principal structure in the rear yard, and to allow parking in the front yard setback. The three variances were granted by the Director, however, only the first two are at issue in this appeal. Appellant seeks to have proposal sited further northward and reduced in height.

2. A declaration of nonsignificance was also issued by the Director on this project. That decision was not appealed and is not at issue here.

3. The proposal is in a single family residential 7200 zone in an environmentally sensitive area. The site is subject to flooding from Thornton Creek, a creek which intersects the site from the northwest to the southeast. Another creek enters the property from the northeast and joins with Thornton Creek as it flows eastward. There is a 100 year floodplain designation along Thornton Creek within the site.

4. The site is an irregular-shaped lot of about 55 ft. wide by 130 to 138 ft. deep, accessed from N.E. 108th Street on the north. The land slopes fairly steeply toward the creek bed from the south property line, particularly from the southwestern corner of the lot where the property line is at 234 ft. in elevation, or 32 ft. higher in elevation than the creek bed. There is a

moderate slope down to the creek bed from the north property line. That line is about 10 ft. higher in elevation than the creek bed.

5. The site contains 7,390 sq. ft. However, actual buildable area of the lot is only about 2,000 sq. ft., due to the limitations placed on it by the creek and floodplain cutting through the center of the property and a sewer line crossing the northern side of the property. Lot coverage allowable for this sized lot under the Code is 2,587 sq. ft. As planned, lot coverage for the principal structure will be 1,644 sq. ft.

6. The proposed residence is a two-story structure over a partial basement and will be located south of the creek, built into the steeper part of the site closest to appellant's house. The front of the house faces the creek bed and looks northward. The rear of the house faces south toward appellant's property. The residence will use an existing foundation cut on the site for purposes of economy in construction and to minimize grading and earth disturbance. Also, siting of the proposal there is necessary to retain two existing mature evergreen trees on the south side of the creek which presently reach 50 to 60 ft. high, to provide for a usable yard for family use and recreation, to maintain other existing vegetation, and to keep the residence away from and minimize the impact on the floodplain.

7. Thornton Creek is at an elevation of 202 ft. The floodplain is at almost 207 ft. elevation above sea level, according to City elevation datum. This floodplain varies in width from 22 to 38 ft. as the creek intersects the site.

8. No part of the structure will be within the floodplain of the creek. The closest part of the principal structure to the floodplain line is at the northeast corner of the house. There, the structure is approximately 10 ft. south of the floodplain line and 3 ft. in elevation above it. The lower proposed deck and stairway on the north side of the house, however, will extend to within a foot of the 100 year floodplain line. There the deck will be elevated about 3 ft., supported by posts to grade at about 208 ft. in elevation.

9. The structure will extend 15 ft. at the maximum into the required rear yard, leaving a 10 ft. rear setback instead of the 25 ft. rear setback required under Chapter 23.44.014. At the southwest corner of the structure which is closest to appellant's home, the rear setback will be about 15 ft.

10. The residence is designed with sloping roofs in different directions. There are a number of protrusions for decks on the north side facing the creek and modulations of the facade on the other sides of the house. On the south side facing the rear lot line, the structure protrudes from the main core of the house into the rear yard and rises one story above grade there. The height to the roof ridge of this story is 240 ft. in elevation, or less than 15 ft. above existing grade at the corner nearest appellant's house.

11. The top story of the structure sets back from the rear main story about seven and one-half feet (7-1/2'). The whole top story is only about one-half the size in square footage of the main floor area and exists only on the eastern half of the main house core (in the opposite direction from appellant's house). The roof ridge of this top story is at 247 ft. in elevation. From existing grade it is 30 ft. This story intrudes into the rear yard about 7 ft. at its closest point to the lot line. It is 28' above grade at the rear setback line.

12. Appellant's house is uphill and another 5 ft. from the Colasurdo's property. It faces west and fronts on 10th Place N.E. Appellant's home is one story above a full basement and is sited mainly westward from the southwest corner of the Colasurdo's property. Only about 5 ft. of his home will be behind the proposed residence. Mr. Stuenkel presently enjoys an unobstructed view of the creek bed and the ravine. With the proposal, some of his view will be blocked, primarily that from the rear corner of his house. However, from the rest of his house he will still be able to see the creek bed and ravine, especially that portion on the lot west of the proposed site and immediately north of his own property. In addition, because of the higher elevation of his property and the lower configuration of the proposed residence nearest his property, he will also be able to see over much of the roof of the Colasurdo's home to the trees and ravine beyond.

13. Surrounding development consists mainly of one to two story residences over basements, some of which residences are built into the

hillsides of the ravine with their basements exposed. From the creek bed several of these residences appear to be three storied because of daylight basements. Those residences are comparable in size to that proposed for this project; many are at higher elevations due to their location near the streets.

14. The Colasurdo's landscaping plan indicates that the natural and pristine nature of the floodplain and ravine will be preserved by utilization of plants native to the area or which impart an informal, wetland image. This plan, along with preservation of the tall existing hemlock and cedar trees on the south side of the creek, should greatly diminish any negative impact of the project on the ravine and creek bed and should help mask the structure's height from the road and surrounding properties.

Conclusions

1. The Hearing Examiner has jurisdiction over the parties and the subject matter pursuant to Section 23.76.022.

2. To grant a variance, the Director or Hearing Examiner must find the existence of the facts and conditions required by Section 23.40.020C, specifically, 1) an unusual condition related to the property (including size, shape, topography and surroundings) which was not created by the owner or applicant because of which strict application of the code would deprive the property of the rights and privileges enjoyed by other properties in the zone or vicinity; 2) that the variance does not go beyond the minimum necessary to afford relief and does not confer special privilege; 3) the variance would not be materially detrimental to the public welfare or injurious to other property; 4) that the literal interpretation and strict application of the code would cause undue and unnecessary hardship, and 5) that the variance would be consistent with the spirit and purpose of the Land Use Code and policies.

3. Applicant's property is affected by unusual conditions of topography and surroundings, being, essentially, a relatively steep ravine bisected by a creek with a fairly large floodplain. In addition, a pre-existing sewer line apparently serving other residents of the area intersects the north side of the property. As a result, the buildable area of the property is drastically reduced from what would be normal and allowed on other residential properties of 7200 sq. ft. and siting options for the residence are severely limited. None of these conditions was created by the applicants.

4. Strict application of the rear setback requirements and height limitations within the rear setback under the conditions applicable to the property would deprive the property of the rights and privileges enjoyed by other properties in the single family residential 7200 zone. Not only are siting options limited, but the size and shape of the structure are further curtailed and dictated by the steepness of the topography and location of the creek and floodplain. On the one hand there is need to provide adequate square footage for residential use inside and out consistent with other development rights; on the other hand, there is a need to protect the floodplain and creek from harmful impacts, reduce potential for soil erosion, and avoid or ameliorate other adverse impacts of the project on the remaining property or the surrounding neighborhood.

5. The height and size of the project are modest in relation to development standards, and are below those authorized for residential structures. As an example, lot coverage allowable for this sized lot is 2,587 sq. ft. under the code. Section 23.44.010C. Applicants are using only 1,644 sq. ft. in lot coverage for the project as placed and designed. Authorized height commonly is 35 ft. from grade to roof ridges where there are pitched roofs of this type. Section 23.44.012B. The project height to the roof ridge from grade here is a maximum of 30 ft. and that height exists on less than half of the structure.

6. Nor does the project go beyond the minimum necessary to afford relief or constitute a grant of special privilege. The project is of comparable size to other residences of the area, and, as illustrated above, it contains less height and covers less of the property than what would normally be allowed under the Code. Most of the rear portion of the residence which intrudes into the rear yard is only one story. That story is 15 ft. high from grade to the roof ridge at the southwest corner of the residence. It is only slightly higher at the southeast corner. The second story section is higher, but only about seven and one-half feet (7-1/2') of this story extends into the rear yard and then for only a portion of the width of the residence. The second

story roofline is at 28 ft. from grade at the rear setback line only on the southeast edge of the residence. It is not as high from grade at its western end in the middle of the project because of the higher grade there. Nor is it as high the further it extends into the rear yard, since the roof slopes downward in that direction.

7. Property or improvements in the zone and the public welfare will not be materially affected detrimentally by the variances. Only about 5 ft. of appellant's residence will be behind the project. At that point, the proposal is 15 ft. from the rear property line. Appellant's home is about 5 ft. beyond that line, so that a total of 20 ft. of open space exists between the two residences at that point. In addition, appellant's property and residence is uphill from the proposal. Therefore, even at the point of overlap he will be able to look over most of the proposed residence to the ravine beyond. Because of the downhill slope, he will still have privacy and the actual height of the residence will not be as apparent from his property. Additionally, while some of his view will be impacted, most of it will not. He will still be able to see the creek bed and vegetation in the ravine from the rest of his residence.

8. Siting and development of the project as proposed under the variances requested would be less detrimental to the site and the surrounding area than other development alternatives proposed by appellant. More open space and privacy would be maintained with the present siting; there would be less adverse impact on the creek, floodplain, and ravine; mature evergreens would be preserved and would mask the height of the structure from the roadway and other properties; and more natural vegetation of the site will be preserved and enhanced. Furthermore, using an existing foundation cut should reduce any risk of slides on the site.


9. Strict application of the code would cause undue and unnecessary hardship. In addition, the variances requested are consistent with the spirit and purposes of the code and policies. Requiring movement of the structure further northward towards the creek would require more grading and foundation work which would be considerably more expensive for applicants as well as more threatening to soil stability. Mature trees and a more level and usable outdoor space by applicants would be lost in the process. Also, greater impacts to the floodplain and creek bed would occur. In addition, extending northward would not allow access from grade to the lower level of the house without intruding into the floodplain. With the proposed design and siting, adequate separation, open space, and privacy would exist; the character of the neighborhood and the natural environment would be preserved; and the single family housing stock of city would be increased. These are all goals and policies of the land use code. See Sections 23.16.002A "Area Designation Policy", "Bulk and Siting Policy", and "Single Family Residential Use Policy". Moreover, design, siting and landscaping as planned would promote SEPA policies. Section 25.05.675 et. seq.

10. Accordingly, the grant of the variances requested as conditioned by the Director should be affirmed.

Decision

The decision of the Director is affirmed. The variances requested are granted as conditioned by the Director.

Entered this 9th day of May, 1990.


Dona Cloud
Deputy Hearing Examiner

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 party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.