

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MONTA K. BALLARD

FILE NO. MUP-88-002(V)
APPLICATION NO. 8707591

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

Introduction

Appellant, Monta K. Ballard, appeals the decision of the Director, Department of Construction and Land Use, to deny variances required for a deck at 7703 Sunnyside Avenue North.

The appellant exercised the 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 22, 1988.

Parties to the proceedings were: appellant by her husband, Gary Ballard, and the Director, Department of Construction and Land Use, by Faith Lumsden, 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 Ballards constructed a deck addition to their home at 7703 Sunnyside Avenue North without obtaining the required permit. The Director determined that variances would have been required. The Ballards filed a master use permit application for the necessary variances. The application was denied by the Director and this appeal followed.

2. The property involved is a lot at the corner of North 77th Street and Sunnyside Avenue North. The lot contains 4,000 sq. ft. of area and is developed with a single family residence and carport. The structure covers about 1,768 sq. ft. or 44 percent of the lot, prior to the deck addition. The setbacks, prior to the deck addition, were 13 ft. 7 in. on the east or front side, 10 ft. on the south side, 6 ft. on the rear and 3 ft. 2 in. on the north side.

3. The deck addition measures 16 ft. 8 in. by 9 ft. 1 in. plus steps and extends to within 11 in. of the south property line. The floor of the deck is elevated approximately 4 ft. above grade to coincide with the first floor level of the house. A solid wall or fence encloses the deck from the ground to approximately 4 ft. above the floor of the deck for a total height of over 8 ft. Lot coverage with the deck is 1,919 sq. ft. or 48 percent.

4. The deck increases the property's lot coverage nonconformity. The property is allowed up to 35 percent or 1,750 sq. ft. coverage, whichever is greater. Section 23.44.010C. A variance would be required from that provision.

5. The minimum required side yard for this property is 10 ft. Section 23.44.014C. A variance would be necessary for the 11 in. deep side yard proposed.

6. Fences, walls, etc., 6 ft. or less in height, are permitted in a required yard as an exception to the setback requirement. Section 23.44.014D. The Director determined that appellant's deck would need a variance from this provision to exceed 6 ft. in height.

7. The average lot size in the area is about 4,000 sq. ft. Many of the residences on other lots in the area have decks.

8. Two nearby properties have garages which extend to, or near to, the sidewalk. One, with a deck on top, is permitted as a terrace garage because of the slope of the lot. The other appears to be in the rear yard.

9. The Ballards' house is about 1.5 blocks from Green Lake, therefore, there is considerable foot traffic past the house.

10. Exhibit 1, a portion of a Kroll map, shows a number of houses on small, corner lots with similar proximity to Green Lake.

11. A deck may be built within 18 in. of grade without increasing lot coverage and, to a certain extent, within a required yard. The Ballards find that solution unsatisfactory since part of the deck area would have to be utilized for steps down from the main floor door and the deck would be too low to capture the view of Green Lake. They also are concerned that it could obstruct motorists' view of oncoming cars at the intersection.

12. The area lost from the steps could be offset by extending the deck to the east along the house, which the Ballards did not do at the raised level because it would have blocked the view from the windows in that part of the house. With a deck as close as 18 in. to grade, a 6 ft. fence or wall around the deck would provide the desired privacy.

13. Many of Ballards' neighbors indicated in a petition and one comment letter that they have no objection to the deck, as constructed. An immediate neighbor testified in support of the variance application. Two writers object on the basis of potential precedent and lack of hardship.

Conclusions

1. Variances from the provisions of the Land Use Code may be granted only if the facts and conditions set out in Section 23.40.020C are found to be present. For the purpose of this analysis, the fact that the deck exists is to be ignored.

2. The first fact that must be found to be present is an unusual condition of the property because of which the application of the Land Use Code to the property deprives it of rights and privileges enjoyed by other properties in the vicinity. Section 23.40.020C1. Appellant urges that the combination of the property's location on a corner lot close to Green Lake, its size and the lack of private open space constitute an unusual condition. The evidence shows that there are other similarly situated properties in the area. Whether those properties lack private outdoor space was not shown, however, the property is not deprived of creating such space by the code provision. The code just requires the space to be configured differently, i.e., close to grade.

3. The second requirement is that the variance requested be the minimum necessary for relief. Section 23.40.020C2. Here, since it appears that the relief needed is for private open space and that can be achieved without further exceeding lot coverage and without exceeding the permitted fence height, the variance requested from those two provisions would go beyond the minimum necessary for relief. As to the side yard setback, some variance would be necessary even with the deck within 18 in. of grade because such deck is to be at least 5 ft. from a property line.

Because the side yard is only 10 ft. wide and even for a deck within 18 inches of grade a 5 ft. setback is required, variance would be necessary to create satisfactory open space.

4. The third factor is whether there would be material detriment to the public welfare or injury to other properties from the variances. Section 23.40.020C3. None appears to be present.

5. The fourth condition is that the literal interpretation and strict application of the provision would cause undue or unnecessary hardship. Section 23.40.020C4. Since the existence of the structure must be ignored, the cost of altering it cannot be considered in looking for undue hardship. The code allows the creation of an enclosed deck and, even without that opportunity, outdoor privacy could be achieved by fencing or landscaping the area so the requisite hardship is not present.

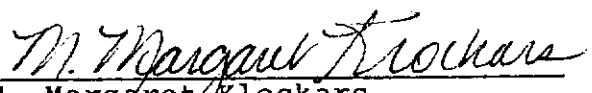
6. Finally, the variances are to be consistent with the spirit and purpose of the Land Use Code and Single Family Residential Areas Policies. Section 23.40.020C5. Intrusion of a solid, 8 ft. high structure in a street yard would be inconsistent with the policy to preserve the streetscape character though uncovered decks, close to grade, are permissible. The policies provide for lot coverage for smaller lots up to a maximum of 42 percent so the requested variance would conflict with this policy. The policy does provide for an exemption for decks close to grade from the calculation of lot coverage. A variance to allow extension of such a deck into the side yard would not conflict.

7. Since several of the required facts or conditions were not shown to be present for the lot coverage and height variances, the examiner cannot grant those variances. The variance from the side yard setback may be granted.

Decision

The lot coverage and fence height variances are denied. A variance is granted from the side yard requirement to allow a deck within 18 in. of grade within approximately one foot of the side lot line.

Entered this 6th day of April, 1988.


M. Margaret Klockars
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, 400 Yesler Building, Seattle, Washington 98104, (206) 684-0521.