

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

In the Matter of the Appeal of

JAMES P. FUDA

FILE NO. MUP-82-090(V)  
APPLICATION NO. 82-0485

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

Introduction

Appellant, James P. Fuda, appeals the decision of the Director of the Department of Construction and Land Use (Director) to deny a variance for fence height for property at 2711-36th Avenue S.W.

The appellant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on January 3, 1983.

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. Appellant applied for six variances for a deck addition to his residence at 2711-36th Avenue S.W. The Director granted all but the one to allow a fence higher than 6 ft. Appellant appeals.

2. Appellant has constructed a deck with play area and hot tub to the rear of his single family residence. The deck is elevated above grade 14 in. to 6 ft. because of the sloping condition of the lot. Appellant reduced the slope by moving earth but was unable to totally level the rear yard.

3. The deck replaced an old deck which had rotted, appellant believes because of its closeness to grade. Therefore he built the new deck higher.

4. At the south end of the deck the top of the fence enclosing it is 8-10 ft. above grade for a 12 ft. length. The fence provides privacy at that end for the hot tub.

5. At the north end of the deck the top of the fence is 12 ft. above grade for a 10 ft. length. A tree house in the children's play area stands higher than the fence. The ladder leading to the bottom of the tree house is next to the fence. The floor of the deck is some 6 ft. above grade adjacent to a lot with rough terrain.

6. Section 23.44.14.D.10. allows walls up to 6 ft. in height above existing grade in required yards.

7. Any railing on the deck at the north and south ends would exceed 6 ft. above grade. An exception from the height limitation is made, however, for an open railing 3 ft. high to comply with Building Code requirements for a deck which is 3 ft. or more above grade.

8. Vegetation higher than 6 ft. can be used in required yards without violation of the Zoning Code to gain privacy.

9. The fencing complements the design of the deck. It presents a "walled-in" look to the lot from the other lots from where it is visible. Only a part of the north end is visible from the street.

10. No variances from the fence height limitation have been applied for or granted in the vicinity of the subject property.

11. The Director's granting of the other variances needed for the deck recognized that it was needed to allow use of the rear yard which was virtually unusable because of its fairly steep topography.

### Conclusions

1. The burden is on appellant to show that his application meets all criteria listed in Section 23.40.20C for variance relief, i.e., allowance of the fence greater than 6 ft. in height above grade. He has failed in that burden.

2. The property's topography has qualified it for special consideration to allow the deck. There is nothing unique, however, that requires a fence 6 ft. above the deck to avoid depriving the property of rights enjoyed by other properties in the same zone or vicinity. The rear yard deck, with an open 3 ft. high railing, would allow enjoyment of the rear yard.

3. The variance requested would go beyond the minimum for relief, if relief were warranted, since it was undisputed that vegetation could provide the desired privacy. No reason was shown why railings could not be added to the ladder to provide safe access to the tree house.

4. The granting of the variance for fence height would not cause any injury to other property nor would it be materially detrimental to the public welfare.

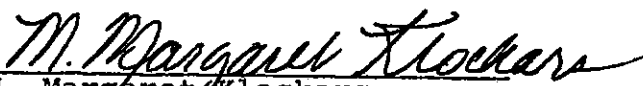
5. The unnecessary hardship caused by strict application of the code in this case is the result of appellant's misunderstanding about the need for construction permits and his building fences out of compliance with the Code requirement. That hardship cannot be addressed by variance relief.

6. The extra height and the reduction in openness in the required yard open space is not consistent with the intent of the Land Use Policies and Code.

### Decision

The decision of the Director denying the variance is AFFIRMED.

Entered this 14th day of January, 1983.

  
M. Margaret Klockars  
Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App 418 (1977); JCR 73 (1981). Should an appeal 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.