

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

SOLOMON BIRULIN

FILE NO. MUP-83-034(V)

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

APPLICATION NO. 83-204

Introduction

Appellant, Solomon Birulin, appeals the decision of the Director, Department of Construction and Land Use, to deny variances for 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 August 1, 1983.

Parties to the proceedings were: Appellant and the Director, represented by Jim Barnes, 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. Appellant constructed a deck addition to the house at 4878 Beach Drive S.W. His application for variances to legalize the addition was denied by the Director. Appellant appeals.

2. The property is a lot with around 7425 sq. ft. of area developed with a single family residence located in a SF 5000 zone.

3. The house, prior to the addition which necessitates the variance application, covered 38.2% of the lot area and provided an 8 ft. north side yard except for a 5 ft. wide, 10 ft. long porch and stairway which reduced the yard to 3 ft. for the 10 ft. length. Across the front of the house at the second level is a 6 ft. by 41 ft. deck.

4. The addition extends the second level porch at the northeast corner of the house 16 ft. to the east and 28 ft. to the south with a stairway down to the rear yard.

5. Section 23.44.10C allows up to 35% lot coverage. Section 23.44.14C requires a side yard setback of at least 3 ft.

6. The SF 7200 zone in the immediate area has a number of extremely large lots. The subject lot and its neighbor to the north are the two smallest in the immediate area in this zone. Beach front lots across the street are generally smaller but are in a different zone.

7. Houses on neighboring lots, except for the house on the northerly adjacent lot, are set much further back from the street.

8. No variances have been granted for side yards or lot coverage in this area of this zone.

9. The hillside to the east of Beach Drive behind the subject property, has springs. During rainy periods the low, level yards of the lots on that side of the street have standing water. During dry periods the yards can be used normally.

10. Most houses in the area have decks or large porches.

11. Beach Drive is heavily travelled.

12. Appellant's wife and mother have physical disabilities which make the second level deck especially convenient since the living space used by the family is on the second floor. There was reference at hearing to other living space at ground level used as a rental unit, which would not be a legal use in the SF 7200 zone.

13. The subject deck provides a view into the neighboring rear yard extending that now available from the house.

Conclusions

1. The size of the subject lot is somewhat unusual in the immediate vicinity however the record does not show that the development rights available to it have been restricted by its size to less than those enjoyed by other properties in the vicinity, i.e. the house is not unusually small and it does have a substantial view deck. The drainage condition appears to be common in this area.

2. The requested variances do go beyond the minimum necessary for relief as the property already has achieved comparable development. The desired privacy and escape from noise is available in the rear yard at ground level.

3. The appellant's family has special needs which the deck would meet. The court recently reiterated the principle that personal hardships cannot justify a variance. Martel v. Vancouver, Wn.App.250, 35 Wn.App.250, 256 (1983). To grant variances because of personal needs would be to confer special privilege which is not permitted. Section 23.40.20C(2).

4. The additional opportunity to overlook the neighbor's back yard can be viewed as injurious to that property. That harm, standing alone however, would not cause denial of the variance if otherwise justified.

5. The extra lot coverage and reduced side yard do not meet any of the special circumstances of the Single Family Residential Areas Policies so must be judged to be inconsistent with them and with the Code since the variances are not otherwise warranted.

6. It is the examiner's understanding that the previously existing stairs and landing were removed to construct the new deck. If, as a result of this decision, the new deck must be removed, it should be clear that a landing of the size of the former landing can be retained without variance or that this decision confers variance for that landing and stairs, if necessary.

Decision

The requested variances are denied.

Entered this 15th day of August, 1983

M. Margaret Klockars
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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.