

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

In the Matter of the Appeal of

DALE R. NORSEN

FILE NO. MUP-86-059(W)
APPLICATION NO. 8602424

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

Introduction

Appellant appeals the decision of the Director, Department of Construction and Land Use, to deny a design departure for building depth for an apartment building proposed for 2100 California Avenue S.W.

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 October 10, 1986.

Parties to the proceedings were: appellant, Dale R. Norsen, pro se, and the Director by Arthur Ward, 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 applied for a master use permit with design departure for an apartment building to be built at 2100 California Avenue S.W. The Director approved design departure for alley access to parking but denied design departure for building depth. This appeal challenges that denial.

2. The site of the proposed building is in a Lowrise 3 zone in an area that enjoys some view of Puget Sound and the Seattle skyline and the Cascades. The subject site has frontage on California Avenue S.W. and S.W. Hill Street.

3. The proposal is for a 23 unit, four story apartment building with balconies on the north, east and south on the three upper floors and on the west, as well, on the two upper floors.

4. The design departure for depth would allow the four balconies on the west side and the three balconies on the east side to be 6 ft. deep instead of four feet deep. The extra depth would qualify those balconies as open space but would make them no longer exempt from depth measurements. The Director found that the building would exceed the maximum allowed depth by 4 ft.

5. If the required open space is on the roof, two stair penthouses and guardrails would be added to the roof and the flue chases would have to be extended. The exhibits suggest that any view blockage would be minimal, at most.

Conclusions

1. Design departure may be permitted for one of the reasons set out in Section 23.40.010B to allow "design solutions which would result in a better development than would be allowed under the development standards of the applicable zone." Section 23.40.010A. The reasons cited by appellant as supporting his request are:

2. To provide better amenities on the site for common use of residents such as well equipped open spaces (playground equipment, benches, picnic tables, play courts) or increased quality and quantity of landscaped open space;

4. To minimize view obstruction;...

Section 23.40.010B.

2. The Director has rejected both reasons. She found that open space would not be for the common use of residents and that any view blockage by rooftop additions would be minimal.

3. The Director's determination as to design departure is to be accorded substantial weight. Section 23.76.022C(7). Appellant bears the burden of proving that the decision is clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981).

4. Appellant has shown only minimal potential for some additional view blockage from the rooftop appendages. This was recognized in the Director's decision but not found to be sufficient to qualify for design departure.

5. The Director emphasized open space for common use. Appellant, however, based his request on increased quality of open space pointing out that the wider balconies would allow greater use than 4 ft. wide balconies, balconies provide private space which is also more secure and some of the balconies are covered so could be used year around. While the examiner would agree that the quality of the open space would be improved, the Code refers specifically to landscaped open space. No definition is provided for "landscaped open space" but it is unlikely to encompass private deck area.

6. Though design departure may allow a better project than will result from strictly applying the depth restriction, as argued by appellant, appellant has not shown the decision to be clearly erroneous. Therefore, it must be affirmed.

Decision

The Director's decision is affirmed.

Entered this 27th day of October, 1986.

M. Margaret Klockars
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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) 625-4197.