

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

In the Matter of the Appeal of

KELLY VIG

FILE NO. MUP-86-074(V)
APPLICATION NO. 8602679

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

Introduction

Kelly Vig appeals the decision of the Director, Department of Construction and Land Use (DCLU), to conditionally grant a variance to construct a structure in the front yard setback.

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 November 10, 1986.

Parties to the proceedings were: appellant represented by Donald K. Davis, attorney at law; and the DCLU Director by Cheryl Waldman, 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 has applied for a Master Use Permit to construct an enclosed front porch in the front yard setback. The Director has conditionally granted the requested variance and appellant has appealed.

2. The subject property is Lowrise I zoned and is located in an area that contains a mix of single-family and multi-family residences. The lot is 25 ft. wide and 140 ft. deep and developed with a small single family residence.

3. Through credible testimony the Hearing Examiner finds that the lot is smaller than most other properties in the area and that the lot at the rear slopes steeply to the west. Appellant established that the owners of the apartment abutting to the north caused its diggings during construction to be dumped on appellant's lot prior to her purchase of the property.

4. The front porch stands partially enclosed with a roof as an unauthorized structure in that appellant began construction without a grant of a variance or building permit.

5. The residence abutting to the south having also been created out of the original 50' x 140' lot is situated on a similar 25 foot by 140 foot lot and has a front deck that is open and intrudes 5' into the front yard setback. The apartment building abutting to the north is set back 20 ft. from the property line.

6. The Hearing Examiner finds from credible testimony of the Director's representative that Lowrise I zones require a 20 foot setback or a front yard setback that is the average of the the setbacks on either side of the subject property.

7. Despite the Director's representative's admission of not having exactly measured the setbacks of the residences, the Hearing Examiner finds reliability in the measurements as was presented and further finds that appellant's testimony regarding her more exact measurements supports the Director representative's measurements. The Hearing Examiner finds that the porch intrudes 10 ft. into the front yard setback.

8. Appellant established that residences to the east are constructed within the 20 foot setback but the Director's representative has established that those properties all have eastward sloping characteristics.

No record has been made as to the exact reason for the non-compliance of these residences but the Director's representative has stated that the residences are either pre-code or previously authorized.

9. Through credible testimony and the record, the Director's representative established that the structure as proposed would not be permitted in either the single family zone or the Lowrise I zone because of its bulk.

10. The record discloses that the property owner two houses south of appellant has objected to the structure although no area resident appeared to give testimony at the hearing.

11. Appellant stated through credible testimony that a second story addition is infeasible and that the steep slope at the rear of the lot precludes expansion into the back yard and the Hearing Examiner so finds.

The site is designated environmentally sensitive because of potential for land slides.

Conclusions

1. To qualify for a variance, the applicant must show that all the facts and conditions set forth in Seattle Municipal Code Section 23.40.020.C. exist as to the request.

2. The first requirement is the existence of unusual conditions that are applicable to the property, that were not created by the owner, which causes the strict application of the Land Use Code to deprive the property owner of rights and privileges enjoyed by others in the same zone or vicinity. Seattle Municipal Code Section 23.40.020.C.1. The Director stated and the Hearing Examiner concludes that because of the site's topography, size and surroundings some variance relief should be granted to the property owner. However, no other property owner in the area has been granted a variance to construct an enclosed front porch in the required front yard setback.

3. The second requirement is that the variance may not go beyond the minimum necessary for relief and may not constitute a grant of special privilege to the property owner. Seattle Municipal Code Section 23.40.020.C.1.2. The Director stated and the Hearing Examiner concludes that granting the property owner's request would go beyond the minimum necessary in that there is no history of variances for similar structures in the required setbacks and that the structure's roof and enclosure would be excessively bulky.

4. The third requirement is that the requested variance cause no material detriment to the public welfare or injury to other properties. Seattle Municipal Code Section 23.40.020.C.3. The Director stated and the Hearing Examiner concludes that there will be no material detriment to the public welfare or other properties if the variance relief is limited to an open front porch. There is some evidence, however, of injury to neighbors' properties due to the 10' foot intrusion in the setback and the

bulk of the structure if completely enclosed as proposed.

5. The fourth requirement is that there must be a showing that the literal interpretation and strict application of the Land Use Code would cause undue and unnecessary hardship. Seattle Municipal Code Section 23.40.020.C.4. The Director stated that complete denial of the requested variance would cause undue and unnecessary hardship to the property owner because of the lot's characteristics and the Hearing Examiner so concludes. Partial grant of the requested variance would not cause undue and unnecessary hardship to the property owner.

6. The granting of the setback variance must be consistent with the spirit and purpose of the Land Use Code. Seattle Municipal Code Section 23.04.020.C.5. The Director stated that adopted multi-family policies state that the purpose of the front yard setbacks is to maintain established patterns but that flexibility allows for in-fill if the development is compatible in scale and siting with other development. In that no other property has an enclosed porch in the required front yard setback, the Examiner concludes that the requested variance is not consistent with the spirit and purpose of applicable policies and standards of Lowrise I designated area. Chapter 23.45, Seattle Municipal Code.

7. As all of the facts and conditions required for variance relief to enclose the structure are not present, the Director's partial grant of the variance is affirmed.

Decision

The front yard setback variance is conditionally granted as follows:

The front porch is limited to 10 ft. in depth, 15 ft. in width, not to exceed 3 ft. in height above existing grade, no roof or enclosures are permitted but a 4-foot high open railing shall be allowed.

Entered this 24th day of November, 1986.

Roger H. Shimizu
Roger H. Shimizu
Hearing Examiner Pro Tempore

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.