

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JEFF BARRECA

FILE NO. MUP-81-092(V)  
APPLICATION NO. 81285-0387

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

#### Introduction

Jeff Barreca, appellant, appeals the decision of the Director of the Department of Construction and Land Use (Director) to conditionally grant variances for property at 2612 Warren Avenue North.

The appellant exercised his right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on March 23, 1982.

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. In 1979, appellant's agent applied for variances to allow construction of a balcony addition to the house at 2612 Warren Avenue North, the subject property. The variances were granted with the condition that the deck be uncovered and at ground level.
2. Appellant applied again, in October, 1981, for a master use permit to permit the construction of the deck. The same variances were determined to be required. The variances were again conditionally granted for a ground-related structure only. Appellant filed this appeal.
3. The property involved is a sloping lot, measuring 50 by 53 ft. developed with a single family residence. The rear slopes steeply. The house leaves a front yard setback of 9 ft., north side yard setback of 4 ft., south side yard of 1 ft. and a rear yard setback of 13.5 ft. where Sections 24.20.090 and 24.20.150 together establish 10.53 ft. as the minimum requirement for the rear yard.
4. The existing structure covers about 58 percent of the lot where the maximum permitted is 35 percent according to Section 24.20.100.
5. The proposed deck would be 6 ft. by 12 ft. 10 in. leaving a rear yard setback of 5 ft. and increasing lot coverage to 59.77 percent. A further variance from Section 24.14.040 would be required to permit the expansion of a building nonconforming as to bulk.

6. The lot is in a Single Family Residence High Density (RS 5000) zone. Fifteen of the 16 lots in the block with the subject property are undersized and have similar-sized yards.

7. The deck would extend from a second story dormer at the rear of the house. The appellant objects to the ground level or "ground-related" condition because of the lack of sunlight in the rear yard. A deck at the second story would have better access to the sunlight and have a more open feeling.

8. Since the lots in the block are quite small the houses are extremely close to each other. The house to the east, adjacent to the subject property, is close to its rear property line bringing the deck very near to that house.

9. Other residents expressed concern about fire hazard, privacy and nuisance from the use of the deck.

10. Appellant's dormer, built with many windows, has reduced the privacy of the nearby homes. The deck could further reduce the privacy. Irresponsible behavior at the second story could also result in nuisance or hazard because of its proximity to the other house and elevation above it.

11. Appellant maintains that his house is more over-shadowed than the others in the block so his need for a second story deck is greater. The Director's representative, an environmental specialist, did find the rear yard to have some light on all of her three visits. The yard has a steeper slope than others.

12. Because of the slope of the lot a rear, main floor deck would be 12-15 ft. off grade. A ground level deck would be more than the permitted 12 in. off grade because of the slope.

#### Conclusions

1. The size of the lot and the lot's topography are conditions causing some hardship to appellant in creating a usable outdoor space without violating the bulk standards of the ordinance. The decision of the Director to grant the variances for a ground-related deck offers relief of that hardship. Such variance would not confer special privilege because of the size and steepness of the lot.

2. Variances to allow a second story deck would set an undesirable precedent for the area leading to further crowding. The second story deck at this location has the potential to cause injury to the property below it.

3. The variances, as conditioned, would comport more with the intent of the Single Family Residential Policies than variances allowing an elevated deck.

#### Decision

The decision of the Director to conditionally grant the variances is AFFIRMED.

Entered this 17th day of April, 1982.

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.