

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ZOFIA KRZESZOWSKI

FILE NO. MUP-86-015(V)
APPLICATION NO. 8506570

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

Introduction

DCLU granted two variance approvals required for construction of a second story at 4606 S.W. Trenton Street.

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 April 28, 1986.

Parties to the proceedings were: appellant, pro se; applicant by Rick Anderson; and the Julia Gibb, land use specialist, representing the DCLU Director.

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. The site is developed with a single family home at 4606 S.W. Trenton Street in Seattle. Applicant began construction of a second story addition, then was halted due to the requirement for obtaining a variance from DCLU.

2. The site is zoned Single Family 5000 (SF 5000). The house faces south onto S.W. Trenton Street and the lot is generally flat. The house to the east also faces south onto Trenton; the house to the west faces west and is on the corner of Trenton and Fauntleroy Way.

3. The proposed second story addition continues upward from the existing facades and ends in a modified pitched roof. The original house extends into the front yard and is nonconforming as to required front yard, which is 12.5 ft. from the lot line.

4. DCLU granted a variance to provide less than the minimum required front yard of 15 ft. for the proposed 12.5 ft. DCLU also granted a variance to expand a nonconforming structure.

5. Sixteen letters and one petition were received during the comment period. Four letters favored the proposal; a supporting petition was signed by 13 residents (four more individuals signed the petition but later rescinded their support). Ten letters opposed the application, citing reasons of view blockage, that the addition was substantially completed before variance application was made, and because of a concern that granting the variance would be an unfair advantage.

6. Applicant's site location near the block end, between two houses, one on a corner lot with a side yard adjacent to applicant's front yard, precludes averaging the front yards of adjacent residences.

7. From a physical, site comparison basis, if the two actual adjacent yards were averaged, the result would be a 10.5 ft. average setback from S.W. Trenton Street (8.5 and 12.5 ft.) Applicant's front yard setback is 12.5 ft. from S.W. Trenton Street.

8. Of the houses on the north side of S.W. Trenton between Fauntleroy Way and Fauntleroy Place S.W., including the subject site, four have south-facing yards less than that of the subject house: 8.5 ft., 10 ft., 12 ft. and 11 ft. Three of these four houses have side yards facing south. Two houses have yards which are bigger than that of the subject site: 36 ft. and 20 ft. The house immediately east of the subject house has the same setback as the site: 12 ft.

9. The front yard is located adjacent to a shallower side yard of the corner lot house facing west. The house was built in 1945, and its presently nonconforming front yard was not created by the applicant. At least seven properties in the vicinity have received variances as to required front, rear and side yards. Credible testimony indicates that the reason work on the second story addition had begun without application for a variance was due to an error by the architect. The architect measured the front yard from the most prominent landmark which contradicted earlier engineering drawings indicating a front yard setback of 12.5 ft.

10. Applicant's proposal to extend the single family residence with an addition of a second story from the existing wall would amount to providing 2.5 ft. less than the minimum required front yard. Requiring an additional 2.5 ft. setback of the second story front wall, from the existing first story wall, would still be possible by extending the second story further to the north due to a deep rear yard. The view blockage resulting from this second story addition would still exist. An additional structural difficulty of supporting a second floor by requiring a setback of 2.5 ft. from the first floor would result.

11. Other two story single family residences are located within the immediate vicinity.

Conclusions

1. The Hearing Examiner has jurisdiction of this matter pursuant to Chapter 23.76, Seattle Municipal Code.

2. The DCLU Director's decision is given no deference. Seattle Municipal Code Chapter 23.76.22(C)(7).

3. Seattle Municipal Code Chapter 23.40.20(C)(1-5) provide for the conditions which must be met in order for a variance to be granted in this case. In summary, such conditions include the following:

unusual conditions applicable to the subject property, which were not created by the owner or applicant, where strict application of the code would deprive the property of rights and privileges enjoyed by other properties in the vicinity; the requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity; the granting of the variance will not be materially detrimental to the public welfare or injurious to the properties of the vicinity; the literal interpretation and strict application of these requirements would cause undue and unnecessary hardship; and the requested variance would be consistent with the spirit and purpose of the Land Use Code.

4. The strict application of the Code in this case would deprive the owner of rights and privileges enjoyed by other properties in the same vicinity and would not constitute a grant of special privilege in the vicinity of the site due to variances granted for other front yards in the vicinity. Unusual conditions applicable to the subject property exist in that the front yard is located adjacent to a shallower side yard.

5. The requested variance does not go beyond the minimum necessary to afford relief, as it would extend the existing front wall to the second story and not further encroach into the front yard.

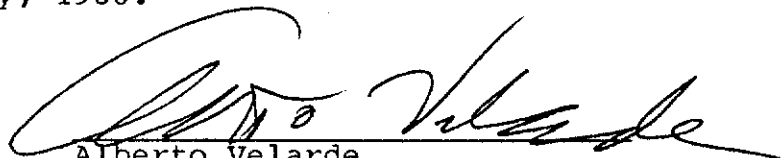
6. A strict application of the Code could only lead to a 2.5 ft. setback of the second story front wall from the existing first story wall. Since the applicant could still build a second story, granting of this variance would not be materially detrimental to the public welfare due to view blockage and the existence of second story homes in the vicinity.

7. Strict application of the Land Use Code would cause unnecessary hardship to the applicant due to the relatively slight difference of 2.5 ft. between the required and proposed second floor setback, and because of the additional structural difficulty of supporting a second floor setback 2.5 ft. from the first floor. The requested variance is consistent with the spirit and the purpose of the Land Use Code and adopted policies.

Decision

The decision of the DCLU Director is AFFIRMED.

Entered this 12 day of May, 1986.



Alberto Velarde
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.