

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

THEO VAN SOEST

FILE NO. MUP-86-053(V)
APPLICATION NO. 8601812

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

Introduction

Appellant, Theo van Soest, by Construction and Development Services, Inc., appeals the decision of the Director, Department of Construction and Land Use, to deny variances for a deck at 5319 S.W. Admiral Way.

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 September 29, 1986.

Parties to the proceedings were: appellant, pro se and by John Crull, Construction and Development Services, Inc., and the Director, Department of Construction and Land Use, by Malli Anderson.

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. Some seven years ago appellant contracted to have a bridge or deck constructed from the alley to the side entrance of his single family house at 5319 S.W. Admiral Way. This year the Department of Construction and Land Use received a complaint regarding the deck and found a permit had not been obtained for its construction and it did not conform to the Land Use Code. Appellant applied for the necessary variances and the Director, Department of Construction and Land Use, denied the application.

2. The 5,000 sq. ft., SF 5000-zoned lot slopes down from the alley at the rear to Admiral Way. The house is situated about halfway down the lot.

3. Most lots in the area are sloping. Many houses are sited closer to either the street or alley than the subject house.

4. Prior to the addition of the entry deck, concrete steps, about 9, led down from the parking space beside the alley to the rear yard and then steps led up to the kitchen door. In the front yard some 12 steps lead from the street to the front yard and then another series of steps lead to the front door.

5. The entry deck was designed to reduce the number of steps and, with a removeable ramp, could make the house accessible to wheelchairs.

6. The deck is 4.6 ft. wide from the alley and widens to 8 ft. at the house. The degree of proximity to the side lot line is the subject of disagreement between appellant and his neighbor

but the deck is at least as close as 1 ft. The deck is 18 in. above grade for the first 10 ft. and then, because of the topography of the lot, it is 4 ft. 2 in. above grade. A railing in the nature of a wall with decorative piece on top extends at least 6 ft. above the decking.

7. The deck was located close to the lot line to avoid conflict with the entrance to the basement since 4 ft. 2 in. headroom would not have been sufficient for that entrance. The height above grade was that of the existing main floor entrance.

8. The deck is along the property line on the northeast side of the complaining neighbor so would not affect the neighbor's sunlight.

9. Many properties in the vicinity have decks and other improvements near the side lot lines so the subject deck would not be a departure from an existing pattern.

10. The deck allows for wheelchair access for several physically disabled relatives but it does not meet the state standards for handicapped access which would allow it to be located in a required yard.

11. The Director found the deck to be in violation of Section 23.44.14.D.9 which requires a 5 ft. side yard setback for decks over 18 in. above grade and of Section 23.44.14.D.10 which limits certain structures which are permitted in a side yard, such as fences, to 6 ft. height.

12. The neighbor on the southerly side is disturbed by noise made by children cared for by appellant's wife in her family day care home business. Vines from a trellis over the deck also encroach on the neighbor's property.

13. Many letters were received from residents in the vicinity either supporting the appellant, commenting on the pleasing aesthetics of the deck, or opposing the variance, chiefly because of the effect of the deck on the complaining neighbor.

14. Gerda van Soest is licensed to operate a family home day care center for six children.

Conclusions

1. Variance from provisions of the Land Use Code may be granted only when all of the conditions required by Section 23.40.020.C are found to exist. The first of those is an unusual condition of the property not caused by the applicant because of which strict application of the code provisions deprives the property of rights or privileges enjoyed by other properties in the vicinity. Section 23.40.020.C.1. Here, the property slopes and the house is designed and situated so that stairs are required from either the alley or street. Added to that condition, which alone is not unusual, are two other conditions: the entry to the house in the side and the stair entry to the basement extending into the 5 ft. side yard. The sloping condition makes a bridge necessary for wheelchair access and the two entries forces any access into the required side yard. The topography of the site is such that any bridge with required railing would be higher than 6 ft. above grade for part of the distance.

2. The second requirement is that the variance not exceed the minimum necessary for relief and not confer special privilege on the applicant. Section 23.40.020.C.2. The variance from the side yard setback requirement is the minimum necessary for relief to achieve wheelchair access given the location of the two entries. The wider portion of the deck cannot be reduced because of the space needed for turning from the bridge to the door opening. The variance for 10.5 ft. height does exceed the minimum necessary for relief. The minimum would be 4 ft. 2 in. to the

deck plus the height for the standard safety railing. Variance to this extent would not confer special privilege.

3. Third, any variance is not to be materially detrimental to the public welfare or injure any property. Section 23.40.020.C.3. No material detriment to the public welfare from an access deck is reasonably foreseeable. The main injury to the adjacent property complained of is noise from children at play. An additional 4 ft. setback would not be likely to reduce that noise appreciably. Unfortunately, reducing the height of the structure to more closely comply with the code requirement may increase the noise heard from the adjacent property.

4. The code restrictions must be shown to cause undue and unnecessary hardship. Section 23.40.020.C.4. Here, because of the topography and the configuration of the house, the code restrictions would prevent the applicant from providing access for handicapped persons. Though the code does provide an exception for standard handicapped access, that does not provide relief when non-standard access is deemed more suitable to the site.

5. Finally, the variance must be consistent with the spirit and purpose of the Land Use Code and Single Family Residential Areas Policies. Section 23.40.020.C.5.


6. The policy intent includes maintaining the city-wide pattern of open spaces between houses. p. 23-11. Implementation Guideline 5 states that access bridges and decks may be in required front and rear yards but shall not be permitted in required sideyard setbacks. p. 23-12. The code provides several exceptions from the 5 ft. setback requirement including uncovered porches and steps, but no closer than 3 ft. to the side lot line, and barrier-free access facilities that meet state regulations. Otherwise structures must observe the 5 ft. setback. It appears that the application cannot meet this fifth requirement because the policy of protecting side yards from intrusions is so clear. While variance from code requirements is permitted it must be consistent with the spirit and purpose of the policies as well and the variance from the side yard requirement would not be. A minor height variance would be consistent with the spirit and purpose of the policies and code.

7. Because all five conditions must be found to be present to grant a variance and the fifth is not, the variance from the side yard setback requirement cannot be granted. Because all five conditions are present for a limited variance from the height restriction and because that variance would be needed if the deck could be altered to meet the state rules for barrier free access, which would allow it to remain in its present location, a variance from the height restriction should be granted.

Decision

The variance to allow a deck in the required side yard is denied. The variance to allow a structure over 6 ft. in height in a required yard is granted to the extent of 4 ft. 2 in. or additional height necessary to meet state regulations for barrier free access plus the height of a fence or railing meeting barrier free access standards or other safety regulations.

Entered this 14th day of October, 1986


M. Margaret Mockars
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.