

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

In the Matter of the Appeal of

JACK THOMAS

FILE NO. MUP-86-051(V)
APPLICATION NO. 8600798

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

Introduction

Appellant, Jack Thomas, appeals the decision of the Director, Department of Construction and Land Use, to deny a lot coverage variance for property at 9836 Rainier Avenue South.

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 23, 1986.

Parties to the proceedings were: appellant, represented by Frank W. Payne, Payne and Verzani, and the Director, Department of Construction and Land Use, by Patrick Doherty, associate land use specialist.

No correspondence or testimony was received in opposition to the application.

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 to approve the construction of a boat lift, deck and two finger piers at 9836 Rainier Avenue South. The Director determined that certain variances would be required. The variances were denied. This appeal followed.

2. The property is an SF 5000 zoned lot on a 5,085 sq. ft. waterfront lot which is mostly underwater. A single family residence has been constructed on the steep slope to the water and partially over water.

3. Other lots along the lake in the vicinity are similarly sized and are also characterized by shallow and steep dry land portions with large houses built partially over water.

4. In 1977, shoreline variances for overwater development were granted for three single family residences, the subject property and two lots to the south. Lot coverage was not addressed as a specific issue but the plans approved in the permits included lot coverage greater than the maximum then allowed by the Zoning Code.

5. Appellant constructed his house in 1981 following the approved plans. The plans included a boat garage several feet above water level. In 1982 or 1983 when the house was finished the appellant constructed two finger piers extending out from each side of the boat garage. They were built over existing pilings. The piers had not been included in the approved plans. The applicant constructed a boat lift, not shown in the plans but

necessary if the boat garage was to be utilized. Finally, in 1984, the appellant added decking to the boat lift structure. His intent was to utilize the space created by the structure, improve its appearance and add stability to the boat lift.

6. The lot coverage with the finger piers and deck covering the moorage would be 42 percent.

7. Section 23.44.10.C restricts lot coverage to 35 percent.

8. To utilize the boat lift there must be some way to disembark from the boat prior to its being lifted. The finger piers provide this and also a way to load and unload the boat.

9. The northerly finger pier borders the property line. It creates a small moorage area or slip used by the neighbors to the north.

10. The northerly pier represents approximately 110 sq. ft. of lot coverage or 2 percent. The new decking represents 182 sq. ft. or 3.5 percent. Measurements for the other finger pier are not provided on the plans but would amount to less than one percent coverage.

11. No other properties in the area were found to have secured variances for lot coverage. The percent coverage of other lots in the vicinity had not been ascertained by either party.

12. The other two lots which obtained shoreline approvals with the subject property did not have pilings extending out as far into the water as the subject property.

Conclusions

1. Variance from provisions of the Land Use Code may be granted if all of the conditions set forth in Section 23.40.020.C are found to be present.

2. The first requirement is for some unusual condition of the property which prevents the property, because of the code restriction, from enjoying rights similar to those enjoyed by other properties. Section 23.40.020.C.1. In this case the lot was described as being virtually identical to the two properties to the south which have been similarly developed and very similar to the other waterfront lots in the vicinity. The only difference cited was the existence of the pilings which supplied the foundation for the finger piers and boat lift. Utilization of the pilings, other than for the boat lift, would increase lot coverage. Appellant's argument would be that he is denied the right to fully utilize improvements on his property if he is not permitted the excess lot coverage. He would also maintain that the unusual property condition is a boat garage above water without access which was not created by him in that the original plans which were approved contemplated access. While the condition of existing pilings may arguably relate to increased lot coverage from the piers, there is no relationship between it and the decking covering the boat lift.

3. The second requirement is that the variance not exceed the minimum necessary for relief nor confer special privilege. Section 23.40.020.C.2. Here, the property conditions indicate no need for the extra lot coverage for the deck so variance for that would exceed the minimum necessary for relief. The variance to allow lot coverage by the finger piers appears to be the minimum necessary to get boat access and utilize the existing pilings.

4. Next, the variance cannot cause material detriment to the public welfare or injury to other properties. Section 23.40.020.C.3. None is reasonably foreseeable from the extra

coverage for the finger piers. Instead of permitting trespass on the next lot, the northerly pier provides a moorage spot for a small boat on that property. Since the piers are nearly at water level they would have no effect on view or light or air passage.

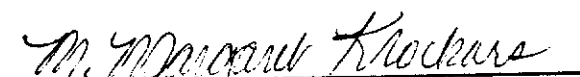
5. The fourth consideration is whether strict application of the lot coverage restriction would cause undue and unnecessary hardship. Section 23.40.020.C.4. Without some relief from the lot coverage restriction, there would be great difficulty in utilizing the boat garage since after attaching the boat to the lift, one must disembark before using it.

6. Finally, the variance should be consistent with the spirit and purpose of the Land Use Code and policies. Section 23.40.020.C.5. The code allows variance if the above conditions are met so, to the extent they are, the variance would be consistent with the code. The Single Family Residential Areas Policies are not specific about the policy intent for lot coverage regulation except "to recognize and preserve the streetscape character of individual clusters of housing units in City neighborhoods." Seattle Municipal Code p. 23.16.002. Assuming that assurance of light, air and open space is also intended, the variance for the finger piers would be consistent with the policy since they are close to the water so would not affect light or air and would have an imperceptible effect on open space given the expanse of Lake Washington.

Decision

The variance for lot coverage is granted to the extent necessary to allow the two existing finger piers but not for the decking over the boat lift.

Entered this 8th day of October, 1986.


M. Margaret Klockars
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.

