

ORDER ON MOTION FOR RECONSIDERATION
HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

VICTOR OKINCZYC

FILE NO. MUP-87-077(V)
APPLICATION NO. 8707064

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

This matter came before the undersigned following the appellant's motion for reconsideration of the Findings and Decision of the Hearing Examiner entered in this matter on February 14, 1988. The motion for reconsideration was received on February 26, 1988. A response to the motion for reconsideration was received from the Seattle Department of Construction and Land Use on March 7, 1988. The Examiner has considered the appellant's motion, City's response to the motion, the testimony and exhibits and is fully informed. Now therefore it is

ORDERED that Finding of Fact No. 8 is hereby amended to read as follows:

"8. There is no admissible evidence that construction of the balconies would adversely affect light, privacy and the views of parcels situated south of the subject property. However, there is evidence that other properties along Alki Avenue S.W. and Harbor Boulevard are developed with balconies or decks which enhance the owner/tenants enjoyment of the northerly views of Puget Sound."

It is further ORDERED that Finding of Fact No. 11 is hereby amended to read as follows:

"11. To comply with the code, the balcony addition would have to end 4 ft. 4 in. from the north facade of the building, making the addition more complex and costly. Denying the variance would result in a structural appearance which is not in keeping with the intent of the modulation required by the bulk requirements of the Land Use Code."

It is further ORDERED that Conclusion No. 3 is hereby amended to read as follows:

"3. Granting the variance would not be injurious to property or improvements in the zone or vicinity. There is no persuasive evidence that granting the variance would be materially detrimental to the public welfare."

It is further ORDERED that except as amended above, the February 11, 1988 Decision is affirmed.

Entered this 24th day of March, 1988.

Christopher E. Mathews
Christopher E. Mathews
Hearing Examiner Pro Tempore

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

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Introduction

Victor Okinczyc, appellant, appealed the decision by the Director, Department of Construction and Land Use, to deny a variance to allow construction of a balcony addition to an existing apartment building.

The appellant exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

A public hearing was held on January 27, 1988.

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 of law and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Victor Okinczyc applied for a Master Use Permit to allow the construction of a balcony addition to the front of an existing apartment building located at 1356-1358 Alki Avenue S.W. in Seattle. The existing structure was built prior to 1952 as a single family residence; was legally converted to apartments in 1958; and in 1969, was converted from four units to eight units by adding a third floor.

2. In conjunction with the addition of a third floor in 1969, a variance was granted to allow expansion of a nonconforming structure and to allow less than the required side yard setback on the north (northeast) side of the building. The variance allowed the third floor addition to be aligned directly above the existing nonconforming wall rather than being set back 8 ft. 6 in. (8' 6") from the side property line, as required in 1969.

3. The required setback under current development standards is 8 ft. (8'). The north (northeast) side yard currently varies from about 3 ft. 8 in. at the front to 2 ft. 3 in. in the rear.

4. The applicant's proposal requires both a side setback variance and a front setback variance, but the applicant failed to request the front setback variance and the Hearing Examiner lacks jurisdiction to rule upon such a request now.

5. The Director determined that a variance to reduce the side setback from 8 ft. (8') and to permit a 4 ft. 5 in. intrusion into the front portion of the north (northeast) side yard should be denied.

6. The properties to the north and south along Alki Avenue S.W. are residential in a mix of single family, duplex, triplex, four-plex and a few apartment buildings of five or more units. The land to the rear of the subject property rises sharply to the

Alki Bluff and is designated as a greenbelt. There is an unobstructed view of Puget Sound looking to the west (northwest) from the front of the subject property across Alki Avenue S.W. Most structures along Alki Avenue have picture windows and many have decks or balconies to take advantage of the scenic setting.

7. DCLU received six letters. One offering full support of the proposal; and three opposing the variance request and two letters noting general opposition. Six additional form letters in support of the proposal were introduced at the hearing.

8. There is evidence that construction of the balconies would adversely affect light, privacy and the views of parcels situated south of the subject property. However there is also evidence that other properties along Alki Avenue S.W. and Harbor Boulevard are developed with balconies or decks which enhance the owner/tenants enjoyment of the northerly views of Puget Sound.

9. There is no evidence that current or future owners of the subject property would be deprived of the right to continue using the property as an eight unit apartment building if the variance request is denied.

10. The subject property is similar in size and topography to the majority of lots or sites in the vicinity. The pertinent distinguishing feature of the subject property is that the walls of the original structure from which it evolved were placed very near to the north (northeast) lot line.

11. The applicant states that to comply with the code, the balcony addition would have to end 4 ft. 4 in. from the north facade of the building, making the addition more complex and costly. The applicant also asserts that denying the variance Chris Casper, would result in a structural appearance which is not in keeping with the intent of the modulation required by the bulk requirements of the land use code.

Conclusions

1. The placement of the building on the subject site in relation to side property lines and its proximity to Puget Sound constitute unusual conditions applicable to the subject property which were not created by the owner/applicant. The strict application of the side yard setback requirements would deprive the tenants of the front units of the privilege of having balconies which are large enough to comfortably enjoy the westerly (north-westerly) views of Puget Sound, like other properties in the same vicinity.

2. The requested variance does not go beyond the minimum necessary to afford relief and would not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity. However, there is no evidence that the balconies cannot be constructed in a manner which minimizes or eliminates the need for a variance of the side setback requirements, as has been done by the owners of other properties in the vicinity.

3. Granting the variance would be injurious to property or improvements in the zone or vicinity. One adjacent property owner commented persuasively that construction of the enlarged balconies would interfere with light, privacy and views from properties to the north. There is no persuasive evidence that granting the variance would be materially detrimental to the public welfare.

4. Literal interpretation and strict application of the applicable provisions or requirements of the land use code would not cause undue and unnecessary hardship. There is no evidence that the three (3) apartments located in the subject property that would benefit by the addition of expanded balconies cannot be rented without the improvements. Moreover, the subject apartment units are currently developed with small balconies that now permit some enjoyment of views and proximity to Puget Sound.

5. There is no persuasive evidence that granting the variance, under the circumstances of this case, would be inconsistent with the spirit and purpose of the Land Use Code and adopted policies.

6. Variances from the provisions or requirements of the Land Use Code may only be authorized when all of the facts and conditions discussed above are found to exist. The applicant has failed to establish that the requested variance: (1) would not be injurious to other properties in the vicinity; and (2) that the literal interpretation and strict application of the land use code would cause undue and unnecessary hardship.

Decision

The application for variance to relax the minimum side setback requirements is, therefore, DENIED.

Entered this 11th day of February, 1988.

Christopher E. Mathews
Christopher E. Mathews
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) 684-0521.