

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

VIDA WILLIAMS

FILE NO. MUP-89-013(V)  
APPLICATION NO. 8900431

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

#### Introduction

Vida Williams appeals the decision of the Director, Department of Construction and Land Use, to deny her master use permit application for a variance to allow a deck constructed in the required front yard at 2560 - 29th Avenue West to remain.

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 May 8, 1989.

Appellant, Vida Williams, pro se, and by Hal Kelly, and the Director, Department of Construction and Land Use, represented by Jan Mulder, land use specialist.

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. Vida Williams applied for a master use permit for a deck which had already been added to the front of her house at 2560 29th Avenue West. The Department of Construction and Land Use (DCLU) determined that a variance from the required front yard setback provision, Section 23.44.014, would be required. The Director, DCLU, denied the variance and this appeal followed.

2. The subject property is a lot developed with a single family house in an SF 5000 zone. The lot fronts on the east side of the street and the front slopes steeply up to the house set back approximately 25 to 26 ft. from the front of the lot. A driveway is cut into the slope to a basement, single car garage. The deck addition is at the main floor level, approximately 13.5 ft. above the sidewalk and extends to within 10 ft. 1 1/2 in. of the front property line.

3. Section 23.44.014A requires a front setback of 20 ft. or the average of the front yards of the structures on either side of the subject site. There is no indication in the record which applies in this case.

4. The deck addition was designed to provide a carport for a second car in front of the garage and a large, outdoor living space to capture the view and to reduce the work required to maintain a steeply sloping front yard.

5. After the Director, DCLU, denied the variance application, the appellant modified her request proposing to move that part of the deck structure to the west of the first support truss 6 ft. from the front of the house which would mean removing

approximately 60 percent of the existing deck structure. Any greater reduction would require a total reconstruction of the deck.

6. All lots in the block on the east side of the street slope down toward the street to some extent. Some slopes are much less than that of the subject property. The plans show that the subject property has an especially steep area directly below the subject deck.

7. Some houses in the immediate area have front patios placed on fill behind bulkheads. There are other houses in the area that have developed decks on top of garages in front yards to take advantage of the view.

8. The photographs in the record show that the fenestration of the house on the subject property is not oriented to the view as much as that of the houses lying to each side of it. The addition of a deck would be one way to increase the view opportunities from the house without major redesign and remodeling.

9. The deck, as now proposed, would not create a carport but would provide some functional space to enjoy the view and eliminate the need to maintain a portion of the steepest part of the slope.

10. The Director's staff found that the variance, as originally requested, would alter the established streetscape. No other detriment to the public welfare was found.

11. Letters were submitted by appellant from neighbors supporting the request for a one foot variance. The Director had received letters during the comment period generally opposed to the original request. Those letters addressed architectural incompatibility with the house and with other houses on the block, view blockage, loss of privacy, effect on property values and potential precedent.

#### Conclusions

1. A variance from the Land Use Code provisions may be granted only if the five facts or conditions listed at Section 23.40.020C are found to exist. The first is an unusual condition related to the property, because of which the strict application of the code provision would deprive the property of rights or privileges enjoyed by other properties in the zone or vicinity. Section 23.40.020C.1. The evidence shows the subject property is affected by several unusual conditions, the slope and extra elevation of its front yard and the fenestration of the view side of the house. Where other properties enjoy views from the interior of the house or have flat area for a patio or a more gradual slope for maintenance, this house does not.

2. The second requirement is that the relief requested is the minimum necessary and that the variance, if granted, would not confer special privilege. Section 23.40.020C.2. After modification of the proposal, applicant/appellant is seeking a variance of one foot. This is minimal and, given the property conditions, granting the variance would not confer special privilege.

3. The variance may not cause material detriment or injury. Section 23.40.020C.3. The comment letters address the initial proposal, which, because of its size, may have interfered with views and did have an effect on the streetscape. The evidence does not show that the variance, adding one foot to that amount of deck otherwise permitted, would have any material negative effect.

4. The strict application of the code provisions must be found to cause undue and unnecessary hardship. Section 23.40.020C.4. Here, they would since removal of the additional one foot would have negligible effect on the appearance of the

deck and streetscape but would require total reconstruction of the structure.

5. Finally, the variance is to be consistent with the spirit and purpose of the Land Use Code and the Single Family Residential Areas Policies. Section 23.40.020C.5. The front setback provision and the policy intent is to preserve the streetscape character of the neighborhood. As the small extension to the deck otherwise permitted would have a negligible effect on the streetscape, the variance would be consistent with the code's and policies' spirit and purpose.

Decision

A variance of one foot from the setback requirement is granted.

Entered this 22nd day of May, 1989.

M. Margaret Klockars  
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, Room 320, Arctic Building, Seattle, Washington 98104, (206) 684-0521.