

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

In the Matter of the Appeal of

ARNOLD I. GRAVEM

FILE NO. S-87-011

from an interpretation of the
Director, Department of
Construction and Land Use

Introduction

Arnold I. Gravem appeals the interpretation of the Land Use Code issued by the Director, Department of Construction and Land Use, for property at 10040 Rainier Avenue South.

The appellant exercised the right to appeal pursuant to the Seattle Municipal Code, Section 23.88.020, as amended.

Parties to the proceedings were: appellant, Arnold Gravem, pro se; the Director, Department of Construction and Land Use, by Guy Fletcher, senior land use specialist; the property owner, Carl Sapanen, pro se.

This matter was heard before the Hearing Examiner on December 7, 1987.

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 findings of fact shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject of the appealed interpretation is a water-front lot at 10040 Rainier Avenue South. The lot is within the Shoreline District.

2. On October 1, 1985, Carl Sapanen, the property owner obtained a variance to allow a single-family residence to be constructed closer to the shoreline than the adjacent structures. One of the conditions of approval of the variance was:

The residential setback for any principal building and/or part shall be at or behind a line subtended from the shoreside wall of the adjacent residence to the west (10038 Rainier Avenue South) at right angle to the east and west boundaries of the subject lot....

3. On October 21, 1985, Mr. Sapanen received the necessary permits from the Army Corps of Engineers to dredge some 230 cubic yards of material from in front the subject lot. He had that material placed on the subject lot as fill, except for some small amount which was trucked away, and supported the fill with a rock bulkhead on the easterly side of the lot and a concrete wall on the westerly side. Pictures in evidence clearly show that the lot has been raised by use of fill and these walls.

4. A short plat was then approved which separated the subject lot from the remainder of the parcel.

5. The site plan for the new residence showed a 20 by 12 ft. patio on the water side of the proposed residence. The residence is shown to extend to the line created by the variance. The site plan also states in a note that "grade elevations existing & finished will be the same."

6. The photographs and testimony of appellant show that a large concrete slab was poured on grade created by the fill some

12 ft. from the front of the house. Later a wooden deck was constructed which attached to the house and extended out over the concrete slab. The pictures show the deck some distance above grade when constructed and some indication of the fill being pushed up to the deck to bring it closer to grade. (Exhibits 2-7 and 4-C)

7. The deck is 10-14 inches above the concrete slab over which it extends.

8. In response to Mr. Gravem's request for an interpretation of the Land Use Code and the Shoreline Code as they relate to the deck and whether the deck violates the shoreline setback limits the Director decided that the deck is not prohibited by Superintendent's Ruling 14-79 or the provisions of the Shorelines or Land Use Codes.

9. Superintendent's Ruling 14-79 addresses the means of determining residential setbacks in the Shoreline District, ordinance section 21A.35(c). Three definitions given in the ruling are pertinent:

Structure or Building, Principal:

The principal structure or building on the lot as distinguished from any separate structures or buildings housing accessory uses. The Director shall determine which structure or building is the principal structure or building in the Shoreline District.

View Deck:

An unenclosed platform extending from a principal building toward the water and connected to the ground by supports. A view deck may provide access to the ground and/or to the principal building. An open railing of forty-two (42) inches or less in height does not constitute enclosure.

Residential Setback Line:

The closest distance to the shoreline permitted for new residential structures or parts and for permitted accessory view decks and/or view balconies.

Under the method of determining residential setback the ruling states at 7 that "porches and architectural features shall not be constructed in the shoreline setback. Eaves may project 18" into the shoreline setback." One of the reasons given for the ruling is:

2. It is a stated purpose of the Shoreline District to regulate development of the shorelines in order to preserve, enhance and increase views of the water and access to the water (Section 21A.01).

10. The subject deck has no effect on views of the water from any other property.

Conclusions

1. Appellant urges that the deck is prohibited, as part of a structure, by the Superintendent's Ruling 14-79: the deck is prohibited as a principal building or part by the condition of the shoreline variance; and even if a deck within 18 inches of grade is permitted this deck is not within 18 inches of the existing grade. His argument as to Superintendent's Ruling 14-79 is that the ruling states that the residential setback line shall apply to view decks and that porches are prohibited in the shoreline setback so the subject deck must be behind the setback line.

Under the definitions provided in the Land Use Code, the wooden platform is a deck, not a porch, which must have steps or a ramp leading to the ground. Sections 23.84.008 and 23.84.030. Therefore the prohibition in Superintendent's Ruling 14-79 against porches in the shoreline setback would not apply. View decks, under the ruling, are to be behind the setback line, however the Director interprets her ruling to exclude decks within 18 inches of grade from the definition of view decks thereby allowing them to extend beyond the residential setback line. She offers two arguments to support this interpretation of the ruling. One is her finding that decks close to grade have no effect on views of the water and the reason for using the method to establish the setback line described in the ruling is to preserve, enhance and increase views of the water. The other since the Director is interpreting her own ruling that interpretation is entitled to great weight. Federated American Insurance v. Marquardt, 108 Wn. 2d. 651, (1987). Appellant's disagreement does not overcome that weight.

2. The shoreline variance establishes a required setback for this lot. "Setback" is defined as "a required distance between every structure and the lot lines of the lot on which it is located." Section 23.84.036. For determining setback the Superintendent's Ruling 14-79 defines "residential setback line" as "the closest distance to the shoreline permitted for new residential structures or parts and for permitted accessory view decks and/or view balconies" "Structure" means "anything constructed or erected on the ground...." Section 23.84.036. The Director allows the deck in the setback by her decision that a deck within 18 inches of grade is not a structure, she has shown that, despite the definition of "structure", such decks are not regulated in Title 23, the Land Use Code so are not treated as structures.

3. The Shoreline Master Program states that "(t)he regulations of this chapter are supplemental to regulations of this subtitle and Title 23 otherwise applicable to property in the existing zones, which shall continue to apply; provided that in case of irreconcilable conflict, the provisions of this chapter shall apply." Section 24.60.285. The Director found no conflict and concluded that no purpose of the Shoreline Management Act will be furthered by treating near-grade decks differently in the Shoreline District.

4. Appellant must overcome the substantial weight which the Hearing Examiner is required to accord the Director's interpretation. Section 23.88.020E.5. That would require a showing that the interpretation is clearly erroneous. Brown v. Tacoma, 30 Wn. App. 762, 637 P.2d 1005 (1981). Though appellant offers a reasonable, alternative interpretation, he has not shown the Director's interpretation to be clearly wrong.

5. The other issue raised by appellant is whether the deck can be treated as within 18 inches of grade when the grade has been artificially created by fill. "Lot grade, existing" means "the natural surface contour of a lot, including minor adjustments to the surface of the lot in preparation for construction." Section 23.84.024. The Director's position is that the grade as of the date of the short plat, when the lot was created, is its "natural surface" for purpose of establishing existing grade. Appellant disagrees. Where there are two opinions and appellant has not shown any specific error in the Director's or authority for his, the examiner is required by the standard of review to affirm that of the Director.

7. Since appellant has not shown the interpretation to be clearly erroneous, it must be affirmed.

Decision

The interpretation of the Director is affirmed.

Entered this 22nd day of December, 1987.

M. Margaret Klockars
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Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

The decision of the Hearing Examiner in this case is the final administrative determination by the City, and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fifteen days of the date of this decision. Should such a request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.