

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

In the Matter of the Appeal of

H.G. MATSUDA

FILE NO. MUP-84-082(V)
APPLICATION NO. 8404912

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

Introduction

Appellant, H.G. Matsuda, appeals the decision of the Director, Department of Construction and Land Use, to conditionally grant variances for property at 4819 49th Avenue South.

The appellant exercised his 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 December 17, 1984.

Parties to the proceedings were: appellant, H.G. Matsuda, represented by R. Stanley Morse, attorney at law; the Director represented by Jim Barnes, land use specialist; and the applicants, William and Vicki Jones, represented by Phillip Bastian, attorney at law.

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. Applicants applied for a variance under a master use permit. This application followed a series of events which began when applicants started work on the "repair" of the front porch at 4819 49th South. An inspector from the Department of Construction and Land Use advised them that a building permit was required, they applied and a permit was issued based on the information provided. After the foundation was poured the plans submitted were found to be incorrect as to property lines and applicants were advised to apply for a variance.

2. A single family house is situated on the subject property. Prior to applicants' construction project the house had a porch or deck on the front of the house extending out approximately 14 ft.

3. The street right of way is 70 ft. wide in the block where the subject property is located. On the west side of the 25 ft. width of pavement is a 6 ft. wide planting strip, a 6 ft. wide sidewalk and an additional 10.5 ft. between the sidewalk and the lot lines which appears to be part of the front yards of the homes on the street.

4. The site plan provided by applicants for the building permit showed an 18 ft. setback to the existing porch which was to be rebuilt with a basement underneath. Exhibit 2. The plot plan submitted for the variance application shows an "existing" setback of 14 ft. and from the new foundation, 11 ft.

5. Section 23.44.14A requires a 20 ft. front yard setback. An 11 ft. setback is proposed.

6. Section 23.44.82.A prohibits the extension or expansion of a nonconforming part of a structure. The porch which was removed was in the required front yard and the proposal would extend the structure 3 ft. further into the yard so a variance is required from this provision.

7. A number of structures on the two facing block fronts are closer than 20 ft. to the front lot line. The partial block plan submitted by the applicants shows two at 10 ft., four at 14 ft., one at 15 ft. and one at 16 ft. Two of these represent decks which appear to have been built in disregard of the regulation since no permits or variances were found. Two garages are partially within the street right-of-way.

8. Persons using the proposed deck could look into appellant's living room. The deck is to be similar in height to the former porch but the 3 ft. extension would provide a better angle further reducing appellant's privacy.

Conclusions

1. A variance may be granted only if all factors listed in Section 23.40.20 are present. The Director found an unusual property condition in the perception that the lot line was located in the actual street right-of-way. The existence of this unused street has led others to build closer to the street than is permitted so there is a use, whether of "right" or not is questionable in some cases, which applicants would be deprived of if restricted to a 20 ft. setback. The "existing" porch, the one actually removed to be rebuilt, also extended into the required setback to an extent comparable to other properties. No showing was made of any right or privilege enjoyed by others denied applicants if they are restricted to the earlier nonconforming setback.

2. The requested variance may not go beyond the minimum necessary for relief. In this case, again, there has been no showing that the variances to expand even farther into the front yard than the old porch are necessary. Therefore, this requirement is not satisfied. Since the majority of the lots provide more than the 11 ft. setback proposed and there is no showing of necessity the variances would confer special privilege.

3. There probably would be no material detriment to the public welfare from the variance. Appellant asserts injury to his property from loss of privacy. Given that only 3 ft. extra is involved that injury would not be sufficient in itself to require denial of the variances.

4. Applicants will suffer hardship only because the foundation has already been poured. That hardship is not cognizable.

5. The change resulting from the extra 3 ft. would not have an appreciable effect on the streetscape since other lots have nonconforming front yards. Therefore, the variances would not be inconsistent with the spirit and purpose of the Single Family Residential Areas Policies.

6. Because not all of the variance criteria are satisfied, the variances must be denied.

Decision

The variances are denied.

Entered this 26th day of December, 1984.


M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11). Should such 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.