

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

SAFECO TITLE INSURANCE COMPANY

FILE NO. MUP-87-004(V)

APPLICATION NO. 8604157

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

Introduction

Appellant, Safeco Title Insurance Company, appeals the decision of the Director, Department of Construction and Land Use, to substantially deny variances for a deck at 5301 - 1st Avenue N.W.

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 April 1, 1987.

Parties to the proceedings were: appellant represented by Charles Gillespie, senior claims adjuster, and the Director, Department of Construction and Land Use, represented by Jim Barnes, associate 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. In 1972, a building permit was issued for 5301 - 1st Avenue N.W. to "construct sundeck addition to existing one family dwelling per plan". The permit described an 11 ft. by 28 ft. addition.

2. Joe Stassi bought the property in 1981 and obtained title insurance issued by appellant.

3. The structure purchased by Stassi had a two level deck with the upper level covered by a roof. In 1983 or 1984 he began repairing deck portions damaged in a windstorm. Following a complaint, the Department of Construction and Land Use inspected and determined that the deck does not conform to present Land Use Code standards nor would it have conformed to the standards of the Zoning Code in existence in 1972.

4. The subject property is a lot at the corner of 1st Avenue N.W. and N.W. 53rd Street in an SF 5000 zone developed with a single family residence. The lot contains approximately 2,400 sq. ft. of area.

5. Exhibit 4 shows many small lots in the zone, few, if any, smaller than 2,400 sq. ft.

6. The rear yard of the subject property joins the side yard of the property to the west.

7. The subject lot is on a westerly slope in Phinney Ridge. Exhibit 3, provided by Safeco and Stassi to the Director, shows that the rear yard of the subject lot changes approximately 1.5 ft. in elevation over almost 12 ft. under the south end of the

deck. Under the north end the change is shown to be approximately 6 inches over an 8 ft. distance. A slope is shown from north to south of some 4 ft. over a distance of some 26 ft.

8. Mr. Gillespie testified that the westward slope is much greater than depicted on appellant's Exhibit 3 and he would describe it as "unusable."

9. The photos submitted by the Director's representative appear to show a slope not unlike that depicted in Exhibit 3.

10. The elevations and the photos show that the existing ground level at the house at the southwest corner is 1.1 ft. lower than the house and that a retaining wall supports the earth at that point so that the rear yard is some 3 ft. lower. Stairs would be necessary to go from the house to the rear yard if the deck was not there.

11. The upper portion of the deck is 2.8 ft. from the rear property line. The lower portion is 3.6 ft. from the rear property line.

12. The Director has determined the rear yard required for the subject lot to be 12 ft.

13. The lower deck extends to within 2.8 ft. of the south side property line.

14. The Director has determined the side yard required for this corner lot is 10 ft.

15. The Director has determined that 49 percent of the required rear yard is covered where 40 percent is permitted. A question was raised about Exhibit 2 showing a different coverage, but calculations from those measurements result in 234.8 sq. ft. coverage for 49 percent.

16. The total area of the deck and steps is approximately 340 sq. ft.

17. The deck has a solid wood fence for privacy. Portions of the fence are as high as 6 ft. above the deck.

18. The deck is not currently covered. If covered the height would exceed 12 ft. above grade.

Conclusions

1. Variance from code standards may be granted only if all facts and conditions set out in Section 23.40.020C are found to be present. For purposes of making the determination as to whether variances are warranted, the deck must be treated as "proposed" rather than existing.

2. The first requirement is for an unusual property condition, because of which strict application of the code provision deprives the property of development rights enjoyed by other properties in the vicinity. Section 23.40.020.C.1. The lot is one of the smallest in the area, though subsized lots are common. The rear yard coverage restriction would limit the size of a deck to a size smaller than other properties, however there was no showing that rear yard coverage on other lots exceeds that which would be permitted on this lot.

3. The other property condition cited as unusual is the slope of the rear yard. The gentle slope shown in the pictures and exhibit would not preclude the use of a deck within 18 in. of grade which would be in conformance with the code provisions. If the slope is as steep as described by appellant's representative, the code provisions may deprive the property of outdoor use offered by other properties in the vicinity, however, the more

objective evidence of the picture and elevation drawings are relied upon. The difference between the floor level and grade immediately west of the house is a condition which, without small variance, would deprive the property of access to and from the rear of the house.

4. No property condition was shown which would justify a variance to exceed 12 ft. in height.

5. The second requirement is that the variance relief sought not exceed the minimum necessary for relief nor be a grant of special privilege. Section 23.40.020.C.2. While a deck higher than 18 inches which would meet the setback requirements would not provide usable space for outdoor activity, the record does not show that a lower deck covering 40 percent of the rear yard, or over 190 sq. ft., would not provide adequate space for outdoor enjoyment. That the relief requested is the minimum necessary was not proved. Variances necessary to provide stairs and a landing leading from the back of the house to grade are within the minimum necessary for relief.

6. Variance may not result in detriment to the public welfare or injury to other properties. Section 23.40.020.C.3. Because the deck, with its walls, rises so high above grade and does not observe the required setbacks, it reduces the amount of light and air or open space the adjacent property is entitled to under the code to its detriment.

7. The fourth showing required is that undue and unnecessary hardship results from strict application of the code. Section 23.40.020.C.4. It is difficult to look beyond the existence of the deck, the City's possible earlier approval of the deck and the current owner's good faith purchase of the property. There is no question that hardship is visited on him, if just from uncertainty, delay and inconvenience even if a damage claim is settled in his favor. However, that the deck is in existence must be ignored for variance consideration. If the standards are strictly applied, there would be considerable hardship because greater than the 3.1 ft. width would be needed to provide access from the house level down to grade or to a level 18 in. above grade if such a deck is constructed. The degree of variance approved by the Director is appropriate to avoid the cognizable hardship. The provision allowing a deck near grade, which could be constructed in the required rear yard and exceed 40 percent coverage, was not shown to cause undue hardship.

8. Finally, the variances requested must be consistent with the spirit and purpose of the Land Use Code and Single Family Residential Areas Policies (Policies). Section 23.40.020.C.5. The Policies state, as their intent, to preserve streetscape character and the pattern of open spaces between single family structures. The implementation guidelines require setbacks with an exception for decks close to grade but not in required side yards. The requested variances would conflict with those policies in that the streetscape would be slightly affected and the open space between two residential structures would be largely eliminated. The small variance for access would not conflict with the Policies.

Decision

The variances are denied except for a 1 ft. variance from the required rear yard setback to allow for stairs and a 4 ft. wide landing, as contemplated by the Director's decision.

Entered this 16th day of April, 1987.


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, 5th Floor, Seattle, Washington 98104, (206) 625-4197.