

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

MARGARET WATSON

FILE NO. MUP-87-045(V)  
APPLICATION NO. 8703303

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

#### Introduction

Margaret Watson (Molzan) appeals the decision of the Director, Department of Construction and Land Use, to deny a variance for a second residence on a lot at 8853 - 38th Avenue S.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 September 25, 1987.

Parties to the proceedings were: appellant, pro se, and the Director, Department of Construction and Land Use, represented by Leslie Lloyd, 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. Margaret Watson filed a master use permit application to establish for the record a second residence at 8853 - 38th Avenue S.W. The variance needed was denied by the Director, Department of Construction and Land Use. The applicant filed this appeal with the Office of Hearing Examiner.

2. Appellant bought the subject lot with its two existing residences in 1980. She did not receive a certificate of land use and local assessments at that time but was told the structures were legal. The second residence was rented at the time of the sale. She and her husband then renovated the second structure, in part with a City Light energy grant, investing some \$9,000.

3. The subject lot is zoned SF 5000 as is the property surrounding it.

4. The lot contains 6,400 sq. ft. of area. Other lots in the area are similar in size. The second residence is located near the alley. Both units have on-site parking.

5. Two structures were established by permit. Permit No. 201881 in 1921 was for a single family residence at 8853 38th Avenue S.W. An earlier permit, No. 198644, was for a "shed" at 8853-1/2 38th Avenue S.W. The original construction of the "shed" included a chimney in the middle of the roof. It either was occupied immediately as a dwelling unit or some time later, but no later than 1937.

6. Testimony and a 1937 photo of the second residence showed that the structure was not intended for garage use.

7. Appellant applied for a permit to legally establish the

second structure as a nonconforming use but the application was denied.

8. Appellant located some 12 or 13 examples of two dwelling units on one single family-zoned lot within a radius of 1.5 miles of the subject lot. In several instances the two units are in separate structures. Just two blocks away, across the street from 9023 38th Avenue S.W., there is a second house on one lot according to Elsie Kaleda. The official zoning maps show that at least three of the examples are in the same SF 5000 zone, others are zoned SF 5000 but separated by SF 7200 zoning from the SF 5000 zone where the subject lot is situated. Others are found in the adjoining SF 7200 zone.

9. No new effect on the neighborhood would result from the granting of the variance since the structures and uses have been in existence for decades.

10. Both structures have off-street parking. The small size of each assures that traffic impact would be minimal.

11. The two structures together cover some 926 sq. ft. of area, less than many single family residences. The second structure is very small and at 320 sq. ft., very similar to the size of a garage. The structures are separated by some 50 ft. The front structure is set back from the street a minimum of 28 ft. 5 in. The rear structure is close to the alley but the 12 ft. wide alley assures separation from any other structure. With the small size and good separation, the building mass or bulk would not be detrimental.

12. Eleven letters opposing this variance were received by the Director. Several of the letters show that the intent of the action, to legalize the existing use, was not clear.

#### Conclusions

1. To qualify for variance relief from Land Use Code regulations, an application must conform to all conditions stated in Section 23.40.020C.

2. The subject property has been shown to have an unusual property condition, a second residence, and that condition was not created by the current owner. Additionally, the applicant must show that strictly applying the Land Use Code provisions "would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity." Section 23.40.020 C.1. The examples provided are from a broader area than usually appropriate, however, the property condition is unusual and not one that can be expected to be found in close proximity. The evidence of other similar structures is not strong but because of the degree of the hardship involved is considered sufficient to support a conclusion that without variance the property would be denied property rights enjoyed by other properties in the zone and vicinity.

3. Assuming that the variance is warranted, the requested variance would be the minimum necessary for relief since it is for the existing structure, and would not confer a special privilege.

4. Based largely on the small size of both residences it can be concluded that the variance would not be materially detrimental to the public welfare or be injurious to other properties. Any increase in building bulk or total mass could alter this assessment so a condition should be imposed to restrict the size of the structures.

5. Denying the variance to allow the second unit to remain would cause undue and unnecessary hardship where an innocent purchaser of a long standing use has made substantial improvements and the use would not harm other properties. This situation is unlike that of a second unit within one structure where, when ordered to return it to one family use, can readily be used for

living purposes. The second structure, far removed from the first, would be of no use for usual living purposes.

6. It is the policy of the City to preserve the character of single family areas and protect the areas from the effect of incompatible uses. p. 23-8. The variance would not conflict with this policy since the use is not incompatible and, because of its long existence, it is part of the character of the neighborhood. The policies also recognize nonconforming, higher density structures and permit them to stay in residential use. p. 23-9. While the second structure does not technically qualify as a nonconforming use because proof of its existence prior to 1923 could not be obtained, the fact that it has been in residential use for decades brings it within the general intent of the policy.

#### Decision

The variance is granted subject to the following condition:

The second (rear) residence shall not be expanded in any way. Any addition to the floor area of the front residence of 300 sq. ft. or greater or the construction of any accessory structure of 200 sq. ft. or greater area shall terminate the variance allowing the second residential structure and the second structure shall be immediately removed.

Entered this 12<sup>th</sup> day of October, 1987.

M. Margaret Klockars  
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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, Seattle, Washington 98104, (206) 684-0521.