

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

In The Matter of the Appeal of

ANTONIE HUMPHREYS

FILE NO. MUP-89-046(V)
APPLICATION NO. 8707478

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

INTRODUCTION

Appellant, Antonie Humphreys, appeals the decision of the Director, Department of Construction and Land Use, to deny a variance to allow an expansion of a nonconforming use in a single family (SF 5000) zone by construction of a third story onto a two story multi-family structure at 3509 South Leschi Place.

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 Wednesday, October 18, 1989.

Parties to the proceedings were appellant, pro se and Claes Hagstromer, co-owner; and the Director, Department of Construction and Land Use, by Ed Somers, Land Use Specialist.

After due consideration of the evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions of law and decision of the Hearing Examiner on this appeal.

FINDINGS OF FACT

1. Appellant applied for a variance required to add a third story onto the existing two story duplex structure located at 3509 South Leschi Place. The Director, Department of Construction and Land Use, denied the variance.
2. Appellant's lot property is an irregularly shaped parcel of land with a frontage along South Leschi Place of approximately 58 ft. and a depth along the western portion of the lot of 79 ft. and along the rear of the lot of 40 ft. and along the eastern portion of the property for 57 ft. In October 1988, a portion of the lot immediately east of 3509 South Leschi Place was adjoined to the subject lot by quit claim deed. The addition became necessary following the 1988 reconstruction of the duplex structure, following a fire that occurred in 1987. The new construction encroached upon the lot immediately to the east. The addition is approximately 8.2 ft. by 46 ft. for a present total square footage lot area of approximately 3,077 sq. ft.
3. No evidence was presented by appellant concerning the topography of the lot or as to how the current structure is situated in comparison to the views of the neighboring houses. The entire area, however, is a designated environmentally sensitive area because of steep topography. Exhibit 5.
4. The subject lot is zoned SF 5000 and situated in the Leschi area of the City. The addition and the lots immediately to the east are zoned L-3. The 8.2 by 46 ft. addition has not been rezoned to conform with the original SF 5000 designation of the subject lot.
5. The lot is currently developed as a two story duplex consisting of an existing one bedroom, one bath unit on the ground floor and a two bedroom unit on the second story plus an attic.

Appellant purchased the property in mid-1987, with co-owner, Claes Hagstromer. At the time of the purchase, the structure had a legal non-conforming duplex use. Subsequent to the purchase, the structure was destroyed in an August 3, 1987, fire. Another two story duplex structure plus attic, substantially the same in configuration, was constructed in 1988.

6. Appellant's measurement of the attic ceiling indicates a four inch (4") diminution in the height of the two structures from six ft. ten in. (6'10") to six ft. six in. (6'6"). Prior to the fire, the attic was illegally used as a bedroom. The attic is presently used for storage space. The four inch difference between the current and former structures does not relieve appellant of the obligation to seek the grant of a variance to use the attic as a bedroom.

7. The application for the third story variance was filed subsequent to the purchase of the property, but prior to the fire and reconstruction. No subsequent applications for a variance were filed based upon the new construction.

8. The proposed third story would expand the current 6 ft. 6 in. attic by 296 sq. ft. into a master bath and bedroom by raising the central roof line 3 ft. 6 in. along 8 ft. of the 18 ft. peak, and 2 ft. in the west portion of the attic.

9. It is undisputed that the lot is sited near several other nonconforming multi-family structures in the SF 5000 zone. The other nonconforming structures are located at 3501 Main Street and 3502 South Leschi Place. The 3501 Main Street property had been granted a variance for multi-family nonconforming use. Appellants allege 3502 South Leschi Place was also granted a variance for a nonconforming multi-family use. No testimony or evidence was presented as to the number of units in these multi-family structures. Evidence presented by appellant indicates that at least one other property in the neighborhood may consist of a four-story structure. There is no evidence as to whether all four stories of that structure are in use.

10. There is currently no off-street site parking. The lot has an existing foundation for a single car garage. That foundation is currently filled with earth and debris.

11. Four letters, (admitted into evidence as Exhibit 12), received by the Department of Construction and Land Use, objected to the proposed addition based upon increased parking problems and the impact of additional residents. Two of the four letters were not received within the time period permitted by the Department of Construction and Land Use. For that reason the tardy letters were not considered in this decision.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over these parties and this subject matter pursuant to Section 23.76.022, Seattle Municipal Code.

2. In this appeal of the decision to deny the requested variance the Director, Department of Construction and Land Use, the appellant bears the burden of proof. Hearing Examiner Appeal Rules 1.26(a) adopted pursuant to the Seattle Administrative Code, Chapter 3.02, Seattle Municipal Code.

3. The Director's decision on a Master Use Permit requesting the grant of a variance shall be given no deference on review. Seattle Municipal Code 23.74.022.C.7.

4. The application for a variance related to the old structure on the property that was destroyed by fire. No subsequent application for a variance was filed for the new construction. However, the new construction is substantially identical to the old structure. In light of the fact that the structures are virtually identical, that the variance issue pertains to both, and in the

interest of avoiding the necessity to duplicate variance applications, the application for a variance shall apply to the new construction.

5. Section 23.44.080(C) provides that a non-conforming use that is destroyed by fire may be rebuilt to the same or smaller configuration.

6. Section 23.44.080(D) provides that a non-conforming multi-family residential use shall not be expanded.

7. Section 23.44.082(A) provides that a non-conforming use shall be prohibited from expanding in any matter that increases the extent of the non-conformity, except as necessary to improve access for disabled or elderly.

8. Variance from the code requirements may be granted only if each of the five conditions listed in Section 23.40.020 are met.

9. The first requirement is that there be an unusual condition of the property, not created by the owner or applicant, because of which the strict application of the code would deprive the property of the rights and privileges enjoyed by other properties in the same zone or vicinity. Section 23.40.020(C)(1). Appellant offers three: the location of the lot adjacent to an L-3 zone; the lot consists of both SF 5000 and L-3 zoned property; and the fire. No other evidence was presented that went to the requirement of the unusual physical condition of the property. The location of the lot does not qualify as an unusual condition since it shared by many properties in the zone and vicinity. The combination of both SF 5000 and L-3 zoned property within the same lot was a condition created by the appellant in 1988. The destroying fire, while not created by the appellant, did not deprive the owner of property rights and privileges enjoyed by others who rebuild following destruction by fire and other natural forces.

10. The second requirement is that the requested variance not go beyond the minimum necessary for relief or constitute a grant of special privilege. Section 23.40.020(C)(2). The requested variance constitutes the minimum necessary for relief to make the attic a habitable space. Comparable multi-family structures, i.e., the four story structure in the same zone and area, indicate that the variant use would not alter the main complexion of the neighborhood and not constitute a special privilege.

11. The third requirement is that the requested variance not cause material detriment to the public welfare or injury to other property in the area. Section 23.40.020(C)(3). No evidence was presented as to whether the additional height would block any neighbors' views. The neighbors objected to the variance because of a possible increase in parking demands and in residents occupying the structure. The additional parking demand can be met by clearing away the debris from the single car garage foundation and using the foundation for off-street parking. The possible additional resident does not appear to be materially detrimental or injurious.

12. The fourth requirement is that the record show that literal interpretation and strict application of the code provision would cause undue and unnecessary hardship. Section 23.40.020(C)(4). While the third story addition would increase the use of the property, the structure in its present configuration can still be used for its intended purpose. Although the attic portion was used illegally as a bedroom prior to the fire, a diminution in height of four inches in the present attic configurations does not render this space unusable as storage. Therefore, appellant is not caused unnecessary and undue hardship.

13. Finally, the variance must be consistent with the spirit and purpose of the Land Use Code and Single Family Residential Areas Policies (SFRAP). Section 23.40.020(C)(5). The SFRAP specifically addresses the expansion of nonconforming structures in the single-family residential areas providing that such structures cannot be expanded or structurally altered except to remove barriers to the elderly or handicapped. The spirit and purpose of the land

use code is to bring nonconforming uses into conformance--not to further expand their nonconformance. Thus, the variance applied for is not consistent with that spirit and purpose.

14. Each of the requirements for variance approval have not been shown to be present.

DECISION

The decision of the Director, Department of Construction and Land Use, to deny the grant of a variance is affirmed.

Entered this 9th day of November, 1989.


GAIL S. FUJITA
HEARING EXAMINER PRO TEMPORE

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 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.