

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

In the Matter of the Appeal of

JOHN KOVALENKO, JR.

FILE NO. S-76-024

from a ruling of the Superintendent  
of Buildings

The appeal is DENIED and the ruling of the  
Superintendent of Buildings is affirmed.

Introduction

The appellant, John Kovalenko, Jr., filed an appeal with the Hearing Examiner from a decision of the Superintendent of Buildings to deny the appellant's application for a use permit for the construction of a duplex at 3517-19 Carr Place N.

The appellant exercised his right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

This matter was heard before the Hearing Examiner on October 25, 1976.

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

Findings of Fact

1. The appellant applied for a use permit for the construction of a duplex at 3517-19 Carr Place N. on September 21, 1976. On this same date the Superintendent of Buildings (hereinafter, Superintendent) denied the requested permit and on September 23, 1976, published notice of this decision. The appellant filed an appeal with the Hearing Examiner on September 30, 1976, which alleged that the appellant's right to construction of a duplex on the subject property had vested prior to the effective date of a zoning code amendment.

2. Prior to August 2, 1976, Section 26.44.050(b), Seattle Code, permitted the development of a duplex structure on a lot containing less than the required total lot area as long as the lot was located in an RD zone or a zone of greater density. On August 2, 1976, however, the aforementioned code section was amended to exclude the RD zone from the lot area exception, thereby prohibiting the development of a duplex on an RD zoned lot that did not contain the minimum required total lot area.

3. The subject property is located in an RD 5000 zone and contains 4,800 square feet. A minimum lot area of 5,000 square feet is required in an RD 5000 zone pursuant to Section 26.22.090, Seattle Code.

4. In March or April of 1976 the appellant talked with a representative of the Superintendent concerning his intent to apply for a building permit to construct a duplex on the subject property. However, at this time the appellant's plans demonstrated that the appellant would need two variances

for his development and the appellant consequently did not at this time fill out a building permit application. On April 2, 1976, the appellant filed an application for the variances required for the development. The variances related to the required front yard and the maximum permitted total lot coverage. A decision concerning the requested variances was issued June 9, 1976, granting the front yard variance and denying the total lot coverage variance. The appellant returned to the Building Department and formally applied for a building permit for the construction of a duplex on the subject property on September 21, 1976.

### Conclusions

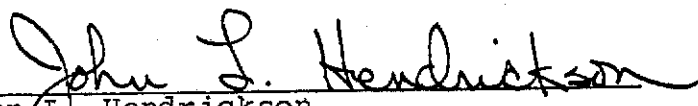
1. The appellant has not demonstrated that the Superintendent has committed any error in denying the requested permit for the development of a duplex on the undersized subject property. Since the subject property is less than the required minimum of 5,000 square feet, the appellant is not entitled to construct a duplex on the subject property unless variance relief is sought and approved. The appellant's rights to develop under the prior lot area exception for RD zoned property did not vest at the time that the variances were applied for, nor at the time that a discussion of the filing for a building permit occurred.

2. The owner of property has a vested right to put the property to a permissible use as provided by the prevailing zoning ordinances. This right vests when the owner applies for a building permit, if that permit is thereafter issued. Hull vs. Hunt 53 Wn 2d 125, 331 P.2d 856 (1958). It is clear, therefore, that the appellant was entitled to develop the subject property according to the zoning ordinances that existed at the time he formally applied for a building permit on September 22, 1976, which was subsequent to the date that the lot area exception for RD zones was omitted from the zoning code. A discussion about filing for a permit is not the same as actually filling out the application form and filing it with the Superintendent and therefore no rights vested in the appellant at that time. Additionally, no rights vested in the appellant at the time of the filing for the variances, due to the fact that by the nature of a variance application the appellant's proposal was not at that time in conformance with the zoning regulations. The courts have determined that no rights may vest with any person where the application submitted or the permit which is issued fails to conform to the zoning or building regulations. Eastlake Community Council vs. Roanoke Associates 82 Wn 2d 475, 513 P.2d 36 (1973). Consequently, the appellant's right to develop the subject property vested on September 21, 1976, when a building permit was applied for and the appellant is limited by and entitled to an application of the zoning regulations in existence at that time.

### Decision

The appeal is DENIED and the decision of the Superintendent of Buildings is affirmed.

Entered this 3<sup>rd</sup> day of November, 1976.

  
John L. Hendrickson  
Deputy Hearing Examiner