

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MR. AND MRS. ROBERT HORTON

FILE NO. S-79-028

from a determination of the
Superintendent of Buildings

The appeal is GRANTED and the Findings and Decision
of the Superintendent of Buildings are reversed.

Introduction

The appellants, Mr. and Mrs. Robert Horton, filed an appeal from a decision of the Superintendent revoking a use permit for property at 2227 Prescott Avenue S.W.

The appellants exercised their right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: the appellants, represented by Peter LeSourd and the Superintendent, represented by Joyce Kling.

This matter was heard before the Hearing Examiner on September 27, 1979.

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 subject property is located at 2227 Prescott Avenue S.W. and is zoned Single Family Residence High Density (RS 5000).

2. On October 4, 1978, variances for the front yard for 3.5 and 6.5 ft. were granted by the hearing examiner for an existing residence. The variance decision (X-78-253) held that among the unique conditions authorizing variance relief were the topography and the location of the existing residence.

3. Subsequent to the October 4, 1978 decision, it was discovered by the Hortons that the foundation on the existing residence was substandard and that the most reasonable alternative was removal of the existing residence and construction for a new one.

4. On July 3, 1979 a use permit (No. 584461) was issued by the Superintendent to remove the existing residence and to construct a new residence relying on the variance decision of October 4, 1978. The new residence was substantially similar in configuration to the old although somewhat larger in the rear and somewhat taller (an estimated 6 in.).

5. On September 10, 1979, the Superintendent determined that the permit was issued in error and it was revoked. A stop work order was posted. A timely appeal was filed by Mr. and Mrs. Robert Horton on September 17, 1979.

6. The appellants allege that no provisions were stated in the variance application which are contrary to the building/use permit in question. It is further alleged that the permit in question is for construction of a residence that meets the requirements of the variance decision (X-78-253).

Conclusions

1. The variance decision (X-78-253) gives several reasons for approving the variance. The location of an existing residence was a factor but it also appears that due to topography there were sufficient grounds to authorize a variance with or without the existing development being considered.


2. Since there was a sufficient basis to grant the variance without considering the nature of existing development, it was not an error to issue the permit to remove the existing residence and to construct a new residence based on the previous variance grant.

3. Cases such as this must be closely scrutinized in order to avoid abuse such as a deliberate attempt by a permit applicant to change his building plans after a variance hearing. The facts in this case show no such attempt by the applicant. The revised plans contain only slight modification of the original design and the Superintendent will have to determine whether these modifications should be permitted.

Decision

The appeal is GRANTED and the Findings and Decision of the Superintendent of Buildings are reversed.

Entered this 8th day of October 1979.


William N. Snell
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn. App. 418 (1977).