

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

MARGARET CEIS

FILE NO. MUP-81-024(V)  
APPLICATION NO. X-81-051

from a determination of the Director  
of the Department of Construction and  
Land Use on a Master Use Permit  
Application

#### Introduction

Appellant, Margaret Ceis, appealed the granting of variance components of a Master Use Permit application for property at 6504 S.W. Stevens Streets.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended), unless otherwise indicated.

This matter was heard before the Hearing Examiner on August 11, 1981.

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. Robert L. Boggess, applicant, applied for a master use permit to allow him to demolish one of two single family residences and construct a duplex at 6504 S.W. Stevens Street.

The Department of Construction and Land Use (DCLU) determined that variances from Section 24.26.010 to provide less than the minimum required lot area for three dwelling units, 6,500 sq. ft. required, and from Section 24.08.130 to allow two principal uses on one parcel of land were needed and granted them. A timely appeal from these decisions was filed by appellant.

2. The subject property is a through lot between Alki Avenue S.W. and S.W. Stevens Street containing 6,450 sq. ft. The lot is currently developed with a two story single family residence fronting on Alki and a one story single family residence fronting on Stevens.

3. The site is in a Duplex Residence High Density (RD 5000) zone. At least five of the lots, including the subject one, have more than one principal structure. Some large lots are developed with one single family residence, others have duplexes or triplexes.

4. Southwest Stevens Street is narrow with a 16 ft. wide area for travel and a 16 ft. right of way at the west end and a 30 ft. wide right of way between 64th Place S.W. and 66th Avenue S.W. Most traffic reaches Stevens by traveling from Admiral, turning onto 65th Avenue S.W. and turning onto Stevens, a turn made difficult by the angle, narrowness of the street and parked cars. Traffic from Alki turns onto 64th Place S.W. and onto Stevens. Stevens dead-ends a few lots west of 66th Avenue S.W. Vehicles have to back out because of the lack of space for turning around.

5. Stevens is severely congested from parked cars. Because of the difficulty of parking on Alki residents of houses fronting on Alki, such as the house on the subject lot, and visitors park on Stevens. The high rents charged for units in the area result in several residents and multiple cars per unit. Where on-site parking is provided it does not accommodate all cars.

6. The applicant proposes to provide three parking spaces under the duplex, two for those residence's use and one for use of the other house. No off-street parking is now provided for the house to be removed. If only one vehicle were associated with each unit the on-street parking situation would be improved with the removal of one car from the streets. Second and guest cars, however, must either park in the driveway/access area to the carports or on the street.

7. Variances were granted in 1972 to the subject property to structurally expand one of two principal structures on one lot and from the yard requirements to allow construction of the residence fronting on Alki.

8. The record shows no evidence of variances having been granted with regard to more than one principal use on a lot in the area, with the exception of the 1972 variance for the subject property. The instances of more than one use, then, either represent development prior to the adoption of the Zoning Ordinance in 1957 or development without permit.

The first lot east of the subject lot has three separate single family structures. The lot just west of the subject property has two single family residences. Two lots west is one with what the Kroll map shows to be a duplex and a single family residence although one unit over the garage may have been established without permit. Farther west is one more lot with two single family residences with frontage only on Alki. The lots with more than one structure range in size from approximately 4,650 to 7,500 sq. ft., the largest with three structures.

In the same block, lots of similar sizes are developed with one structure.

9. Three variances from minimum lot size requirements have been granted, one in 1968 of 682 sq. ft. for a waterfront lot, another in 1961 for a waterfront lot and one in 1969, according to the applicant and DCLU although the record submitted of variances does not show that the area variance was granted.

10. Properties on the south side of Stevens are zoned Single Family Residence High Density (RS 5000) and are developed with single family residences, many on lots nearly as large and larger as those in the subject block.

11. With regard to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, the action proposed in this application has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC 197-10-170.

12. Issues raised regarding shorelines and setback compliance are not properly part of the appeal of the variance decision.

### Conclusions

1. The only condition of the property that might be considered "unique" to satisfy the code's requirement for variance relief is the existence of the two principal structures on the lot. The nonconforming status of a property, however, (here the two principal structures where only one is now permitted) carries with it no greater right to future development than a property with conforming development. State ex rel. Meany Hotel v. Seattle, 66 Wn.2d 329, 402 P.2d 486 (1965).

2. The other instances of extra structures also represent nonconforming status resulting from development prior to the current code. Those instances cannot, alone, justify variance from the current code.

3. While the code would permit the development of one triplex structure on this lot, if it were 50 ft. larger, or a four unit townhouse, a variance to allow the second structure to expand for a total of three units on the lot would not comport with the purpose of the code. The code does not merely regulate density but bulk and location to assure adequate light, air and access. To develop a townhouse the applicant would have to meet multiple conditions and undergo a design review process.

4. The property has development at least comparable to many other lots in the vicinity and zone. The requested variances would go beyond the minimum necessary for relief. Since no other variances to permit the establishment or expansion of a second principal structure on a lot have been granted, except to the subject property, such a variance, without showing of hardship, would confer special privilege.

5. Because of the difficulties with S.W. Stevens, the variance to allow reconstruction and a new unit could cause material detriment in light of the potential for additional cars on the street.

6. The conclusion by DCLU that the variances would not adversely affect the Seattle Comprehensive Plan is hereby adopted.

7. Section 24.84.170, Standard of Review, provides that the Hearing Examiner is to give the decision of the Director no deference but consider it in conjunction with all other evidence. The burden remains with the applicant to show that his application meets the code criteria for variance. Since those criteria have not been met the decision must be reversed.

#### Decision

The decision of the Director of the Department of Construction and Land Use is REVERSED.

Entered this 25th day of August, 1981.

M. Margaret Klockars  
M. Margaret Klockars  
Deputy 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 further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981).