

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

In the Matter of the Appeal of

EDWARD R. AND JUDI J. KUEHN

FILE NO. MUP-84-019(V)
APPLICATION NO. 83-654

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

Introduction

Edward R. and Judi J. Kuehn appeal the decision of the Director, Department of Construction and Land Use, to deny a variance for property at 335 North 73rd.

The appellants exercised their 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 March 20, 1984.

Parties to the proceedings were: appellants and the Director represented by Jim Barnes, 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. Appellants applied for a master use permit to expand an existing non-conforming duplex at 335 North 73rd Street. The Director denied the variance requested. Appellants filed this appeal.

2. The duplex is on an SF 5000 zoned lot. The lot measures 56 by 102 ft. and is located midblock. Six lots to the west is the beginning of a Community Business (BC) zone along Greenwood Avenue North. Uses on the SF 5000 zone in the area are almost entirely single family. At the end of the block, but in the BC zone, there are triplexes.

3. Appellants use the upper two stories of the duplex for their own living space which consists of a two bedroom unit with sunroom, deck and hot tub. Space on the third floor is used as a guest room. The first floor or basement is a rental unit.

4. Appellants propose to add an additional 278 sq. ft. of living space, not including decks, to the 677 sq. ft. already in the third floor, according to Mr. Kuehn's testimony. That would allow the creation of two bedrooms, den and a bathroom on that level. One of the existing bedrooms would then be converted to a family room. The roofline will be changed, a bay window added to accommodate an improved staircase and decks provided.

5. The structure, as proposed to be changed, would meet the development standards for a single family house.

6. Other houses in the block on the two North 73rd Street blockfronts have two to four bedrooms.

7. Section 23.44.80 prohibits the expansion or extension of a non-conforming multi-family residential use except as required by law, necessary for handicapped or elderly access or as otherwise permitted. At least a part of appellants' proposed addition would require variance from this provision.

Conclusions

1. The first of the five conditions that must be met for variance relief is that an unusual property condition is present and because of that condition the strict application of the code would deprive the property of rights and privileges enjoyed by other properties in the same zone and vicinity. Section 23.40.20(C)(1). Appellants offer as the "unusual condition" the property's nonconforming use. Since it is the existence of that "condition" that triggers the special restriction on expansion it cannot be the condition which justifies avoidance of the restriction. While the property is more restricted in its expansion ability than others in single family use, that is presumably off-set by the greater intensity of use.

2. Since the property is not entitled to relief, the variance requested would go beyond the minimum necessary and constitute a grant of special privilege.

3. The expansion requested would not be materially detrimental nor would it injure any other properties.


4. Since some of the expansion appellants desire can probably be done through various exceptions for structural features, the strict application of the code should not cause undue hardship.

5. The purpose of the Single Family Residential Areas Policies is very clear to allow uses like appellants' duplex to remain but not permit its bulk to be expanded. The Code carries out that purpose. The requested variance would conflict with both.

Decision

The variance is denied.

Entered this 3rd day of April, 1984.


M. Margaret Lockars
Deputy Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11). Should such request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.