

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

In the Matter of the Appeal of

FREDERICK CASE

FILE NO. MUP-84-040(V)
APPLICATION NO. 8401264

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

Introduction

Appellant, Frederick Case, appeals the decision of the Director, Department of Construction and Land Use to deny a variance to expand a nonconforming use at 6206 Meridian Avenue North.

The appellant exercised his 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 June 29, 1984.

Parties to the proceedings were: appellant represented by Osgood S. Lovekin, Jr.; the Director by Clay Leming, associate 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. The appellant applied for a master use permit to allow for future alteration of the basement of a nonconforming four-plex building. A variance to expand a nonconforming use is required and was denied by the Director. This appeal followed.

2. The subject property is located at 6206 Meridian Avenue North in an SF 5000 zone. The zone is predominantly in single family development however there are a number of nonconforming duplexes and other multi-family structures. Directly across the alley from the subject property is what appears to be a seven unit building. A Neighborhood Business (BN) zone is across the street from the subject property.

3. The subject site is developed with a structure with four dwelling units. Appellant bought the property in 1980 and has eliminated code violations that existed and spent some \$25,000 in repair and renovation. Further renovation will be undertaken if he can complete the current proposal.

4. Appellant now proposes to construct a new foundation and raise the height of the building to increase the area and headroom of the basement.

5. Section 23.44.80.D prohibits the expansion of a nonconforming multi-family residential use, "except as otherwise required by law, as necessary to improve access for the elderly and disabled, or as specifically permitted for nonconforming uses and nonconforming structures elsewhere in this code."

6. The basement now takes up to approximately $\frac{1}{2}$ - $\frac{1}{2}$ of the area within the foundation of the house. As proposed the entire area would be used for a recreation room, studio, bathroom, laundry area, storage, etc. The basement ceiling height is now 5 ft. 7 in. to 5 ft. 10 in. It is proposed to be 8 ft. The building, at its highest point, is 24.5 ft. above grade. The height would be increased to 31.5 ft.

7. Appellant's architect found that some of the old foundation must be rebuilt to bring it up to code. Jacking up the house would be much less expensive than digging down.

8. The raising of the house would have no effect on the sunlight received by or view from the neighboring house to the north.

9. A number of houses in the general area have been raised.

10. The appellant intends to rearrange the internal configuration of the units without changing the number. He plans for his family to live in one of the units if it can be enlarged to meet the family's growing needs.

Conclusions

1. For variance approval, the criteria set forth in Section 23.40.20 must be met. The first requires an unusual condition of the property, because of which the code provision denies the property rights and privileges enjoyed by others in the zone or vicinity. Appellant urges that the unusual condition is the property's nonconformity, itself. Because of the property's nonconforming status the property is denied the right that single family residences have to expand, within the bulk limits for the zone. The property condition of "nonconformity" is the condition which triggers the legal limitation, however, so cannot also be the limiting condition which justifies variance. The property actually enjoys use rights greater than the single family properties even if they may make alterations the subject property is prohibited from doing. No other unusual property condition was shown which could justify variance.

2. Since no relief is warranted, the requested variance would exceed the minimum necessary and constitute a grant of special privilege.

3. The granting of the variance would not be detrimental to the public welfare or injure any other property. In fact, the continued improvement of the property only can be considered beneficial.

4. The strict application of the code does cause hardship to the applicant because of his personal needs.

5. The main intent of the Land Use Code and Policies, to allow the continuation of nonconforming uses by allowing improvement but not to allow their extension or expansion, would be violated if variance was granted. The Higher Density Residential Use Implementation Guideline 1 makes it clear that the prohibited expansion is as to both bulk and number of units.

6. Because the facts of the case do not satisfy all criteria for variance, the Director's decision to deny the variance is correct.

Decision

The variance is denied.

Entered this 13th day of July, 1984.


M. Margaret Klockars
Deputy Hearing Examiner

APPEAL NOTICE FOR 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. 2 Am. Jur. 2d., Admin. Law 2d Section 524. Any request for judicial review of the decision must be filed in King County Superior Court within fourteen days of the date of this decision. Seattle Municipal Code Section 23.76.36(B)(11); Akada v. Park 12-01 Corporation, 37 Wn. App. 221 (1984); JCR 73.

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, 400 Yesler Building, Seattle, Washington 98104.