

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

In the Matter of the Appeal of

JANE INSUN KIM for CHUL KIM

FILE NO. 84-052(V)
APPLICATION No. 8401057

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

Introduction

Appellant, Jane Insun Kim for Chul Kim, appeals the decision of the Director, Department of Construction and Land Use to deny a variance to establish a home occupation within a detached accessory structure at 5213 Delridge Way Southwest.

The appellant exercised her 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 October 18, 1984.

Parties to the proceedings were: Appellant represented by Rodney L. Kawakami, attorney; the Director, by Art Ward, 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 establish a home occupation within an accessory structure. A variance to allow for a home occupation in a detached accessory structure is required and was denied by the Director. This appeal followed.

2. The subject property is located at 5213 Delridge Way Southwest in a Lowrise 3 (L3) zone. The zone is predominantly in single family development, duplexes, and other multifamily structures, however, there is a large wholesale use within the block north of the subject property. Directly across the alley from the subject property is an SF 5000 zone. A community business (BC) zone is immediately adjacent to the subject property to the south. A fruit stand is two doors south of the subject property and a grocery store is approximately 850' north of the subject property.

3. The subject site, a 40' by 124' lot, is developed with a one story single family residence, with a floor area of 693 square feet, a 20' by 20' deck at the rear of the residence, a 22' by 40' detached (7' from residence) garage structure (built under a building permit issued 8/3/82, but not issued a final okay), which garage structure is proposed as the home occupation (tofu shop), and a 8' by 13' tool shed connected to the northeast corner of the garage (shown on the revised plans as an 8' by 8' tool closet). A 16' wide alley in need of repair abuts 4' from the garage. The property was purchased in 1982 and the garage was built in February, 1983.

4. Section 23.45.152 permits home occupations of a resident person as accessory uses when seven conditions are met. Appellant meets six of the seven conditions, but does not meet condition C--"The occupation shall be conducted within the principal structure, and not in an accessory structure..."

5. The appellant's family purchased the subject property and added the "garage" under the mistaken belief that a home occupation could be pursued. Mr. Kim, appellant's father, does not speak fluent English, has no skills other than making tofu and pickled cabbage and cannot find employment. His savings were exhausted in constructing the accessory structure. Establishment of the home occupation would allow him to support his family as he did from 1975 to 1982 in Hawaii making tofu and pickled cabbage.

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. No unusual property condition was shown which could justify the variance.

2. The granting of the variance might be detrimental to the public welfare and/or injure other property. Neighbors have written to object to the variance due to the adverse impacts of smell, noise, traffic and late working hours.

3. The strict application of the code does cause financial hardship to the applicant.

4. Since the applicant is enjoying practical use of his property for single family residence purposes, the requested variance would exceed the minimum necessary and constitute a grant of special privilege.

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 were granted.

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 ^{31st} ~~21st~~ day of October, 1984.


SALLY PASETTE
Hearing Examiner Pro Tempore

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. Jr. 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, 27 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.