

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

H. W. TOWNSEND

FILE NO. MUP-87-013(V)
APPLICATION NO. 8605825

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

Introduction

Appellant, H. W. Townsend, appeals the denial of variances for property at 1938 10th Avenue East.

The appellant exercised the 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 April 30, 1987.

Parties to the proceedings were: appellant, H. W. Townsend, pro se, and the Director, Department of Construction and Land Use, by Ed Somers, 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. Appellant herein filed a master use permit application for the subdivision of one lot into two at 1938 10th Avenue East. The Director determined, based on the plans submitted by appellant, that five variances would be needed. Those variances were denied and this appeal followed.

2. Based on the absence of any indication of a designated parking space on the plans, the Director determined that a variance would be needed from the one parking space per lot requirement. At hearing, Mr. Townsend clarified that he intended to provide the required parking and, therefore, was not seeking waiver of that requirement. The establishment of a parking space would require breaching the low retaining wall and excavation.

3. The subject property is a corner lot with 100 ft. of frontage on East Newton Street and 60 ft. on 10th Avenue East. The lot is developed with a two-story, single family house and a detached two-story garage or "carriage house". The lower level of the 23 by 15 ft. garage is for parking and the upper level contains living space used as a dwelling unit.

4. The subject property is within an SF 5000 zone on Capitol Hill. An L-2 zone begins one half block west of 10th Avenue East, an arterial.

5. In response to a notice of land use code violation, the appellant proposes to subdivide the lot. Parcel A would be 3,960 sq. ft. in area and contain the existing house. Parcel B would be 2,040 sq. ft. in area and contain the existing garage which would then be established as a legal dwelling unit.

6. The use of the garage as a dwelling unit has never been legally established, according to permit history, however the use has existed since at least 1946. Mr. Townsend bought the property in 1962.

7. Because the new lot areas and new yards would not conform to Land Use Code requirements, variances would be required to allow approval of the subdivision. The lot area required in the zone is 5000 sq. ft., Section 23.44.10A, where appellant is proposing less area for both lots. The front yard setback required for Parcel B is 9 ft., Section 23.44.14A, and 1 ft. is proposed. The side yard requirement is 5 ft., Section 23.44.14C, and 2 ft. is proposed for Parcel B. The requirement for the side street side yard setback is 10 ft., Section 23.44.14C, and Parcel A provides and will provide only 7 ft.

8. The subject site is similar in size and topography to the majority of properties in the area. There are several lots in the area which are comparable in size to those proposed. Those lots appear to have been created prior to the zoning of the area since there is no record of any variance for lot area having been granted. Across East Newton Street to the north are two lots, both smaller than those proposed with one at 2,800 sq. ft. which was built upon in 1906 and one 1,200 sq. ft. built upon in 1900. To the west, across 10th Avenue East, are two lots, one 4,380 sq. ft. developed with a duplex, and one 3,300 sq. ft. Finally, the lot immediately south of the subject property is owned by appellant, has 4,000 sq. ft. of area and is developed with a duplex.

9. There are instances of side and rear yards in the area which do not meet current code requirements. There is no record of variances having been granted for these yards. Most appear to have been established prior to zoning laws.

10. The subject site, with the existing development, complies with the code requirements for yards. The proposed subdivision causes the need for variances.

Conclusions

1. Variances from Land Use Code requirements may be granted only when the facts and conditions set out at Section 23.40.020C are found to exist. The first is that there are unusual conditions, not created by the applicant, because of which the strict application of the code would deprive the property of rights and privileges enjoyed by other properties in the zone or vicinity. Section 23.40.020(C)(1). Since the size of the property is not unusual in the vicinity, the unusual condition appellant must rely upon is the second floor living space over the garage. Since there is no evidence this was ever legally established as a dwelling unit, it can be regarded only as a second story to a garage. Appellant asserts that his is the only property in the area with such a garage which makes it unusual. However, that condition does not cause the application of the code requirements to deprive this property, in any way, of rights and privileges enjoyed by other properties.

2. The variances requested must be found not to exceed the minimum necessary for relief nor constitute a grant of special privilege. Section 23.40.020C(2). If the variances were warranted, the degree of variance would not exceed the minimum necessary to divide the lot into two lots. Since no similar relief has been granted to others in the area and the other small lots appear to have been created prior to the establishment of zoning with its minimum lot size, granting variances to allow the division of this lot based on a second story in the garage would confer special privilege.

3. The granting of the variances must be found not to be materially detrimental to the public welfare nor injurious to other properties. Section 23.40.020C(3). Insofar as the development and use of the site is unchanged from its current use, there would be no physical change that would be injurious nor would it cause physical detriment to the public welfare.

Legalizing the second dwelling unit would cause the density to exceed that deemed appropriate by the City Council and could be considered detrimental to the public welfare. If the new lot were to be redeveloped with a single family structure utilizing the variances, there would be excess density plus the loss of open space which would change the character of the area.

4. The fourth requirement is that the application of the code provisions must be shown to cause undue and unnecessary hardship. Section 23.40.020C(4). The appellant would experience hardship in that his lot could not be divided which would mean he would have to discontinue the use of the garage as a second dwelling unit, a use which existed prior to his ownership. The kind of hardship from the loss of a use which may not be legal is economic and cannot be recognized.

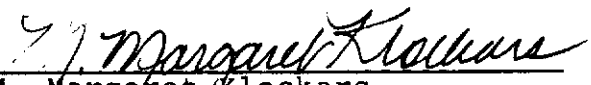
5. The variances must be shown to be consistent with the spirit and purpose of the Land Use Code and the Single Family Residential Areas Policies (SFRAP). Section 23.40.020C(5). The reduction in yards which would occur with new development would be contrary to the intent of the SFRAP stated at page p. 23-11. "The City-wide pattern of open spaces between single family residential areas shall be maintained..." and, further, the intent is to "...preserve the streetscape character of individual clusters of housing units...."

6. Since not all facts and conditions necessary for authorization of variances from code provisions were shown to exist, the variances may not be approved.

Decision

The application for variances is denied.

Entered this 15th day of May, 1987.


M. Margaret Klockars
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW OF
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. Any party's request for judicial review of the decision must be by application to King County Superior court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

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 (206) 684-0521.