

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

GERALD AND GEORGIA JACOBSON, ET AL.

FILE NO. MUP-85-024(V)  
APPLICATION NO. 8500625

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

#### Introduction

Gerald and Georgia Jacobson, et al, appeal the decision of the Director, Department of Construction and Land Use, conditionally granting a variance for property located at 535 West McGraw Street in Seattle.

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 May 30, 1985. The record was left open to June 13, 1985, for submittal of photographs.

Parties to the proceedings were: appellants appearing pro se; the Director represented by Patrick Doherty, land use specialist; and the applicant represented by Jack Jones, attorney at law.

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 site is located in a BN (Neighborhood Business) zone on Queen Anne Hill. It is located at the southeast corner of the intersection of West McGraw Street and 6th Avenue West.

2. The subject property is developed with a one-story business to which a two-story residence is attached. The business fronts on West McGraw Street; the residence fronts on 6th Avenue West.

3. At present there is no off-street parking on the site. On-street parking is limited on both street frontages. On West McGraw Street, there is a truck loading zone and on 6th Avenue West, there is no parking allowed due to a stop sign placed at the corner.

4. The BN zone extends to 7th Avenue West on the west and to the alley between 5th and 6th Avenues West on the east. Land on both sides of West McGraw Street is included in the BN zone. The BN zone is surrounded by a very large single family (SF 5000) zone. The single family zone is occupied primarily by single family residences, but there are numerous nonconforming duplexes, triplexes, apartment buildings and commercial uses in the zone. For example, in the stretch of 6th Avenue West between West Crockett Street and West McGraw Streets, there are three duplexes, one triplex and a 16-unit apartment building with commercial uses at the street level. The Frantz Coe Elementary School is directly north of the BN zone. In the BN zone, there are several commercial structures with residential structures above them, and an apartment building with business uses at the street level.

5. The area is proposed for an NC-1 designation (Neighborhood Commercial 1) in the Neighborhood Commercial Area Map, due for adoption in 1986.

6. The proposal is to convert the residence portion of the site into a duplex by converting the second story into a separate unit. Off-street parking for one vehicle is proposed to be developed on the southern edge of the site. Access to the parking space would be provided from 6th Avenue West by a new curb cut. Some construction of this proposal has taken place.

7. According to the plot plan, the residence portion of the site presently provides a 3 ft. 6 in. east side yard and a 7 ft. 6 in. rear (southern) yard. No expansions of the structure are proposed. The lot measures 40 ft. wide (along West McGraw Street) by 60 ft. deep (along 6th Avenue West), for a total area of 2,400 sq. ft. Applicants sought and DCLU approved variance relief from the 15 ft. rear yard and 4000 sq. ft. lot area requirement for conversion of a residence structure to a duplex.

8. Several letters and a petition were received by the Director and/or the Office of the Hearing Examiner whereby all but one expressed opposition to the proposal. The letters expressed concerns about parking generated by the new unit, area congestion and the lack of on-street parking, potential loss of property values, and the fact that construction had taken place without appropriate permits.

9. The Director's representative testified that the reason why only one off-street parking space is required was that the prior owner was not required to have an off-street parking space in the existing retail/one-family dwelling structure. Now that an additional dwelling space is proposed, an additional off-street parking requirement exists.

10. The subject property was heavily damaged in a fire several years ago which caused the premises to be uninhabitable and necessitated structural repairs.

11. The Director proposed the following conditions:

1. Obtain a permit for the new curb cut on 6th Avenue West.

2. Provide one off-street parking space.

The Director's representative amended the second condition to allow applicant to provide one off-street parking space anywhere on site.

12. The appellants, south abutting property owners, have an off-street garage next to their home. However, the garage is solely used for storage of tools and not for parking purposes.

13. While all parties agreed to keep the record open for an additional two weeks for purposes of submitting photographs and surveys indicating whether a parking problem exists in the neighborhood, no such survey was introduced into the record. The photographs that appear on file fail to demonstrate any substantial parking problem in the immediate vicinity.

#### Conclusions

1. When a dwelling unit is added to an existing residence, the Zoning Code requires a rear yard of 15 ft., Section 24.66.030 (B)(1), and minimum lot area of 4,000 sq. ft. Section 24.66.030 (B)(2), reference Sections 24.40.090, 24.30.120.

2. A variance from the provisions of the Land Use Code may be granted if the facts and conditions listed in Section 23.40.20(C) are shown to be present. The first condition required is

an unusual property condition, not created by the applicant, which causes the strict application of the provision to deprive property of rights and privileges enjoyed by other properties in the zone or the vicinity. The property condition in this case is that there are several other structures in this BN zone which are occupied by businesses in the ground story and residences above. There is greater residential density in the zone as determined by lot area per dwelling unit, than is proposed on the subject site. Some of these properties have less than required yards. Thus, strictly applying the rear yard and lot area requirements would deprive the property of rights enjoyed on other lots in this BN zone.

3. Secondly, the requested variance does not go beyond the minimum necessary to afford relief. Because the existing building would not be expanded, the variance for a 7 foot 6 in. rear yard would not be a grant of special privilege inconsistent with other BN-zoned lots which are comparably developed. Similarly, since the same or greater residential density exists in the BN zone and the SF 5000 zone, a grant of the requested lot area variance would also not be a grant of special privilege.

4. Thirdly, the granting of the variance will not materially detrimental to the public welfare or injurious to be property in the vicinity. No material detriment would occur because the existing building would not be expanded and because a new parking space would be provided to offset the increased demand of on-street street parking from the new unit.

5. Denial of the variance request would cause undue and unnecessary hardship to the owner in that he could not develop his property in a comparable manner to other BN-zoned lots in the immediate vicinity.


6. Finally, the requested variance would be consistent with the spirit and purpose of the Land Use Code and Policies. The requested variance would be consistent with the spirit and purpose of the Neighborhood Commercial Areas Policies. These policies encourage, among other things, residential development in combination with commercial structures in existing business districts, preservation of small neighborhood-oriented business districts, the efficient use of commercially zoned land and a transition in use between residential and commercial areas.

#### Decision

The variance is granted under the following conditions:

1. Obtain a permit for the new curb cut on 6th Avenue West.
2. Provide one off-street parking space on the site.

Entered this 21<sup>ST</sup> day of June, 1985.

  
Alberto Velarde  
Hearing Examiner Pro Tempore

#### 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 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).

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.