

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

In the Matter of the Appeal of

HILDA KANE

FILE NO. MUP-83-014(V)
APPLICATION NO. 83-014

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

Introduction

Appellant, Hilda Kane, appeals from the denial of variances by the Director of the Department of Construction and Land Use (Director) for her property at 5611 Rainier Avenue South.

The appellant exercised her right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

Parties to the proceedings were: appellant, by her attorney, William N. Snell, Haggard, Tousley and Brain, and the Director by Diane Althaus.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on April 18, 1983.

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 owns the property at 5611 Rainier Avenue South which consists of a lot developed with a two story building. The building was constructed in 1902 and has contained eight dwelling units.

2. The subject property is located in a Community Business (BC) zoned strip along Rainier Avenue South. SF 5000 zones abut the strip to the east and west. In the immediate area, many of the buildings extend lot line to lot line. Many storefronts and buildings, formerly housing businesses, are vacant. Most of the buildings have dwelling units on the second floor.

3. On the property to the south of the subject property, which is smaller than the subject property, is a recently renovated, two story building, described in City records as a "hotel", which has 19 living units and a City storefront office. That parcel is smaller than the subject property, has nearly 100 percent lot coverage and provides no off-street parking.

4. The property to the north, with more than 75 percent lot coverage, has small businesses on the first floor and dwelling units on the second floor. One of the businesses is scheduled to vacate shortly.

5. In 1979, appellant undertook remodelling of the units to move the bathrooms, which had been added to the rear in 1914, to a better location and repair of foundation, walls, etc.

6. It was determined that she needed variances to allow "conversion" of the use to dwelling units since the building had been unoccupied for a longer period than permitted.

7. She applied for variances from the side yard requirement, maximum lot coverage and maximum number of units to allow eight units. Side yard and lot coverage variances were granted, variance for eight units was denied.

8. The plot plan initially submitted omitted a 6 ft. by 30 ft. section of the building which had been removed by appellant's carpenter prior to inspection and the architect's preparation of the plan. That section was the former location of the bathrooms and was to replace the bedroom and closet space taken over by the new bathroom locations.

9. The 30 by 6 ft. "addition" is the portion that conflicts with the 5 ft. side yard requirement of Section 24.66.030.A(1) as the existing lot line wall is to be extended six feet. The lot coverage maximum of 40 percent set by Section 24.44.150 would be further exceeded. The coverage without the addition is 46.3 percent and would be increased to 49.3 percent.

10. The effect of indenting the addition 5 ft. to satisfy the side yard requirement would be to reduce the width of back of two of the rear bedrooms to 7 ft. 8 in. The open space created would be walled on the south by the adjacent building 5 ft. away and on two sides by the subject building.

11. Section 24.66.030(A)(2) requires that for conversion of a building into a dwelling or to increase dwelling units the lot area per dwelling unit must be at least 20 percent greater than required for a new building in that zone.

12. The subject property can support six units with 20 percent greater lot area.

13. The building, as constructed for eight units, has supporting structure or bearing walls for four units per floor.

14. The building is to be offered to Seattle Housing Authority, which has expressed an interest, for low income tenants.

15. Each unit is to have one small bedroom.

16. Section 24.64.030.B requires that parking stalls be at least 9.5 ft. wide. Appellant proposes stalls 9 ft. wide at which width the stalls would use all space available.

17. On-street parking is not fully utilized in the area.

Conclusions

1. The building's structural design, size and history of use constitute unusual conditions which, if the Code were strictly applied, would deny this property rights enjoyed by others in the vicinity and zone. The evidence shows that other properties far exceed the lot coverage requested and have considerably less lot area per dwelling unit.

2. As to the side yard and lot coverage variances, which can be considered entirely apart from the number of units, the request is for the minimum variance necessary for each. The addition would merely replace the section removed and is required to make the two units, which are permitted without variance, usable. The side yard setback would serve no purpose but to satisfy the technical requirement and the strict application would work hardship on that unit. With the property conditions present, neither variance would cause injury or material detriment to the public welfare.

3. The conditions also warrant variance from the extra 20 percent area per unit requirement. Only the interruption in use brings into play this requirement making this not, in reality, a conversion. Without variance, this building would be restricted to the six units while next door, on a smaller property, sit 19. This would avoid undue hardship and would not confer special privilege.

4. The area is now mixed use showing its acceptability for residential use. The building would not need to be expanded to allow the additional two units and spreading the cost over the additional units would help keep the rents low. No material detriment or injury to other properties can be reasonably foreseen.


5. If the purpose of requiring the extra area for conversion is to discourage conversion in order to assure a supply of commercial properties, the conditions in the area are such that the provision is not necessary. There appears to be little demand for small commercial properties in this area and a unused supply still remains. There would be little reason to discourage conversion in this instance. Further, denying use of two of the units would not add to any amenity available to other residents such as reduced use of yard space, since there is none. The spirit and purpose of the Code would not be offended by this variance.

6. The property is unusual in its restricted area available for parking. Others provide no on-site parking. Since parking is required on this property, it already is denied some rights others enjoy. Though it could be argued that the hardship is self-created by appellant's desire for eight units since six standard stalls could be provided, such an analysis would deprive the property of rights comparable to other properties in the vicinity. Since the number of stalls is tied inextricably to the number of units, the same analysis applies. Further, the amount of variance is unlikely to cause any material detriment or injury to other properties and would not conflict with the spirit and purpose of the Land Use Code.

Decision

The variances are granted.

Entered this 28th day of April, 1983.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App 418 (1977); JCR 73 (1981). Should an appeal 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.