

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

E.R. AND LAURA LANE

FILE NO. MUP-81-095(V)  
APPLICATION NO. 81316-0444

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

#### Introduction

E.R. and Laura Lane, appeal the decision of the Director of the Department of Construction and Land Use (Director) to deny variances for property at 13035-39th N.E.

The appellants exercised their right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

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 January 25, 1982.

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. Appellants applied for a master use permit to add to a duplex at 13035-39th Avenue N.E. It was determined that variances would be required to allow the expansion of a building nonconforming as to use and to provide less than the minimum required turning radius for existing parking. The Director denied both variances. Appellants appealed.

2. The subject property is a lot covering 24,500 sq. ft. developed with a duplex, built in 1949, and another unit over a garage behind the duplex. Parking for three cars is provided by a garage and carport.

3. The area is zoned Single Family Residence Medium Density (RS 7200). Development is chiefly single family except for the subject property and a duplex at the corner of N.E. 135th and 39th N.E. With the exception of a few lots similar in size to the subject property which have not been subdivided, other lots in the area are 8,000 sq. ft. or smaller. A number of lots with the same dimensions as the subject property's have been divided into three parcels.

4. The duplex structure is brick and two story with one unit on each floor. The applicants propose to add some 450 sq. ft. to the first story in the back and a new deck to the south side. Mr. Lane expects to be confined to a wheelchair and the additional space is needed to get wheelchair access to the bathroom and bedroom.

5. Section 24.14.060 prohibits the expansion of a building nonconforming as to use. A variance is needed from that prohibition to allow the proposed expansion.

6. A variance would also be required from Section 24.64.030B(1) because of an inadequate turning radius. Appellants acknowledged that there are other solutions to that problem besides a variance.

7. Other houses in the immediate area have made additions and other changes.

8. The lot coverage on the subject site is just over 10 percent. The lot has sufficient area to be divided into three conforming lots.

9. The deck is proposed for the added enjoyment of appellants.

#### Conclusions

1. The prohibition against expansion of a nonconforming use causes undue hardship in this case because of the extremely large lot. If the existing structures were removed the lot could be divided into three and support three units all of which could be expanded so long as bulk limits were not exceeded. The subject property has no greater density than other lots in the area but is denied the right to construct an addition which other properties in the area are enjoying. Special privilege would not result from allowing a comparable right.

2. Variance for the addition on the west side to acquire wheel chair access into essential parts of the house would be the minimum necessary for relief. The deck addition would be beyond the minimum necessary.

3. No material detriment would occur to the public welfare from the variance to allow the addition since density and bulk is still under that which would be allowed were the lot divided into three. No injury to other properties appears to be reasonably foreseeable.


4. The Single Family Areas Policies permit variance for handicapped access to nonconforming residential uses so this variance would not be inconsistent with those policies.

5. Since alternatives exist to the variance for turning radius, that variance would go beyond the minimum necessary for relief.

#### Decision

The Director's decision as to the variances to permit expansion of a nonconforming duplex is REVERSED and the variance is GRANTED for the proposed addition on the west side of the duplex only. The decision of the Director as to the turning radius variance is AFFIRMED.

Entered this 4th day of February, 1982.

  
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.