

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

In the Matter of the Appeal of

ERIC K. HILTON

FILE NO. H-86-003

from a decision of the Director of the
Department of Construction and Land Use
pursuant to the Housing Code

Introduction

Appellant, Eric K. Hilton, appeals from a Notice of Violation of the Housing Code issued by the Director, Department of Construction and Land Use, for a structure at 4321 5th Avenue N.E.

The appellant exercised the right to appeal pursuant to Section 22.206.230, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on April 30, 1986.

Parties to the proceedings were: appellant/property owner Eric K. Hilton, pro se; property owner Emergy Kapusy, pro se; and the Director represented by Sandy Watson, code compliance coordinator.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the the Hearing Examiner on this appeal.

Findings of Fact

1. A Notice of Violation, Habitable Building, was issued by the Director, Department of Construction and Land Use, and received by appellant, citing a series of violations and required corrections at the premises known as 4321 5th Avenue Northeast. Appellant appeals violations and required corrections Nos. 7a and c only.

2. The Notice of Violation provides, in pertinent part:

7. Inadequate Fire Safety (Section 22.206.120 4.12)

- a. Provide the stairway with a minimum run of nine (9) inches and a maximum rise of eight (8) inches with a rise and run varying not more than one-half (1/2) inch throughout each flight: Second floor stairway has 9-inch risers.
- c. Provide a landing having a minimum horizontal dimension of thirty (30) inches at each point of access to the stairway: Second floor stairway door closes over the top of the first tread.

Exhibit 2.

3. The structure is a house built circa 1910. No plans for the original structure have been located but appellant found similarities in the materials and construction of the first and second floors suggesting the second floor was built at the time of original construction. The inspector presumed the second floor was "long-standing".

4. The housing and zoning inspector visited the house and found that the rise of the stairs is nine inches and that the door at the lower part of the stairway lacks a landing.

5. The structure is used as a rental unit by the owners.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to Section 22.205.230.

2. Section 22.206.120 provides:

The following provisions of this section shall apply to all buildings less than four (4) stories in height; provided that dwellings shall be exempt from the requirements of subsections B through I....

Necessary alterations, repairs and improvements to existing buildings to meet the standards and requirements of this section shall be completed not later than two hundred seventy (270) days from the effective date of this Housing Code,² and it is unlawful for the owner of any such building to fail or refuse to complete such alterations, repairs and improvements within such period.

A. Stair Construction. All stairs shall have a minimum run of nine inches (9") and a maximum rise of eight inches (8")....

A landing having a minimum horizontal dimension of thirty inches (30") shall be provided at each point of access to the stairway. A door that swings away from a stairway shall be deemed to have created a landing in the area of its swing.

2. Editor's Note: Ord. 106319 became effective on April 20, 1977.

3. Appellant urges that conditions that pre-existed the code requirements, in this case were part of the original construction, are not required to conform to the current code. Section 22.206.120 leaves no room for argument, however. That section requires that pre-existing conditions must be altered to conform to the code standards.

4. Appellant also urges that a variance is appropriate because of the high cost to correct a minor deviation.

5. Variances may be granted from the standards if:

1. A literal interpretation and strict application of the standards and requirements would result in an undue or unnecessary hardship, other than solely a financial hardship, and adversely affect the preservation and enjoyment of a substantial property right of the owner or tenant of the subject building; and

2. Because of special conditions or circumstances applying to the subject building or to the occupancy thereof, the variance will not be materially detrimental or injurious to the safety, health, or general welfare of the occupants thereof, or of neighboring property or occupancies, or of the public. (Emphasis added.)

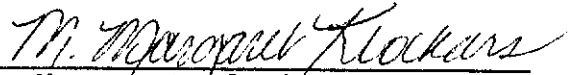
Section 22.206.220.B.

6. Since the basis of the request is financial hardship the required conditions for variance are not present.

Decision

The Director's decision is affirmed and the matter remanded to the Director for the establishment of a new compliance date.

Entered this 21st day of May, 1986.


M. Margaret Klockars
Deputy Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City, 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 must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such request 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. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.