

1 BEFORE THE CITY OF LAKEWOOD HEARING EXAMINER

2 IN RE:) HEARING NO. 13431
3)
4 WEBER SINGLE FAMILY) FINDINGS OF FACT,
RESIDENTIAL VARIANCE,) CONCLUSIONS OF LAW AND
5) DECISION

6 **REPRESENTATIVE:** Chris Arnold
NW Permit Solutions

7 **APPLICANTS:** Christopher and Lola Weber

8
9 **PLANNER:** Billie Stewart

10
11 **APPLICANTS' REQUEST:**

12 Applicants seek a variance to rebuild a recently destroyed single-family residence. The
13 residence was legally nonconforming as it did not comply with the site's current Multifamily 2
(MF2) zoning designation.

14 **PROJECT LOCATION:**

15 14423 Portland Avenue SW, Tax Parcel No. 2200003760).

16
17 **SUMMARY OF DECISION:**

18 The requested variance is **approved** subject to the conditions recommended by City Staff.

19
20 **BACKGROUND**

21 The single-family residence at 14423 Portland Avenue SW was constructed in 1923, or
22 prior to the City's incorporation. It sits within a neighborhood that is solidly single-family
23 residential structures but the neighborhood's zoning has recently been changed to Multifamily 2
24 (MF2) making all of these single-family residences legally nonconforming. The residence at this
25 location was recently heavily damaged by fire and the owners seek to rebuild. As a legally

1 nonconforming structure, and as the cost of rebuilding is more than 50% of its replacement cost,
2 the property owners must first obtain a Variance from the Hearing Examiner.

3 City Staff recommends approval of the requested Variance subject to a few conditions.

4 There has been no public opposition.

5 **PUBLIC HEARING**

6 The public hearing on the application commenced at 10:00 a.m. on Monday,
7 December 16, 2024. The hearing occurred remotely utilizing the Zoom platform with City Staff
8 serving as the host. The City appeared through Billie Stewart, Planner. The Applicants,
9 Christopher and Lola Weber, appeared through their representative, Chris Arnold of NW Permit
10 Solutions. There were no members of the public present. All testimony was taken under oath
11 and a verbatim recording of the proceedings was maintained. Evidence considered at the time of
12 the hearing was the Staff Report prepared by Mr. Stewart along with the following other
13 exhibits:

- 14 A. Staff Report
- 15 B. Site Plan/Plan Set
- 16 C. Applicant Response to Required Findings
- 17 D. Notice of Application
- 18 E. Notice of Public Hearing

17 **City's Testimony.** The hearing began with the testimony of Billie Stewart, Planner and
18 author of the City's Staff Report. Ms. Stewart's testimony followed closely her earlier written
19 report. She explained that the single-family residence at 14423 Portland Avenue SW had been
20 constructed in 1923, or prior to the City's incorporation. It was recently destroyed by fire and the
21 owners seek to rebuild. Pursuant to LMC 18A.20.200.B.7 "reconstruction of nonconforming
22 residential dwelling units that are involuntarily damaged or destroyed" is allowed. However,
23 under LMC 18A.20.230, "should such structure be destroyed by any means to an extent of more
24 than 50% of its replacement cost at time of destruction, in the judgment of the City's Building
25

1 Official, it shall not be reconstructed except in conformity with the provisions of this title". In
2 other words, in order to reconstruct this single-family residence the Applicants must first obtain a
3 variance from the Hearing Examiner.

4 The City's Building Official has confirmed that the value of the new building will exceed
5 the replacement cost at time of destruction and therefore generates a need for a variance pursuant
6 to LMC 18A.20.230.

7 The project site is relatively small, consisting of a 5,000 square foot lot. The Applicants
8 hope to rebuild the single-family residence, resulting in a 962-square foot house. The foundation
9 of the house will be shifted away from its current location near the property boundary in order to
10 meet all current setback requirements.

11 Ms. Stewart was asked by the Hearing Examiner as to the neighborhood's history of
12 zoning designations. She explained that the neighborhood previously had a zoning designation
13 of Moderate Single-Family Density but more recently was changed to Multifamily 2. The
14 proposed residence is a permitted use in the former zoning designation but not in its current
15 zoning, making the residence legally nonconforming.

16 The Hearing Examiner also asked Ms. Stewart as to whether a residential structure could
17 be built on this 5,000 square foot lot that would comply with the density requirements of its
18 current MF2 zoning designation. Ms. Stewart was uncertain but agreed that it would be difficult
19 to construct a residence on this small lot satisfying the density requirements of the MF2 zoning
20 designation.

21 **Applicant's Testimony.** Following Ms. Stewart's testimony the Applicants appeared
22 through their representative, Chris Arnold of NW Permit Solutions. Mr. Arnold agreed with the
23 City's presentation and Staff's proposed conditions and added that the application simply seeks to
24 allow the homeowners to restore their damaged home.

1 I concur with Mr. Arnold that the application is a simple one and that the equities fully
2 support its approval.

3 I therefore make the following:

4 **FINDINGS OF FACT**

5 General Findings.

6 1. The Applicants seek a single-family residential variance in order to reconstruct a
7 962-square foot house recently destroyed by fire.

8 2. Any Findings of Fact contained in the foregoing Background and Public Hearing
9 Sections are incorporated herein by reference and adopted by the Hearing Examiner as his
10 Findings of Fact.

11 3. The project site is located at 14423 Portland Avenue SW. The site contains 5,000
12 square feet.

13 4. The project site has a zoning designation of Multifamily 2 (MF2). The single-
14 family residence previously located on the site is not consistent with the MF2 zoning designation
15 and the residence was therefore legally nonconforming.

16 5. Pursuant to LMC 18A.20.230, should the residence be destroyed by any means to
17 an extent of more than 50% of its replacement cost at the time of destruction, in the judgment of
18 the City's Building Official, it shall not be reconstructed except in conformity with the provisions
19 of Titel 18A LMC. This requires that the applicant obtain a variance from the Hearing
20 Examiner.

21 6. The City's Building Official has confirmed that the valuation of the new building
22 will exceed the replacement cost at time of construction, thus requiring a need for a variance.

23 7. The proposed new residence will have 962 square feet and will be relocated
24 toward the center of the lot so as to comply with all setback requirements.

1 8. All surrounding residences, and all residences on this block as well as all nearby
2 blocks, are single-family residences and are therefore legally nonconforming in the current MF2
3 zoning designation.

4 9. It is believed that the lot is too small to be able to construct a residence meeting
5 the density requirements of the current MF2 zoning designation. It is therefore possible that the
6 lot would not have any practical use if the variance was not granted.

7 Findings Relating to Public Notice.

8 10. Notice of Application was issued September 20, 2024, with a 15-day comment
9 period. No public or agency comments were received.

10 11. Notice of Public Hearing was issued on November 27, 2024, with a 16-day
11 comment period. No public comments were received and no members of the public were present
12 for the public hearing.

13 Findings Relating to Compliance with LMC 18A.30.880 - Variances.

14 12. As noted in earlier Findings, the requested rebuilding of the prior single-family
15 residence must first obtain a variance due to the residence's legally nonconforming status, as the
16 cost of rebuilding the residence has been determined to exceed 50% of the value at the time of
17 destruction. LMC 18A.20.230A.3.

18 13. Variances are regulated by LMC 18A.30.880.1-6. The Applicant has the burden
19 of proving that each of these elements has been satisfied.

20 14. The Applicant must demonstrate that the proposed variance will not amount to a
21 rezone or constitute a change in the district boundaries shown on the official zoning map.

22 15. City Staff finds that the proposed variance would allow for the rebuilding of a
23 previously existing, legally nonconforming single-family residence that was involuntarily
24 destroyed, and that its rebuilding does not amount to a rezone or a changing in the district
25 boundaries. The Hearing Examiner concurs.

*Findings of Fact,
Conclusions of Law
and Decision - 5*

CITY OF LAKEWOOD HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

1 16. The Applicant must demonstrate that because of special circumstances relating
2 to the size, shape, topography, location or surroundings of the subject property, the variance is
3 necessary to provide it with use, rights and privileges permitted to other properties in the vicinity
4 and in the zone in which the subject property is located.

5 17. City Staff finds that the property is currently located in the MF2 zoning district
6 but that the previously existing residence, as well as the residences currently existing on all
7 surrounding lots, are all legally nonconforming single-family residences built prior to the City's
8 incorporation in 1996. The requested variance would allow the property owners to continue the
9 site's long-established use as a single-family residence, matching that use with all surrounding
10 properties. The Hearing Examiner concurs. The Hearing Examiner also finds that the property
11 may not be of sufficient size to allow development consistent with the current MF2 zoning
12 designation, and that the Applicant would be denied any reasonable use if the variance was not
13 granted.

14 18. The Applicant must demonstrate that the special conditions and circumstances do
15 not result from the actions of the Applicant. The previous residence was unexpectedly destroyed
16 by fire. The circumstances are not the result of the actions of the Applicant.

17 19. The Applicant must demonstrate that granting the variance will not constitute a
18 grant of special privilege inconsistent with the limitation upon uses of other properties in the
19 vicinity and zone in which the property is located.

20 20. City Staff finds that all properties to the north, east, south and west are similarly
21 legally nonconforming single-family residences. Indeed, the entire neighborhood consists of
22 legally nonconforming single-family residences. Thus, granting the variance will not constitute a
23 grant of special privilege but will simply allow the property owners to reestablish the site's long-
24 term use in a manner consistent with all surrounding properties. The Hearing Examiner concurs.
25

1 21. The Applicant must demonstrate that granting the variance will not be materially
2 detrimental to the public welfare or injurious to the property or improvements in the vicinity in
3 the zone in which the property is situated

4 22. As noted previously, all surrounding properties to the north, east, south and west
5 are legally nonconforming single-family residences. Granting the requested variance will not be
6 detrimental to these properties but will instead allow the use on this property to be consistent
7 with those surrounding uses while also relocating the building on the site to improve its
8 compliance with setback requirements.

9 23. The Applicant must demonstrate that the variance is the minimum variance
10 necessary to provide the rights and privileges described by this ordinance. The Applicants seek
11 no more than to restore the existing residence with similar square footage. The application
12 therefore seeks no more than the minimum variance necessary.

13 24. The use will not adversely impact properties in the general vicinity.

14 25. The subject site is not located within a critical area or near a designated shoreline.

15 26. City Staff recommends that the Variance be approved subject to the five
16 conditions set forth in the Staff Report. The Applicants do not object to these conditions.

17 27. There has been no public opposition to the application.

18 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

19 **CONCLUSIONS OF LAW**

20 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.

21 2. Any Conclusions of Law contained in the foregoing Background Section, Public
22 Hearing Section, or Findings of Fact Section are hereby incorporated herein by reference and
23 adopted by the Hearing Examiner as his Conclusions of Law.

24 3. All public notice requirements for this application have been met.
25

1 4. The Applicant has the burden of proving that all requirements of LMC
2 18A.30.880.1-6 have been satisfied.

3 5. The Applicants have met their burden of proving that all requirements for their
4 requested variance have been met and that all requirements of LMC 18A.30.880 have been
5 satisfied.

6 6. The requested variance should therefore be approved subject to the conditions set
7 forth in the Staff Report.

8 Now, therefore, the Applicant's request for a variance is **approved** subject to the
9 following:

10 **DECISION**

11 1. Weber Single-family Residence shall be constructed in compliance with this staff
12 report and all conditions of approval. Minor modifications to the plans will require Type
13 II administrative approval from the Planning and Public Works Department, and major
14 modifications will require a Type III land use modification permit before the Hearing
15 Examiner.

16 2. All necessary permits from outside agencies, such as Lakewood Water District,
17 West Pierce Fire and Rescue and Pierce County Sewer shall be obtained prior to construction
18 activities.


19 3. A complete application of all required construction level permits shall have been
20 submitted to the City for approval within three (3) years of the date of variance permit
21 approval.

22 4. Before granting a variance, the Hearing Examiner may prescribe appropriate
23 conditions and safeguards that will ensure that the purpose and intent of this title shall
24

1 not be violated. Noncompliance with the conditions of the permit shall be grounds for
2 rehearing before the Hearing Examiner, in addition to fines and penalties under
3 Chapter 1.44 LMC, General Penalties. The Hearing Examiner may suspend or revoke a
4 variance pursuant to this section for violation of any of the provisions of this title or
5 original conditions of approval.

6 5. Construction shall abide by construction and protection guidelines for all Garry
7 Oak Trees found on site, pursuant to LMC 18A.70.330.C.

8 DATED this 31 day of December, 2024.

9
10 
11 _____
12 Mark C. Scheibmeir
13 City of Lakewood Hearing Examiner

14 **Appeal Right and Valuation Notices**

15 Final decision of the Hearing Examiner are subject to appeal to superior court. Appeals
16 of final land use decisions to superior court are governed by the Land Use Petition Act
17 ("LUPA"), Chapter 36.70C RCW. LUPA imposes short appeal deadlines with strict service
18 requirements. Persons wishing to file LUPA appeals should consult with an attorney to ensure
19 that LUPA appeal requirements are correctly followed.

20 Affected property owners may request a change in valuation for property tax purposes
21 notwithstanding any program of revaluation.