

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

In the Matter of the Appeal of

MARV KAERCHER

FILE NO. H-83-002
DCLU NO. H-83-191

from a decision of the Director of the Department of Construction and Land Use pursuant to Title 22, Subtitle II, Seattle Municipal Code (Housing Code, Ordinance 106319)

Introduction

Appellant, Marv Kaercher, appeals the Order of the Director following Reconsideration of Notice of Violation. The Order relates to premises at 1712 Summit Avenue in Seattle.

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

This matter was heard before the Hearing Examiner on June 20, 1983.

Parties to the proceedings were: appellant, represented by Bill Barr, one of the property owners and the Director of the Department of Construction and Land Use (Director) represented by William Woodward.

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 manages a 70 unit apartment building located at 1712 Summit Avenue in Seattle.

2. A Notice of Violation was issued by the Director on March 7, 1983, alleging 22 housing code violations as a result of an inspection by a housing inspector.

3. Appellant requested reconsideration and following a hearing on April 4, 1983, the Order of the Director following Reconsideration of Notice of Violation was issued on April 19, 1983, affirming the Notice of Violation in all respects except modifying by allowing variance to reduce the number of electrical outlets in the kitchen to two. All other requests for variance were denied.

4. Appellant filed an appeal on May 16, 1983, challenging three cited violations, namely;

- 2a. Provide on each floor at least one toilet and lavatory, and one bathtub or shower accessible from a public hallway for each eight (8) occupants or fractional number in excess of eight (8), or provide these facilities on a readily, accessible adjacent floor if such facilities are not used by more than eight (8) persons: 1) The public bathroom in the basement, both women's public bathrooms and both men's public bathrooms on each of the first, second and third floors lack a lavatory; 2) bathtub and water closet have been removed from one men's public bathroom on the first floor; 3) the shower is inoperable in a men's public bathroom on the second floor.

- 2c. Provide the kitchen with an approved kitchen sink with hot and cold running water: All kitchens presently have lavatories in lieu of required kitchen sinks.
- 6c. Provide that doors be self-locking: Basement - storage area beneath stairway, store room no. 1, laundry room and public bathroom; first floor - both men's and both women's public bathrooms; second floor - both men's and both women's public bathrooms and store room no. 2; third floor - both men's and both women's public bathroom and store room no. 3.

5. Appellant contends that the Code doesn't require self-closing and self-locking doors on hallway bathrooms since only "storage, maintenance and service rooms" are required to be self-locking and bathrooms are not service rooms. In addition, such requirements will inconvenience tenants. Appellant wants to install dead-bolt, surface mount, frame to frame locks with a knob. No keys would be required. The users could lock themselves in and nobody would be able to enter from the outside except by breaking down the door.

6. The Director interprets "service rooms" to include hallway bathrooms.

7. Appellant contends that no plumbing in bathrooms for sinks exists. Adding sinks will be expensive resulting in increased rent. Space is limited in the hallway bathrooms for installation of sinks. The building is 50 years old and never had sinks in the hallway bathrooms.

8. The Director contends that it is unsanitary to have bathrooms without sinks. Bacteria would be spread by requiring bathroom users to walk into a living unit to wash their hands.

9. The bathtub and water closet presently have been reinstalled in the first floor men's public bathrooms.

10. The inoperable shower in a men's public bathroom on the second floor has been repaired and is currently operable.

11. All of the storage area rooms, the laundry room and store rooms contain doors that are self-locking.

12. Appellant contends that the existing 70 sinks in the 5 ft. by 6 ft. kitchens are sufficient for washing pots, pans, silverware and up to nine inch plates. The size of the sinks are smaller than standard kitchen sinks but functional as kitchen sinks nonetheless. The present sinks were in existence when the present owners purchased the building in March of 1982. Removal and replacement of 70 kitchen sinks would be expensive and would further limit the cramped conditions of the tiny kitchen. Providing larger, standard kitchen sinks would result in the loss of counter and walking space in the tiny kitchens.

13. The Director contends that the Code requires only "approved kitchen sinks" and that a nineteen page National Plumber's Equipment Catalogue differentiates between types of sinks used in bathrooms and kitchens. Appellant is using bathroom sinks in the kitchen.

14. Since March of 1982 when the present owners purchased the building, hundreds of security, sanitation, appliances and remodelling improvements have been made. The subject site is being transformed from a dilapidated, run-down, unsanitary flop-house into a clean, sanitary, pleasantly habitable and reasonably priced housing for economically depressed tenants.

Conclusions

1. The Director's order is to be deemed prima facie correct by the Hearing Examiner. The burden of proving the contrary is upon the appellant. Section 22.206.230, Seattle Municipal Code.

2. The alleged violations of the Seattle Municipal Code are as follows:

Section 22.206.050. Sanitation.

D. Other Buildings. Every building, other than a hotel, containing housekeeping or guest rooms in which private toilets, lavatories and bathtubs or showers are not provided, shall contain not less than one toilet, one lavatory, and one bathtub or shower, accessible from a public hallway, for each eight occupants, or fractional number thereof in excess of eight. On floors with fewer than eight occupants, the required sanitary facilities may be provided on an adjacent floor if the floor on which the facilities are provided is directly and readily accessible to such occupants and if such use does not cause the facilities to be used by a total of more than eight persons.

E. Kitchen. Every dwelling unit shall be provided with a kitchen. Every kitchen shall be provided with an approved kitchen sink, hot and cold running water, counter work space, cabinets for storage of cooking utensils and dishes, and approved cooking appliances and refrigeration facilities or adequate space for their installation. Splash-backs and counter tops shall have an impervious surface.

Section 22.206.130. Minimum Security Standards Requirements.

G. Doors to storage, maintenance and building service rooms shall be self-closing and self-locking.

L. Subject to approval by the Superintendent of Buildings, alternate security devices may be substituted for those required in this section provided the devices are of equal capability to resist illegal entry and further provided that the installation of these devices does not conflict with other requirements of this Housing Code and other ordinances regulating safety of exit.

3. Since interpretation of some of the aforementioned terms is in dispute in this appeal, the Seattle Municipal Code provides some clarification of terms as follows:

Section 22.204.040. Approved.

"Approved" means approved by the Superintendent of Buildings...by reason of accepted principles or tests by national authorities, or technical or scientific organizations.

Section 22.204.290. Kitchen.

"Kitchen" means a space or room designed to be used for the preparation of food.

4. Deference must be given to the official responsible for enforcement as to the construction of legislation. Keller v. Bellingham, 92 Wn.2d 726 (1979).

5. The Seattle Municipal Code Section 22.206.220B allows for variances from the standards and requirements of the Violation section of this appeal if all of the following conditions or circumstances exist:

1. A literal interpretation and strict application of the standards and requirements would result in an undue or an 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.

6. The 1983 Housing Assistance Plan for the City of Seattle proposed that the City remains strongly committed to increasing the supply of low-income housing.

7. Appellant fails to show hardship in order to allow granting of a variance pertaining to installation of bathroom sinks in the hallway bathrooms. Adequate sanitary requires that every public bathroom contains a sink with hot and cold running water so users of the bathrooms may wash away bacteria and other contamination from their hands before entering the public hallways.

8. Partial variance should be granted to the appellant pertaining to the self-closing and self-locking hallway bathroom doors. Although "service rooms" have been interpreted by the Director to include bathrooms and deference should be allowed for such interpretation, appellant has shown adequate hardship to allow the installation of dead-bolt, surface mount, frame to frame locks with a knob inside the bathroom doors. However, the outside bathroom doors must have a key access to the inside lock in order for management to open the bathroom doors in cases of emergency.

9. Bathroom sinks and kitchen sinks differ in style and size and deference should be allowed to the Director's interpretation of the Code pertaining to approved kitchen sinks. However, appellant has shown sufficient hardship in that the 70 kitchen sinks have been in existence long before purchase of the building. Variance should be granted to the appellant to allow continuing use of the 70 kitchen sinks.

Decision

The decision of the Director pertaining to requiring installation of sinks in the hallway bathrooms is AFFIRMED. The decision of the Director pertaining to requiring self-closing and self-locking hallway bathroom doors is REVERSED and a partial variance is granted to the appellant, but appellant must provide key access to the outside of the bathroom doors. The decision of the Director pertaining to requiring approved kitchen sinks is REVERSED and a variance is granted to the appellant.

Entered this 1st day of July, 1983.


Al Velarde
Hearing Examiner Pro Tempore

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).