

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DORIS O. TURNER

FILE NO. S-80-026

from a determination of the
Superintendent of Buildings

The appeal is GRANTED and the Findings and
Decision of the Superintendent of Buildings
are REVERSED.

Introduction

The appellant exercised her right to appeal pursuant to
Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: Appellant, Doris O.
Turner, pro se and the Superintendent by LeAnn Collings, and
witnesses Joyce Kling, and Tessie Santos.

This matter was heard before the Hearing Examiner on
June 16, 1980.

For purposes of this decision, all section numbers,
unless otherwise indicated, refer to the Zoning Ordinance
(86300, as amended).

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

Findings of Fact

1. The subject residence is located at 5903 - 37th
Avenue S.W., legal description Lot 1, Block 7 of the Aero
Heights #2 Addition to the City of Seattle. The property is
located in a Single Family Residence High Density (RS 5000)
Zone.

2. The Superintendent testified to the pertinent various
zoning regulations that have been in effect for the subject
area. The property was zoned RIA from 1923 - 1957, permitting
only single family uses. However, between 1927 - 1946,
duplex use could have been established if adjoining property
owners gave written approval. Superintendent's witness
Kling testified that although there was a World War II
emergency provision which permitted conversion of single
family units to duplexes, this conversion was limited to 5
years. From 1946 - 1951, a public hearing, Board of Public
Works approval and adjoining property owner approval was
required for duplex use.

3. The subject structure was built as a single family
residence in 1925. The only permit ascertainable by the
parties was the construction permit of 1925.

4. Entered into the record were the following:

(a) A May 1, 1980 notarized statement bearing
the signature of Winifred Cain stating:

The ... property has been used as a
duplex since 1942. Lillian Sullivan, my
Mother (sic) converted it at that time.
In 1974, she deeded the property to me and I
maintained it as a duplex until 1977, at
which time I sold it.

(b) May 1, 1980 notarized statements bearing the signatures of: (1) Emilie Shoebbotham that the subject property was used as a duplex dating from at least 1946 when the affiant began residence at 5911 - 37th Avenue S.W. (2) Mrs. John W. Poe that the property here at issue was used as a duplex dating from at least 1953 when the affiant began residence at 5922 - 37th Avenue S.W. and (3) Mrs. J.H. Smuck that the property here at issue was used as a duplex from at least 1948 when the affiant began residence at 5906 - 37th Avenue S.W.

(c) A June 13, 1980 notarized statement bearing signature of Mildred Trulin indicating that to her recollection the property at issue was sold through Trulin's real estate office to Lillie Sullivan in August 1941, from which time it was used as a duplex.

5. The property, purchased by appellants' daughter and son-in-law through appellant in 1977, has individual gas and water meters for each of the two units. We find in keeping with appellant's uncontradicted testimony that the subject structure has been consistently taxed as a duplex.

6. There were no letters or statements of opposition to the maintenance of the existing structure from community residents.

Conclusions

1. A nonconforming use is defined in Section 3.22 as:

A lawful use of land or structure in existence on the effective date of this Ordinance or at the time of any amendments thereto and which does not conform to the use regulations of the zone in which such use is located.

The Superintendent's basic position is that a use permit under these circumstances can be issued only if the duplex could have been legally established under a previously existing zoning code or its discretionary approval. Secondly, the continuous existence and use of the structure as a duplex would need to be shown. Superintendent's Ruling No. 11-80, (Publication March 4, 1980).

2. Where a potential plaintiff or moving party has a reasonable opportunity to discover the existence of a cause of action, and there is an unreasonable delay by that party in commencing the cause of action resulting in damage to the respondent, it has been held that the movant has impliedly acquiesced in the conditions, and that the principles of equity may surface to favor the respondent. Buell v. City of Bremerton, 80 Wn.2d 518 (1972). The public interest and the nature of the relief demand are factors to consider in this application of this doctrine of laches. Lopp v. Peninsula School District No. 401, 90 Wn.2d. 754 (1978).

3. A duplex use was a legal and permitted discretionary use in the subject area since the Zoning Ordinance of 1923. Additionally, temporary conversions were apparently allowed through emergency war provisions. From 1927 - 1946, during which period the conversion apparently occurred, duplex conversion could have been legalized through adjoining property owners' approval. The inability to locate written approval or permit is not conclusive.

4. Affidavits in the record show that the residence was used continuously as a duplex from at least 1942, some 35 years before the subject purchase. No community opposition has been voiced concerning this use. The subject use is compatible

residential use. This use has occurred over an extended period of time, during which period there have been dual utility and tax assessment acknowledgment.

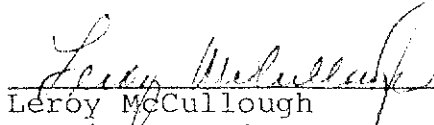
5. Single Family Residential Areas Policies, Implementation Guideline 2, Use Policies, provides that "[a]ny structure in higher residential use which may have been legal under zoning in the past, has been continuously maintained in the same use and which complies with applicable Housing Code standards may be legalized upon request to the Building Department." (Emphasis added). Several possible documented proofs are listed. The use at issue could have been legal in the past.

6. Under the compelling circumstances of this case, the applicant should be issued a permit subject to the applicable Housing Code standards of the City of Seattle. Accord, Amercian Law of Zoning, Section 6.14.

Decision

The appeal is GRANTED and the Findings and Decision of the Superintendent of Buildings are REVERSED.

Entered this 30th day of June 1980.


Leroy McCullough
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 appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).