

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

DAVID B. WEAVER

FILE NO. S-80-027

from a determination of the  
(Superintendent of Buildings)  
Director of the Department of  
Construction and Land Use

The appeal is DENIED and the Findings and  
Decision of the Director of Construction and  
Land Use are AFFIRMED.

#### Introduction

David B. Weaver appeals the denial of a use permit by  
the Director of the Department of Construction and Land Use  
to legally establish a fiveplex at 819 23rd Avenue East.

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

Parties to the proceeding were: Appellant, David B.  
Weaver and Counsel Peter Francis, attorney at law; the  
Director of Construction and Land Use by LeAnn Collins.

This matter was heard before the Hearing Examiner on  
July 9, 1980, pursuant to a motion by appellants for con-  
tinuance. Parties have waived the 41 day decision limitation  
pursuant to Section 25.46 of the Zoning Ordinance.

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 property is presently in use as a  
fiveplex residence at 819 23rd Avenue East. Four units are  
presently occupied.

2. The property was zoned R1A (First Residence Area  
District A) from 1923 to 1957. The property was zoned  
Duplex Residence High Density (RD 5000) from 1957 to 1979.  
In 1979, the property was downzoned to Single Family Re-  
sidence High Density (RS 5000). Appellant purchased the  
property in June 1978 after a personal inspection which  
revealed that it was a fiveplex. The sales document which  
was to state the most recent authorized use of the property  
showed that the dwelling was a single family dwelling.  
However, appellant was also aware of provisions whereby uses  
legalized before a zone change could possibly be ruled legal  
subsequent to the zone change i.e. "grandfathering".

3. Appellant applied for the property status as a duplex  
prior to the area's rezoning to single family use.

4. The dwelling is presently listed as a legal duplex  
for purposes of the Department of Construction and Land Use.

5. The dwelling was constructed sometime before 1909.  
In 1909 there was a permit to build a one-story frame addition  
to the property.

6. The dwelling has 5 electrical meters, 5 doorbells and 5 mailboxes. The property has been used as a fiveplex for over 30 years.

7. By letters received in the file, appellant's purchase, renovation and use of the property was commended by tenants as well as area residents.

#### Conclusions

1. The property's use as a fiveplex could not have been an outright or discretionary legal use under the 1923 to 1957 R1A classification; the 1957 to 1967 Duplex Residence High Density classification; or the present Single Family High Density classification. See Resolution 25968 (1979) Single Family Residential Areas Policies. While it is possible that the dwelling was converted to fiveplex use before 1923 such that the Department would approve present use, the testimony and findings show that the fiveplex use approximates only 30 years.

2. Under certain clear and compelling circumstances, the doctrine of equitable estoppel may be applied to avoid a manifest injustice. However, notwithstanding the sentiments of the present area residents the 1979 area downzone to single family supports a conclusion that the neighborhood is not favorably pre-disposed to multiple family units.

3. Additionally, in the instant case, there is an application for a fiveplex use in a single family zone. As relates to compatibility, we conclude such use to be clearly distinguished from, for example, a duplex use in a single family zone. Further, appellant was on notice by inspection and otherwise prior to his purchase that the property was listed as a single family dwelling even though it was in use as a fiveplex. Under the particular circumstances of this case, we conclude that the Director's determination is correct.

#### Decision

The appeal is DENIED and the Findings and Decision of the Director of the Department of Construction and Land Use are AFFIRMED.

Entered this 23rd day of July 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. After 5 days from the date of this decision, a permit may be issued unless a party of record files with the Director of the Department of Construction and Land Use a written notice of intent to seek judicial review of the City's action. 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).