

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

HOLY ORDER OF MANS

FILE NO. S-80-029

from a determination of the  
Director of the Department  
of Construction and Land Use

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

#### Introduction

Appellant contests an interpretation by the Superintendent of Buildings (presently known as the Director of the Department of Construction and Land Use) that the Holy Order of MANS is not a single "family" within the definition of the Zoning Code (Ordinance 86300, as amended), such that the appellant's residential use of the property at 1717 N.E. 55th Street, zoned Single Family Residence High Density, is not permitted.

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

Parties to the proceeding were: Joyce Kling, Zoning Administrator, Seattle Department of Construction and Land Use (CLU), Holy Order of MANS, by Br. John Savage and Janet Main Worthington, for the University Park Community Club, witness.

This matter was heard before the Hearing Examiner on July 7, 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 property is a single family dwelling located at 1717 N.E. 55th Street, in a Single Family Residence High Density (RS 5000) Zone.

2. Members of the Holy Order of MANS occupy the premises. The Order, formed approximately 11 years ago, has its headquarters in San Francisco, California. All members take vows of service, purity, obedience, humility and poverty. Although there is a chapel in the garage for the residence members' private use, the Order has no religious edifice per se in the Seattle area, although Order Pastors do serve the facility of the Christian Community of Seattle at 700 East Pike, Seattle.

3. The Order was referred to its present housing through a friend who knew of the Order's need for a large house. Presently, 7 men (brothers), women (sisters), 1 child and a priest occupy the premises. The priest ministers to the spiritual needs. One sister, the stewardess, is in charge of routine business or temporal affairs. The group

uses the same kitchen, dines together and pools individual resources. There is a house father and house mother. Appellants testified that the members relate as a family unit, and in fact are a family through their common vows in a manner similar to husbands and wives who become family by vows. Off-street parking is available at the premises.

4. The Director of the Department of Construction and Land Use (hereinafter referred to as the Director) determined that the residence use of the subject property by the 15 adults was in contravention of the Zoning Ordinance of the City of Seattle.

5. Single family dwellings are uses permitted outright in the RS 5000 zone. Section 8.11, cross reference Section 6.11(a). A family is "[a]ny number of related persons, or not to exceed eight (8) non-related persons, or not to exceed a total of eight (8) related and non-related, non-transient persons, living as a single non-profit house-keeping unit..." Section 3.07.

6. Principal conditional uses which the Hearing Examiner may authorize in less intensive zones are permitted in RS 5000 zones when authorized by the Hearing Examiner.

7. In the RS 7200 (Single Family Residence Low Density) Zone a less intensive zone, principal conditional uses subject to authorization of the Hearing Examiner are:

"Group dwellings for members of religious Orders in conjunction with permitted churches... when located on the same lot with the principal building(s) or on a lot abutting such principal use lot directly or across an alley or street..."  
Section 8.22, cross reference Section 6.22(i)(2).

Thus, if the group dwelling is located at least 25 ft. from any other lot in a single family zone or 15 ft. or more from any other lot in any other residence zone, the dwelling could be a permitted use in the RS 5000 zone.

#### Conclusions

1. The Superintendent's (Director's) determination is to be considered as prima facie correct, and the burden of establishing the contrary "shall be upon the appellant." Zoning, Ordinance, Section 25.44.

2. The residents at 1717 N.E. 55th Street are part of a religious order.

3. It is admitted that the Holy Order of MANS does not have a church building in the area. Thus, a group dwelling for members of the religious order that could be permitted in the single family residence zone pursuant to Section 8.22 cannot be sustained in this case since the group dwelling is not located on the same or abutting lot of a "principle (church) building."

4. Appellants therefore urge that they are a family.

5. Of the several case references given to the Hearing Examiner, some were particularly relevant. In "Zoning - What Constitutes 'Family'," 71 ALR 3d 693 (1976), Section 9(a) is concerned with "Social or religious groups without biological or legal relationship." The cases there cited suggest that where the zoning regulation defined a family in terms of a single housekeeping unit, religious groups occupying or proposing to occupy single-family dwellings did not violate zoning regulations which limited the residences to single family dwelling purposes. And, in Holy Name Hospital

v. Montroy, 379 A.2d 299 (1973), the New Jersey court ruled impermissible the Teaneck, N.J. code that limited permissible single family zone residential use to one family or not more than 3 persons not related by blood, marriage or adoption.

6. However, the general rule is that an ordinance definition of "family" will control. 71 ALR 3d 693, at 703.

7. In affirming a New York village ordinance which defined a family as one or more persons related by blood, adoption or marriage, or no more than 2 unrelated persons living and cooking together as a single housekeeping unit, the U.S. Supreme Court observed that:

"A quiet place where yards are wider, people few and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs."

Belle Terre v. Boraas, 416 U.S. 1 (1974).

8. In Palo Alto Tenants Union v. Morgan, 321 F. Supp 908 (1970), affirmed per curiam 487 F. 2d 883 (9th Cir. 1973), certiori denied 417 U.S. 910 (1974), the ordinance defined family as one person living alone or two or more persons related by blood, marriage or legal adoption, or a group of not more than 4 persons living as a single housekeeping unit. The ordinance was upheld as constitutional. The district and appeal court decisions noted that in contrast to persons related by blood, etc., communal arrangements were voluntary; had fluctuating memberships; were without legal obligation of support or cohabitation; and were not subject to domestic relations law.

9. A quote from the decision is instructive:

"Plaintiffs are unquestionably sincere in seeking to devise and test new life-styles, but the communes they have formed are legally indistinguishable from such traditional living groups as religious communities and residence clubs. The right to form such groups may be constitutionally protected, but the right to insist that these groups live under the same roof, in any part of the city they choose, is not." Palo Alto Tenants Union v. Morgan, supra, at p. 911-12.

Washington State lies in the ninth judicial circuit (federal).

10. The Seattle ordinance clearly defines a family as any number of related persons... or no more than 8 unrelated persons. Zoning Ordinance, Section 3.07. The term "related" is not defined in the ordinance. Webster's New Collegiate Dictionary defines related as connected by common ancestry or sometimes by marriage." Accord, Blacks Law Dictionary.

11. Ordinance Section 12.12 permits as an outright (as opposed to conditional) use group dwellings for members of religious orders in the Multiple Residence Low Density (RM 800) Zone.

12. Thus, because of the ordinance' pointed inclusion of appellant's circumstances, it is not necessary to seek a strained word interpretation of the word. We apply the ordinary meaning of the word "related" to the statute.

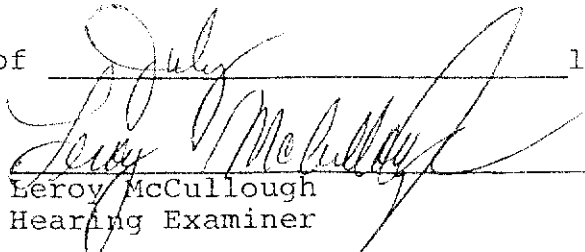
13. The Seattle ordinance clearly recognizes the existence of religious orders and their group dwellings, and has chosen to allow those dwellings in a single family residence zone only on specific conditions.

14. Appellants do not meet the specified conditions. Additionally, the members are not "related" and thus, do not constitute a "family" as those terms are meant in the Zoning Ordinance, Palo Alto Tenants Union v. Morgan, supra. Zoning Ordinance, Section 3.07.

Decision

The appeal is DENIED and the Findings and Decision of the Director is AFFIRMED.

Entered this 10th 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. 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).