

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

WALTER WEBER for MR. & MRS. THOMAS MOONEY FILE NO. S-81-002

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

The Decision of the Director, Construction and Land Use
is AFFIRMED.

Introduction

Appellant seeks to legalize the use of property at
4402-33rd Avenue South as a two family residence.

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

Parties to the proceeding were: Walter Weber for
Mr. and Mrs Thomas Mooney; LeAnn Collins for the Director,
Construction and Land Use.

This matter was heard before the Hearing Examiner on
February 10, 1981.

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 located in a Single Family
Residence High Density (RS 5000) Zone at 4402-33rd Avenue S.

2. The subject dwelling was constructed pursuant to a
1916 building permit, Number 152989, Department's Exhibit 1.
October 7, 1966, the City of Seattle issued a building permit
to allow a dormer addition. Department's Exhibit 2. That
permit, Number 519773, showed that the 50 ft. by 100 ft. lot
was developed with a single family residence, i.e., one
dwelling unit.

3. The property was zoned single family RIA from 1923-
1957 when it was changed to its present designation of RS 5000.
Although conditional authorization for a duplex in RIA zones
were permitted, the Department of Construction and Land Use
records show no application or grant of this authorization.

4. The property was represented as a duplex to appellants
who purchased it in approximately March 1978. As nearly as the
appellants can ascertain, the dwelling began its use as a board-
er facility in the early 1950's. Sometime in 1966 structural
changes, then conversion to duplex use occurred. At present,
each of the two roughly 1,200 sq. ft. area units provides
separate cooking and bathroom facilities and are tenant occupied.

Conclusions

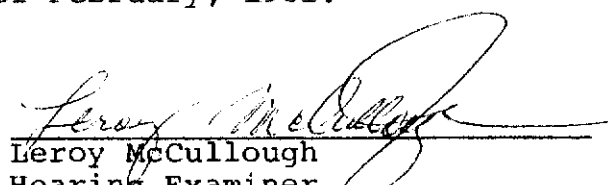
1. The Director's determination is to be regarded as prima facie correct. Section 25.44.
2. A nonconforming use is a:

... lawful use of land or structure in existence on the effective date of (the) 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. Section 3.21.
3. The subject duplex use in the single family zone does not conform to the regulations of the zone, and was not proved to be a lawful use. No record of any conditional authorization for duplex use was presented. No evidence of a pre-1923 conversion was presented. In point of fact, the evidence was that boarder use, distinguished from duplex use, began in the 1950's, and that structural conversion to duplex occurred in 1966, roughly nine years after the conditional authorization for duplex use could have been authorized. See also Superintendent's Ruling 11-80; Resolution 25968 (1979).
4. Under these circumstances, the doctrine of equitable estoppel and laches do not apply. Relief for the sale representation is more properly sought through a different forum.

Decision

The Decision of the Director, Construction and Land Use is AFFIRMED.

Entered this 24th day of February, 1981.


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 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).