

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

RANDAL AND SHARIE DEHART

FILE NO. S-81-003

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

The decision of the Director of the Department of
Construction and Land Use is REVERSED.

Introduction

The appellants exercised their right to appeal pursuant to Section 24.10.030, Seattle Municipal Code.

Parties to the proceeding were: Robert H. Stevenson, attorney for the appellants and Joyce Kling, representing the Department of Construction and Land Use (CLU).

The hearing on this matter was heard before the Hearing Examiner on April 13, 1981.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance Title 24 (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 at 5213-12th Avenue N.E. and is zoned RD 5000, or Duplex Residence High Density. From 1923 to 1957, the property was in an R1-A, or First Residence District. The lot is 4,500 sq. ft.

2. The Housing Division inspection records indicate the established use of the property as "duplex and six sleeping rooms," established by permit in August, 1962. That permit required removal of a first floor kitchen range, which, according to Inspector notes, was accomplished by December 19, 1962.

3. At issue is the classification of this three floor building. There are first floor and third floor apartments, both with separate kitchen and bath facilities. The middle level has six sleeping rooms, a common bath, and a common kitchen food preparation area where tenants meet socially. For 1976, the Housing Inspector required installation of an exterior stair "as a second means of egress to an existing building." The necessary permit was issued in August, 1976, and entry of the Inspector's approval was made September 21, 1976. We find in accord with appellant testimony that the basement unit was not in single unit use at that time; and that various City building and fire inspectors viewed the entire premises.

4. Appellants, the owners of the subject property, contend that the mid-level sleeping rooms and use of the common area kitchen do not constitute a second level dwelling unit as defined in Section 13-5 of the Seattle Building Code; that the subject property operates as a duplex.

5. Appellants further contend that the doctrine of laches bars the City from enforcing action against this alleged zoning violation since no enforcement action was taken by City in 1976 when Housing Code violations were cited at the subject property.

6. CLU contends that Zoning Ordinance definitions must be applied to determine zoning violations and that pursuant to the zoning code the common area of the main floor would be deemed a dwelling unit; that therefore the subject property is used as a triplex.

Conclusions

1. The ruling or interpretation of the Director is to be regarded as prima facie correct. The burden of establishing the contrary is upon the appellant. Section 24.10.030.

2. Assuming arguendo that the subject property is in use as a triplex, the structure is not in legal nonconforming use as it was not shown that the use could have been lawfully established from the date of its inception. The lot was zoned First Residence from 1923-1957. From 1957, it was zoned RD 5000. Triplexes are permitted in the RD 5000 zone on lots of 6,500 sq. ft. or more.

3. We do not consider the doctrine of laches to prevent enforcement in this case. Assuming the doctrine's general applicability to this fact pattern, we are not persuaded that the 1976-1981 hiatus is a sufficient period for laches to be invoked in this specific case.

4. Section 24.08.050 defines a dwelling unit as follows:

...a room or rooms located within a building, designed, arranged, occupied or intended to be occupied by not more than one family and permitted roomers or boarders, as living accommodations independent from any other family. The existence of a food preparation area within such room or rooms shall be evidence of the existence of a dwelling unit.

5. Section 24.08.070 defines a "Food Preparation Area" as:

...a room or rooms designed, arranged, intended or used for cooking or otherwise making food ready for consumption for a family living independently from other families within the same building. A recreation room "wet bar" or similar convenience accessory food preparation facility is not included in this definition.

6. Superintendent's Ruling 35-78 was issued to assist in determinations of whether a "dwelling unit" existed. The disjunctive elements include:

- (a) separate electrical and/or gas meters;
- (b) the relationship of one floor to the next and the ease of creating separate entrances;
- (c) additional food preparation areas; etc.

7. A dwelling unit may consist of "rooms...occupied by...roomers or boarders, as living accommodations independent from any other family." The subject lower and top-level units have their own distinct tendencies and are separate and independent of the mid-level unit.

8. However, the zoning ordinance definition of dwelling unit concludes with language that the "existence of a food preparation area within such room or rooms shall be evidence of the existence of a dwelling unit." (Emphasis added.) Section 24.08.050. The kitchen area is for preparation of food but is not "within such room or rooms...occupied...by...permitted roomers or boarders...."


9. Further, there is some fluid relationship between the three levels, evidenced by the gathering at the second level kitchen/common area, which has assumed the appearance of a recreation room/area. Superintendent's Ruling 35-78 provides that if the convenience food preparation area is located not in a separate room, but in a recreation room, it is generally assumed to be "accessory". The definition of Food Preparation Area specifically excludes a recreation room, wet bar or "similar convenience accessory food preparation facility." Therefore, we cannot agree that the subject kitchen area qualifies as evidence of the existence of a separate dwelling unit as defined by the zoning ordinance.

10. Nor does the Director urge that the occupants of the six second level rooms constitute a family - up to eight non-related persons living as a single housekeeping unit. In point of fact, the six boarding rooms are presented as separate tenant units.

Decision

The decision of the Director of the Department of Construction and Land Use is REVERSED.

Entered this 15th day of May, 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. 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).