

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal

KEITH C. THOMSON

FILE NO. S-83-004

from an interpretation of the
Director, Department of
Construction and Land Use

Introduction

Keith C. Thomson appealed the interpretation issued by the Director, Department of Construction and Land Use, concerning use of property at 13035 - 25th N.E.

The appellant exercised his right to appeal pursuant to the Seattle Municipal Code, Chapter 23.88.

This matter was heard before the Hearing Examiner on October 31, 1983.

Parties to the proceedings were: appellant Keith C. Thomson, Esq., pro se; the Department of Construction and Land Use Director (DCLU) by Judy Talman, land use specialist.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, as amended, unless otherwise indicated.

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

Findings of Fact

1. The subject property is located in the single family (SF) 7200 zone at 13035-25th N.E.

2. The 25,950 sq. ft. lot is developed with a single family residence. Also on site is a detached accessory building, initially used for temporary residence pending construction. The accessory building has been in use for shop, recreation room, storage and garage space.

3. The property owners propose to remodel the accessory building to accommodate appellant's ill and elderly parents currently residing out of state. The owners have no plans to use the remodeled accessory structure as income producing property.

4. Project applicants propose no food preparation area within the accessory structure.

5. The Director's interpretation decided that with proposed modifications the accessory structure "... would constitute a single family residence" and that:

creation of a separate dwelling unit in the accessory building could be authorized only if a variance to allow more than one single family dwelling on a lot were approved or if the property was platted into two lots.

6. Project applicants submitted this appeal.

7. According to the plans the existing storage area would not be affected. Proceeding easterly, however, would be a recreation room with lavatory and wood burning stove. Next is a laundry/dark room with its laundry appliances, hot water heater and laundry tubs. Easternmost will be a bedroom, with designated bath, shower, closet and shelf space.

8. The remodeled portion of the accessory building would have a floor area of approximately 900 sq. ft.

9. DCLU's initial decision that no code language prohibited the proposed use was subsequently reversed in a meeting with the DCLU Director. A key hearing DCLU witness opined that the proposal could be "more acceptable" if, for example walls were opened and showers and tubs eliminated, i.e. if the proponent would essentially "open up the floor."

Conclusions

1. In Hearing Examiner appeals, the interpretation of the Director is accorded substantial weight, and the burden of establishing a contrary position rests with the appellant. Section 23.88.20.E.4. The short platting and variance alternatives submitted by the Director were not shown to be technically infeasible.

2. Section 23.44.06.A. provides that in the single family residential zone, single family dwelling units are principal uses permitted outright and that "one single family dwelling unit shall be permitted on a lot."

3. The term "single family dwelling unit" is defined at 23.84.36 as a "detached structure containing one dwelling unit and having a permanent foundation." The Land Use Code defines a dwelling unit as:

a room or rooms located within a structure, 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. Section 23.84.080.

The referenced section continues that the "existence of a food preparation area within the room or rooms shall be evidence of the existence of a dwelling unit."

4. It is undisputed in this case that: accommodations are proposed for the appellant's extended family; that the accessory structure will not be rented out; and that no food preparation area is proposed. The Director nevertheless concluded that the proposed accessory use would constitute a separate dwelling unit in contravention of Section 23.44.06.A., supra. The Director's decision is in error.

5. Generally, this issue was previously resolved adverse to DCLU's position in S-81-026. There a second floor addition to a garage was the bone of contention. The garage addition offered "a bedroom, three-quarters bathroom, recreation room and deck attached to the house." Finding of Fact No. 3. The Hearing Examiner decision essentially concluded that as the occupation by one family was uncontroverted, the use was permitted.

6. The Director's representative urged that the conclusion of S-81-026, and indeed approval of the subject application herein, would constitute amendment of the code definition of dwelling unit to state:

... a room or rooms... designed, arranged, and occupied or intended to be occupied... (Director's emphasis).

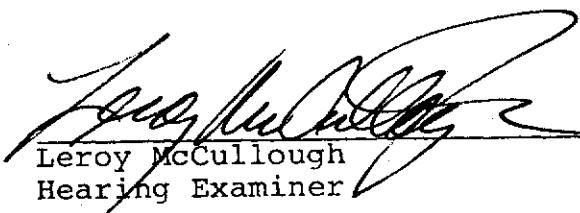
7. It can be persuasively argued that the disjunctive "or" in the definition of dwelling unit is designed to apply to or modify each preceding past participle, i.e. "a dwelling unit is a room or rooms... (either) or arranged or occupied or intended to be occupied..."

8. However, the phrase "as living accommodations independent from any other family" must be read to modify preceding phrases. Thus, notwithstanding DCLU's perceived enforcement issue, applicants "pavilion" does not meet the definition of a "dwelling unit," since the proposed "accommodations" are not independent of applicant's "family." See also S-81-026. Further, while the Hearing Examiner agrees that mere absence of a food preparation area will not always mean the absence of a "dwelling unit," the presence - and in this case, the absence - of a food preparation area is a legislatively embodied factor to be considered.

Decision

The Director's interpretation as to the existence of a second dwelling unit is Reversed.

Entered this 14th day of November, 1983.


Leroy McCullough
Hearing Examiner

Concerning Further Review

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any request for court review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should such request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.