

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

WILLIAM WARREN

FILE NO. H-83-004

from a decision of the Director of the Department of Construction and Land Use pursuant to Title 22, Subtitle II, Seattle Municipal Code (Housing Code, Ordinance 106319)

Introduction

Appellant, William Warren, appeals one of the corrections for a violation of the Housing Code at 2014 Terry Avenue, ordered by the Director, Department of Construction and Land Use.

The appellant exercised his right to appeal pursuant to Section 22.206.230, Seattle Municipal Code (Section 4.23, Ordinance 106319).

This matter was heard before the Hearing Examiner on August 19, 1983.

Parties to the proceeding were: appellant, William Warren, and the Director represented by William W. Woodward.

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 an apartment building at 2014 Terry Avenue.
2. The Director issued a Notice of Violation of the Housing Code on June 16, 1983. Following a departmental hearing, requested by the owners, an Order of the Director following Reconsideration of Notice of Violation was issued. Several variances from previously cited requirements were granted.
3. Appellant filed this appeal to challenge the requirement of a lavatory sink in each of the three public bathrooms and the denial of a variance from that requirement. That requirement was cited in violation No. 2, Inadequate Sanitation (Section 22.206.050).
4. Section 22.206.050(D) provides:

Other Buildings. Every building, other than a hotel, containing housekeeping or guestrooms in which private toilets, lavatories and bathtub or showers are not provided, shall contain not less than one toilet, one lavatory, and one bathtub or shower, accessible from a public hallway, for each eight occupants, or fractional number thereof in excess of eight.
5. Each apartment unit has one sink, available for food preparation, and no toilet or bathtub or shower.
6. Appellant contends the requirement should not be enforced for the reason that the requirement is not justified on a health or safety basis in that the Health Department is not concerned, multiple users could promote the spread of contagious disease, there is no provision for regular cleaning of the public facility and renters have their own sinks within 25 ft. of the bathroom;

that it will have an effect on the availability of low cost housing in the downtown area which is being lost at a high rate in that the owner may close the building rather than invest in improvements or the rents may be raised to cover the cost which will force some tenants out; that moving is costly in terms of money, effort, and longevity of elderly tenants; that the requirement is arbitrary in that it is stricter for rooming houses than for hotels where bathrooms get more non-residential use; and other reasons.

Conclusions

1. The Director's order is to be deemed prima facie correct and the burden is on the appellant to overcome that presumption. Section 22.206.230(B).

2. Appellant does not contest that the building is not in conformance with the code's requirements. Instead he urges that the requirement is not fair or necessary for the health and welfare of the tenants. The Director's, or Hearing Examiner's, opinion about the wisdom of enacting the standards can have no bearing on the enforcement of those standards. The principle, "(t)he acts of administering a zoning ordinance do not go back to the questions of policy and discretion which were settled at the time of the adoption of the ordinance," Pearson v. Evans, 51, Wn.2d 574(1958), applies as well to the housing code. Appellant's concerns about the effects of this provision can be addressed only by the legislative body, the City Council.

3. Appellant also maintains that the Director should have granted a variance from the requirement of sinks in the public bathrooms. Appellant has not shown the "special conditions or circumstances applying to the subject building or to the occupancy thereof," because of which the variance will not be materially detrimental to the safety, health or welfare of the occupants, neighbors or public. Section 22.206.220 B(2). The circumstances he offers, sinks available in individual rooms and lack of maintenance, are not of the nature to support the granting of the variance. Section 22.206.050(E) requires a sink for the kitchen so the presence of those sinks in each unit would not be a "special" circumstance. The lack of maintenance would not support a finding that the variance from the requirement of a sink will not be materially detrimental, as required by variance section.

4. Appellant has satisfied the first of the variance criteria, that the strict application of the standards would result in undue or unnecessary hardship, other than solely a financial hardship, and adversely affect the enjoyment of a property right of the tenants. Section 22.206.220 B(1). The increased rents to offset the cost of the improvement or the closure of the building would cause a loss of housing opportunity and a harmful disruption in the tenants lives. Since both criteria must be met, the Director did not err in denying the variance so his decision must be affirmed.

Decision

The decision of the Director is affirmed.

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Entered this 13th day of September, 1983.

M. Margaret Klockars
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Deputy 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). Should an appeal 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.