

FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JOHN AND SUSANNE RICHMOND

FILE NO. S-78-008

from a ruling of the Superintendent
of Buildings

The use permit is revoked but the permittee is authorized to submit a new application. The Superintendent is to notify the parties to this proceeding by mail, if a new application is filed, in addition to the notice required by the ordinance.

Introduction

The appellants, John and Suzanne Richmond, requested review of the decision of the Superintendent of Buildings to issue a use permit for construction of a garage at 5019 2nd Avenue N.W.

Parties to the proceeding were John and Suzanne Richmond, represented by Janet E. Quimby of Evans, Quimby & Hall, Inc., P.S. and Joyce C. Kling, Zoning Administrator, representing the Superintendent of Buildings. The property owner/permittee was not present.

The appellants exercised their right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

This matter was heard before the Hearing Examiner on April 24, 1978.

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 parcel comprised of Lots 26 and 27 of Block 10, Woodland Terrace Addition, located at 5019 Second Avenue N.W. in a Single Family Residence Residence High Density (RS 5000) Zone. Prior to the permit in question, development consisted of a small single family residence occupied by a tenant of the owner.

2. An application for a Building-Use Permit was filed January 30, 1978, by C. T. Noonan, owner of the property. The permit was issued that day "to construct a 20 foot by 40 foot detached garage per plan." There was no publication of notice of the use permit.

3. Construction on the structure began the first week of March. Residents in the area contacted the Building Department on March 8 and several times after that about their concerns. On March 13 construction was halted by the Building Department to determine conformance with the zoning code. Construction resumed March 15. On March 24 the appellants filed their Notice of Appeal. On April 6 the building was put into use.

4. The structure measures 20 feet by 40 feet and is approximately 18 feet high. The lot is 60 feet by 100 feet and has a 24 foot front yard and a 5 foot side yard. The residence on the property covers approximately 700 square feet and is one story in height. ✓

5. The tenant has no access to use of the new structure. ✓ The property owner has retained use of the new structure for himself. On April 6, 1978, movers brought various items and boxes items to 5019 Second Avenue N.W. and moved them into the structure. Vans belonging to the same company were seen at the owner's former medical offices the same day being loaded with the contents of those offices. According to testimony at hearing, Dr. Noonan, the owner of both properties, had sold the offices to the City of Seattle.

6. The current use of the structure is in violation of the code. Enforcement proceedings have not been initiated because of statements to the Superintendent of Buildings by the owner that he would move into the residence himself. The tenant has been given notice to vacate by April 30.

Conclusions

1. The current use of the structure for storage by the owner who is not the occupant of the residence is illegal.

2. Evidence adduced at hearing showed that the intended use was not as represented on the permit application. A garage, as defined by the ordinance, is "an accessory building...designed or used for the shelter or storage of vehicles owned or used by the occupants of the principal building." The building was not designed for nor is it used to store the occupant's vehicles. While other accessory uses customarily incidental to the principal use are permitted, the permit was based on the applicant's representation that the use would be a garage and therefore the permit should be revoked. ✓

3. Since "accessory use customarily incidental to a permitted principal use" comprehends both the kind and degree of use, two determinations need to be made by the Superintendent of Buildings if the owner reapplies for a use permit for a building to store medical records and is the occupant of the residence. First is whether any storage of medical records is a permitted accessory use where the principal use is a single family residence in a residential zone occupied by a physician. ✓

4. The second involves the matter of degree. The terms "accessory" and "incidental" both denote a relationship between two things, in this case, structures. The term "incident" means something dependent upon or subordinate to something else of greater or principal importance according to Webster's New Collegiate Dictionary (1977). Therefore, the relationship is to be one of a subordinate structure to a principal or dominant structure. The "accessory" structure in the instant case appears, from the plot plan admitted as Superintendent's Exhibit No. 8 to be factually dominant. It covers 800 square feet while the "principal" use appears to cover approximately 700 square feet. It may also be greater in height. If this is in fact the case, the storage building is in fact the principal use and should be termed, as alleged, a warehouse. Such a use would not be permissible in a residential zone.

5. Specific bulk restrictions have not been placed on accessory uses, other than those that apply to a principal use, except for the 1000 square foot maximum area for a private garage. If the code's use of the terms "accessory use customarily incidental to the permitted principal use" is an indication of an intent to restrict accessory building bulk to less than that of the principal use and therefore maintain the subordinate-principal relationship, the Superintendent of Buildings would need to obtain the dimensions of the principal use single family residence to determine if the proposed accessory building is permitted.

6. The zoning ordinance's requirement, Section 25.41, that appealable rulings be published serves a twofold purpose: that of notifying others who may wish to appeal the ruling and that of giving the permit holder some certainty as to when he or she may safely proceed with construction, without the risk of having an appeal result in reversal of the ruling. Here the appellants, who reside near the property, observed the construction so received notice without publication. The permit holder, however, proceeded with construction without the security of the termination of the appeal period.

Decision

The use permit is revoked but the permittee is authorized to submit a new application. The Superintendent is to notify the parties to this proceeding by mail, if a new application is filed, in addition to the notice required by the ordinance.

Entered this 9th day of May, 1978.

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 and any further appeal must be made to the courts.