

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

SCOTT L. JOHNSON

FILE NO. S-79-008

from a ruling of the Superintendent
of Buildings

The appeal is DENIED and the Findings and Decision
of the Superintendent of Buildings are affirmed.

Introduction

The appellant, Scott L. Johnson, filed an appeal from a decision of the Superintendent to deny a use permit for a fourth unit for property at 124-28 North 103rd Street.

The appellant exercised his 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 25, 1979.

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 consists of a multiple residential building located at 124-28 North 103rd Street in a General Commercial (CG) zone. The property is developed with 3 legally established dwelling units.
2. Located in the basement of the building is a fourth unit which the appellant requests to be established as a legal unit. The Superintendent published a denial of the use permit for this unit on March 29, 1979.
3. On April 10, 1979 a timely appeal was filed by Scott L. Johnson appealing the action and decision of the Superintendent.
4. The subject building was zoned Multiple Residence Low Density (RM 800) in 1957. This zone permitted the location of dwelling units in the building. In 1960 the property was rezoned to CG which also permitted outright the establishment of dwelling units. In 1970 the CG zoning provisions were amended so that dwelling units could only be established in this zone subject to a council conditional use.
5. It is the contention of the appellant that the fourth unit has been occupied and used as a dwelling unit since 1953. An affidavit from a neighboring resident and the prior owner attests to this fact. The appellant and other purchased the property in October, 1977.
6. On May 16, 1977 the prior owner, James W. Immus, requested a use permit to establish for record purposes that the existing building was being used as a triplex. Two affidavits were entered in the record to attest to this use and the Building Department conducted a field inspection. The field inspection affirmed the use as a triplex and a use permit was issued.

7. It is the Superintendent's contention that the record in this case presents conflicting evidence as to whether or not the property was used as a four-plex and therefore that a permit should be denied.

Conclusions

1. The conclusive evidence in this case is Superintendent's Exhibit 5 which was the use permit issued on May 16, 1977 for the sole purpose of determining the number of units in the existing building. The property owner at that time clearly knew that the use of the building was being determined and any claim regarding additional units should have been raised at that time. In past decisions of the Hearing Examiner the issuance of permits for remodeling have not been deemed to carry a great deal of weight as to the determination of use because of the unlikelihood that people are aware of the consequences of a use determination. Here, in this case, the property owner clearly knew that use was being determined.

2. In this era of housing shortages any denial of additional units must be closely scrutinized. However, in this case the appellant has failed to establish that the fourth unit was used since 1953 in light of Superintendent's Exhibit 5. The owner has the option of seeking a council conditional use to legally establish the unit provided all zoning and housing code provisions are met.

Decision

The appeal is DENIED and the Findings and Decision of the Superintendent of Buildings are affirmed.

Entered this 10th day of May 1979.


William N. Snell
Hearing Examiner

Notice of 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 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).