

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

GARY D. HUFF
for ERA DEVELOPMENT ASSOCIATES

FILE NO. S-80-054

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

Introduction

ERA Development Associates, appellant, by Gary D. Huff, appeals an interpretation by the Director of the Department of Construction and Land Use of the Zoning Ordinance as it applies to property at 7536 Seward Park Avenue South.

Parties to the proceeding were: Appellant, represented by Gary D. Huff, Shidler, McBroom, Gates and Baldwin; and Director of the Department of Construction and Land Use, hereafter Director, represented by Gordon F. Crandall, Assistant City Attorney.

This matter was heard before the Hearing Examiner on December 22, 1980.

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 property, subject to the interpretation, is a lot located at 7536 Seward Park Avenue South in a Single Family Low Density (RS 9600) zone. The lot is developed with one single family residence.
2. Appellant proposes to develop the property with nine additional single family residences owned by an owner's association.
3. The Director has determined that Section 3.13 permits only one principal building to be located on a lot in an RS 9600 zone.
4. Appellant filed its appeal of that interpretation.
5. Section 3.13 defines "lot" as:

A platted or unplatted parcel of land unoccupied, occupied or be occupied by a principal use or building and accessory buildings, together with such yards and open spaces as required by this ordinance and abutting by not less than twenty (20) feet upon a street sufficiently improved for automotive travel or having an exclusive, unobstructive permanent access easement serving not more than two (2) principal uses and jointly owned by the two (2) property owners served and at least twenty (20) feet wide and not exceeding one hundred fifty (150) feet in length to such street; provided that lots for townhouse dwellings may abut upon a street or unobstructed permanent access easement by not less than twelve (12) feet and said easement may be not less than fifteen (15) feet in width and may serve up to ten (10) townhouse dwellings.

6. "Principal Use or Building" is defined by Section 3.22 as:

The principal use conducted on the lot or the building housing the principal use as distinguished from any separate buildings housing accessory uses.

7. Section 6.53 establishes the yard requirement for lots in the RS 9600 zone as follows:

Each lot shall have front, side and rear yards of not less than the depth and width as follows, except as provided in Section 22.4:

Front Yard: Twenty-five (25) feet

Side Yard: Eight (8) feet for the least side yard and twenty (20) feet for the sum of both side yards

Rear Yard: Thirty (30) feet

8. Section 3.26 defines "front yard" as:

An open space between the side lot lines of a lot, extending from the front lot line to a line on the lot parallel to the front lot line, to a depth, measured horizontally, as specified in this ordinance.

9. Apartment houses consisting of two or more principal buildings are permitted on one lot as group apartments in the Multiple Residence Low Density (RM 800) zone with certain conditions, according to Section 12.11(i). The conditions establish the relationships between the building and the lot boundaries and between principal buildings themselves.

10. RCW 64.32.110 provides that:

Local ordinances, resolutions, or laws relating to zoning shall be construed to treat like structures, lots, or parcels in like manner regardless of whether the ownership is divided by sale of apartments under this chapter (RCW Ch. 64.32) rather than by lease of apartments.

Conclusions

1. The crux of appellant's challenge is the meaning to be ascribed to the terms "principal use or building." Appellant contends that the use of the conjunction "or" was intended to allow a choice of one principal use or one principal building and that if one principal use is chosen, multiple buildings housing that use may be present, if owned in common.

2. The intent in the use of the conjunction "or", according to the Director, is to provide for situations where a "use" is not housed in a building so the provision limits a lot to one building or, if not in a building, one use.

3. "Use" is defined in Section 3.22 as:

The purpose for which land or a building is designed, arranged or intended, or for which it is occupied or maintained, let or leased.

This definition appears to be consistent with the Director's interpretation of the terms "principal use of building" in the definition of "lot" in that it provides for a "use" without a structure housing it.

4. RCW 64.32.110 removes any consideration of the type of ownership from the interpretation of the provision in question.

5. Section 25.44 provides that the determination of the Director is to be considered prima facie correct. Further, considerable deference is to be accorded to interpretation by the official required to enforce the ordinance of a term that is ambiguous. East v. King County, 22 Wn.App. 247 (1978). Moreover, if uncertainty arises because of language used, the section with the ambiguity should be read in context with the whole ordinance to avoid strained meaning or absurd consequences. Alderwood Water District v. Pope and Talbot, Inc., 62 Wn.2d 319 (1963). Appellant has not overcome the presumption of correctness.

6. The appellant, by the construction urged, would avoid the subdivision or P.U.D. process otherwise required to develop the property as proposed which processes provide for public notice, review and regulation. In light of the yard provisions of the ordinance, the specific provision for more than one principal building for group apartments, and the result if appellant's reading were adopted of avoiding notice, review opportunities and various regulations, the Council clearly intended the interpretation applied by the Director.

Decision

The determination of the Director, Department of Construction and Land Use, is AFFIRMED.

Entered this 29th day of December, 1980.

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 appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).