

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

In the Matter of the Appeal of

THE UNIVERSITY PARK COMMUNITY CLUB

FILE NO. S-76-026

from a ruling of the Superintendent
of Buildings

This matter is remanded to the Superintendent
of Buildings for further consideration.

Introduction

The appellant filed an appeal with the Office of the Hearing Examiner requesting a review of a determination by the Superintendent of Buildings that a use permit would be issued for the construction of a triplex on property located at 5212 21st Avenue N.E. The appellant alleges that the subject property does not qualify for construction of a triplex and that only two dwelling units may be constructed on the property.

The appellant 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 November 9, 1976.

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 Superintendent of Buildings (hereinafter Superintendent) published on October 5, 1976, notice of the intent to grant a use permit for the construction of a triplex at 5212 21st Avenue N.E. The appellant filed an appeal of this determination on October 14, 1976.

2. The subject property is located in a Duplex Residence High Density (RD 5000) zone which permits outright the development of a single-family residence or a duplex. In addition, pursuant to Section 26.22.010(b), Seattle Code, a triplex is permitted outright in the RD 5000 zone as long as several stipulations are complied with. One of the stipulations is that at least one of the three dwelling units be located in the basement of the proposed structure. This stipulation is the only portion of the aforementioned code section which the appellant has taken issue with.

3. The subject property and the proposed construction comply with all portions of Section 26.22.010(b), other than that portion which requires that one of the dwelling units be located in the basement. Whether one of the levels of the proposed structure qualifies as a basement is not clear from the record.

4. Pages 6 and 7 of the permittee's original plans for this project (Permittee's Exhibit #1) display the location of the existing grade line in relation to the proposed structure. It appears on page 6 that the existing grade cuts the structure in a fashion that the lowest level would qualify as a basement pursuant to the definition in Section 26.06.030, Seattle

Code, while on page 7 it appears that the lowest level would qualify only as a cellar, pursuant to the definition in Section 26.06.040.

5. It does not appear from the record that the Superintendent, in determining that a use permit would be issued for the proposed construction, specifically considered whether any of the levels of the proposed building would qualify as a basement or whether a dwelling unit was in fact located in this area.

6. If the permittee does not provide a basement in the proposed structure it would not be possible to fully comply with Section 26.22.010(b), Seattle Code, so that it would be impermissible for a triplex to be located on the subject property.

Conclusions

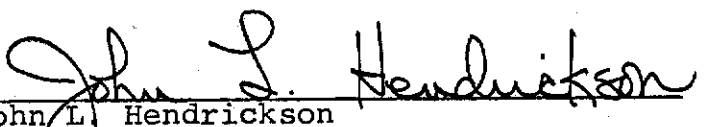
1. In all respects other than the determination of whether a basement will be provided, the permittee has complied with Section 26.22.010(b) and is entitled to construct a triplex on the subject property. It is necessary, however, for this matter to be remanded to the Superintendent for a specific interpretation and determination of whether a basement is provided in this proposal and whether in fact a dwelling unit will be located in such basement.

2. If the Superintendent reaches the conclusion that a basement will be provided in the proposed structure and that a dwelling unit will be located in the basement, the permittee is entitled to a use permit allowing the construction of a triplex on the subject property and such permit shall be issued. This new determination, however, shall be subject to review if an appeal is properly filed. No further review beyond this one specific issue however shall be permitted.

Decision

This matter is remanded to the Superintendent of Buildings for further consideration in conformance with this decision.

Entered this 15th day of November, 1976.


John L. Hendrickson
Deputy Hearing Examiner