

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DOUGLAS A. AUSTIN

FILE NO. S-79-004

from a ruling of the Superintendent  
of Buildings

The appeal is GRANTED and the Findings and Decision  
of the Superintendent of Buildings are reversed.

#### Introduction

The appellant, Douglas A. Austin, filed an appeal from  
a written ruling of the Superintendent of Buildings regarding  
property at 1812 Federal Avenue East.

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

The parties stipulated that there is no issue of fact  
and presented written argument in lieu of public hearing.

After due consideration of the evidence and arguments  
presented, the following findings and conclusions shall  
constitute the decision of the Hearing Examiner on this  
appeal.

#### Findings of Fact

1. An interpretation of the Zoning Ordinance as it  
applies to property at 1812 Federal Avenue East was requested  
by Thomas P. Henry. A written interpretation was signed  
February 27, 1979, and published March 1, 1979. The instant  
appeal was filed March 15, 1979.

2. The subject property is zoned Single Family Residence  
High Density (RS 5000).

3. The 3,895.3 sq. ft. lot is developed with a single  
family residence. Lot coverage is 38.7 percent or 1,509 sq.  
ft.

4. The maximum permitted lot coverage for a single  
family residence in the RS 5000 zone is 35 percent. Section  
8.54, Ordinance 86300, as amended.

5. A "building nonconforming as to bulk" is defined  
in Section 3.03 of the Zoning Ordinance as: "A lawfully  
established building or structure which on the effective  
date of this Ordinance was not in conformance with the bulk  
regulations of this Ordinance for the zone in which located."

6. "Bulk" is defined at Section 3.03 as: "The size  
and location of buildings and structures in relation to the  
lot. Bulk regulations include height of building, minimum  
lot area, minimum front, side and rear yards and maximum lot  
coverage."

7. Section 5.32 of the Zoning Ordinance states the  
following: "Any building conforming as to use which is a  
building non-conforming as to bulk as of the effective date  
of this Ordinance may be altered, repaired or extended;  
provided, that such alteration, repair or extension does not  
cause such building to further exceed the bulk provisions of  
this Ordinance."

8. The owner proposes to remove 121.5 square feet of the existing front deck and to construct a 121.5 square feet addition to the rear of the building. The proposed deck removal and construction of the addition would result in a total lot coverage of 38.7 percent or 1,509 square feet.

9. The Superintendent has interpreted the Zoning Ordinance provisions set forth in Findings 5,6,and 7 to prohibit the contemporaneous removal of a part and addition of a part of equal size.

#### Conclusions

1. As applied to a building nonconforming because of excess lot coverage, the Superintendent's interpretation would effectively render meaningless the word "further" in Section 5.32 where it allows extension so long as it does not cause the building "to further exceed the bulk provisions of this Ordinance." (emphasis added). This would violate a fundamental principle of statutory construction that statutes and ordinances must not be construed so as to nullify, void, render meaningless or superfluous any word in the provision. See Taylor v. Redmond, 89 Wn.2d 315 (1977).

2. Section 5.32's application is clear for nonconformity based upon lot coverage because the Superintendent can simply compare the existing percentage to the proposed percentage to determine if it further exceeds 35% or the applicable allowance. Nonconformity due to reduced side or other yards could require a different consideration but is not at issue here.

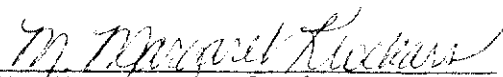
3. An examination of the policy of the zoning legislation is not necessary or appropriate to construe the provision where the language is clear except in the instance where a literal reading would obviously be contrary to legislative intent. Hatfield v. Greco, 87 Wn.2d 780 (1976). No such case is presented here. Further, as agreed by the parties, comparison to the status of and policies toward nonconforming uses is not appropriate.

4. Concern for possible administrative difficulties where the removal and addition are separated by months or years is also specious since the interpretation of the ordinance was based upon a contemporaneous removal and addition.

#### Decision

The appeal is GRANTED and the Findings and Decision of the Superintendent of Buildings are reversed.

Entered this 13th day of April 1979.

  
M. Margaret Klockars  
Deputy 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).