

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JAMES A. SPROW

FILE NO. S-78-013

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, James A. Sprow, filed an appeal from the
decision of the Superintendent not to issue a use permit for
property at 6555 16th N.E.

Steven J. Field, attorney at law, represented the
appellant, Joyce C. Kling, Zoning Administrator represented
the Superintendent of Buildings. Hugh K. and Martha E.
Sisley were granted intervention however did not appear at
hearing or present evidence.

This matter was heard before the Hearing Examiner on
June 27, 1978 and continued for a search of the records by
the Superintendent.

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 Single Family Residence
High Density (RS 5000) zoned lot developed with a residential
structure. The structure was constructed in 1918 as a
"residence." Permits were taken out in 1930 and 1934 for
construction of a garage and enclosure of the rear porch.
The 1934 permit showed occupancy as "One family residence."
In 1930 and 1934 the zoning was R-1.

2. The structure has been in continuous use as a
duplex since prior to July 24, 1957, the effective date of
Ordinance 86300.

3. The appellant purchased the subject property in
1972 as a duplex. A complaint was filed which brought the
property to the Superintendent's attention.

4. The upstairs unit of the structure is connected to
the lower, basement unit by a stairway which was enclosed in
1930. Prior to that there was no inside access to the
downstairs unit. Plumbing in the lower unit predated World
War II.

5. The appellant was notified by a letter December
29, 1977 that the subject property was in violation of
Sections 8.6(a) and 25.2(a) but that he could clear the
violation by submitting two affidavits to the fact that the
structure has been a legal non-conforming duplex since prior
to July 24, 1957, and has been used so continuously. The
appellant supplied such affidavits and was informed by
letter that he needed to submit a plot plan and pay the fee
and after publication of the use permit and appeal period he
could pick up the permit.

6. Sometime after that letter the Superintendent
changed his position and officially denied the application
for a use permit. Notice was published May 4, 1978. The
appeal was filed May 18, 1978.

7. The Superintendent's position is now that the Building Department will issue a use permit for a non-conforming use if the applicant can show "(t)hat the use could have been established lawfully at a time before the current zoning designation went into effect," as well as continuous occupancy.

8. The Superintendent showed that lawful use of the structure could have been established by means of a conditional use from the Planning Commission under the 1923 ordinance.

9. The 1973 Land Use Enforcement Ordinance requires the seller of any property, other than single family residential to provide a certificate to the purchaser regarding current zoning and last permitted use.

Conclusions

1. Section 3.22, Ordinance 86300, as amended, defines non-conforming use as:

A lawful use of land or structure in existence on the effective date of this Ordinance or at the time of any amendments thereto and which does not conform to the use regulations of the zone in which such use is located.

2. The Superintendent appears to have changed his policy regarding non-conforming uses to give effect to the word "lawful." Prior to the passage of the 1973 Ordinance for certification of land use a wise prospective purchaser would have had to search the Building Department's records and the City's former zoning ordinances to determine if anything other than a single family residential use was permitted on pain of having to change the use to conforming. The 1973 ordinance remedied that. Unfortunately for the appellant he purchased the property prior to the passage of that legislation.

3. Under the Superintendent's old policy the use permit should have been issued. Under the new policy the permit could be issued as well since a duplex use could have been established lawfully at a time prior to the current zoning ordinance.

4. The Superintendent's records show no indication that a conditional use was ever granted. The structure was constructed when no zoning was in effect in Seattle. The designation on the 1918 building permit of "residence" does not lead inescapably to the conclusions that a single family residence was intended and evidence of the separate entryways leads to the opposite conclusion. "Dwelling" was defined in the 1913 Building Code but "residence" was not.

5. The record shows a very long period of duplex use, uncertainty about the definition of terms, construction consistent with duplex use, and a method at one time for making the use lawful. This is sufficient to satisfy either the Superintendent's current or the earlier policy so the permit should have been issued.

Decision

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

Entered this 25th day of August 1978.

M. Margaret Klockars
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Deputy Hearing Examiner

Notice of 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.