

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

In the Matter of the Appeal of

JANET MAIN WORTHINGTON

FILE NO. S-76-028

from a ruling of the Superintendent
of Buildings

The appeal is GRANTED and the decision of
the Superintendent of Buildings is reversed
in part and remanded in part.

Introduction

The appellant, Janet Main Worthington, filed an appeal requesting review of the decision of the Superintendent of Buildings to issue a use permit for the establishment of a triplex use on property located at 5211-15 21st Avenue N.E. The appellant contends that the subject residence is not entitled to a nonconforming status as a triplex and that the structure does not qualify for conversion to a triplex use.

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

This matter was heard before the Hearing Examiner on December 1, 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) issued a use permit to Mrs. E. E. Harrington (hereinafter permittee) on August 30, 1976, for the establishment of a triplex use on property located at 5211-15 21st Avenue N.E. The Superintendent published notice of such issuance on November 2, 1976 and the instant appeal was filed on November 3, 1976.

2. The subject property is located in a Duplex Residence High Density (RD 5000) zone which permits the establishment of single-family residences or duplex residences. A triplex may be established in this zone if certain conditions are satisfied, pursuant to Section 26.22.010 (b), Seattle Code.

3. A triplex would qualify as a legal nonconforming use on the subject property if it were established prior to the effective date in 1957 of the current zoning ordinance.

4. The structure on the subject property was erected in approximately 1914 and was converted to a duplex in 1955 with the approval of the Seattle Planning Commission. On the effective date of the current zoning ordinance in 1957 the subject residence contained two separate kitchen facilities and therefore housed two dwelling units.

5. The definition of a dwelling unit in the zoning code, pursuant to Section 26.06.050, Seattle Code, emphasizes the number of kitchen facilities located within a building

as a determining factor of the number of dwelling units. Since a triplex by definition contains three dwelling units it would be necessary that there be three corresponding kitchen facilities within that building. A third kitchen facility was placed in the subject residence sometime after 1957 and approximately in the year 1963.

6. A structure may be converted to accomodate an increased number of dwelling units, pursuant to Section 26.48.030(a), Seattle Code, if certain conditions and requirements are satisfied by the permittee. The Superintendent has not considered these requirements and has not determined whether they have been satisfied by the permittee.

7. The permittee in applying for the use permit in question submitted no plans of the subject property and has therefore not complied with the requirements of Section 26.04.020(c), Seattle Code.

Conclusions

1. The appellant has established by a preponderance of the evidence that the subject residence did not contain three dwelling units at the time the current zoning code became effective in 1957. It appears to the contrary that the third dwelling unit was established several years after this time and that the residence is not entitled to a legal nonconforming status as a triplex use. The Superintendent's decision to issue the requested use permit was based on information submitted by the permittee, which it appears was not entirely accurate. Therefore, the decision of the Superintendent that a use permit could be issued for the establishment of a triplex use as a legal nonconforming use on the subject property was clearly erroneous and that decision is hereby reversed.

2. The Superintendent has not complied with mandatory procedures set forth in the zoning code with regard to the requirement that plans be submitted by a permit applicant. In addition, the Superintendent has overlooked or at least not adequately considered specified requirements for the conversion of a building to accomodate an increased number of dwelling units. Therefore, this matter is remanded to the Superintendent so that these procedures may be complied with should the permittee wish to legally convert the structure for use as a triplex. No inference should be drawn from this decision that the structure would qualify as a triplex, pursuant to Section 26.22.010(b), Seattle Code, as this determination does not appear to have been fully analyzed by the Superintendent at this time.


3. If the permittee intends to proceed with the conversion of the subject structure, the Superintendent in his analysis of whether the requirements for a triplex in an RD 5000 zone are complied with must specifically determine whether one of the proposed dwelling units is in a basement as defined in the zoning code. If it is determined, to the contrary, that the lowest level in the structure is actually a cellar, the Superintendent shall specifically consider whether this satisfies the requirements of the zoning code.

Decision

The decision of the Superintendent that the use of the subject property qualifies as a legal nonconforming triplex use is reversed and the determination of whether the structure can be converted for use as a

triplex is remanded for further consideration.

Entered this 9th day of December, 1976.


John L. Hendrickson
Deputy Hearing Examiner