

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Application of

PATRICIA BROCKWAY AND JULIAN ANDERSEN

FILE NO. S-81-010

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

The decision of the Director of the Department
of Construction and Land Use is REVERSED.

Introduction

The appellants exercised their right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: Patricia Brockway and Julian Andersen, pro se; representing the Department of Construction and Land Use, Judy Talman.

This matter was heard before the Hearing Examiner on April 15, 1981.

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 located at 7515-14th Avenue N.E., legal description Lot 13, Block 2, Sandall's Home Addition. The property is located in a Single Family Residence High Density (RS 5000) Zone.

2. The subject property, purchased by appellants in 1974, has been in continuous use as a triplex since 1942. This use has been unchallenged by the Department of Construction and Land Use to the point of this case. After undertaking remodeling in 1980, and receiving a subsequent stop work order, the appellants began to inquire as to the proper use of the building, and applied for the triplex use.

3. There were no letters or statements in opposition to the maintenance of the existing structure from the community residents. Furthermore, appellant contended on the record that longterm neighbors favor the triplex use.

4. The Director testified that the subject building was moved onto the subject site in 1925 which site was then zoned RIA (Single Family). The Director further testified that the subject property was converted into a triplex in 1942; and that there are no building permits on record. During World War II due to a serious housing shortage Ordinance No. 71986, and amendments allowed less than full compliance with Building Code and Zoning Ordinance requirements.

5. Pursuant to Ordinance No. 71986, Section 16, the owner was required to execute and record an agreement to return the building and its use to comply with the Building Code and Zoning Ordinance within six months of the termination of the war emergency in order to obtain the benefits of the Ordinance.

6. No agreement such as that required by Section 19, Ordinance No. 71986 was submitted into evidence.

Conclusions

1. A nonconforming use is defined in Section 3.22 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.

The Director's basic position is that a use permit under these circumstances can be issued only if the triplex could have been legally established under a previously existing zoning code or its discretionary approval. Secondly, the continuous existence and use of the structure as a triplex would need to be shown. Superintendent's Ruling No. 11-80, (Publication March 4, 1980.)

2. Ordinance 71986 and amendments permitted more intense residential development in the Single Family zones. It is undisputed that the subject triplex was converted pursuant to these provisions.

3. Superintendent's Ruling 11-80 requires a showing that the use could have been lawfully established "...at the time from which its existence can first be proved..." (emphasis added). The triplex use could have been lawfully established as part of the emergency war provisions. The ruling does not require a showing that the use could have been lawfully maintained; thus, the temporary nature of the Ordinance authorization is not determinative of the issue.

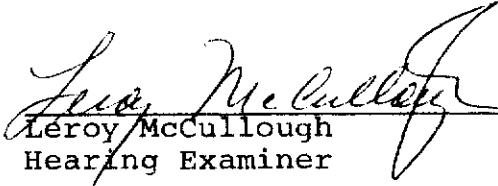
4. The Single Family Policies permit continuation of some nonconforming higher density residential structures in Single Family Residential Areas, but prohibit "new instances" of such uses.

5. Considering the tenure of this dwelling as a triplex, unchallenged by neighbors or the Department of Construction and Land Use, and the present appellants' ownership history, it would be an inequitable burden for the appellants to be required to provide more detailed accounts of the conversion.

Decision

The decision of the Director of the Department of Construction and Land Use is REVERSED.

Entered this 29th day of April, 1981.


Leroy McCullough
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 further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981).