

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

LEE NICHOLS

FILE NO. S-75-016

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, Lee Nichols, filed an appeal from a  
written ruling of the Superintendent of Buildings concerning  
property located at 5216 21st Avenue N.E.

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

This matter was heard before the Hearing Examiner on  
July 7, 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 appellant, Lee Nichols, filed an appeal from a  
written decision, dated May 28, 1976, of the Superintendent  
of Buildings (hereinafter, the Superintendent) which denied  
the appellant a building permit for the construction of a  
wet bar.

2. The subject property is located at 5216 21st  
Avenue N.E. in a Duplex Residence High Density (RD 5000)  
zone. This zone permits the development of a triplex dwelling  
if a sufficient lot area exists, but prohibits the establishment  
of four dwelling units within a structure.

3. The appellant obtained a building permit (561527)  
on January 22, 1976, to allow construction of a triplex  
dwelling on the subject property. On approximately May 11,  
1976, the appellant filed revised plans and requested a  
building permit to allow construction of a wet bar in the  
basement of the triplex. The Superintendent denied the  
requested building permit for the reason that the proposed  
construction would facilitate the establishment of a fourth  
dwelling unit in the structure. After receiving a written  
decision from the Superintendent, the appellant filed an  
appeal on June 17, 1976, requesting a hearing on the matter.

4. The proposed wet bar would consist of a sink,  
dishwasher, and a refrigerator. It would be located in a  
room adjacent to the planned recreation room in the basement  
of the triplex structure. Other uses to be located in the  
basement are an office, bathroom, and bedroom. A dwelling  
unit will be located in each of the other three stories in  
the structure and the basement will be used as part of the  
first-floor unit with an internal stairway connecting the  
floors. The appellant intends to reside in this two-floor  
unit.

5. The appellant has been previously cited in Seattle Municipal Court for establishing an illegal fourth unit in the basement of a triplex located at 5208 21st Avenue N.E. The floor plans of the subject triplex and the other one are similar, but with respect to the basement, the actual uses proposed will be different.

6. Pursuant to the definition of "dwelling unit" in the zoning code (Section 26.06.050, Seattle Code), the presence of kitchen facilities is the critical factor in determining whether a space is a dwelling unit. The Superintendent has generally interpreted this to be cooking facilities such as a stove or electric range.

7. There is no provision in the zoning code which prohibits the establishment of a wet bar in a triplex as proposed by the appellant.

#### Conclusions

1. There is insufficient evidence to support the Superintendent's conclusion that the appellant intends to utilize the basement of the triplex as an unlawful fourth dwelling unit. The fact that such was done in another triplex at another time, and that the floor plans of the triplexes are similar, does not establish that the appellant intends to convert the basement of the subject triplex into an unlawful dwelling unit. This fact is of a speculative nature and is of little probative weight without corroborative evidence.

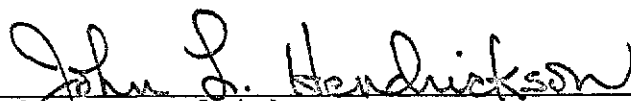
2. The proposed wet bar is not prohibited by the zoning code in and of itself and there is no evidence that it will be used for anything other than its intended function. Historically, a wet bar has not been interpreted by the Superintendent to constitute kitchen facilities, with regard to the determination of a dwelling unit in accordance with the zoning code. Consequently, without a text amendment to the zoning code it does not appear that the Superintendent has the authority to preclude construction of a wet bar since it does not amount to kitchen facilities and does not demonstrate an intent to develop an additional dwelling unit.

3. Notwithstanding this decision, the Superintendent has the authority to order closure of a dwelling unit in the basement should it ever be so converted by the present or a future owner. To deny the appellant a building permit for the construction of a wet bar in anticipation that the basement will one day be converted for dwelling purposes would be an arbitrary action that exceeds the authority of the Superintendent.

#### Decision

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

Entered this 14<sup>th</sup> day of July, 1976.

  
John L. Hendrickson  
Deputy Hearing Examiner