

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DR. MICHAEL E. DOMAN

File No. S-78-024

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, Dr. Michael E. Doman, filed an appeal from an interpretation of the Superintendent that property at 1700 36th Avenue had never been established as a legal nonconforming duplex.

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

Parties to the proceeding were: the appellant, represented by Richard Weil, and the Superintendent, represented by Joyce Kling.

This matter was heard before the Hearing Examiner on October 10, 1978.

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 consists of a residential structure at 1700 36th Avenue. The property is located in a Single Family Residence High Density (RS 5000) zone and only single family units are permitted in this zone except for legally established nonconforming uses.

2. Dr. Micheal E. Doman purchased the property in June, 1978 and was assured orally that the property had been used previously for duplex use and he has continued to rent out the second unit.

3. City records show that a dwelling unit was first established on this site in 1904. Subsequent permits indicate various improvements being made to the property. In 1931 a doctor's office was established in the residence.

4. The Superintendent also cited the various zoning regulations that were in effect. The 1923 zoning ordinance shows the property as zoned for first residence use. A duplex could have been established under the 1923 zoning but there are no records of such a change. The present zoning code was adopted in 1957 and the area was zoned for single family use and duplexes are not permitted.

5. A nonconforming use is defined in Section 3.22 of the zoning ordinance as: " A lawful use of land or structure in existance 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."

6. The appellant has submitted evidence into the record which supports a finding that the structure was utilized for duplex use prior to 1957 and has been in continuous duplex use to the present time.

7. It is the position of the Superintendent that a duplex can be legally established only on the following grounds:

- (a) that it could have been legally established under one of the previously existing zoning codes; and
- (b) that it has been continuously occupied as a duplex since 1957.

8. On August 23, 1978, the Superintendent entered a written interpretation with regard to the use of property at 1700 36th Avenue. The Superintendent held that the use of the property is not a conforming use because its use as a duplex was never legally established. The appellant filed a timely appeal from this interpretation.

Conclusions

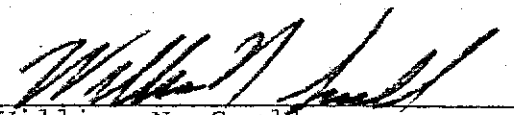
1. A duplex use was a legal and permitted discretionary use in the area since the first zoning ordinance was adopted in 1923. The fact that the building permits for the property do not show a duplex use is not conclusive since most minor building permits issued several years ago did not involve a formal determination of use in every case. For example, the 1963 permit for siding and window frames has stamped on its face that "issuance of this permit does not establish use or occupancy."

2. Affidavits in the record show that the residence was used continuously as a duplex from at least 1954 to the present or over a period of 24 years. Such a compatible residential use over such a long period of time, results in a conclusion that the public interest would not be served by refusal to issue a permit for a duplex. Laches has been applied where there was a failure for over 10 years to object to a nonconforming use. Anderson, AMERICAN LAW OF ZONING, Section 6.12. Based on the circumstances in this case, the applicant should be issued a use permit.

Decision

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

Entered this 23rd day of October 1978.


William N. Snell
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.