

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

In the Matter of the Appeal of

RICHARD J. SHAVEY, A.I.A.,
SHAVEY, DEGRASSE, SHAVEY

FILE NO. S-80-004

from a determination of the
Superintendent of Buildings

The appeal is DENIED and the Findings and Decision
of the Superintendent of Buildings are affirmed.

Introduction

Richard J. Shavey, A.I.A., Shavey, DeGrasse, Shavey, appellant, filed an appeal of an interpretation of the provisions of the Zoning Ordinance for bulk requirements for townhouses by the Superintendent of Buildings for property at 2622 23rd Avenue West.

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

This matter was heard before the Hearing Examiner on February 14, 1980.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance (86300, as amended).

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. An interpretation was requested of the Superintendent of Buildings as to whether plans submitted by appellant for a four unit townhouse for 2622 - 23rd Avenue West comply with the Zoning Ordinance.
2. The Superintendent of Buildings issued his interpretation, notice of which was published January 15, 1980, which concluded that the plans did not meet all Zoning Ordinance requirements.
3. An appeal was filed by appellant, January 29, 1980, of the portions of the interpretation which determined that a deck for a unit cannot extend past the common wall line and which determined that the side yard requirement would be 7.5 ft.
4. The subject property is an RD 5000 zoned lot containing 9,000 sq. ft. of area. Four townhouse dwellings are proposed each with greater than 1,600 sq. ft. in lot area.
5. "Townhouse dwelling" is defined in Section 3.05 as

A dwelling unit attached to one or more dwelling units, each dwelling unit occupying space from the ground to the roof and being attached to other dwelling units at the side or rear by common walls located on lot lines.

6. The Superintendent assumed, based upon plans by the appellant, that the lot lines project upward on a vertical plane from the ground.

7. The design of the structure includes decks for units 1 and 3 that extend over the lot lines, as described in the Superintendent's Finding No. 9. The architects stacked the decks to meet some of the townhouse design requirements, to reduce the lot coverage, to keep the low scale of the building and to improve the view orientation.

8. The Superintendent agrees with the appellant that the decks are not within the definition of "dwelling unit" but are accessory uses to the dwelling units.

9. "Accessory use or structure" is defined in Section 3.22 as

A use or structure incidental to a permitted principal use, provided that such use or structure shall be located on the same lot as the principal use or structure, except when permitted elsewhere as specifically set forth in this ordinance.

10. The definition of "lots" for townhouse dwellings requires at least 12 ft. of frontage upon a street or permanent access easement.

11. According to the Superintendent's Finding No. 5, there will be individual ownership of the dwelling units and condominium ownership of the structure, decks and yards. The property will not be short platted.

12. According to RCW 64.32.110,

Local ordinances, resolutions, or laws relating to zoning shall be construed to treat like structures, lots, or parcels in like manner regardless of whether the ownership thereof is divided by sale of apartments under this chapter rather than by lease of apartments.

The appellant did not challenge the Superintendent's interpretation that Sections 11.11(c)(2), (3), (4) and (5) apply to the lots for individual dwelling units rather than to the larger lot. The Superintendent's representative stated that the application of these bulk requirements to the individual lots would be hampered by the stacked deck design.

14. To determine the required side yard, the Superintendent relies upon Sections 11.11(c)(4), 22.45(b) and 13.53. The determination depends upon the number of stories and length of the building. The appellant agrees that these sections apply and that the side yard requirement must be calculated in the manner stated in the February 15, 1980, letter to the examiner by Gregory Borba.

Conclusions

1. The Superintendent's recognition of the decks as accessory uses, rather than a part of the townhouse dwelling, appears to be a change from the interpretation signed on January 10, 1980. The representative maintained at hearing that the overlapping deck would still be impermissible because an accessory use is to be located on the same lot as the principal use. This raises the issue of whether the reference to the lot of the principal use is necessarily to the smaller, individual lots or to the lot of the townhouse structure. Section 11.11(c)(10) permits location of parking which could be, presumably, covered, within 200 ft. of the "townhouse dwelling" it serves. It would appear unlikely

that the parking, as far away as permitted, would be on the same individual lot and yet parking structures are normally accessory uses and probably would not be permitted as a principal use in the RD zone. Whether an accessory use deck should be treated differently was not argued.

2. The condominium statute provisions allow for horizontal division of ownership as well as the vertical contemplated by the short plat ordinance. The Superintendent's interpretation, since it included the decks within the "townhouse dwellings" for its conclusions, did not address specifically whether horizontal division, as well as vertical, could be effected in this case. It did indicate that with vertical division, the individual lots do not comport with ordinance requirements for lot coverage.

3. The analysis of the Superintendent's application of the ordinance to the stacked deck design shows several areas where there is room for further interpretation or where more information or argument might have been convincing to the examiner such as how division under the condominium statute would be applied to the instant case. Section 25.44 provides that the interpretation of the Superintendent is to be regarded as prima facie correct and the burden of establishing the contrary is to be borne by the appellant. The presumption in favor of the Superintendent's interpretation, therefore, must stand where the appellant has not proved it to be erroneous. This decision, affirming the Superintendent's interpretation, does not bind the Superintendent to that interpretation if he finds that some other means of division of the property could be effected while still reasonably accomplishing the purposes of the ordinance.

4. Since the parties have agreed upon the interpretation of the ordinance as to side yards, no conclusion as to that issue will be entered.

Decision

The appeal is DENIED and the Findings and Decision of the Superintendent of Buildings are affirmed.

Entered this 25th day of February 1980.

M. Margaret Klockars
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Deputy 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 appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).